

CITY OF MONTCLAIR

AGENDA FOR CITY COUNCIL, REDEVELOPMENT AGENCY, AND  
MONTCLAIR HOUSING CORPORATION MEETINGS

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

July 5, 2011

7:00 p.m.

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

*The CC/RDA/MHC meetings are now available in audio format on the City's website at [www.ci.montclair.ca.us](http://www.ci.montclair.ca.us) and can be accessed the day following the meeting after 10:00 a.m.*

Page No.

I. **CALL TO ORDER** - City Council, Redevelopment Agency, and Montclair Housing Corporation

II. **INVOCATION**

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

III. **PLEDGE OF ALLEGIANCE**

IV. **ROLL CALL**

V. **PRESENTATIONS** - None

VI. **PUBLIC COMMENT**

*This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded five minutes to address the City Council Members and Redevelopment Agency and Montclair Housing Corporation Boards of Directors. (Government Code Section 54954.3)*

*Under the provisions of the Brown Act, the Council/Agency/ MHC is prohibited from taking action on items not listed on the agenda.*

VII. **PUBLIC HEARINGS**

- A. Consider Adoption of Resolution No. 11-2910 Amending the Master User Fee Schedule Related to Vehicle Impound Service Fees [CC]

**VII. PUBLIC HEARINGS**

- |    |   |    |
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| A. | Consider Adoption of Resolution No. 11-2908 Amending the Fee Schedule for the Collection and Disposal of Residential Refuse [CC]                              | 7  |
| B. | First Reading - Adoption of Ordinance No. 11-923 Adding Chapter 11.75 to Title 11 of the Montclair Municipal Code Related to Undergrounding of Utilities [CC] | 19 |

**VIII. CONSENT CALENDAR**

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| A.  | Approval of Minutes   |    |
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| B.  | Administrative Reports  |    |
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3.	Consider Approval of Agreement No. 11-88 with West Coast Arborists for Tree-Maintenance Services [CC]	82
4.	Consider Approval of Agreement No. 11-89 with Liebert Cassidy Whitmore for Participation in the East Inland Empire Employment Relations Consortium [CC]	94
5.	Consider Approval of Agreement No. 11-90 with Bartel Associates, LLC, for Completion of the Required Governmental Accounting Standards Board Statement No. 45 Actuarial Valuation [CC]	97
6.	Consider Approval of Agreement No. 11-91 with Inland Empire United Way to Provide Case Management Programs [CC]	103
7.	Consider Approval of Agreement No. 11-92 with Bilingual Family Counseling Services to Provide Case Management and Mental Health Services [CC]	111
8.	Consider Approval of Agreement No. 11-93, a Jurisdiction Master Agreement with San Bernardino Associated Governments [CC]	118
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	Consider Designating Edward C. Starr or His Designee as the Person Authorized to Execute All Necessary Documents for the Purpose of Securing Payment Funds[CC]	126
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**IX. PULLED CONSENT CALENDAR ITEMS**

**X. RESPONSE**

**XI. COMMUNICATIONS**

**A. City Attorney/Agency Counsel**

- 1. Closed Session Pursuant to Section 54957.6 of the Government Code Regarding Conference with Designated Labor Negotiator City Manager Edward C. Starr

Agency: City of Montclair

Employee Organizations: Management  
 Montclair Fire Fighters Association  
 Montclair Police Officers Association  
 San Bernardino Public Employees Assoc.

**B. City Manager/Executive Director**

**C. Mayor/Chairman**

- 1. Announcement of Planning Commissioner Reappointment

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**E. Committee Meeting Minutes (For Informational Purposes Only)**

- 1. Minutes of the Code Enforcement Committee Meeting of May 16, 2011 142
- 2. Minutes of the Personnel Committee Meeting of June 20, 2011 146

**XII. ADJOURNMENT OF REDEVELOPMENT AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS OF DIRECTORS**

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

**XIII. CLOSED SESSION ANNOUNCEMENTS**

**XIV. ADJOURNMENT OF CITY COUNCIL**

*The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, July 18, 2011, at 7:00 p.m. in the Council Chambers.*

*Reports, backup materials, and additional materials related to any item on this Agenda distributed to the City Council, Redevelopment Agency Board, or Montclair Housing Corporation Board after distribution of the Agenda packet are available for public inspection in the Office of the City Clerk located at 5111 Benito Street, Montclair, California, between 7:00 a.m. and 6:00 p.m., Monday through Thursday.*

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (909) 625-9415. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)*

*I, Yvonne L. Smith, Deputy City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the bulletin board adjacent to the south door of Montclair City Hall on June 30, 2011.*

# AGENDA REPORT

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION  
NO. 11-2910 AMENDING THE MASTER  
USER FEE SCHEDULE RELATED TO VEHICLE  
IMPOUND SERVICE FEES

**DATE:** July 5, 2011  
**SECTION:** PUBLIC HEARINGS  
**ITEM NO.:** A  
**FILE I.D.:** FLP170  
**DEPT.:** POLICE

**REASON FOR CONSIDERATION:** The City Council is requested to consider adoption of Resolution No. 11-2910, succeeding Resolution No. 11-2896, which would amend the Master User Fee Schedule for vehicle impound service fees.

**BACKGROUND:** The City Council adopted Resolution No. 11 2896 on May 2, 2011, establishing impounded vehicle towing fees pursuant to California Vehicle Code Section 14602.6, the 30-day impound law. The City would collect the tow fees and pay the tow companies the full amount collected on a monthly basis if the vehicles were released back to the registered or legal owners. If the impounded vehicles were released through a lien sale, the City would only collect .55 percent of the established tow fees and pay that full amount to the tow companies.

Dietz Towing and Pacific Truck and Auto Towing, Inc., were provided with the option of the bifurcated fee schedule described above or a reduced single-rate fee schedule for their towing services, regardless of how the vehicles were released. Neither company selected a preferred fee schedule, and the Police Department decided to move forward with the bifurcated fee schedule.

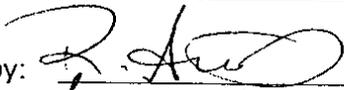
On June 8, 2011, the Police Department met with representatives of Dietz Towing and Pacific Truck and Auto Towing, Inc., to review the new tow contracts. At that time, both towing companies decided they would prefer to establish a reduced single rate fee for their services.

Establishing a single-rate fee for impounded vehicle towing services would simplify the process and reduce the overall costs paid by registered or legal owners. The existing and proposed impounded vehicle towing fees are as follows:

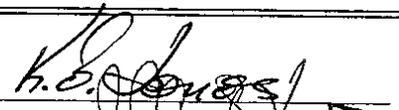
### *Existing Police Department Fee Schedule*

<i>Description</i>	<i>Fees</i>
Impounded Vehicle Towing	\$193 for vehicles with a gross vehicle weight rating under 14,000 pounds

Prepared by:



Reviewed and  
Approved by:



Proofed by:



Presented by:



Impounded Vehicle Towing	\$218 for vehicles with a gross vehicle weight rating of 14,001 to 19,501 pounds
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*Proposed Police Department Fee Schedule Changes*

<i>Description</i>	<i>Proposed Fees</i>
Impounded Vehicle Towing	\$150 for vehicles with a gross vehicle weight rating under 14,000 pounds
Impounded Vehicle Towing	\$170 for vehicles with a gross vehicle weight rating of 14,001 to 19,501 pounds

**FISCAL IMPACT:** Revenues generated from the City's vehicle impound lot would offset expenditures.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 11 2910 amending the Master User Fee Schedule related to vehicle impound service fees.

**RESOLUTION NO. 11-2910**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MONTCLAIR AMEND-  
ING THE MASTER USER FEE SCHEDULE  
FOR VEHICLE IMPOUND SERVICE FEES**

**WHEREAS**, the City of Montclair has the statutory authority to impose fees, charges, and rates under its regulatory and Police power as authorized pursuant to California Government Code Section 37112; and

**WHEREAS**, user fees are imposed for services rendered by the City of Montclair that will benefit a specific individual or group of individuals; and

**WHEREAS**, there is a need for the City of Montclair to recoup costs related to the provision of specified services; and

**WHEREAS**, user fees are imposed to assign the cost of providing services to the specific individual or group of individuals receiving the benefits of said services, rather than funding said services from General Fund revenues; and

**WHEREAS**, California Vehicle Code Section 22850.5(a) authorizes cities to administer vehicle impound facilities; and

**WHEREAS**, the City Council of the City of Montclair has determined that fees equal to costs related to the towing of vehicles be set by City Resolution; and

**WHEREAS**, the City has heretofore conducted an analysis of the costs incurred in connection with vehicle towing, and the fees established herein were determined to not exceed actual costs; and

**WHEREAS**, the City Council has duly noticed and conducted a public hearing on July 5, 2011, at which time the public was invited to give oral and/or written testimony as part of the regularly scheduled City Council meeting prior to the City Council's consideration of adoption of this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby find and determine that the Police Department shall impose the following impounded vehicle towing service fees:

Impounded Vehicle Towing	\$150 for vehicles with a gross vehicle weight rating under 14,000 pounds
Impounded Vehicle Towing	\$170 for vehicles with a gross vehicle weight rating of 14,001 to 19,501 pounds

**BE IT FURTHER RESOLVED** that this Resolution shall be in full force and effect thirty (30) days after passage.

**APPROVED AND ADOPTED** this XX day of XX, 2011.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 11-2896 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2011, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

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**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 11-12, A RESOLUTION OF THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY APPROVING AGREEMENT NO. 11-79, A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY, AND NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA (NATIONAL CORE) AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

**DATE:** July 5, 2011  
**SECTION:** PUBLIC HEARINGS (JT)  
**ITEM NO.:** B  
**FILE I.D.:** RDS735  
**DEPT.:** REDEVELOPMENT

CONSIDER ADOPTION OF RESOLUTION NO. 11-2916, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING AGREEMENT NO. 11-79, A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY, AND NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA (NATIONAL CORE) AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

CONSIDER APPROVAL OF AGREEMENT NO. 11-86, A GRANT OF EASEMENT AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND MILLS FAMILY HOUSING PARTNERS, L.P.

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**REASON FOR CONSIDERATION:** Section 33433 of the California Health and Safety Code requires that a public hearing be conducted prior to the disposition of property owned by a redevelopment agency. Proposed Disposition and Development Agreement (DDA) No. 11-79 between the City of Montclair Redevelopment Agency and National Community Renaissance of California (National CORE) involves the sale and transfer of property owned by the City of Montclair Redevelopment Agency to National CORE. The purpose of the sale would allow National CORE to construct an 18-unit affordable housing project for persons with developmental disabilities. The property proposed for sale is located at 4113 Kingsley Street directly east of the recently completed 50-unit Vista Del Cielo project. The site is shown on Exhibit A.

The Redevelopment Agency Board of Directors is requested to consider adoption of Resolution No. 11-12 approving the DDA. When considering sale of property owned by a redevelopment agency, state law requires that the Redevelopment Agency obtain approval

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Prepared by: M. STAATS  
                  [Signature]  
Proofed by: [Signature]

Reviewed and Approved by: M. STAATS  
  [Signature]  
Presented by: [Signature]

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from the City Council. Therefore, the City Council is asked to consider approval of the DDA through adoption of Resolution No. 11-2916. Lastly, the Redevelopment Agency Board of Directors is requested to consider Agreement No. 11-86. The Agreement grants an access easement to Mills Family Housing Partners, L.P. Mills Family Housing Partners, L.P., is the investment entity of National CORE that owns the Vista Del Cielo project. The easement is needed for vehicle access to the Special Needs project from the Vista Del Cielo project.

Proposed DDA No. 11-79 and the Grant of Easement document (Agreement No. 11-86) are included in the agenda packet for consideration.

## **BACKGROUND:**

### Project History

As the Redevelopment Agency Board of Directors is aware, in 2003 the Housing Improvement Task Force identified the area generally located between Mills Avenue, Kingsley Street, Amherst Avenue, and Holt Boulevard as the San Antonio Gateway. The Housing Improvement Task Force proposed various housing types and densities for the area. As a result of the City Council's approval of the recommendations of the Housing Improvement Task Force, the San Antonio Gateway area included land use planning for multifamily housing, senior housing, and single-family housing. To date, the City has seen many of the proposed housing developments come to fruition. A 106-unit single-family housing project has been developed by Taylor Morrison. The Redevelopment Agency participated with National CORE in development of the 75-unit San Antonio Vista Apartment project. With assistance from the Redevelopment Agency, National CORE completed the 85-unit senior project. On June 2, 2011, the Redevelopment Agency celebrated the grand opening of the 50-unit affordable Vista Del Cielo family apartment project with National CORE. Vista Del Cielo included a \$4.3 million residual receipts loan from the Redevelopment Agency Housing Fund.

The proposed location for the National CORE Special Needs project lies directly east of Vista Del Cielo on the southwest corner of Kingsley Street and Pradera Avenue. This site also serves as an entry corner for the Montclair Meadows Foundation Area and the San Antonio Vista Apartments. The Redevelopment Agency Board of Directors authorized the acquisition of the .47-acre property at 4113 Kingsley Street on January 20, 2009. The purchase price for the property was \$330,000. At the time the property was acquired, staff held preliminary discussions with National CORE to determine its interest in considering the site for special needs housing. Development of a Special Needs Housing Project was of interest to National CORE. National CORE developed similar projects in the past and has partnered with nonprofit social service providers regarding tenancy and social service needs. On September 8, 2009, the Redevelopment Agency Board of Directors approved an Exclusive Right to Negotiate Agreement between the City of Montclair Redevelopment Agency and National CORE regarding the 4113 Kingsley Street site.

An Option Agreement regarding purchase of 4113 Kingsley Street was approved by the Redevelopment Agency Board of Directors and National CORE on October 19, 2009. The Option Agreement provided National CORE with the ability to apply for United States Department of Housing and Urban Development (HUD) Section 811 funding to finance the development of affordable housing for developmentally disabled persons. The Option Agreement also committed that the Redevelopment Agency Board of Directors would

consider providing National CORE with a residual receipts loan of at least \$1.6 million. National CORE received a commitment for funding from the Section 811 program in 2010. However, National CORE still finds itself in need of some additional funding for the project and wants to apply for the California 9 Percent Low-Income Housing Tax Credit (LIHTC) program. In order to apply for tax credits, all other financial assistance must be secured including that assistance to be provided by the Redevelopment Agency. If National CORE is successful at receipt of tax credits, the Montclair Special Needs project could begin as early as February 2012.

### Special Needs Housing

There are distinct types of "special needs housing" recognized by federal/state housing programs. These categories include housing for emancipated minors or those exiting the foster care system; housing for persons or families that are victims of spousal/partner abuse; housing for persons suffering the effects of acquired immune deficiency syndrome/ Human immunodeficiency virus; housing for persons suffering from mental problems; and housing for persons with developmental disabilities. The category of special needs housing proposed for construction at 4113 Kingsley Street is housing for persons with developmental disabilities.

A developmentally disabled adult is defined as a person of least 18 years of age or older who has a severe chronic disability, likely to continue indefinitely, that is attributable to mental or physical impairment or both where the condition manifested itself before the person attained the age of 22 years old. The disability must reflect a person's need for a combination of special, interdisciplinary, or generic care, treatment, or other services that are lifelong or of an extended duration. This physical or mental condition must substantially limit function in **three or more** of the following areas:

- Self care
- Receptive and expressive language
- Learning
- Mobility
- Self-direction
- Capacity of independent living
- Economic self-sufficiency

Adults residing in the Montclair Special Needs Housing Project would need to have the capacity and ability for independent living. However, these proposed residents would likely have the need for special services. Therefore, the proposed Special Needs Housing Project would be operated slightly different than either the National CORE Senior San Marino Apartments or the San Antonio Vista or Vista Del Cielo projects. The difference in operation would be reflected in social service delivery. While all the other National CORE projects have some community, recreational, or educational programs, the Special Needs Housing Project would have a social service provider that would monitor and follow up on the needs of the resident population.

The nonprofit social service provider for the Montclair Special Needs Housing Project selected by National CORE is United Cerebral Palsy of Los Angeles. United Cerebral Palsy of Los Angeles is experienced in operating special needs housing for the developmentally disabled. This organization currently services 11 independent living apartments and 25 community-based homes to help address affordable and accessible housing in Los Angeles, Orange, and Santa Barbara counties. The Montclair Special Needs Housing Project would be the first project served by United Cerebral Palsy of Los Angeles in San Bernardino County. An employee of United Cerebral Palsy would act as onsite manager of the units to aid the residents of the Montclair Special Needs project.

National CORE contacted local organizations serving the developmentally disabled community and found that these groups did not have the capability of performing services for the Montclair Special Needs Housing Project at this time. For example, the Ontario-Pomona Association for Retarded Citizens (OPARC) wrote letters of support for the proposed project but indicated an inability to provide the type of social services needed to operate the proposed development. National CORE indicated that one reason OPARC supported the project was because its client base would be eligible to apply for residency.

#### Disposition and Development Agreement

Proposed Agreement No. 11-79, the DDA, is presented for consideration at this time because National CORE must have all other forms of financing secured prior to submitting an application to the State Tax Credit Allocation Committee (TCAC). The more salient points of the DDA include the following:

- National Core would agree to purchase approximately .47 acres from the Agency for the Special Needs Housing project. The property being acquired originally contained a single-family home that was in disrepair. The Redevelopment Agency demolished the house and the site is vacant. National CORE would agree to pay a purchase price of \$350,000 for the site. This price represents the Redevelopment Agency's purchase price of \$330,000 and includes closing costs related to the acquisition and the demolition costs of the structure.
- National CORE would be responsible for constructing 18 units on the property at 4113 Kingsley Street. Occupancy and rents of the units would be restricted to very low-income households. There would be 17 one-bedroom units and one two-bedroom unit for the resident manager. Each one-bedroom unit would be restricted to occupancy by two persons during the term of the HUD regulatory agreement. Occupancy and affordability restrictions would be maintained for 55 years from the date of the City's issuance of a final certificate of occupancy for the project. Seventeen of the 18 units would be constructed to meet needs of developmentally disabled persons. One unit would be reserved for the resident manager. The Planning Commission approved the entitlements for the Special Needs Project on March 14, 2011, and the City Council approved the environmental documentation and Precise Plan of Design for the project on May 16, 2011.
- The Agency would agree to lend National CORE the amount of \$1.7 million for the project. The amount of the loan includes the \$350,000 purchase price for the property and approximately \$252,000 in certain predevelopment costs. The remaining amount of the loan, approximately \$1,098,000, would be used for

architectural and design costs, development costs or other costs mutually determined by the Redevelopment Agency and the Developer. National CORE's obligation to repay the Agency loan would be established in the form of a Promissory Note. The Promissory Note would have a 55-year term and bear simple interest in the amount of 1 percent per annum. The Promissory Note would be payable from the "residual receipts" of the housing project after payment of operating expenses, debt service which is senior to the Promissory Note, reserve requirements, and other fees or payments as detailed in the Agreement. As the City Council and Redevelopment Agency Board of Directors will recall, the Agency has three outstanding Promissory Notes payable from residual receipts on the other National CORE projects. In addition, the Redevelopment Agency has three residual receipts notes from Augusta Homes for its participation in acquisition and rehabilitation of Villa Montclair Mobile Home Park, Hacienda Mobile Home Park, and Monterey Manor Mobile Home Estates.

- The Promissory Note would be paid by National CORE to the Agency in an amount equal to 50 percent of any residual receipts from the operation of the housing complex in the preceding year. Residual receipts payments and accrued interest would be paid during the term of the Note until repayment in full. Any remaining portion of the Note amount would be due and payable on the 55th anniversary of the date of the Note. However, any payment of residual receipts to the Redevelopment Agency before the maturity of HUD's 40-year capital advance loan may not be paid without the consent of HUD.
- The Promissory Note would be secured by a Deed of Trust. However, the Redevelopment Agency's interest would be subordinate to HUD's capital advance loan and the security interest of a developer participating in the LIHTC program.
- The terms of the Agreement or the Promissory Note would not be assumable by successors or assignment except as approved or permitted by the Redevelopment Agency Board of Directors as detailed in the Agreement.
- Construction of the project would be subject to compliance with applicable federal and state labor laws.
- The DDA would act as the required Agreement necessary to implement the Density Bonus Ordinance for this proposed project.
- If National CORE should fail to maintain or manage the project pursuant to the terms of the Agreement, the Agency would have the ability to perform the maintenance and attach a lien to the project and/or cause the removal and replacement of the property manager for the project. These provisions are included as a safeguard. Staff does not anticipate that this situation would occur given the track record of National CORE.
- National CORE would submit an operating budget to the Agency Executive Director on an annual basis for approval. Operating and Capital Reserve Funds for the project would also be retained.
- National CORE would supply the appropriate policies of general liability insurance and agree to indemnification of the Agency as stated in the Agreement.

Redevelopment Agency Resolution No. 11-12 finds that the proposed project is in keeping with the goals of the Redevelopment Plan for Redevelopment Project Area No. V, approves the sale of the Agency-owned property for the purpose of the development of the Special Needs Housing Project, and approves Agreement No. 11-79. City Council Resolution No. 11-2916 finds that the sale of the property to National CORE will eliminate blight within the Project Area, finds that the project will provide affordable housing for low- and moderate-income persons, and approves Agreement No. 11-79.

#### Easement Agreement

Agreement No. 11-86 is an easement agreement between the Redevelopment Agency and Mills Family Housing Partners, L.P. Mills Family Housing Partners, L.P., is the development entity formed by National CORE and an investor partner to finance and own the Vista Del Cielo project. The Vista Del Cielo project lies west of the proposed Special Needs Housing Project site. As approved by the Planning Commission and City Council, the Special Needs Housing Project will have no vehicular access points to the street. Vehicle access to the Special Needs Housing Project would be shared with the Vista Del Cielo project by vehicle and pedestrian gate. This access was designed as a safety and security measure for the residents of the Special Needs Housing Project.

In order to legally allow access from the Vista Del Cielo project to the Agency-owned property for the Special Needs Housing Project, the Redevelopment Agency Board of Directors is requested to approve an easement for ingress and egress. This action is needed to submit a complete proposal to the State Low-Income Housing Tax Credit Committee. The Redevelopment Agency Board of Directors is requested to approve the access easement.

**FISCAL IMPACT:** As previously indicated National CORE has identified three sources of revenue to finance the construction and financing costs related to the Special Needs Housing Project. National CORE has secured a financial commitment of approximately \$2.9 million from the HUD 811 program and the Redevelopment Agency is requested to provide a commitment of \$1.7 million. National CORE plans to apply for the 9 Percent LIHTC Program as a source of financing \$4.1 million for permanent financing of the 18-unit Special Needs Housing Project. The 9 percent LIHTC Program currently provides the most effective leverage of local revenues. The construction cost for the project would be approximately \$7.5 million. Permanent financing for the project utilizing the identified sources would cost approximately \$8.7 million. It should be noted that National CORE receives a Developer's fee for facilitating the project. LIHTC rules allow a developer to take up to a 15 percent fee based on the permanent financing costs. National CORE has reduced their fee for this project to approximately 10 percent of the permanent financing costs.

The Redevelopment Agency purchased 4113 Kingsley Street and demised the building on the site for approximately \$350,000. Through the Exclusive Negotiating Agreement, the Agency has paid approximately \$252,000 in predevelopment costs such as architecture, engineering, and Planning Division fees. The Agency would also contribute approximately \$1,098,000 in cash for project costs. The Agency's total contribution would be \$1,700,000. The Agency's contribution would be a residual receipts loan repayable from future project revenue after the payment of expenses. The Agency loan would be secured through a Deed of Trust. The Redevelopment Agency Housing Fund Budget for the 2011-12 fiscal year contains funding for this financial participation.

**RECOMMENDATION:** Staff recommends the City Council and Redevelopment Agency Board of Directors members take the following actions:

- Adopt Resolution No. 11-12, a Resolution of the City of Montclair Redevelopment Agency approving Agreement No. 11-79, a Disposition and Development Agreement by and between the City of Montclair, the City of Montclair Redevelopment Agency, and National Community Renaissance of California (National CORE) and making certain findings in connection therewith.
- Adopt Resolution No. 11-2916, a Resolution of the City Council of the City of Montclair approving Agreement No. 11-79, a Disposition and Development Agreement by and between the City of Montclair, the City of Montclair Redevelopment Agency, and National Community Renaissance of California (National CORE) and making certain findings in connection therewith.
- Approve Agreement No. 11-89, a Grant of Easement Agreement by and between the City of Montclair Redevelopment Agency and Montclair Family Housing Partners, L.P.



## RESOLUTION NO. 11-12

### A RESOLUTION OF THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY APPROVING AGREEMENT NO. 11-79, A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA (NATIONAL CORE) AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH

**WHEREAS**, the City of Montclair Redevelopment Agency (the "Agency") is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Agency's Redevelopment Project No. V (the "Redevelopment Project"); and

**WHEREAS**, National Community Renaissance of California (National CORE) (the "Developer") has expressed its desire to acquire approximately .47 acres of real property located at 4113 Kingsley Street in the City of Montclair, which the Agency currently owns (the "Site"); and

**WHEREAS**, the Developer desires to acquire the Site, and to develop and operate on the Site a eighteen (18) unit multifamily housing development for special needs developmentally disabled persons (the "Project"); and

**WHEREAS**, the Developer has submitted to the Agency and the City Council of the City of Montclair (the "City Council") copies of a Disposition and Development Agreement (the "Agreement") in a form to be executed by the Developer; and

**WHEREAS**, pursuant to Section 33433 of the Community Redevelopment Law (California Health and Safety Code Section 33000, *et seq.*), the Agency is authorized, with the approval of the City Council after a duly noticed public hearing, to sell the Site for development pursuant to the Redevelopment Plan upon a determination by the City Council that the sale of the property would either assist in the elimination of blight or provide affordable housing for low- and moderate-income persons, that the consideration for such sale is not less than either the fair market value or fair reuse value of the Site in accordance with the covenants and conditions governing the sale and the development costs required thereof, and that the sale is consistent with the Implementation Plan that has been adopted by the Agency for the Redevelopment Project; and

**WHEREAS**, the City Council has previously determined, in its adoption of the Ordinance approving the Redevelopment Project, that the Site was blighted; and

**WHEREAS**, the Agreement would provide for the elimination of such blighting conditions by providing for the construction of the Project on such previously blighted real property; and

**WHEREAS**, the Agreement will provide for eighteen (18) units of housing which will be made available and rented to very low- and lower-income special needs households at an affordable rent; and

**WHEREAS**, the purchase price for the Site under the Agreement is not less than the reuse value of the Site, at the use and with the covenants, conditions precedent, conditions subsequent and development costs authorized by the Agreement; and

**WHEREAS**, the Agency has adopted an Implementation Plan for the Redevelopment Project pursuant to Health and Safety Code Section 33490, which identifies goals and objectives including providing for the construction of affordable housing; and

**WHEREAS**, the Agreement will assist the Agency in meeting the goals and objectives set forth in the Implementation Plan by the construction of the Project; and

**WHEREAS**, the voters of the City of Montclair have approved the development, construction and acquisition of low rent housing projects pursuant to Article XXXIV of the State Constitution; and

**WHEREAS**, a joint public hearing of the Agency and City Council on the proposed Agreement was duly noticed in accordance with the requirements of Health and Safety Code Sections 33431 and 33433, and the proposed Agreement, and a summary report meeting the requirements of Health and Safety Code Section 33433, was available for public inspection prior to the joint public hearing consistent with the requirements of Health and Safety Code Section 33433; and

**WHEREAS**, on July 5, 2011 the Agency and City Council held a joint public hearing on the proposed Agreement, at which time the Agency reviewed and evaluated all of the information, testimony, and evidence presented during the joint public hearing; and

**WHEREAS**, all actions required by all applicable law with respect to the proposed Agreement have been taken in an appropriate and timely manner; and

**WHEREAS**, the City of Montclair, through the Planning Commission (the "City"), acting as the lead agency for the Project, prepared and circulated for public review an Initial Study and Mitigated Negative Declaration (the "Mitigated Negative Declaration") regarding the Project in accordance with the requirements of the California Environmental Quality Act ("CEQA"); and

**WHEREAS**, following such public review period, the City, on May 16, 2011 by Resolution No. 11-2901, adopted the Mitigated Negative Declaration and a mitigation monitoring program in conjunction therewith (the "Mitigation Monitoring Program"), therefore determining that the Project, as mitigated, would not have a significant effect on the environment; and

**WHEREAS**, the City filed a Notice of Determination and Certificate of Fee Exemption pursuant to CEQA and the California Fish and Game Code, respectively; and

**WHEREAS**, the Agency has duly considered all terms and conditions of the proposed Agreement and believes that the redevelopment of the Site pursuant thereto is in the best interests of the City of Montclair and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of the City of Montclair Redevelopment Agency does hereby find and determine as follows:

**Section 1:** Based upon substantial evidence provided in the record before it, the consideration for the Agency's sale of the Site pursuant to the terms and conditions of the Agreement is not less than the fair reuse value of the Site, at the use and with the covenants, conditions precedent, conditions subsequent and development costs authorized by the Agreement.

**Section 2:** That the sale of the Site pursuant to the Agreement will eliminate blight within the Redevelopment Project by providing for the proper reuse and redevelopment of a portion of the Redevelopment Project which was previously declared blighted.

**Section 3:** That the sale of the Site pursuant to the Agreement will provide affordable housing for lower income special needs persons.

**Section 4:** That the Agreement is consistent with the provisions and goals of the Implementation Plan and the Redevelopment Plan.

**Section 5:** That the Agreement is within the scope of the project previously analyzed pursuant to CEQA as set forth above; and therefore, no further environmental documentation is required for the City Council's approval of the Agreement.

**Section 6:** The Agency hereby approves the Agreement and authorizes and directs the Chairman of the Agency to execute the Agreement on behalf of the Agency. A copy of the Agreement, when executed, shall be placed on file in the Office of the Agency Secretary. The Executive Director of the Agency, or designee, is authorized to implement the Agreement and take all further actions and execute all escrow documents and other documents which are necessary or appropriate to carry out the Agreement.

**Section 7:** The Agency Secretary shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this XX day of XX, 2011.

\_\_\_\_\_  
Chairman

**ATTEST:**

\_\_\_\_\_  
Secretary

I, Yvonne L. Smith, Secretary of the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. 11-12 was duly adopted by the Redevelopment Agency Board of Directors at a regular meeting thereof, held on the XX day of XX, 2011, and that it was adopted by the following vote, to-wit:

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

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Yvonne L. Smith  
Secretary

**RESOLUTION NO. 11-2916**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR CONSENTING TO THE APPROVAL OF AGREEMENT NO. 11-79, A DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA (NATIONAL CORE) AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH**

**WHEREAS**, the City of Montclair Redevelopment Agency (the "Agency") is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Agency's Redevelopment Project No. V (the "Redevelopment Project"); and

**WHEREAS**, National Community Renaissance of California (National CORE) (the "Developer") has expressed its desire to acquire approximately .47 acres of real property located at 4113 Kingsley Street in the City of Montclair, which the Agency currently owns (the "Site"); and

**WHEREAS**, the Developer desires to acquire the Site, and to develop and operate on the Site an eighteen (18) unit multifamily housing development (the "Project"); and

**WHEREAS**, the Developer has submitted to the Agency and the City Council of the City of Montclair (the "City Council") copies of a Disposition and Development Agreement (the "Agreement") in a form executed by the Developer; and

**WHEREAS**, pursuant to Section 33433 of the Community Redevelopment Law (California Health and Safety Code Section 33000, *et seq.*), the Agency is authorized, with the approval of the City Council after a duly noticed public hearing, to sell the Site for development pursuant to the Redevelopment Plan upon a determination by the City Council that the sale of the property would either assist in the elimination of blight or provide affordable housing for low- and moderate-income persons, that the consideration for such sale is not less than either the fair market value or fair reuse value of the Site in accordance with the covenants and conditions governing the sale and the development costs required thereof, and that the sale is consistent with the Implementation Plan that has been adopted by the Agency for the Redevelopment Project; and

**WHEREAS**, the City Council has previously determined, in its adoption of the Ordinance approving the Redevelopment Project, that the Site was blighted; and

**WHEREAS**, the Agreement would provide for the elimination of such blighting conditions by providing for the construction of the Project on such previously blighted real property; and

**WHEREAS**, the Agreement will provide for eighteen (18) units of housing which will be made available and rented to very low- and lower income special needs persons with physical disabilities at an affordable rent; and

**WHEREAS**, the purchase price for the Site under the Agreement is not less than the reuse value of the Site, at the use and with the covenants, conditions precedent, conditions subsequent, and development costs authorized by the Agreement; and

**WHEREAS**, the Agency adopted an Implementation Plan for the Redevelopment Project pursuant to Health and Safety Code Section 33490, which identifies goals and objectives including providing for the construction of affordable housing; and

**WHEREAS**, the Agreement will assist the Agency in meeting the goals and objectives set forth in the Implementation Plan by the construction of the Project; and

**WHEREAS**, the voters of the City of Montclair have approved the development, construction, and acquisition of low rent housing projects pursuant to Article XXXIV of the State Constitution; and

**WHEREAS**, a joint public hearing of the Agency and City Council on the proposed Agreement was duly noticed in accordance with the requirements of Health and Safety Code Sections 33431 and 33433; and the proposed Agreement and a summary report meeting the requirements of Health and Safety Code Section 33433 were available for public inspection prior to the joint public hearing consistent with the requirements of Health and Safety Code Section 33433; and

**WHEREAS**, on July 5, 2011 the Agency and City Council held a joint public hearing on the proposed Agreement, at which time the City Council reviewed and evaluated all of the information, testimony, and evidence presented during the joint public hearing; and

**WHEREAS**, all actions required by all applicable law with respect to the proposed Agreement have been taken in an appropriate and timely manner; and

**WHEREAS**, the City of Montclair, through the Planning Commission (the "City"), acting as the lead agency for the Project, prepared and circulated for public review an Initial Study and Mitigated Negative Declaration (the "Mitigation Negative Declaration") regarding the Project in accordance with the requirements of the California Environmental Quality Act ("CEQA"); and

**WHEREAS**, following such public review period, the City of Montclair on May 16, 2011, adopted the Negative Declaration and therefore determining that the Project would not have a significant effect on the environment; and

**WHEREAS**, the City filed a Notice of Determination and Certificate of Fee Exemption pursuant to CEQA and the California Fish and Game Code, respectively; and

**WHEREAS**, the City Council has duly considered all terms and conditions of the proposed Agreement and believes that the redevelopment of the Site pursuant thereto is in the best interests of the City of Montclair and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby find and determine as follows:

**Section 1:** The City Council finds and determines that, based upon substantial evidence provided in the record before it, the consideration for the Agency's sale of the Site pursuant to the terms and conditions of the Agreement is not less than the fair reuse value of the Site, at the use and with covenants, conditions precedent, conditions subsequent, and development costs authorized by the Agreement.

**Section 2:** The City Council hereby finds and determines that the sale of the Site pursuant to the Agreement will eliminate blight within the Redevelopment Project by providing for the proper reuse and redevelopment of a portion of the Redevelopment Project which was previously declared blighted.

**Section 3:** The City Council hereby finds that the sale of the Site pursuant to the Agreement will provide affordable housing for lower income persons with special needs.

**Section 4:** The City Council hereby finds and determines that the Agreement is consistent with the provisions and goals of the Implementation Plan and the Redevelopment Plan.

**Section 5:** The City Council hereby finds that the Agreement is within the scope of the project previously analyzed pursuant to CEQA as set forth above, and therefore, no further environmental documentation is required for the City Council's approval of the Agreement.

**Section 6:** The Deputy City Council hereby approves and consents to the Agency's approval of the Agreement, and authorizes the Agency to enter into the Agreement. A copy of the Agreement when executed shall be placed on file in the Office of the City Clerk.

**Section 7:** The Deputy City Clerk shall certify to the adoption of this Resolution.

**APPROVED AND ADOPTED** this XX day of XX, 2011.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 11-2916 was duly adopted by the City Council of said City and was approved by the Mayor of said City at a regular meeting of said City Council, held on the XX day of XX, 2011, and that it was adopted by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF ORDINANCE NO. 11-923 ADDING CHAPTER 11.75 TO TITLE 11 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO UNDERGROUNDING OF UTILITIES  <u>SECOND READING</u>	<b>DATE:</b> July 5, 2011 <b>SECTION:</b> PUBLIC HEARINGS <b>ITEM NO.:</b> C <b>FILE I.D.:</b> UTL050 <b>DEPT.:</b> PUBLIC WORKS
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**REASON FOR CONSIDERATION:** Staff typically requires developers to underground utilities within and adjacent to their developments as a condition of approval for their developments. When the development is extensive, the cost of undergrounding is a small percentage of the overall cost of development. When the development is small, such as an infill single lot or an addition to an existing house, the potential cost of undergrounding can be significant. In order to provide the City with some flexibility in how the utility undergrounding requirement is applied to development, an Ordinance is proposed. Ordinances require public hearings and adoption by the City Council.

The City Council is requested to consider adoption of Ordinance No. 11-923 to provide the City with some flexibility in how the utility undergrounding requirement is applied to development. A copy of proposed Ordinance No. 11-923 is attached for the City Council's review and consideration.

**BACKGROUND:** The California Public Utilities Commission has established a practice of undergrounding overhead utilities. Reasons include safety, reliability, and aesthetics. The Commission's Rule 20 sets policies and procedures for the conversion of overhead power lines and other equipment to underground facilities.

Undergrounding funds are made available to cities through Rule 20 and Southern California Edison to underground overhead electrical facilities. Cities also typically require developers to underground electrical and telecommunication facilities as conditions of approval for their developments. Many cities include undergrounding requirements in their municipal codes. Having undergrounding requirements associated with development activities codified generally allows more uniform application of the requirement. Depending on how the ordinance is written, it can also provide options to undergrounding when the undergrounding cost is disproportionate to the development cost.

Proposed Ordinance No. 11 923 defines a developer as any person, entity, agency, or property owner building on or remodeling, developing, or redeveloping any property within the City. The development could be something as minor as adding a bathroom to an existing house to building hundreds of houses on acres of land.

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Prepared by: 	Reviewed and Approved by: 
Proofed by: 	Presented by: 

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It is the intent of proposed Ordinance No. 11-923 to automatically exempt developers from undergrounding requirements when any of the following conditions apply:

- Overhead lines and services have already been placed underground
- Overhead lines are electrical transmission lines
- Overhead services are temporary in nature, such as temporary power to a construction site
- Utilities are located in rear or side yards
- If building an addition, the addition amounts to less than 50 percent of original building (example, the bathroom addition previously cited)

Proposed Ordinance No. 11-923 allows an in lieu fee to be paid to exempt the developer from undergrounding requirements under certain conditions. It may not be economically feasible to underground overhead utilities less than 600 feet in length. An infill lot development, for example, with a width of 60 feet might have to underground several hundred feet of overhead wires. The Ordinance allows the developer to "opt out" of undergrounding by paying a fee to the City equal to the cost of undergrounding just that portion within the frontage of the development. The use of the fee collected by the City would not be limited to the area from which it was collected. Proposed Ordinance No. 11-923 would allow it to be used for undergrounding overhead utilities anywhere in the City.

An additional exception is also available to a developer by requesting a hardship exemption from the City Manager from both the actual work and the in lieu fee. An exception application would be submitted to the City Manager for his consideration. Should it be denied, a final appeal could be made to the City Council.

Ordinance No. 11-923 includes a requirement that fees associated with the Ordinance be set by Resolution. These fees include in lieu fees, exception applications, and appeals. Resolution No. 11-2907 will be considered by the City Council at the July 18, 2011 regular joint meeting. The proposed Resolution establishes the following fees:

• In lieu electrical undergrounding	\$190 per foot
• In lieu telecommunications undergrounding	\$130 per foot
• Application for undergrounding exception	\$220
• Application for City Council appeal	\$100

The attached spreadsheet indicates most of the surrounding cities have ordinances requiring undergrounding as a condition of development. Of the ten cities surveyed, half also have an in lieu fee program. The fees charged by those cities are included in the spreadsheet.

**FISCAL IMPACT:** Adoption of Ordinance No. 11-923 will potentially create an unknown but positive fiscal impact, depending upon development and in lieu fees collected.

**RECOMMENDATION:** Staff recommends the City Council adopt Ordinance No. 11-923 adding Chapter 11.75 to Title 11 of the Montclair Municipal Code related to undergrounding of utilities.

## SUMMARY OF CITIES ON UTILITY UNDERGROUNDING

City	Required by Muni Code	Exemption Process	Authority to Exempt	In Lieu	Fee per foot
Chino	Y	Y	C.E.	Y	Note 1
Chino Hills	N	N/A	N/A	N/A	N/A
Claremont	Y	Y	P.C.	Y	Note 2
Fontana	Y	Y	C.E.	Y	\$150
Ontario	Y	Y	C.E.	Y	Note 3
Pomona	Y	Y	B.O.	N	N/A
Rancho Cucamonga	N-Note 4	Y	P.C.	Y	Note 4
Rialto	Note 5	N/A	N/A	N/A	N/A
San Bernardino	Note 5	N/A	N/A	N/A	N/A
San Dimas	Y	Y	P.C.	N	N/A
Upland	Y	Y	P.C.	N	N/A
Montclair	Proposed	Y	C.M.	Y	Note 6

Note 1-Chino in lieu fees are approved by City Engineer based on recent undergrounding costs.

Note 2-Claremont fees set by resolution and last updated in the 1980s: Electric-\$133; Telephone-\$96; Cable TV-\$50.

Note 3-Ontario in lieu fees are approved by City Engineer and range from \$150-\$200 for electrical only to \$300-\$350 for electrical and telecommunications combined.

Note 4-Rancho Cucamonga requirement for undergrounding established by Planning Commission resolution. Fees are: Electric-\$250; Telephone-\$50; Cable TV-\$27.

Note 5-Rialto and San Bernardino through establishment of utility underground districts only.

Note 6-Proposed Montclair fees: Electric-\$190; Telecommunications-\$150

### Abbreviations

N-No

Y-Yes

P.C.-Planning Commission

C.M.-City Manager

C.E.-City Engineer

B.O.-Building Official

N/A-Not applicable

**ORDINANCE NO. 11-923**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MONTCLAIR ADDING  
CHAPTER 11.75 TO TITLE 11 OF THE  
MONTCLAIR MUNICIPAL CODE RELATED  
TO UNDERGROUNDING OF UTILITIES**

**THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES HEREBY  
ORDAIN AS FOLLOWS:**

Section I. Chapter 11.75 of the Montclair Municipal Code is hereby added as follows:

**Chapter 11.75 Undergrounding of Utilities**

**Sec.11.75.010 Purpose.**

The intent and purpose of this chapter is to establish uniform regulations for the installation of underground utilities. For purposes of this chapter, any person, entity, agency, or property owner responsible for building on or remodeling, developing, or redeveloping any property within the City of Montclair is hereinafter referred to as "developer." Property upon which the work is taking place is hereinafter referred to as "property."

**Sec.11.75.020 Statutory Authorization.**

The California Public Utilities Commission's Rule 20 sets policies and procedures for the conversion of overhead power lines and other equipment to underground facilities.

**Sec. 11.75.030 Undergrounding of utilities required.**

The provisions of this chapter shall apply to subdivisions and residential, commercial, industrial, and mobilehome park development, redevelopment, remodeling, and building additions. No developer shall construct a new structure or structures; or modify, remodel, or add to any existing structure; or add an additional attached or detached dwelling structure upon any parcel of land unless:

All of the existing utility lines including, but not limited to, electrical, street lighting, data/communication/telephone, and cable television within the street frontage of the property or limits of the subdivision are placed underground and one of the following conditions has been complied with:

A. All utility lines and/or services including, but not limited to, electrical, data/ communication/telephone, and cable television that provide direct service to the existing structure and/or the new structure on the parcel of land, have been installed underground.

B. The existing main utility lines are located to the rear or side of the parcel of land on which the existing structure and/or new structure is constructed unless located in a public right-of-way.

C. The modification, remodeling, or addition is to an existing structure and no structure(s) is/are being added and the area of the work to be performed is equal to or less than 50 percent of the total square footage of the existing structures upon the parcel.

D. An exception of the foregoing requirements has been granted in accordance with the provisions of Section 11.75.050.

When utility undergrounding is required, no poles, wires, guy wires, pole supports or appurtenances, except as noted in Section 11.75.035, shall be permitted to remain within the property frontage or parkways. Development on corner lots will require undergrounding through the adjacent intersection.

Sec.11.75.035 Appurtenances permitted to be placed above ground.

For the purposes of this chapter, appurtenances and associated equipment, such as, but not limited to, surface-mounted or pad-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, and streetlights (with underground service) may be placed above ground if permitted by and in accordance with the rules of the California Public Utilities Commission.

Sec. 11.75.040 In-lieu utility undergrounding payment

If the width of the frontage of property is equal to or less than 600 feet, developer may opt to pay an in-lieu undergrounding payment to City. If property includes two or more street frontages, the 600-foot limitation shall apply to each street individually. The in-lieu undergrounding payment shall be determined as the product of the width of the property along each street and a cost per foot set forth by a Resolution of the City Council. In-lieu payments collected by the City may be used for utility undergrounding anywhere within the City.

Sec. 11.75.050 Exceptions to undergrounding requirements.

11.75.051 The provisions of this chapter shall not include or apply to the following:

A. Primary electrical energy transmission facilities operated at nominal voltages in excess of 20,000 volts.

B. Facilities necessary to the transmission or reception of radiated wireless communication media.

C. Temporary facilities to supply electrical power or communication services for construction purposes.

D. Temporary facilities to supply electrical power to communication services interrupted by damage or destruction of existing underground facilities.

Sec. 11.75.052 Where the enforcement of the provisions of this section would result in severe economic hardships requiring underground expenditures or in-lieu utility undergrounding payments that are substantially disproportionate to the improvement being remodeled or erected and served, property owners may make an application for exception from the provisions of this section in the following manner:

A. An exception application shall be filed with the City Manager for consideration. An exception application filing fee shall be submitted concurrent with the exception application, said fee being set by City Council Resolution. The fee shall be paid to the City at the time of filing. No application shall be considered filed unless the established fees have been paid to the City.

B. Such application shall include all information necessary to properly apprise the City Manager of the circumstances existing that require such an exception.

C. Within 30 working days after the filing of such application, the City Manager shall consider the application and shall make his/her findings regarding the acceptance or rejection of the exception application. Failure of the City Manager to respond within 30 working days shall be deemed denial of the application.

D. The exception application may be further appealed to the City Council by submitting the application to the City Clerk to agendaize for City Council consideration. An exception appeal application filing fee shall be submitted concurrent with the exception application, said fee being set by City Council Resolution. The fee shall be paid to the City at the time of filing. No appeal application shall be considered filed unless the established fees have been paid to the City. The City Council's decision to uphold or overturn the City Manager's decision shall be deemed final.

## **Section II. Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

**Section III. Effective Date.**

This Ordinance shall be in full force and effect thirty (30) days after passage.

**Section IV. Posting.**

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

**APPROVED AND ADOPTED** this XX day of XX, 2011.

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Mayor

**ATTEST:**

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Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 11-923 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2011, and finally passed not less than five (5) days thereafter on the XX day of XX, 2011, by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF ORDINANCE NO. 11-924 REPLACING SECTION 11.72.270 OF THE MONTCLAIR MUNICIPAL CODE REL- ATED TO TEMPORARY AND SPECIAL EVENT SIGN PERMITS	<b>DATE:</b> June 20, 2011
	<b>SECTION:</b> PUBLIC HEARINGS
	<b>ITEM NO.:</b> D
<u>FIRST READING</u>	<b>FILE I.D.:</b> SIG180
	<b>DEPT.:</b> COMMUNITY DEV.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider adoption of Ordinance No. 11 924 replacing Section 11.72.270 of the Montclair Municipal Code (MMC) related to temporary and special event sign permits.

**BACKGROUND:** In July 2009, in response to a business owner's concern about the local and regional economic impacts of the recession on Montclair businesses, the City Council approved a temporary policy extending the maximum amount of time that businesses could display promotional banners from 48 to 90 days per calendar year. At the Council's direction, the temporary policy will sunset on June 30, 2011.

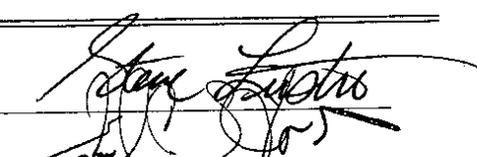
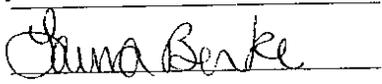
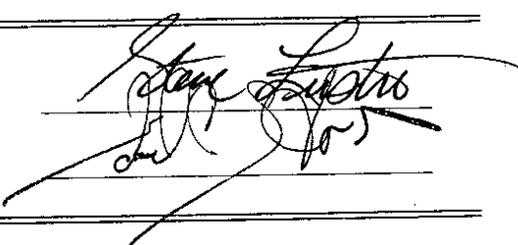
Prior to implementing the temporary policy, staff conducted a survey through the League of California Cities' Listserv to ascertain the banner policies of other cities and also whether any cities had relaxed their standards, either temporary or permanently, in response to the economic downturn.

A total of 21 cities responded to staff's inquiry. Additionally, staff reviewed the temporary banner regulations of three nearby cities. The regulations for these 24 cities are summarized in the table attached to this report. In general, the survey revealed the following:

- Only one city (Rocklin) had relaxed its temporary banner standards in response to the economy at the time of the survey.
- Montclair's 48-day maximum for the display of temporary banners is less than the average (69.5 days) for the cities surveyed.
- The maximum allowed size for a banner in Montclair (50 square feet) is more generous than most of the surveyed cities.

While a handful of Montclair businesses continue to abuse the temporary banner policy, staff believes that allowing businesses to display promotional banners for 90 days per year is reasonable and is proposing an MMC amendment to make the temporary policy permanent. Staff foresees no major issues in the event the City Council chooses to increase the amount of time a promotional banner may be displayed.

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Prepared by: 	Reviewed and Approved by: 
Proofed by: 	Presented by: 

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In reviewing the current MMC section related to temporary banners, staff also identified a separate issue related to the visibility of banners on larger commercial buildings. The current code limits the maximum size of a temporary banner to 50 square feet. While this size is adequate and appropriate for the vast majority of commercial buildings in Montclair, staff believes that retailers occupying large buildings, such as the anchor tenants at the Montclair Plaza, should be allowed corresponding larger banners in order for them to be reasonably visible and readable to passersby. Accordingly, staff is proposing that businesses occupying between 50,000 and 100,000 square feet of leasable area be allowed a temporary banner of up to 100 square feet, and those occupying in excess of 100,000 square feet be allowed a maximum of 200 square feet.

**FISCAL IMPACT:** The current temporary sign permit fee is \$20, which is borne by the applicant and is minimally satisfactory in covering the staff costs of issuing the permit, entering the information in a log, and updating the weekly summary of permits issued for use by Code Enforcement staff. As a component of the interim policy, the City Council directed staff to maintain the \$20 application fee but only for the first application per business per calendar year. The application fee for subsequent permits for the same business during the same calendar year has been waived. Staff is proposing the adopted fee be reinstated upon the effective date of Ordinance No. 11-924, meaning that applicants would be required to pay the \$20 fee each time a banner permit is obtained. Staff believes that the fee is nominal and minimally satisfactory in covering the cost of issuing the permit and performing inspections to ensure applicants are complying with the MMC.

**RECOMMENDATION:** Staff recommends the City Council adopt the first reading of Ordinance No. 11-924 replacing Section 11.72.270 of the Montclair Municipal Code related to temporary and special event sign permits.

LEAGUE OF CALIFORNIA CITIES  
 HCED ListServ Survey – Week of June 15, 2009\*

TEMPORARY BANNER POLICIES

City	Maximum annual display period	Maximum banner size (in square feet)	Removal required between display periods?	Economy-related relaxation of standards?	Comments
Montclair	48 days	50	Yes (30 days)	No	Display periods may be separated into 12- or 24-day increments; an additional 45-day display period is available for new businesses on a one-time basis
Bellflower	120 days	Not specified	Not specified	No	Maximum three (3) display periods. No display period shall exceed 60 days.
Buellton	60 days	30	Yes (180 days)	No	
Chowchilla	60 days	Max. 2.5% of wall area to which banner is affixed	Not specified	No	
Claremont	30 days*	32	N/A	No	Banners permitted for grand openings or ownership changes only. Director may grant one 30-day extension.
Delano	30 days	32	Not specified	No	
Diamond Bar	90 days	25	Yes*	No	* Maximum 30-day display period within any 90-day period.
Dublin	15 days	60	Yes (30 days)	Pending	CC considering allowing 21-day display periods with 21-day removal period
Fortuna	60 days*	At staff's discretion	N/A	No	Banners permitted for grand openings only
Glendora	90 days	At staff's discretion	Not specified	No	
Hanford	14 days	Not specified	N/A	No	Banners permitted for grand openings only
Irvine	40 days	30	No	No	Maximum four (4) display periods of 10 days

\* Matrix also includes code requirements from three local cities (Claremont, Diamond Bar and La Verne)

City	Maximum annual display period	Maximum banner size (in square feet)	Removal required between display periods?	Economy-related relaxation of standards?	Comments
Laguna Woods	60 days*	25	Not specified	No	Display periods may be separated into 15- or 30-day increments; *considering increasing to 120 days
Lakewood	60 days	Not specified	Yes (30 days)	No	
La Puente	90 days	50	Not specified	No	Maximum six (6) display periods
La Verne	28 days	18	Not specified	No	Maximum four (4) display periods of 7 days each
Mission Viejo	42 days	24	No	No	Maximum three (3) display periods
Paso Robles	180 days	1 s.f. per l.f. of building or tenant space frontage	Yes (30 days)	No	Maximum six (6) display periods annually not to exceed 30 days each
Pico Rivera	120 days	At staff's discretion	Yes (30 days)	No	Maximum four (4) 30-day display periods annually
Rocklin	90 days*	32	N/A	Yes	* Banners permitted for grand openings only for one continuous 90-day period. "Economic Stimulus Ordinance" allows continuous display for promotional uses through 6/1/2010.
Rosemead	60 days	30	Not specified	No	Maximum two 30-day display periods annually
San Dimas	60 days	At staff's discretion	No	No	Maximum six (6) display periods annually. No display period shall exceed 30 days.
San Marino	60 days*	Max. 25' in length	Yes (30 days)	No	* Temporary signs may be attached only to the <u>inside</u> of a display window
Simi Valley	120 days	50	No	No	Temporary sign permits are valid for a maximum of 30 days
Yuba City	90 days*	Not specified	Not specified	No	* Maximum 30 consecutive days each calendar quarter

**ORDINANCE NO. 11-924**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MONTCLAIR AMENDING SECTION 11.72.270  
OF THE MONTCLAIR MUNICIPAL CODE (TEMPORARY  
AND SPECIAL EVENT SIGN PERMITS)**

**WHEREAS**, California Government Code Section 65800 *et seq.* authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

**WHEREAS**, the Montclair Municipal Code (MMC) makes provisions for businesses and institutions to display banners on a temporary basis to announce grand openings and to advertise promotional events; and

**WHEREAS**, the Code currently allows new businesses, as defined in Chapter 11.02 MMC, to obtain a permit and display a "Grand Opening" banner for a maximum of 45 days; and

**WHEREAS**, the Code also allows businesses and institutions to obtain a permit or permits to display promotional banners for a maximum of 48 days per calendar year, either consecutively or in increments of 12 days or 24 days; and

**WHEREAS**, on July 20, 2009, in response to a business owner's concern about the local and regional economic impacts of the recession on Montclair businesses, the City Council approved a policy directive temporarily modifying the Code section governing promotional banners. The revisions increased the amount of time that businesses could display promotional banners from 48 to 90 calendar days per year, and required that businesses pay the adopted application fee (\$20.00) only for the first permit obtained in the calendar year, with subsequent permits to be issued at no charge; and

**WHEREAS**, the policy directive included a sunset date of June 30, 2011; and

**WHEREAS**, staff believes that the Council policy increasing the maximum amount of days that businesses may display promotional banners is reasonable and, therefore, should be made permanent; and

**WHEREAS**, the proposed Code amendment also adds language to address criteria for promotional banners for "big box" retailers and also removes obsolete language regarding political signs; and

**WHEREAS**, the City Council finds that the proposed Ordinance is consistent with the General Plan's goals and policies of protecting community aesthetics through regulated signage and promoting the viability of a variety of commercial land uses; and

**WHEREAS**, the City Council finds that this Ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines. The proposed code amendment revises a section of the Zoning Ordinance that addresses on-premise signs that would be considered exempt as "minor structures accessory to existing commercial, industrial, or institutional facilities..." under Section 15311(a) of the CEQA Guidelines. Moreover, the code amendment would not have a significant effect on the environment as it does not in itself directly approve any construction activities but, instead, establishes standards, permit requirements, and other measures that regulate the design, installation, and maintenance of temporary banners on commercial, industrial, and institutional properties; and

**WHEREAS**, the Director of Community Development is directed to file a Notice of Exemption in accordance with CEQA and the State CEQA Guidelines.

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

**SECTION I.** Section 11.72.270 ("Temporary and special event sign permits") of Title 11 ("Zoning and Development") of the Montclair Municipal Code is hereby repealed and replaced in its entirety as follows:

**11.72.270 Temporary and special event sign permits.**

A. A temporary sign permit may be issued by the Director of Community Development for a temporary period of time, as specified in this Section, for various special and promotional events. The signs may be used to promote the sale of new products, a special promotion or event, new management, new hours of operation, a service, or to promote a special sale. In addition, grand openings, carnivals, festivals, special educational, cultural, civic, charitable, and religious programs, seasonal crops or tree sales and other similar special events may be specifically granted the use of such temporary signs in accordance with the provisions of this Chapter. The time periods granted under temporary sign permits shall refer to calendar days unless otherwise indicated.

B. To apply for a temporary sign permit, the applicant shall submit to the Planning Division for review and approval a completed application along with the necessary drawings and filing fees as set forth by resolution of the City Council. The use of each sign shall be subject to the following limitations:

1. Each business shall be allowed one (1) 45-day temporary sign permit for the sole purpose of announcing the grand opening of a new business or significantly new use as defined in Chapter 11.02 of this Title, provided that the privilege of utilizing such sign permit shall occur no later than 60 days from the initial occupancy of such business location.

2. Each business, nonprofit, or civic organization shall be allowed to display a temporary promotional banner for a maximum of 90 days per calendar year. Businesses and organizations may obtain a single permit for 90 consecutive days, or multiple permits for display periods of less than 90 days, except that permits shall not be issued for periods of less than 10 consecutive days. Should a business choose to display temporary promotional banners during multiple

periods, the display periods shall be separated by a minimum of 21 calendar days. This "separation period" shall also apply between the display period for a grand opening banner as described in (1) above and any subsequent display period for a temporary promotional banner.

3. Temporary banners shall be made of durable materials and attached only to a building on the property upon which the advertised activity is located. The Director of Community Development may allow alternative placement of temporary banners in cases where their placement on a building would not be plainly visible to passersby. In no case shall a banner be placed higher than the roof line of the building to which it is attached.

4. No more than one temporary banner shall be permitted per street frontage on any property, up to a maximum of three signs. If a business with multiple street frontages is entitled to, and chooses to display multiple banners, they shall not be combined on the same building elevation, but displayed one per eligible frontage. The Director of Community Development may allow a temporary banner to be placed on a building elevation with no street frontage provided that the elevation faces an internal customer parking lot with a capacity of 100 vehicles or more.

5. The maximum allowable size of each banner shall be 50 square feet, except that businesses occupying a gross leasable area (GLA) of 50,000 to 100,000 square feet shall be allowed a banner up to 100 square feet in size, and that businesses occupying in excess of 100,000 square feet of GLA shall be allowed a banner up to 200 square feet in size.

6. Provisions for special sign permits and advertising devices for new and used automobile, motorcycle, and watercraft dealerships shall be in accordance with Section 11.72.280 of this Chapter.

## **SECTION II. Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

## **Section III. Effective Date.**

This Ordinance shall be in full force and effect thirty (30) days after passage.

## **Section IV. Posting.**

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

APPROVED AND ADOPTED this XX day of XX, 2011.

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Mayor

ATTEST:

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Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 11-924 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2011, and finally passed not less than five (5) days thereafter on the XX day of XX, 2011, by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

**SUBJECT:** CONSIDER SETTING A PUBLIC HEARING  
TO CONSIDER ADOPTION OF RESOLUTION  
NO. 11-2907 ESTABLISHING VARIOUS FEES  
RELATED TO UNDERGROUNDING OF  
UTILITIES

**DATE:** July 5, 2011  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 1  
**FILE I.D.:** UTL050  
**DEPT.:** PUBLIC WORKS

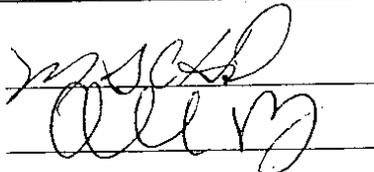
**REASON FOR CONSIDERATION:** On June 6, 2011, the City Council set a public hearing to consider Ordinance No. 11-923 regarding the undergrounding of utilities in the City. A first hearing and reading of that Ordinance was conducted on June 20, 2011, and a second reading and adoption is scheduled for July 5, 2011. Ordinance No. 11-923 includes a provision for an in lieu fee to be paid when the cost to underground utilities is disproportionate to the development cost. The in lieu fee is to be set by resolution. Fee resolutions require a public hearing and adoption by the City Council.

**BACKGROUND:** The California Public Utilities Commission has established a practice of undergrounding overhead utilities. Reasons include safety, reliability, and aesthetics. The Commission's Rule 20 sets policies and procedures for the conversion of overhead power lines and other equipment to underground facilities.

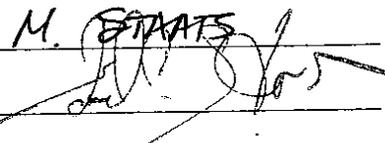
Consistent with the California Public Utilities Commission practice of undergrounding, the City has previously held a public hearing and first reading of Ordinance No. 11-923. A second reading and adoption of the Ordinance is on the City Council agenda for this evening.

It is the intent of Ordinance No. 11-923 to automatically exempt developers from undergrounding requirements when certain conditions apply. It is also the intent of Ordinance No. 11-923 to allow a developer to appeal a requirement to underground or pay an in lieu fee rather than underground. It may not be economically feasible to underground overhead utilities less than 600 feet in length. An infill lot development, for example, with a width of 60 feet might have to underground several hundred feet of overhead wires. The Ordinance allows the developer to "opt out" of undergrounding by paying a fee to the City equal to the cost of undergrounding just that portion within the frontage of the development. Ordinance No. 11-923 allows the establishment of fees for both appeals and in lieu payments to be set by Resolution.

Prepared by:



Reviewed and  
Approved by:

M. STRATS  


Proofed by:

Presented by:

Proposed Resolution No. 11-2907 establishes the following fees:

- In lieu electrical undergrounding \$190 per foot
- In lieu telecommunications undergrounding \$130 per foot
- Application for undergrounding exception \$220
- Application for City Council appeal \$100

For comparison purposes, the attached spreadsheet lists several cities with in lieu fee programs and the fees charged per frontage foot of development.

**FISCAL IMPACT:** The publication cost for the legal notice required for this public hearing is not expected to exceed \$1,000.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Monday, July 18, 2011, at 7:00 p.m. in the City Council Chambers to consider adoption of Resolution No. 11-2907 establishing various fees related to undergrounding of utilities.

## SUMMARY OF CITIES ON UTILITY UNDERGROUNDING

City	Required by Muni Code	Exemption Process	Authority to Exempt	In Lieu	Fee per foot
Chino	Y	Y	C.E.	Y	Note 1
Chino Hills	N	N/A	N/A	N/A	N/A
Claremont	Y	Y	P.C.	Y	Note 2
Fontana	Y	Y	C.E.	Y	\$150
Ontario	Y	Y	C.E.	Y	Note 3
Pomona	Y	Y	B.O.	N	N/A
Rancho Cucamonga	N-Note 4	Y	P.C.	Y	Note 4
Rialto	Note 5	N/A	N/A	N/A	N/A
San Bernardino	Note 5	N/A	N/A	N/A	N/A
San Dimas	Y	Y	P.C.	N	N/A
Upland	Y	Y	P.C.	N	N/A
Montclair	Proposed	Y	C.M.	Y	Note 6

Note 1-Chino in lieu fees are approved by City Engineer based on recent undergrounding costs.

Note 2-Claremont fees set by resolution and last updated in the 1980s: Electric-\$133; Telephone-\$96; Cable TV-\$50.

Note 3-Ontario in lieu fees are approved by City Engineer and range from \$150-\$200 for electrical only to \$300-\$350 for electrical and telecommunications combined.

Note 4-Rancho Cucamonga requirement for undergrounding established by Planning Commission resolution. Fees are: Electric-\$250; Telephone-\$50; Cable TV-\$27.

Note 5-Rialto and San Bernardino through establishment of utility underground districts only.

Note 6-Proposed Montclair fees: Electric-\$190; Telecommunications-\$130

### Abbreviations

N-No

Y-Yes

P.C.-Planning Commission

C.M.-City Manager

C.E.-City Engineer

B.O.-Building Official

N/A-Not applicable

**RESOLUTION NO. 11-2907**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MONTCLAIR ESTABLISHING  
VARIOUS FEES IN ACCORDANCE WITH  
ORDINANCE NO. 11-923**

**WHEREAS**, the City Council adopted Ordinance No. 11-923 on the 5th day of July, 2011, becoming effective 30 days thereafter; and

**WHEREAS**, Ordinance No. 11-923 requires developers as defined by Ordinance No. 11-923 to underground utilities within and adjacent to developers' properties; and

**WHEREAS**, Ordinance No. 11-923 includes a provision for an in lieu fee to be paid to the City under certain conditions; and

**WHEREAS**, Ordinance No. 11-923 includes provisions for requesting an exception to the undergrounding requirement through the City Manager and an appeal process of the City Manager's decision through the City Council; and

**WHEREAS**, Ordinance No. 11-923 requires in lieu fees, exception application fees, and appeals fees to be set by Resolution.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby establish the following fees in accordance with Ordinance No. 11-923, to wit:

In Lieu Fee for Electrical Lines:	\$190 per foot
In Lieu Fee for Telecommunication Lines	\$130 per foot
Application for Undergrounding Exception	\$220
Application for City Council Appeal	\$100

**APPROVED AND ADOPTED** this XX day of XX, 2011.

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Mayor

**ATTEST:**

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Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 11-2907 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2011, and that it was adopted by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

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**SUBJECT:** CONSIDER AUTHORIZATION OF CITY ATTORNEY TO SIGN STIPULATION REGARDING BANKRUPTCY PROCEEDINGS IN THE MATTER OF QUACH INVESTMENT LLC

**DATE:** July 5, 2011  
**SECTION:** ADMIN REPORTS  
**ITEM NO.:** 2  
**FILE I.D.:** LDU375  
**DEPT.:** PUBLIC WORKS

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**REASON FOR CONSIDERATION:** City Attorney Robbins and City Engineer Hudson have been negotiating with an attorney representing Quach Investment LLC in its Chapter 11 bankruptcy proceedings through the United States Bankruptcy Court Central District of California. The City is listed as a secured creditor with certain fees owed to the City. Quach Investment LLC has agreed to certain terms requested by the City, and the City Attorney has been requested to sign the stipulation.

**BACKGROUND:** At its regular meeting on February 12, 2007, the Montclair Planning Commission approved a request for a Precise Plan of Design and Variance associated with the construction of a 17,480-square-foot single-story commercial building for multiple tenancy at 4855 Mission Boulevard, located at the southwest corner of Mission Boulevard and Monte Vista Avenue. (Developed address is now 4875 Mission Boulevard.) Included in the conditions of development were requirements to pay Transportation Development Impact Fees and underground overhead utilities within the frontage of the property. Most of the conditions of approval have been complied with, but these two conditions are outstanding.

In most cases, the Transportation Development Impact Fees are paid at the time building permits are issued. However, the Montclair Municipal Code (MMC) does allow a developer to defer the fees until time of occupancy. That request was made by the developer, Quach Investment LLC (Quach), in this case. At the time that occupancy was requested, Quach submitted a check to the City for \$118,217.24, postdating the check and asking the City to hold it for 90 days. The purpose behind the request was to allow Quach to move in tenants and start generating some cash flow. The check was dated January 15, 2010.

The check was submitted to the bank for payment a few days after January 15 and was returned because of insufficient funds. When asked, Quach stated that he had not been able to develop sufficient cash flow nor the tenants that he expected. He advised the City that he would be able to refinance the project and draw on its equity once he reached 65 percent occupancy, if the City would allow tenant improvements to that level of completion. The City agreed. The project has reached 65 percent occupancy; but according to Quach, the bank now wants 95 percent occupancy before it will consider refinancing.

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Prepared by:

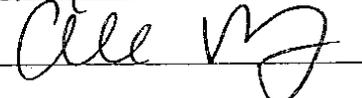


Reviewed and

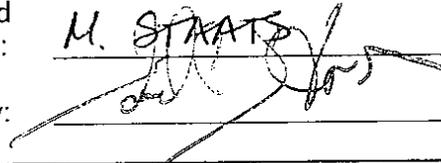
Approved by:



Proofed by:



Presented by:



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On April 28, 2011, Quach Investment LLC filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. Included in the listing of creditors is the City of Montclair.

In addition to the outstanding Transportation Development Impact Fees, Quach also needs to complete the undergrounding requirements for the project. The electrical lines have all been placed underground. Telephone and cable TV conduits have been installed underground, but wire and cable have yet to be installed and the existing wire, cable, and poles removed. Verizon and Time Warner are responsible for doing this work but not until fees have been paid. The fees total approximately \$106,000.

Staff has been negotiating with Quach on both these issues, and the bankruptcy was not entirely a surprise. In an effort to strengthen the City's position, staff has requested a deed of trust and promissory note. Quach's bankruptcy attorney has agreed to these requirements including the promissory note paid over a period of five years with an interest rate set at 3 percent monthly payments beginning in November 2011.

Although the Transportation Development Impact Fees were previously calculated at \$118,217.24, the MMC includes language that the fees to be paid are calculated at the rate in effect at the time the fees are paid. Although the fees were initially paid in October 2009 (with a check postdated January 15, 2010), that check bounced. The rate now in effect would increase the Transportation Development Impact Fees to \$150,415.40. The promissory note would be in this amount and would allow tenant improvements up to 95 percent occupancy. If all undergrounding has been completed at this point and Quach is current with payments, staff would probably allow up to 100 percent occupancy.

**FISCAL IMPACT:** With the deed of trust and promissory note, the City is probably in a better position to collect the outstanding Transportation Development Impact Fees and seeing remaining undergrounding work completed.

**RECOMMENDATION:** Staff recommends the City Council authorize the City Attorney to sign stipulation regarding bankruptcy proceedings in the matter of Quach Investment LLC.

Michael Y. Lo, Esq.  
Bar # 101702  
Law Offices of Michael Y. Lo  
506 North Garfield Avenue, #280  
Alhambra, CA 91801  
Telephone: (626)289-8838  
Attorney for debtor and debtor-in-possession: Quach Investment LLC

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

<p>In re</p> <p>QUACH INVESTMENT LLC</p> <p>DEBTOR AND</p> <p>DEBTOR-IN-POSSESSION</p> <hr/>	<p>)</p>	<p>Case # 2:11-bk-28580-PC</p> <p>CHAPTER 11</p> <p>STIPULATION BETWEEN CITY OF</p> <p>MONTCLAIR AND DEBTOR IN</p> <p>POSSESSION ALLOWING CITY OF</p> <p>MONTCLAIR TO PLACE DEED OF</p> <p>TRUST ON PROPERTY LOCATED AT</p> <p>4875 MISSION BLVD., MONTCLAIR, CA</p> <p>91763</p>
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RECITALS

WHEREAS, Quach Investment LLC (“Debtor” hereinafter), the debtor and debtor in possession herein, filed a voluntary Chapter 11 petition with the United States Bankruptcy Court for the Central District of California on April 28<sup>th</sup>, 2011 (the “Filing Date”), and an order for relief was entered; and

WHEREAS, the Debtor is currently operating and managing its affairs as a Debtor-in-Possession pursuant to 11 U.S.C Sections 1107(a) and 1108; and

WHEREAS, Debtor currently owes “Transportation Deployment Impact fees” to the City of Montclair (“City” hereinafter) in the sum of \$150,415.00 and the City will not issue the occupancy permits for the remaining 4 vacant units, unless said fee is paid.

WHEREAS, Debtor and Debtor’s counsel had a meeting with the City’s Building Official, and City Engineer on June 20<sup>th</sup>, 2011 to discuss a fair resolution to the claim. The City, thru its

1 counsel proposes to place a Deed of Trust, junior to Far East National Bank's ("FENB" hereinafter),  
2 on the property located at 4875 Mission Blvd Montclair, CA 91763. Debtor agrees to said proposal.

3 **WHEREAS**, City's claim of \$150,415.00 is listed in Schedule "D" as secured claim.

4 **WHEREAS**, allowing a Deed of Trust to be recorded on the property will not change City's  
5 status as Secured Creditor. It also would not adversely affect other creditors' (secured or unsecured)  
6 interest in a Chapter 11 plan.

7 **WHEREAS**, Debtor believe it is in the best interest of the estate and all creditors that said  
8 stipulation be approved.

9 **NOW, THEREFORE, SUBJECT ONLY TO COURT APPROVAL, IT IS HEREBY**  
10 **STIPULATED AND AGREED** by and between the Debtor and City, as follows:

- 11 1. City's Claim shall be and hereby secured by a Deed of Trust, a copy of which is  
12 attached herein as Exhibit A and made a part hereof.
- 13 2. Debtor shall pay the utility undergrounding costs to Verizon and Time Warner.
- 14 3. City agrees that Debtor may increase its tenant occupancy to 95% for the property  
15 located at 4875 Mission Boulevard, Montclair, California 91763.
- 16 4. City agrees to vote in favor of the Debtor's proposed plan of reorganization, as well  
17 as any amended plan that may be proposed by the Debtor, in the class in which it is  
18 entitled to vote, if any if it is consistent with this stipulation. In the event that City  
19 fails to return a ballot respecting the Debtor's proposed plan(s), its acceptance of the  
20 Debtor's proposed plan(s), in the class in which City is entitled to vote, shall be  
21 evidenced by this Stipulation.
- 22 5. This agreement shall be binding upon the respective parties, their heirs, assigns,  
23 executors, administrators and successors in interest, and any Chapter 7 or 11 Trustee  
24 that may be appointed herein.
- 25 6. This stipulation may be executed in counterparts.
- 26 7. The Bankruptcy Court shall retain jurisdiction over all of the terms and conditions of  
27 this Stipulation.

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- 8. This Stipulation cannot be amended, modified or superseded except upon written consent of the parties hereto.
- 9. The language of this Stipulation shall be construed as a whole according to its fair meaning and none of the parties shall be deemed draftsmen in the event of a dispute.
- 10. The Counsel for the parties herein, by signing this stipulation, represent to each other that they have the full authority of their clients to enter into and to be bound by the terms of this stipulation.
- 11. The parties shall be authorized to take any and all reasonably appropriate measures to effectuate the terms of this stipulation and Order, as necessary or appropriate.

Dated: 06/24/11

Law Offices of Michael Y. Lo

By: \_\_\_\_\_  
MICHAEL Y. LO, Esq.  
Attorney for Debtor &  
Debtor-in-Possession

Dated:

Law Offices of Robbins & Holdaway

By: \_\_\_\_\_  
Diane Robbins, Esq.  
Attorney for Secured Creditor  
City of Montclair

## AGENDA REPORT

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**SUBJECT:** CONSIDER ACCEPTANCE OF A QUITCLAIM DEED FROM THE CITY OF CHINO HILLS TO THE CITY OF MONTCLAIR FOR A SEWER SYSTEM AND ASSOCIATED EASEMENT FOR AN AREA KNOWN AS PEACHWOOD ESTATES

**DATE:** July 5, 2011  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 3  
**FILE I.D.:** SEW130  
**DEPT.:** PUBLIC WORKS

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**REASON FOR CONSIDERATION:** By City Council action on February 16, 2010, the Council accepted a quitclaim document from the City of Chino Hills essentially conveying ownership of a sewer system serving Peachwood Estates and surrounding areas. In further review of the records, it was determined another easement for that sewer system existed and also needed to be quitclaimed. Acceptance of the quitclaim deed requires Montclair City Council approval.

**BACKGROUND:** Peachwood Estates is located near the northeast quadrant of Phillips Boulevard and East End Avenue within the City of Montclair's Sphere of Influence. When Peachwood Estates developed in the early 1980s, San Bernardino County required the development connect to the sewer system. The sewer system was annexed to San Bernardino County Service Area No. 70Q, which also included the unincorporated County area that eventually became the City of Chino Hills. This sewer system discharged to a City of Chino sewer located in East End Avenue. When the City of Chino Hills incorporated in 1991, it acquired the sewer system and easement. This system also provides sewer service to several residences along Cannery Row just east of Peachwood Estates. All the service addresses are north of Phillips Boulevard and east of East End Avenue in unincorporated San Bernardino County.

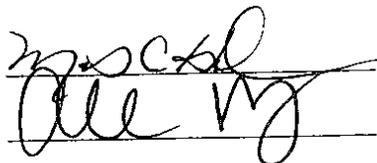
It was reported to the City Council in February 2010 that a request had been made by Chino Hills for Montclair to assume ownership of the sewer system for a variety of reasons, including the following:

- Existing system is remote from Chino Hills and makes maintenance more expensive.
- Logically, Montclair should maintain the system as it is within Montclair's Sphere of Influence.
- Future connections to the Peachwood system would likely be prohibited as the Local Agency Formation Commission most likely would not permit a connection from an area inside one City's Sphere of Influence to another agency's system.

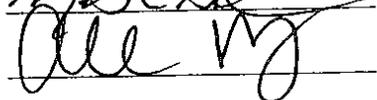
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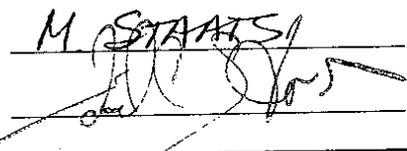
Prepared by:



Proofed by:



Reviewed and  
Approved by:



Presented by:



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It was also previously reported that the sewer system serving Peachwood Estates and Cannery Row encompasses roughly 12,100 linear feet of sewer line and 68 associated manholes and, after certain repair work was performed by Chino Hills, was in a good state of repair.

During a review of Montclair's request for an annexation of the sewer system to the City's service area, the Local Agency Formation Commission found that an easement for a portion of the sewer system appeared to be missing. After further research by Chino Hills, documentation of that easement was found. It is Chino Hills' intent to quitclaim that easement to Montclair at Chino Hills' July 12, 2011 meeting. In anticipation of that action, the City Council is requested to accept that quitclaim.

**FISCAL IMPACT:** There are no additional fiscal impacts beyond those reported to the City Council at its February 16, 2010 meeting. It was reported that the addition of 12,100 linear feet of sewer line to the City of Montclair's sewer system would increase annual maintenance costs and that the monthly fee charged to all City and County residents connected to the City's sewer system is adequate to cover the cost of the City's increased maintenance requirements.

**RECOMMENDATION:** Staff recommends the City Council accept the quitclaim deed from the City of Chino Hills to the City of Montclair for a sewer system and associated easement for an area known as Peachwood Estates.

**RECORDING REQUESTED BY AND  
WHEN RECORDED, MAIL TO:**

City of Chino Hills, City Clerk  
14000 City Center Drive  
Chino Hills, California 91709

Exempt recording per Government  
Code Sec. 6103

**QUITCLAIM DEED**

**APN: None**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the City of Chino Hills ("GRANTOR"), a California general law municipal corporation, its successors and assigns, does hereby REMISE, RELEASE AND FOREVER QUITCLAIM to the City of Montclair ("GRANTEE"), a California general law municipal corporation, the real property located in the City of Chino Hills, County of San Bernardino, State of California, more particularly described as follows:

**A 20-foot wide sanitary sewer easement reserved for the use and benefit of San Bernardino County Service Area No. 70Q as delineated in Document No. 82-019923 recorded on January 29, 1982 in the Records Office of said County. Said sewer easement transferred to the City of Chino Hills by Local Agency Formation Commission Resolution No. 2320, dated May 15, 1991 and Certificate of Completion recorded November 25, 1991 as Document No. 91-447208.**

CITY OF CHINO HILLS

\_\_\_\_\_  
Date

\_\_\_\_\_  
ED M. GRAHAM, MAYOR

ATTEST:

\_\_\_\_\_  
Date

\_\_\_\_\_  
MARY M. McDUFFEE, CITY CLERK

**CALIFORNIA ALL CAPACITY ACKNOWLEDGEMENT**

STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
CITY OF CHINO HILLS

On July 12, 2011 before me, Mary M. McDuffee, City Clerk of the City of Chino Hills, personally appeared Ed M. Graham, Mayor of the City of Chino Hills, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

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MARY M. McDUFFEE, CITY CLERK  
CITY OF CHINO HILLS, CALIFORNIA

(SEAL)

**ACCEPTANCE**

This is to certify that the interest in real property conveyed by the within instrument to the **CITY OF MONTCLAIR**, State of California, a body corporate and politic, is hereby accepted by order of the **MONTCLAIR CITY COUNCIL** made on \_\_\_\_\_, and the grantee consents to the recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy City Clerk

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF THE FILING OF A NOTICE OF COMPLETION FOR THE MISSION BOULEVARD IMPROVEMENT PHASE 10 STORM DRAIN PROJECT; REDUCTION OF FAITHFUL PERFORMANCE BOND TO 10 PERCENT; AND RETENTION OF PAYMENT BOND FOR SIX MONTHS

**DATE:** July 5, 2011  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 4  
**FILE I.D.:** SSP178  
**DEPT.:** PUBLIC WORKS

CONSIDER RELEASE OF RETENTION 30 DAYS AFTER RECORDATION OF NOTICE OF COMPLETION

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**REASON FOR CONSIDERATION:** State law requires Notices of Completion to be recorded with the County Recorder upon acceptance of a public works project. Notices of Completion require City Council approval.

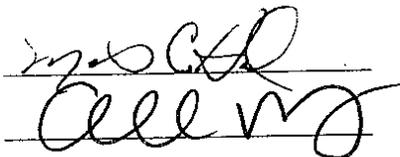
**BACKGROUND:** On May 2, 2011, the Montclair City Council awarded a contract to Gentry Brothers, Inc., for the Mission Boulevard Improvement Phase 10 Storm Drain Project and entered into Agreement No. 11-50. All work required pursuant to Agreement No. 11-50 has been satisfactorily completed. Work under this contract included new storm drain pipe, catch basin inlets, and asphalt pavement.

**FISCAL IMPACT:** This project is entirely funded with Redevelopment Agency Tax Allocation Notes. The contract for the subject project was awarded for \$142,499.00. The award also authorized a construction contingency of \$15,000. During construction, the scope of work was modified to eliminate one storm drain inlet and to include additional concrete flat work and concrete curb. The changes increased the total construction cost from the awarded amount of \$142,499 to the final cost of \$148,763, an increase of \$6,264. The increase is within the previously authorized \$15,000 construction contingency.

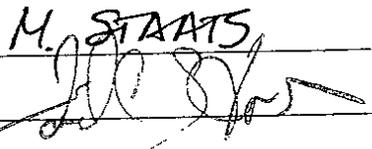
**RECOMMENDATION:** Staff recommends the City Council take the following actions related to the Mission Boulevard Improvement Phase 10 Storm Drain Project:

1. Approve the filing of a Notice of Completion with the Office of the San Bernardino County Recorder.
  2. Reduce the Faithful Performance Bond to 10 percent.
  3. Retain the Payment Bond for six months.
  4. Release retention 30 days after recordation of Notice of Completion.
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Prepared by:



Reviewed and  
Approved by:



Proofed by:

Presented by:



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RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Montclair, City Clerk's Office  
5111 Benito Street/P. O. Box 2308  
Montclair, CA 91763

APN NO. : 1012-172 09 and 1012-172-10 (Space above this line for Recorder's Use)

## NOTICE OF COMPLETION

NOTICE is hereby given that:

The undersigned is the owner of an interest of estate in the hereinafter described property, the nature of which said interest or estate is: fee

The full name and address of the undersigned is Michael C. Hudson, City Engineer  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

The work was completed on that certain work known as Mission Boulevard Improvement Phase 10 Storm Drain Project

for the undersigned City of Montclair, a Municipal Corporation, on the 16th day of June, 2011

The City accepted the job on the 5th day of July, 2011

The Contractor on said job was Gentry Brothers, Inc.  
384 Live Oak  
Irwindale, Ca. 91706

The improvement consisted of Storm Drain Improvements

The property upon which said work of improvement was completed is described as: 4230 Mission Blvd.

### VERIFICATION

I, the undersigned, say that I am agent for the owner of the aforesaid interest or estate in the property described in the above notice.

I have read the foregoing notice and know and understand the contents thereof, and the facts stated herein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: \_\_\_\_\_ at 5111 Benito Street, Montclair, California

\_\_\_\_\_  
City Engineer, City of Montclair

## AGENDA REPORT

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**SUBJECT:** CONSIDER RECEIVING AND FILING  
OF ALCOHOLIC BEVERAGE PERMIT  
APPLICATION - THE SAND BAR

**DATE:** July 5, 2011  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 5  
**FILE I.D.:** FLP025  
**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** Applications for Alcoholic Beverage Licenses are routinely presented to the City Council for review.

**BACKGROUND:** Mr. Mark Howard Shannon is the new owner of The Sand Bar located at 5363 Arrow Highway. A bar has operated at this location since December 1965 and has undergone several changes in ownership. In 1983, Foxy's opened and operated as a bar at this location until 2006 when the business was transferred to new ownership under the name "Knockers Sports Bar."

Mr. Shannon has requested approval from the California Department of Alcoholic Beverage Control (ABC) to have the existing Type 48 - "On-Sale General Public Premises (Bar)" license transferred to his name, thereby allowing continued sale and service of beer, wine, and distilled spirits at the establishment.

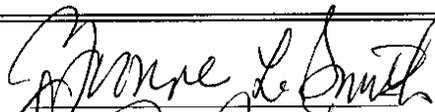
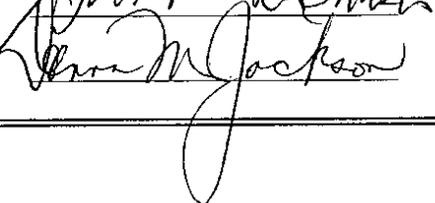
According to ABC representatives, there are no reported violations or issues with the current use. Staff has no objection to the transfer request.

**FISCAL IMPACT:** No fiscal impact

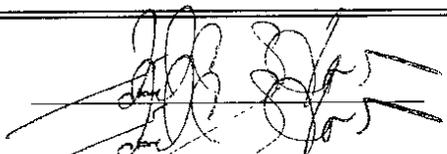
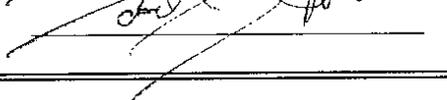
**RECOMMENDATION:** Staff recommends the City Council receive and file this item.

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Prepared by:

Reviewed and  
Approved by:

Proofed by:

Presented by:

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION      **DATE:** July 5, 2011  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 6  
**FILE I.D.:** FIN540  
**DEPT.:** ADMIN. SVCS.

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

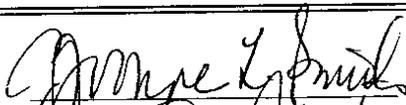
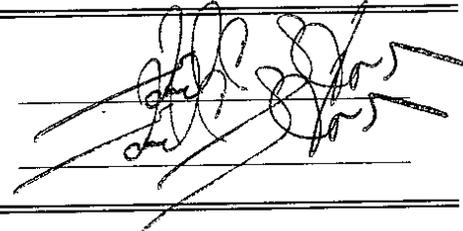
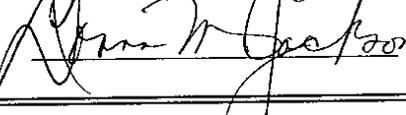
**BACKGROUND:** Mayor Pro Tem Raft has examined the Warrant Register dated July 5, 2011, and Payroll Documentation dated May 22, 2011; finds them to be in order; and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated July 5, 2011, totals \$693,368.18. The Payroll Documentation dated May 22, 2011, totals \$636,227.39, with \$446,638.20 being the total cash disbursement.

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

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Prepared by:       Reviewed and Approved by:   
Proofed by:       Presented by: 

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## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 11-81 WITH CALIFORNIA LANDSCAPE AND DESIGN, INC., FOR MAINTENANCE SERVICES AT THE MONTCLAIR SKATE PARK AND ALMA HOFMAN PARK RESTROOM FACILITIES

**DATE:** July 5, 2011  
**SECTION:** AGREEMENTS  
**ITEM NO.:** 1  
**FILE I.D.:** PRK370  
**DEPT.:** PUBLIC WORKS

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**REASON FOR CONSIDERATION:** Agreement No. 10-126 with California Landscape and Design, Inc., for Montclair Skate Park and the Alma Hofman Park restroom facilities maintenance expires on June 30, 2011. The City Council is requested to consider approval of Agreement No. 11-81 with California Landscape and Design, Inc., to continue maintenance services at these City facilities. A copy of proposed Agreement No. 11-81 is attached for the City Council's review and consideration.

**BACKGROUND:** At its meeting of December 6, 2010, the City Council approved Agreement No. 10-126 with California Landscape and Design, Inc., for maintenance of the Montclair Skate Park and Alma Hofman Park restroom facilities. Agreement No. 10-126 was an amendment to the Agreement for maintenance of the Skate Park that provided for maintenance of the Alma Hofman Park restrooms.

Proposed Agreement No 11-81 would begin a 12-month term corresponding to the 2011-12 fiscal year. The original contract with California Landscape and Design, Inc., (Agreement No. 05-158) provided for five renewal periods. If renewed by the City Council, the fifth renewal period would begin in Fiscal Year 2011-12.

**FISCAL IMPACT:** The cost to provide maintenance services during Fiscal Year 2011-12 is \$47,000. The Agreement proposes no increase in costs over the prior fiscal year. Funds for this purpose are included in the Public Works Fiscal Year 2011-12 Parks Division Budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-81 with California Landscape and Design, Inc., for maintenance services at the Montclair Skate Park and Alma Hofman Park restroom facilities.

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Prepared by:

*M. McGehee*  
*James L. Smith*

Proofed by:

Reviewed and  
Approved by:

*M. STRAITS*  
*[Signature]*

Presented by:

**AN AGREEMENT BY AND BETWEEN THE CITY  
OF MONTCLAIR AND CALIFORNIA LANDSCAPE  
AND DESIGN, INC., FOR MAINTENANCE OF THE  
MONTCLAIR SKATE PARK AND THE OPENING,  
CLOSING AND CLEANING THE ALMA HOFMAN  
PARK RESTROOM**

**THIS AGREEMENT** made and entered into this 1st day of July, 2011, by and between the **City of Montclair**, a Municipal Corporation, County of San Bernardino, State of California, hereinafter referred to as "**CITY**"; and **California Landscape and Design, Inc.**, hereinafter referred to as "**CONTRACTOR**."

**WITNESSETH:**

**SECTION I**

The **CONTRACTOR**, in consideration of the promises of the **CITY** hereinafter set forth, hereby agrees to furnish all tools, equipment, materials, labor, and transportation necessary to perform and complete the terms of this Agreement and to faithfully perform and maintain in a good and workmanlike manner the maintenance services on the area as set forth and listed in this Agreement.

**SECTION II**

This Agreement is for a period of one (1) year from the date herein above set forth and can be renewed annually up to five (5) years with the consent of the **CITY** and the **CONTRACTOR**, 2011-12 shall be considered the fifth (5<sup>th</sup>) renewal year, subject to the right of either party to cancel without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

**SECTION III**

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner for the total monthly sum of \$3,950, with payments to be made on the 15th day of each and every calendar month during the term of this agreement, which will be paid the **CONTRACTOR** for all work and services to be performed pursuant to this Agreement. **CONTRACTOR** shall pay prevailing wages in accordance with the laws of the State of California.

Payment of additional services requested, in writing, by **CITY** and not included in the scope of services as set forth in the Agreement, shall be performed by the **CONTRACTOR** at the rate of \$20.00 per hour. This hourly rate is negotiable annually and shall include labor, equipment, overhead, and profit. Any and all work done under this Section of this Agreement will be with prior written approval from the **CITY**. If prior written approval is not obtained by the **CITY**, no payment will be approved. Charges for additional services shall be invoiced on a monthly basis and shall be paid by the **CITY** within a reasonable time after said invoices are received by the **CITY**.

#### SECTION IV

The CONTRACTOR shall defend, indemnify, and save harmless the CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, including the payment by the CONTRACTOR of any and all legal costs and attorney's fees, in any manner arising out of any negligent or intentional or willful acts or omissions of the CONTRACTOR or any of its agents, servants, employees, or licensees in the performance of this Agreement including, but not limited to, all consequential damages to the maximum extent permitted by law.

#### SECTION V

The CONTRACTOR shall furnish a Certificate of Deposit as surety in the amount equal to one (1) month's maintenance cost in the name of the City of Montclair with all interest payments to the CONTRACTOR. The certificate shall remain in force for the term of this Agreement. If the CONTRACTOR requests a price increase as outlined in Section III, the CONTRACTOR must furnish a Certificate of Deposit with the new amount in the name of the City of Montclair with interest payments to the CONTRACTOR. The Certificate of Deposit must be on file with the CITY before the CONTRACTOR will be permitted to begin his maintenance operations.

#### SECTION VI

The CONTRACTOR shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to the CITY nor shall the CONTRACTOR allow any employee to commence work on the maintenance services subject to this Agreement until all insurance required has been obtained. The CONTRACTOR shall take out and maintain, at all times during the term of this Agreement, the policies of insurance as set forth hereinafter.

#### SECTION VII

Workers' Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish the CITY a Certificate of Insurance as proof that it has taken out full Workers' Compensation Insurance for all persons whom it may employ directly or through subcontractors in carrying out the work specified herein in accordance with the State of California.

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

I am aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self insurance with the provisions of the Code; and I will comply with such provisions before commencing the performance of the work of this Agreement.

## **SECTION VIII**

Throughout the term of this Agreement, at the CONTRACTOR'S sole cost and expense, the CONTRACTOR shall keep, or cause to be kept, in full force and effect for the mutual benefit of the CITY and the CONTRACTOR comprehensive, broad form, general public liability, and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from the CONTRACTOR'S activities, providing protection of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person and Three Million Dollars (\$3,000,000) for any one accident or occurrence and at least One Million Dollars (\$1,000,000) for property damage.

## **SECTION IX**

All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California and policies required under Section VIII shall name, as additional insured, the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured, and all subcontractors waive the right of subrogation against the CITY, its elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by the CITY; and (3) they cannot be canceled or materially changed except after (30) days' written notice by the insurer to the CITY by certified mail. The CONTRACTOR shall furnish the CITY with copies of all such policies promptly upon receipt of them or with a certificate evidencing the insurance. The CONTRACTOR may effect for its own account insurance not required under this Agreement.

## **SECTION X**

The CONTRACTOR shall, before any work begins, obtain and maintain the following: City of Montclair Business license and a State of California Contractor's License (C27).

## **SECTION XI**

The Public Works Superintendent, or his designated representative, shall be the judge of all work performed and shall approve all material provided by the CONTRACTOR before it is used. If the work is not satisfactory, the Public Works Superintendent or his designated representative may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due or payable to the CONTRACTOR for or during any time of such suspension or after termination.

It is further agreed that in the event the CONTRACTOR fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality, or fails to prosecute the work or any part thereof, the Public Works Superintendent or his designated representative shall so certify to the City Manager of the CITY, and if thereafter the CONTRACTOR, for a period of ten (10) days after receipt of a written demand from the Public Works Superintendent or his designated representative, fails to furnish tools, equipment, materials, labor, or transportation in the necessary

quantity or quality and to prosecute said work and all parts thereof in a diligent and workmanlike manner or after commencing to do so within said ten (10) days fails to continue to do so, then the CITY may exclude the CONTRACTOR from the premises or any portion thereof, together with all materials and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work either by furnishing the tools, equipment, materials, labor or transportation necessary therefor, or by letting the unfinished portion of said work or the portion taken over by the CITY be a charge against the CONTRACTOR and may be deducted from any money due or becoming due to the CONTRACTOR for the CITY, or the CONTRACTOR may be compelled to pay the CITY the amount of said charge or the portion thereof unsatisfied. As used herein, the term "premises" shall include the area as set forth in SECTION XII hereof.

## **SECTION XII**

### **SPECIFIC**

#### **MONTCLAIR SKATE PARK**

The Montclair Skate Park are located at 5201 Benito Street, Montclair California, 91763. The skate park is approximately 18,000 square feet in size. The maintenance area includes all signs, concrete surfaces, wrought-iron fence, and block wall in and around the Skate Park as well as the concrete, trash receptacle, bike rack, and two benches outside the south entrance to the Skate Park.

#### **A. Opening and Closing**

1. The skate park is open to the public 365 day per year. The skate park is to be opened at 8:00 a.m. every day and closed at 10:00 p.m. every night. If the skate park cannot be opened because of inclement weather or damage, the CONTRACTOR shall place a sign stating, 'Closed due to Weather' or 'Closed for Repairs' (both supplied by the CITY), at the entrance to the skate park and shall notify the Public Works Superintendent or his designee as soon as possible.
2. If the CITY should determine to open or close the skate park in order to perform any repairs by City staff, the CITY will then either open and/or close the skate park and notify the CONTRACTOR as soon as possible. Should repairs be necessary, the CITY shall place a sign stating, 'Closed for Repairs,' at the entrance to the skate park.

#### **B. Daily Safety Inspection**

1. Each morning before the skate park is opened to the public, the CONTRACTOR shall perform a safety inspection of the site. The inspection shall include checking the concrete surfaces for liquid spills, chips, spalling, etc., and the metal coping and handrails for any hazardous defects. If the CONTRACTOR discovers defects that would cause a safety hazard to patrons, the skate park should not be opened until the hazard is repaired. If the skate park cannot be opened for these reasons, the CONTRACTOR

shall notify the Public Works Superintendent or his designee as soon as possible.

**C. Site Cleanup**

1. Before the skate park is opened each day, the CONTRACTOR shall pick up and dispose of all debris and clean any gum, liquid spills, dirt, or other foreign materials from the concrete surfaces.
2. The CONTRACTOR shall pressure wash all concrete surfaces each Monday before opening the skate park to the public.

**D. Graffiti Removal**

1. Before opening the skate park each day, the CONTRACTOR shall remove any graffiti (including self-adhesive stickers) from the concrete surfaces, signs, light poles, trash receptacles, park benches, wrought-iron fence, and block wall. In removing graffiti, the CONTRACTOR shall use chemicals and methods that will not cause damage to any of the surfaces from which the graffiti is being removed.

**E. Block Wall**

1. The Contractor shall paint the block wall on the west and south sides of the skate park annually at a time mutually agreed upon by the CITY and the CONTRACTOR.
2. The CITY shall be responsible for any structural repairs to the block wall.

**F. Wrought-Iron Fence**

1. The Contractor shall paint the wrought-iron fence on the west, north, east, and south sides of the skate park annually at a time mutually agreed upon by the CITY and the CONTRACTOR.
2. The CITY shall be responsible for any structural repairs to the wrought-iron fence.

**G. Spine**

1. The CONTRACTOR shall be responsible for painting the spine red twice each year at a time mutually agreed upon by the CITY and the CONTRACTOR.

**H. Concrete Repair**

1. The CONTRACTOR shall repair, as part of this Agreement, all chips and spalls in the concrete surfaces that present a hazard to patrons of the skate park.

**I. Metal**

1. The CONTRACTOR shall repair, as part of this agreement, all chips, gouges, cracks, and bending in the metal surfaces on the railing, box edges, and coping that present a hazard to patrons of the skate park.

**J. Management and Supervision**

1. The site defined by this Agreement shall be closely inspected by the CONTRACTOR'S Maintenance Superintendent to ensure proper work procedures are followed.
2. Monthly maintenance reports by CONTRACTOR'S Maintenance Superintendent shall be submitted for CITY'S information.

**ALMA HOFMAN PARK RESTROOMS**

The Alma Hofman Park Restrooms are located at 5201 Benito Street, Montclair California, 91763. The restrooms are approximately 256 square feet in size. The maintenance area includes the interior of both men's and women's restrooms and shall include all signs, walls, wrought-iron gates, and all miscellaneous restroom fixtures.

**A. Opening and Closing**

1. The restrooms are open to the public 365 days per year. The restrooms are to be opened at 8:00 a.m. and closed at 10 p.m. every Friday thru Sunday and all City of Montclair observed holidays, list of Holidays to be provided by City of Montclair.

**B. Daily Safety Inspection**

1. Each morning before the restrooms are opened to the public, the CONTRACTOR shall perform a safety inspection of the site. The inspection shall include checking the concrete surfaces for human waste, liquid spills, chips, spalling, etc. If the CONTRACTOR discovers defects that would cause a safety hazard to patrons, the restrooms should not be opened until the hazard is repaired. If the restrooms cannot be opened for these reasons, the CONTRACTOR shall notify the Public Works Superintendent or his designee as soon as possible.

**C. Daily Cleaning**

1. Before the restrooms are opened each day, the CONTRACTOR shall pick up and dispose of all debris and clean any gum, human waste liquid spills, dirt, or other foreign materials from the concrete surfaces.
2. The CONTRACTOR shall clean the restroom floors, and all plumbing fixtures with disinfectant at the beginning of each day including emptying feminine hygiene disposal units in the women's restrooms.

**D. Graffiti Removal**

1. Before opening the restrooms each day, the CONTRACTOR shall remove any graffiti (including self-adhesive stickers) from the concrete surfaces, block walls, signs, trash receptacles, wrought-iron gates, plumbing fixtures and restroom toilet stall doors. In removing graffiti, the CONTRACTOR shall use chemicals and methods that will not cause damage to any of the surfaces from which the graffiti is being removed. Paint will be provided to the contractor by the City of Montclair as needed to paint out graffiti inside the restrooms.

**E. Stocking Supplies**

1. The CONTRACTOR shall install toilet paper and toilet seat covers in all toilet stalls (toilet paper and seat covers supplied by City of Montclair) as needed.

**F. Management and Supervision**

1. The site defined by this Agreement shall be closely inspected by the CONTRACTOR'S Maintenance Superintendent to ensure proper work procedures are followed.
2. Monthly maintenance reports by CONTRACTOR'S Maintenance Superintendent shall be submitted for CITY'S information.

**SECTION XIII**

**MISCELLANEOUS PROVISIONS**

- A. Assignment.** No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by the CONTRACTOR without the written consent of the CITY.
- B. Independent Contractor.** The parties hereto agree that CONTRACTOR and its employees, officers, and agents are independent contractors under this Agreement and shall not be construed for any purpose whatsoever to be employees of the CITY.
- C. Compliance With Laws.** The CONTRACTOR shall comply with all applicable laws in performing its obligations under this Agreement.
- D. Discrimination.** The CONTRACTOR agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONTRACTOR agrees to comply with all County, State, and Federal laws related to equal employment opportunity rights.
- E. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

- F. **Attorney's Fees.** In the event that any legal proceeding is instituted to enforce any term or provisions of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorney's fees and costs from the opposing party in an amount to be determined by the court to be reasonable.
- G. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any other party that is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing, signed by all parties.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first set forth hereinabove.

**Contractor:**

**CALIFORNIA LANDSCAPE AND DESIGN, INC.**

_____	_____
(Name, Title)	Date

**City:**

**CITY OF MONTCLAIR**

_____	_____
Paul M. Eaton Mayor	Date

**ATTEST:**

_____	_____
Yvonne IL. Smith City Clerk	Date

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 11-87 WITH MARIPOSA HORTI- CULTURAL ENTERPRISES, INC., FOR LANDSCAPE AND MAINTENANCE OF MEDIAN ISLANDS, PARKS, AND PARKWAYS	<b>DATE:</b> July 5, 2011 <b>SECTION:</b> AGREEMENTS <b>ITEM NO.:</b> 2 <b>FILE I.D.:</b> STA500 <b>DEPT.:</b> PUBLIC WORKS
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**REASON FOR CONSIDERATION:** Agreement No. 10-69 with Mariposa Horticultural Enterprises, Inc., for landscape maintenance of median islands, parks, and parkways expired on June 30, 2011. The City Council is requested to consider approval of Agreement No. 11-87 with Mariposa Horticultural Enterprises, Inc., to continue landscape maintenance services. Proposed Agreement No. 11-87 is attached for the City Council's review and consideration.

**BACKGROUND:** At its meeting of July 6, 2010, the City Council approved Agreement No. 10-69 with Mariposa Horticultural Enterprises, Inc., for landscape maintenance of median islands, parks, and parkways. This Agreement was for a one-year period and could be renewed annually up to five years with the consent of the City Council and Mariposa Horticultural Enterprises, Inc. Proposed Agreement No. 11-87 would become the fourth renewal period of the five year overall term of the Agreement.

In Fiscal Year 2010-11, the City paid \$342,978 annually for landscape-maintenance services. An additional \$12,000 was budgeted by the City for miscellaneous repairs to the median islands and irrigation systems in the event of traffic accidents and the need to repair and/or replace controllers, valves, and similar items as needed.

With the exception of the new Mission Boulevard landscape costs, Mariposa Horticultural Enterprises, Inc., recognizes the City's current financial standing and is not requesting an increase for Fiscal Year 2011-12.

**FISCAL IMPACT:** The cost to provide landscape maintenance of median islands, parks, and parkways found in Agreement No. 11-87 is \$370,000. This amount is greater than Fiscal Year 2010-11 because of the addition of new segments to the Mission Boulevard landscaped medians. An additional \$12,000 (not included in the contract amount) is anticipated for repairs to the median islands and irrigation systems. The funds to provide these services are included in the Public Works Fiscal Year 2011-12 Parks Division Budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-87 with Mariposa Horticultural Enterprises, Inc., for landscape maintenance of median islands, parks, and parkways.

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Prepared by: <u>    X. MENDEZ    </u>	Reviewed and Approved by: <u>    M. STAAFS    </u>
Proofed by: <u>    [Signature]    </u>	Presented by: <u>    [Signature]    </u>

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**AN AGREEMENT BY AND BETWEEN THE CITY OF  
MONTCLAIR, THE CITY OF MONTCLAIR REDEVELOP-  
MENT AGENCY, AND MARIPOSA HORTICULTURAL  
ENTERPRISES, INC., FOR MEDIAN ISLANDS, PARKS,  
AND PARKWAY MAINTENANCE**

THIS AGREEMENT, made and entered into this 1st day of July, 2011, by and between the CITY OF MONTCLAIR, a Municipal Corporation; County of San Bernardino, State of California, hereinafter referred to as "CITY"; the City of Montclair Redevelopment Agency, a body corporate and politic, hereinafter referred to as "AGENCY"; and Mariposa Horticultural Enterprises, Inc., hereinafter referred to as "CONTRACTOR."

**WITNESSETH:**

**SECTION I**

The CONTRACTOR, in consideration of the promises of the CITY/AGENCY hereinafter set forth, hereby agrees to furnish all tools, equipment, materials, labor, and transportation necessary to perform and complete the terms of this Agreement and to faithfully perform and maintain in a good and workmanlike manner the maintenance services on the areas as set forth and listed in this Agreement.

**SECTION II**

This Agreement is for a period of one (1) year from the date herein above set forth subject to the right of either party to cancel without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

**SECTION III**

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner for the total monthly sum of \$31,913, with payments to be made on the 15th day of each and every calendar month, during the term of this agreement, which will be paid the CONTRACTOR for all work and services to be performed pursuant to this Agreement. CONTRACTOR shall pay prevailing wages in accordance with the laws of the State of California.

Payment of additional services requested, in writing, by CITY/AGENCY and not included in the scope of services as set forth in the Agreement shall be performed by the CONTRACTOR at the rate of \$35.00 per hour. This hourly rate is negotiable annually and shall include labor, equipment, overhead, and profit. Any and all work done under this Section of this Agreement will be with prior written approval from the CITY/AGENCY. If prior written approval is not obtained by the CITY/AGENCY, no payment will be approved. Charges for additional services shall be invoiced on a monthly basis and shall be paid by the CITY/AGENCY within a reasonable time after said invoices are received by the CITY/AGENCY.

#### SECTION IV

The CONTRACTOR shall defend, indemnify, and save harmless the CITY/AGENCY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by the CONTRACTOR of any and all legal costs and attorney's fees in any manner arising out of any negligent or intentional or willful acts or omissions of the CONTRACTOR or any of its agents, servants, employees, or licensees in the performance of this Agreement including, but not limited to, all consequential damages to the maximum extent permitted by law.

#### SECTION V

The CONTRACTOR shall furnish a Certificate of Deposit as surety in the amount equal to one (1) month maintenance cost in the name of the City of Montclair with all interest payments to the CONTRACTOR. The certificate shall remain in force for the term of this Agreement. If the CONTRACTOR requests a price increase as outlined in Section III, the CONTRACTOR must furnish a Certificate of Deposit with the new amount in the name of the City of Montclair with interest payments to the CONTRACTOR. The Certificate of Deposit must be on file with the Public Works Superintendent before the CONTRACTOR will be permitted to begin his maintenance operations.

#### SECTION VI

The CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to the CITY/AGENCY nor shall the CONTRACTOR allow any employee to commence work on the maintenance services subject to this Agreement until all insurance required has been obtained. The CONTRACTOR shall take out and maintain, at all times during the term of this Agreement, the policies of insurance as set forth hereinafter.

#### SECTION VII

Workers' Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish the CITY/AGENCY a Certificate of Insurance as proof that it has taken out full Workers' Compensation Insurance for all persons whom it may employ directly or through subcontractors in carrying out the work specified herein in accordance with the State of California.

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

I am aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self insurance with the provisions of the Code; and I will comply with such provisions before commencing the performance of the work of this Agreement.

## SECTION VIII

Throughout the term of this Agreement, at the CONTRACTOR'S sole cost and expense, the CONTRACTOR shall keep, or cause to be kept, in full force and effect for the mutual benefit of the CITY/AGENCY and the CONTRACTOR comprehensive, broad form, general public liability, and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from the CONTRACTOR'S activities, providing protection of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person and Three Million Dollars (\$3,000,000) for any one accident or occurrence and at least One Million Dollars (\$1,000,000) for property damage.

## SECTION IX

All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California and policies required under Section VIII shall name, as additional insured, the CITY/AGENCY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured, and all subcontractors waive the right of subrogation against the CITY/AGENCY, its elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by the CITY/AGENCY; and (3) they cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to the CITY/AGENCY by certified mail. The CONTRACTOR shall furnish the CITY/AGENCY with copies of all such policies promptly upon receipt of them or certificate evidencing the insurance. The CONTRACTOR may effect for its own account insurance not required under this Agreement.

## SECTION X

The CONTRACTOR shall, before any work begins, obtain and maintain the following: City of Montclair Business License, State of California Contractor's License (C27), and all State of California Pest Control Licenses and categories necessary to complete the provisions of this Agreement.

## SECTION XI

The Public Works Superintendent, or his/her designated representative, shall be the judge of all work performed and shall approve all material provided by the CONTRACTOR before it is used. If the work is not satisfactory, the Public Works Superintendent, or his/her designated representative, may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due or payable to the CONTRACTOR for or during any time of such suspension or after termination.

It is further agreed that in the event the CONTRACTOR fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality or fails to prosecute the work or any part thereof, the Public Works Superintendent or his/her designated representative shall so certify to the City Manager of the CITY, and if thereafter the CONTRACTOR, for a period of ten (10) days after receipt of a written

demand from the Public Works Superintendent or his/her designated representative, fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality and to prosecute said work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said ten (10) days, fails to continue to do so, then the CITY/AGENCY may exclude the CONTRACTOR from the premises or any portion thereof, together with all materials and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work either by furnishing the tools, equipment, materials, labor, or transportation necessary therefore or by letting the unfinished portion of said work or the portion taken over by the CITY/AGENCY shall be a charge against the CONTRACTOR and may be deducted from any money due or becoming due to the CONTRACTOR for the CITY/AGENCY, or the CONTRACTOR may be compelled to pay the CITY/AGENCY the amount of said charge or the portion thereof unsatisfied. As used herein, the term "premises" shall include those areas and sites as set forth in SECTION XIII hereof.

## SECTION XII

### SPECIFIC

#### A. Trees, Plants, Shrubbery

1. All plants and shrubbery shall be properly irrigated, pruned, and shaped in season to produce the best possible effect and growth condition including tree skirts to have a minimum seven feet of clearance.
2. Tree trimming, planting, and staking shall be completed by the CITY/AGENCY.
3. The CITY/AGENCY may make periodic soil analyses to determine soil amendment requirements (gypsum, sulfur, iron chelates, etc.) as well as fertilization demands, and the Contractor is required to make the necessary applications within two weeks of notification. In lieu of soil tests, the CITY/AGENCY may require the CONTRACTOR to provide an all-purpose fertilizer for application.

#### B. Lawns

1. To comply with the Federal Clean Water Act and City of Montclair Municipal Code Section 9.24 - Storm Drain System, employees from said contractor shall be trained in Stormwater Best Management Practices. No blowing and/or depositing of grass clippings, leaves, or any other yard waste out into the street and catch basins.
2. All lawn areas will be mowed and edged weekly. As work is completed, the clippings, trimmings, weeds, and other extraneous materials shall be removed, leaving the lawns in a neat and attractive condition. The CONTRACTOR is responsible for cost of disposing such material.
3. All lawns shall be fed with commercial fertilizer supplied by the CONTRACTOR two times each year. Time of application of fertilizer shall be as specified by the CITY/AGENCY. Prior to fertilizing, the

CONTRACTOR shall first mow the lawn to the appropriate height. Selective weedkiller supplied by the CONTRACTOR, shall be applied to provide complete dandelion, crabgrass, or other weed control. Chemicals used shall meet Department of Food and Agriculture regulations. The CONTRACTOR is liable for misuse.

4. All lawns shall be verticut, mowed to one inch, seeded, and covered with top dressing. Seed and top dressing will be furnished by CONTRACTOR upon approval by the CITY/AGENCY.
5. All lawns shall be mowed between 2 and 2-1/2 inches.
6. All landscape areas will be monitored and treated for Gopher Control by the CONTRACTOR as needed. The CONTRACTOR, at no additional cost to the CITY/AGENCY, shall furnish chemicals and licenses necessary for Gopher Control.

**C. Replacements**

1. Any plant material that may expire from normal causes shall be replaced and replanted with a like or more desirable species without additional cost to the CITY/AGENCY.
2. Any plantings, cobblestone or stamped concrete areas, or portions of the irrigation systems that are damaged by vehicles, vandalism, or other means beyond the CONTRACTOR'S control shall be repaired and/or replaced by the CITY/AGENCY.

**D. Irrigation System**

1. Sprinkler heads shall be adjusted and kept clean to provide the best possible coverage. Missing, broken, worn, or sprinkler heads damaged while performing the duties pursuant to the Agreement shall be immediately replaced by CONTRACTOR to allow continuous irrigation without additional cost to the CITY/AGENCY.
2. Automatic irrigation controllers, remote control valves, and sprinkler heads will be properly checked and adjusted by the CONTRACTOR weekly.

The CONTRACTOR shall be responsible for immediately notifying City whenever a sprinkler system is not working properly. The CONTRACTOR shall be responsible for all repairs, upon approval by the CITY/AGENCY, at a flat rate of \$35.00 per hour plus costs of the materials needed. Repairs to damage caused by the CONTRACTOR'S operation, shall be borne by CONTRACTOR.

**E. Debris**

1. As work in any area is completed, the clippings, trimmings, and weeds shall be removed and the area shall be left in a neat and attractive condition. The CONTRACTOR is responsible for the cost of disposing all clippings, trimmings, and weeds.

**F. Cobblestone Concrete, Bomanite, and Stamped Concrete Areas**

1. All cobblestone, stamped concrete, bomanite, and concrete areas shall be weeded and kept free of papers and other extraneous material on a weekly basis.

**G. Management and Supervision**

1. The sites defined by this Agreement shall be closely inspected by the CONTRACTOR'S Maintenance Superintendent to ensure proper work procedures are followed.
2. Monthly maintenance reports by CONTRACTOR'S Maintenance Superintendent shall be submitted for CITY'S/AGENCY'S information.
3. The landscape maintenance will be scheduled first to meet the requirements of the landscape and secondly to fit the working procedures of the CITY/AGENCY.

**SECTION XIII**

The areas to be maintained are listed below; however, they are general site descriptions and are to be considered inclusive, not precise:

**A. Moreno Street Landscaping (six islands)—one island east of Central Avenue, one island west of Monte Vista Avenue, the other four islands between Central and Monte Vista Avenues**

Two of these islands are cobblestone only; the remaining islands are landscaped with lawns, trees, shrubs, cobblestone, and stamped concrete. The area to be maintained is approximately 7,970 square feet.

**B. Monte Vista Avenue Landscaping (six islands) located from north of Richton Street to and including one island south of the I 10-Freeway**

These islands are landscaped with lawn, trees, shrubs, stamped concrete, bomanite, and cobblestone. The lawn area to be maintained is approximately 19,060 square feet.

**C. San Jose Street Landscaping (one island) located west of Monte Vista Avenue**

This island is landscaped with lawn, trees, and stamped concrete. The lawn area to be maintained is approximately 800 square feet.

**D. Central Avenue Landscaping (33 islands) located north of Richton Street and Phillips Boulevard**

Some islands are landscaped with lawn, shrubs, trees, stamped concrete, and cobblestone. The lawn area to be maintained is approximately 131,195 square feet.

**E. Mills Avenue Landscaping, (12 islands) located between Moreno Street and Holt Boulevard**

These islands are landscaped with lawn, trees, bomanite and cobblestone. The lawn area to be maintained is approximately 38,910 square feet.

**F. Holt Boulevard Landscaping (17 islands and three parkways) located between Benson Avenue and Mills Avenue**

The islands and parkways are landscaped with lawn, shrubs, stamped concrete, and trees. The area to be maintained is approximately 104,400 square feet.

**G. San Bernardino Street Landscaping (five islands and one parkway) located from Mills Avenue east to 4500 San Bernardino Street**

The islands are landscaped with lawn, trees, and cobblestone. The lawn area to be maintained is approximately 6,200 square feet. A parkway is located on the south side of San Bernardino Street from the Flood Control Channel Bridge to approximately 350 lineal feet east. The parkway is landscaped with six (6) tree wells.

**H. Benson Avenue (two islands) located between Moreno Street and Arrow Highway**

The islands are landscaped with shrubbery, trees, and cobblestone paving. The area to be maintained is 9,600 square feet.

**I. Central Avenue Overpass**

The landscaped areas on the Central Avenue overpass shall include the northwest quadrant, the southwest quadrant and the southeast quadrant. The areas, which are planted with trees and shrubbery, total approximately 58,000 square feet.

**J. Palo Verde Street, (three islands), located between Monte Vista Avenue and Marion Avenue**

These islands are landscaped with shrubbery, trees, and bomanite. The area to be maintained is approximately 11,178 square feet.

**K. Monte Vista Avenue Underpass between Arrow Highway and Richton Street**

The area includes the slopes on the east and west sides of the street. It is landscaped with trees, shrubs, and groundcover. The area to be maintained is approximately 46,700 square feet.

**L. Richton Street Parkway located from Monte Vista Avenue to a point 1,600 feet east.**

The area to be maintained is located approximately 12 feet behind the sidewalk on the north and south sides of the street. The area is landscaped with lawn,

trees, and shrubs. The area to be maintained is approximately 34,320 square feet.

**M. Phillips Boulevard Parkway between Ramona and Buckskin Avenues**

The parkway is located behind the sidewalk on the north side of the street. It is landscaped with trees and shrubs. The area to be maintained is approximately 3,150 square feet.

**N. Ramona Avenue Tree Wells located from Phillips Boulevard to a point 650 feet north of Howard Street**

The tree wells are located on the east side of the street and include 53 tree wells and trees. The area to be maintained is approximately 477 square feet.

**O. Ramona Avenue Tree Wells located from a point 360 feet north of Merle Street to a point 510 feet south of Howard Street**

The tree wells are located on the west side of the street and include 25 tree wells and trees. The area to be maintained is approximately 225 square feet.

**P. San Bernardino Street Tree Wells located from a point 170 feet west of Rosewood Street to a point 175 feet east of Rosewood Street**

The tree wells are located on the south side of the street and include 6 tree wells and trees. The area to be maintained is approximately 54 square feet.

**Q. San Bernardino Street Tree Wells located from San Bernardino Court to a point 380 feet west of Rosewood Street**

The tree wells are located on the north side of the street and include 18 tree wells and trees. The area to be maintained is approximately 162 square feet.

**R. San Bernardino Street Parkway located between Fremont and Monte Vista Avenues**

The area is located on the south side of the street. It includes the sidewalk, tree wells, and trees. The area to be maintained is approximately 9,920 square feet.

**S. Redevelopment Agency-owned house at 9916 Central Avenue**

The area to be maintained consists of concrete, vines, trees, groundcover, and native shrubs in the front and rear yards. The area to be maintained is approximately 1,500 square feet.

**T. Walkway located between Yale and Palo Verde Streets**

The walkway is located east of 5634 Yale Street and travels between Yale and Palo Verde Streets. The area includes sidewalk only and is approximately 3,792 square feet.

**U. Walkway located at Rudisill Street and Amherst Avenue**

The area is located east of 4383 Rudisill Street and travels between Amherst Avenue and the San Antonio Channel. The area includes sidewalks, trees, and shrubs. The area to be maintained is approximately 500 square feet.

**V. Montclair Transcenter Platform**

The area to be maintained is located south of the second platform addition and on the north side at the east and west end of the platform as well as the tunnel under the first and second platforms. This area is landscaped with various shrubs and is approximately 20,500 square feet.

**W. Storm Drain Channel located north of the I-10 Freeway**

The open-face channel is located north of the I-10 Freeway and runs from Monte Vista Avenue to a point 730 feet west and from Monte Vista Avenue to a point 1,562 feet east. The maintenance includes removal of weeds and debris from the channel.

**X. Freedom Plaza**

The site is located at the northeast corner of Palo Verde Street and Monte Vista Avenue. The area includes trees, shrubs, and groundcover around an existing monument. It is approximately 20,500 square feet. It also includes the landscaped area around the caboose. This area includes trees, shrubs, and groundcover. It is approximately 1,000 square feet.

**Y. Alley Planters located between the 5300 blocks of Yale and Cambridge Streets**

The planters are located in the north and south ends of the alley. There are two planters, each landscaped with trees and shrubs. The total area to be maintained is approximately 500 square feet.

**Z. Parkway on the east side of Ramona Avenue, north and south of Canary Court**

The area includes cobblestone and pine trees. The total area to be maintained is 1,925 square feet.

**AA. Undeveloped property at the southeast corner of Ramona Avenue and State Street**

The area is undeveloped and is 5.4 acres in size.

**BB. Benson Avenue Parkway, located on the west side of Benson Avenue from the I-10 Freeway to San Jose Street**

The parkway is landscaped with Oleander bushes. The total area to be maintained is 3,000 square feet.

**CC. Mission Boulevard Median Islands and Parkways from the east to west City Limits**

The areas to be maintained consist of trees, shrubs, groundcover, and undeveloped areas. The area to be maintained is approximately 220,000 square feet.

**DD. Palo Verde Street Landscape located on the north side of Palo Verde Street between Mills Avenue and the San Antonio Channel**

The area includes trees, shrubs, groundcover, and wood chips. The area to be maintained is approximately 22,470 square feet,

**EE. Trash Collection**

Empty trash containers and pick up trash from the ground at the following locations weekly unless otherwise indicated:

- Alma Hofman Park (twice per week, Monday and Friday), 5201 Benito Street
- Civic Center, 5111 Benito Street
- Essex Park, 4295 Howard Street
- Golden Girls Park, 4594 San Bernardino Street
- Kingsley Park, 5575 Kingsley Street
- MacArthur Park, 5450 Deodar Street
- Mini Park #1, 9120 Monte Vista Avenue
- Mini Park #2, 4682 Highland Street
- Moreno Vista Park, 4675 Moreno Street
- Saratoga Park, 5397 Kingsley Street
- Sunrise Park, 5500 Princeton Street
- Sunset Park, 4351 Orchard Street
- Montclair Transcenter (twice per week, Monday and Friday), 5091 Richton Street
- Freedom Plaza, 4902 Palo Verde Street
- I-10 Freeway on- and off-ramps on Central and Monte Vista Avenues

**FF. Olive Street Parkway located on the south side of Olive Street east of Vernon Avenue**

The parkway is landscaped with shrubs and groundcover. The total area to be maintained is 3,275 square feet.

**GG. Fox Homes Parkway located on the southeast corner of Ramona Avenue and Mission Boulevard**

The parkway is landscaped with shrubs, groundcover, and trees. The total area to be maintained is 5920 square feet.

**HH. Richmond American Homes Parkway located on the west side of Monte Vista Avenue south of the I-10 Freeway and west of Monte Vista Avenue the decomposed granite and shrubbery west to Tudor Avenue**

The parkway is landscaped with shrubs, groundcover, trees, and decomposed granite. The total area to be maintained is 19,740 square feet.

**II. Pacific Electric Bike Trail located from Monte Vista Avenue west to the west City limits**

The area will be landscaped with shrubs and trees. The area to be maintained is 21,560 square feet.

**JJ. Ramona Avenue Landscaping (two islands), one island north of Mission Boulevard and one island south of Mission Boulevard**

These islands are landscaped with trees, shrubs, and stamped concrete. Each median island is approximately 4,000 square feet.

**KK. Richton Street Parking Lot located at 4800 Richton Street**

The parking lot is landscaped around the perimeter with trees, shrubs, and groundcover and is approximately 2,800 square feet.

**LL. Montclair Police Department Facility**

The Montclair Police Department facility is located at 4870 Arrow Highway. The landscape at this facility includes, various trees and shrubs. The total area to be maintained is approximately 76,665 square feet. The area also includes maintenance of the drainage basin.

**MM. 5100 Block of Saddleback Street Parkway**

The parkway is landscaped with trees and lawn. The area to be maintained is approximately 1,050 square feet.

**NN. Plaza Landscape at the northeast corner of Monte Vista Avenue and San Jose Street**

The parkway is landscaped with trees and lawn. The area to be maintained is approximately 8,400 square feet.

**OO. Plaza Landscape at the southwest corner of Central Avenue and Moreno Street**

The parkway is landscaped with trees and lawn. The area to be maintained is approximately 6,400 square feet.

**SECTION XIV**

In the event that additional areas require maintenance services, such areas may be added to this Agreement at a negotiated price; however, during the period of time

the CONTRACTOR is negotiating a cost to maintain the new areas, it is the CONTRACTOR'S responsibility to provide maintenance service to any area in question. In the event a maintenance area is deleted from this Agreement, the contract price for that area shall be deducted from the negotiated price.

## SECTION XV

### MISCELLANEOUS PROVISIONS

- A. **Assignment.** No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by the CONTRACTOR without the written consent of the CITY/AGENCY.
- B. **Independent Contractor.** The parties hereto agree that CONTRACTOR and its employees, officers, and agents are independent contractors under this Agreement, and shall not be construed for any purpose whatsoever to be employees of the CITY/AGENCY.
- C. **Compliance With Laws.** The CONTRACTOR shall comply with all applicable laws in performing its obligations under this Agreement.
- D. **Discrimination.** The CONTRACTOR agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONTRACTOR agrees to comply with all County, State, and Federal laws related to equal employment opportunity rights.
- E. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- F. **Attorney's Fees.** In the event that any legal proceeding is instituted to enforce any term or provisions of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorney's fees and costs from the opposing party in an amount to be determined by the court to be reasonable.
- G. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any other party that is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing, signed by all parties.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first set forth herein above.

**Contractor:**

**MARIPOSA HORTICULTURAL ENTERPRISES, INC.**

Name	Title	Date
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**City:**

**CITY OF MONTCLAIR**

By: _____	Paul M. Eaton Mayor	Date
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**ATTEST:**

By: _____	Yvonne L. Smith City Clerk	Date
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**Agency:**

**CITY OF MONTCLAIR  
REDEVELOPMENT AGENCY**

By: _____	Paul M. Eaton Chairman	Date
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**ATTEST:**

By: _____	Yvonne L. Smith Secretary	Date
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## AGENDA REPORT

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 11-88 WITH WEST COAST ARBORISTS  
FOR TREE-MAINTENANCE SERVICES

**DATE:** July 5, 2011

**SECTION:** AGREEMENTS

**ITEM NO.:** 3

**FILE I.D.:** STA700

**DEPT.:** PUBLIC WORKS

**REASON FOR CONSIDERATION:** Agreement No. 10-70 with West Coast Arborists (WCA) for tree-maintenance services expired on June 30, 2011. The City Council is requested to consider approval of Agreement No. 11-88 with WCA to continue tree-maintenance services. Proposed Agreement No. 11-88 is attached for review and consideration by the Council.

**BACKGROUND:** At its meeting of July 6, 2010, the City Council approved Agreement No. 10-70 with WCA for tree-maintenance services. The Agreement was for a one-year period and could be renewed annually with the consent of both the City and WCA. The Agreements with WCA began with a five-year term that could be renewed annually. Proposed Agreement No. 11-88, beginning in Fiscal Year 2011-12, would be the final year of the five-year contract renewal period.

In consideration of the City's ongoing financial challenges, WCA is not requesting a rate increase for Fiscal Year 2011-12. A description of items and costs contained in proposed Agreement No. 11-88 is as follows:

<i>Item</i>	<i>Description</i>	<i>Unit</i>	<i>Cost</i>
1	Tree trimming	Each	\$ 45.00
2	Tree and stump removal	Inch	\$ 16.00
3	Stump-only removal	Inch	\$ 4.90
4	Tree planting, 15-gallon	Each	\$118.00
5	Tree planting, 24-inch box	Each	\$244.00
6	Root pruning	Foot	\$ 7.50
7	Three-man crew rental	Hour	\$118.50
8	Emergency crew rental	Hour	\$250.00

WCA has continued to provide the City with quality tree-trimming and other tree-related services. WCA has been utilized by the City to trim trees since October 2000. The company is responsive to staff's requests and has established an Internet-based inventory of all City trees at no additional cost. Public Works staff uses the inventory in its annual tree-trimming program. The inventory provides information related to tree location, tree

Prepared by: X. MENDEZ  
 Proofed by: Gyenne L Smith

Reviewed and Approved by: M. STARRS  
 Presented by: [Signature]

species, work history, and the value of each tree. This year, WCA completed a full inventory of all City-owned, privately-owned, and vacant locations for trees on public, residential, and commercial properties and has incorporated them into GIS form.

**FISCAL IMPACT:** The cost to provide tree-maintenance services is not expected to exceed \$75,000 during Fiscal Year 2011-12. Funds for this purpose are included in the Public Works Fiscal Year 2011-12 Tree Division Budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-88 with West Coast Arborists for tree-maintenance services.

AN AGREEMENT BY AND BETWEEN THE CITY OF  
MONTCLAIR AND WEST COAST ARBORISTS  
FOR TREE MAINTENANCE SERVICES

**THIS AGREEMENT** is made and entered into this 1st day of July, 2011, by and between the CITY OF MONTCLAIR, a Municipal Corporation, County of San Bernardino, State of California, hereinafter referred to as "CITY," and WEST COAST ARBORISTS, hereinafter referred to as "CONTRACTOR."

**WITNESSETH:**

**SECTION I**

The CONTRACTOR, in consideration of the promises of the CITY hereinafter set forth, hereby agrees to furnish all tools, equipment, materials, labor, and transportation necessary to perform and complete the terms of this Agreement and to faithfully perform and maintain in a good and workmanlike manner the maintenance services on the areas as set forth and listed in this Agreement.

**SECTION II**

This Agreement is for a period of one (1) year from the date hereinabove set forth and the CONTRACTOR will be required to file a request for proposal for the following fiscal year with the consent of the City and the Contractor, subject to the right of either party to cancel without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

**SECTION III**

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner. Contractor shall pay prevailing wages in accordance with the laws of the State of California. Payment for work completed will be based on the following schedule:

	Unit Prices	Unit Description
Tree trimming	\$45.00	Each
Palm tree trimming	\$45.00	Each
Complete tree and stump removal	\$16.00	Diameter inch
Stump removal	\$4.90	Diameter inch
Root pruning	\$7.50	Each (foot)
Tree planting 15 gallon	\$118.00	Each
Tree planting 24 inch box	\$244.00	Each
Three man crew rental, aerial unit, dump truck, and chipper	\$118.50	Hour
Emergency work call out	\$250.00	Hour

Payment will be made on the 15th day of each and every calendar month during the term of this Agreement, which will be paid to the Contractor for all work and services to be performed pursuant to the Agreement.

Payment of additional services requested, in writing, by City and not included in the Scope of Services as set forth in this Agreement, shall be negotiated on an item-by-item basis. Any additional services cost will include labor, equipment, overhead, and profit.

Any and all work done under this Section of this Agreement will be with prior written approval from the CITY. If prior written approval is not obtained by the CONTRACTOR, no payment will be approved. Charges for additional services shall be invoiced on a monthly basis and shall be paid by the CITY within a reasonable time after said invoices are received by the CITY.

#### SECTION IV

The CONTRACTOR shall defend, indemnify, and save harmless the CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, including the payment by the CONTRACTOR of any and all legal costs and attorneys' fees, in any manner arising out of any negligent or intentional or willful acts or omissions of the CONTRACTOR or any of its agents, servants, employees, or licensees in the performance of this Agreement including, but not be limited to, all consequential damages to the maximum extent permitted by law.

#### SECTION V

The CONTRACTOR shall furnish a Certificate of Deposit as surety in the amount equal to \$6,750 in the name of the City of Montclair with all interest payments to the CONTRACTOR. The certificate shall remain in force for the term of this Agreement. If the Contractor requests a price increase as outlined in Section III, the Contractor must furnish a Certificate of Deposit with the new amount in the name of the City of Montclair with interest payments to the CONTRACTOR. The Certificate of Deposit must be on file with the Public Works Superintendent before the CONTRACTOR will be permitted to begin his operations.

#### SECTION VI

The CONTRACTOR shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to the CITY nor shall the CONTRACTOR allow any employee to commence work on the maintenance services subject to this Agreement until all insurance required has been obtained. The CONTRACTOR shall take out and maintain, at all times during the term of this Agreement, the policies of insurance as set forth hereinafter.

#### SECTION VII

Workers' Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish the CITY a Certificate of Insurance as proof that it has taken out full Workers' Compensation Insurance for all persons whom it may employ directly or

through subcontractors in carrying out the work specified herein in accordance with the State of California.

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

I am aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self insurance with the provisions of the Code; and I will comply with such provisions before commencing the performance of the work of this Agreement.

### SECTION VIII

Throughout the term of this Agreement, at the CONTRACTOR'S sole cost and expense, the CONTRACTOR shall keep, or cause to be kept, in full force and effect for the mutual benefit of the CITY and the CONTRACTOR comprehensive, broad form, general public liability, and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from the CONTRACTOR'S activities, providing protection of at least One Million Dollars (\$1,000,000) for any one person Three Million Dollars (\$3,000,000) per accident or occurrence for bodily injury or death, and at least One Million Dollars (\$1,000,000) for property damage.

### SECTION IX

All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California; and policies required under Section VIII shall name, as additional insured, the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured, and all subcontractors waive the right of subrogation against the CITY, its elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by the CITY; and (3) they cannot be canceled or materially changed except after (30) days written notice by the insurer to the CITY by certified mail.

The CONTRACTOR shall furnish the CITY with copies of all such policies promptly upon receipt of them or certificate evidencing the insurance. The CONTRACTOR may effect for its own account insurance not required under this Agreement.

### SECTION X

The Public Works Superintendent, or his designated representative, shall be the judge of all work performed by the CONTRACTOR. If the work is not satisfactory, the Public Works Superintendent or his designated representative may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due or payable to the CONTRACTOR for or during any time of such suspension or after termination.

It is further agreed that in the event the CONTRACTOR fails to prosecute the work or any part thereof contemplated by this Agreement, the Public Works Superintendent, or his designated representative, shall so certify to the City Manager of the CITY; and if thereafter the CONTRACTOR, for a period of five (5) days after written notice, continues to fail to do so, then the CITY may exclude the CONTRACTOR from the premises or any portion thereof and may complete the work contemplated by this Agreement or any portion of said work by letting the unfinished portion of said work, or the portion taken over by the CITY, the cost of which shall be a charge against the CONTRACTOR and may be deducted from any money due or becoming due to the CONTRACTOR from the CITY; or the CONTRACTOR may be compelled to pay the CITY the amount of said charge or the portion thereof unsatisfied.

## SECTION XI

### SPECIFIC

#### A. Scope of Work

The work shall consist of furnishing all materials, labor, equipment, and incidentals necessary for pruning and removal of street and park trees in accordance with the Contractor's request for proposals.

1. **WORKING HOURS:** All work shall be performed between the hours of 7:00 a.m. and 5:00 p.m. weekdays. No weekend or holiday work shall be permitted unless authorized by the Public Works Superintendent.
2. **PUBLIC SAFETY AND COOPERATION:** All work shall be conducted in such a manner as to cause the least possible interference with, or annoyance to others and maintain safe conditions at all times while work operation are in progress.
3. **INSPECTION BY THE CITY:** The City shall inspect all work performed under this contract for compliance to the specifications and report any deficiencies to the Contractor.
4. **DAMAGE TO PROPERTY:** The Contractor shall not damage any public or private property as a result of the work specified. Any damage resulting from the Contractor's work shall be repaired, restored or replaced in kind within twenty-four (24) hours.
5. **CERTIFIED ARBORIST:** The Contractor shall employ a full-time, permanent Certified Arborist, as accredited by the International Society of Arboriculture at the time of proposal submittal, bid award and for the duration of the Agreement.

The Certified Arborist shall be responsible for the Contractor's employees performing the work as specified herein, daily inspections of the worksite, and supervision of the Contractor's employees. The Certified Arborist shall represent the Contractor regarding any disputes that may arise with the City, public, and the Contractor's employees.

6. **WORKMANSHIP:** All work shall be completed in a timely and workmanlike manner. The Contractor shall provide qualified tree workers trained according to the tree care standards accepted by the International Society of Arboriculture and the National Arborists Association.

All work shall be performed in a safe manner in compliance with the American National Safety Institute, Z133.1 Safety Standards for Tree Care Operations, as published by American National Safety Institute, Inc., 1430 Broadway, New York, New York 10018.

The Contractor shall provide qualified tree workers certified to perform tree work near energized primary and secondary electrical distribution lines. The Contractor shall comply with the Electrical Safety Orders issued by the State of California Occupational Health and Safety Administration (Cal/OSHA) including all amendments and revisions.

7. **MEASUREMENT AND PAYMENT:** The unit prices called for in the Agreement shall be full compensation for all labor, materials, and equipment necessary to complete the work as specified

No further compensation shall be made unless authorized by the Public Works Superintendent or his designated representative.

8. **NOTIFICATION TO RESIDENTS:** The Contractor shall notify all affected residents and businesses of tree pruning and removal operations twenty-four (24) hours before the start of work. The Contractor is responsible for posting "Temporary No Parking" signs at least twenty-four (24) hours before using any parking lanes for tree trimming operations. Every effort shall be made by the Contractor to minimize the duration of driveway blocking. Further, the Contractor shall provide access to each residential or commercial establishment each evening.

9. **TRAFFIC AND SAFETY REQUIREMENTS:** Any contractor performing work in a public right-of-way or parks shall conduct the operations so as to cause the least possible obstruction and inconvenience to public traffic and pedestrians and take all necessary measures to maintain an adequate traffic flow to prevent accidents and to protect the worksite.

All traffic controls shall be in accordance with the Manual of Traffic Controls for Construction and Maintenance Work Zones published by State of California, Department of Transportation. All traffic devices, safety lights, and flagmen shall be provided by the Contractor.

The Contractor shall receive approval from the Public Works Superintendent prior to the partial or complete closure of any lanes, streets, or intersections.

## **B. Complete Tree Pruning Specifications**

All trees shall be pruned only in such a manner as to maintain the natural structure, form, health, and appearance of the tree species. Tree pruning shall

consist of the total removal of those dead and living branches that might compromise the health, strength, and natural form of the tree. Specifically, mature trees shall be pruned in such a manner as to:

1. Prevent branch and foliage interference with the requirements of safe public passage. Over residential streets, limbs shall be maintained gradually from eight (8) feet at the curb to seventeen (17) feet over traffic lanes. Over arterial streets, limbs shall be maintained at a maximum height of fourteen (14) feet from grade to wood.  
  
Over sidewalks, limbs shall be maintained at a height of seven (7) feet from the grade to wood.
2. Remove all dead and dying branched and branch stubs that are ½ inch or larger.
3. Remove all broken or loose braches.
4. Remove any live branches that interfere with the tree's structural strength and healthful development, which will include the following:
  - Limbs that rub and abrade a more important branch.
  - Limbs of weak structure that are not important to the framework of the tree.
  - Limbs that, if allowed to grow, would wedge apart the junction of more important branches.
  - Branches near the end of a limb that will produce more weight or offer more resistance to wind that the limb are able to support.
  - Undesirable sucker and water sprout growth giving specific attention not to nick or damage the sprout "burl."
  - Selective removal of one or more developing leaders where multiple branch growth exists near the end of broken or stubbed limbs.
  - Selective removal of limbs obstructing buildings or other structures, streetlights or traffic signs.
5. Cut back ends of branches and reduce weight where excessive overburden appears likely to result in breakage of supporting limbs.
6. On mature trees only, clear water sprout or sucker growth to a minimum height of eight (8) feet above ground level.
7. Maintain a balanced appearance when viewed from the opposite side of the street immediately opposite the tree.
8. Remove all vines entwined in trees and on tree trunks. Vine tendrils shall be removed without injury to the trees.

9. Clear all branches and foliage within four (4) to six (6) feet of primary electrical lines.
10. When pruning cuts are made to a side limb, the remaining limb shall possess a basal thickness of at least one third the diameter of the cut. Such cuts shall be considered proper only when the remaining limb is vigorous enough to maintain adequate foliage to produce wood growth capable of callusing the pruning cut within a reasonable amount of time.
11. All final pruning cuts shall be made in such a manner so as to favor the earliest possible covering of the wound by natural callus growth. Flush cuts shall be made and the branch collar shall not be removed.
12. Tree limbs shall be removed and controlled in such a manner as to cause no damage to other parts of the tree, or to other plants or property.
13. All tools used on a tree known to contain an infectious tree disease shall be properly disinfected immediately before and after completing work on the tree. All significant pest, disease or structural weakness or defects observed by the Contractor while performing this work shall be promptly reported to the City.
14. All pruning tools and saws used for tree pruning shall be kept sharpened at all times to result in final cut with a nonabrasive wood surface and secure bark. All trees six (6) inches in diameter (DBH) or less shall be pruned with hand tools only. Chain saws will not be permitted on any trees with six (6) inches or less (DBH).
15. Whenever pruning cuts are made, while removing limbs too large to hold securely in one hand during the curing operation, the limb shall be cut off first, one (1) to two (2) feet beyond the intended final cut. Then the final cut shall be made in a manner to prevent the tearing of bark and wood.
16. Live, healthy limbs with a diameter of three (3) inches or greater shall not be removed without prior approval from the Public Works Superintendent.
17. No more than twenty (20) percent of live wood may be removed from the crown of any tree. The exception to this is Live Oaks, which are limited to no more than ten (10) percent.
18. Any extraneous metal, wire, rubber or other material interfering with the natural growth of the tree shall be removed.
19. The use of climbing spurs or spike shoes is strictly prohibited except in the case of aerial rescue.
20. All pruning shall be performed in such a manner as to encourage and promote the natural growth and shape of the tree species. The Contractor shall not perform any of the following procedures:

- The severe cutting back of growing tips including topping, dehorning, heading back, pollarding, hat racking.
- Flush cutting where a cut is made even with the surface with the trunk or limb, removing the branch collar and branch bark ridge.
- Stub cutting where branch removal results in the base of the branch removed protruding more than approximately one-quarter inch beyond the zone of the branch collar and branch bark ridge.
- Removal of all the inner branches and foliage also known as lion tailing.

### **C. Removals**

Removals of trees shall be completed in the safest and most efficient manner possible while providing minimal inconvenience to the resident. Removals shall include the total removal of all brush, surface roots, and stumps.

Stumps may be removed in whole by digging out each individual stump or by grinding the stump to a minimum of twelve (12) inches below the top of the curb. In each instance, the areas shall be backfilled and graded to conform to the surrounding area. Whenever a tree is removed, the Contractor is responsible for notifying Dig Alert at 1 (800) 227-2600, two (2) days before digging. Stumps must be removed within two (2) days of the date that the tree is removed.

### **D. Disposal of Tree Branches, Brush, and Stumps**

All tree branches, brush, and stumps produced as a result of the Contractor's operations shall be reduced, reused, recycled, and/or transformed whenever possible.

1. Reducing will include, but not limited to, chipping, grinding, and/or shredding. Disposal at a landfill is acceptable only if the material is accepted by the landfill for use as alternate daily cover.
2. Reusing shall include, but not limited to, using chipped, ground, and/or shredded tree materials as mulch.
3. Recycling shall include, but not limited to, chipped, ground, or shredded tree material used to produce compost utilizing either a low or high technology.
4. Transformation will include, but not limited to, burning green waste, such as tree wood chips, for the purpose of producing energy.

Worksites shall be cleaned on a daily basis with no limbs, brush or debris left overnight.

## SECTION XII

### MISCELLANEOUS PROVISIONS

- A. **Assignment.** No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by the CONTRACTOR without the written consent of the CITY.
- B. **Independent Contractor.** The parties hereto agree that CONTRACTOR and its employees, officers, and agents are independent contractors under this Agreement, and shall not be construed for any purpose whatsoever to be employees of the CITY.
- C. **Compliance With Laws.** The CONTRACTOR shall comply with all applicable laws in performing its obligations under this Agreement.
- D. **Discrimination.** The CONTRACTOR agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONTRACTOR agrees to comply with all County, State, and Federal laws relating to equal employment opportunity rights.
- E. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Stat of California.
- F. **Attorneys' Fees.** In the event that any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount to be determined by the Court to be reasonable.
- G. **Entire Agreement.** This Agreement supersedes any and all other agreements either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any other party that is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing, signed by all parties.

**IN WITNESS WHEREOF**, the parties hereto execute this Agreement as of the day and year first set forth hereinabove.

**CONTRACTOR:**

**WEST COAST ARBORISTS**

\_\_\_\_\_  
Patrick Mahoney, President

\_\_\_\_\_  
Date

**CITY:**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
Paul M. Eaton  
Mayor

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Yvonne L. Smith  
Deputy City Clerk

\_\_\_\_\_  
Date

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 11-89 WITH LIEBERT CASSIDY WHITMORE FOR PARTICIPATION IN THE EAST INLAND EMPIRE EMPLOYMENT RELATIONS CONSORTIUM	<b>DATE:</b> July 5, 2011
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b> 4
	<b>FILE I.D.:</b> PER250
	<b>DEPT.:</b> ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** The City's current Agreement with Liebert Cassidy Whitmore for participation in the East Inland Empire Employment Relations Consortium (ERC) is scheduled for renewal on July 1, 2011. The City Council is requested to consider approval of Agreement No. 11-89 with Liebert Cassidy Whitmore, a copy of which is attached for the City Council's review and consideration.

**BACKGROUND:** For the past 23 years, the City of Montclair has participated in the Liebert Cassidy Whitmore ERC. The City's participation entitles elected officials and employees to receive five one-day group training sessions, unlimited free telephone consultations with the law firm's attorneys, and a monthly employment-relations newsletter. Participating agencies may also receive specialized training for an added cost.

The term of proposed Agreement No. 11-89 is July 1, 2011, through June 30, 2012.

**FISCAL IMPACT:** The annual fee for participation in the Consortium is \$2,528. Funds to cover the cost of the training sessions and consulting service are included in the Fiscal Year 2011-12 Budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-89 with Liebert Cassidy Whitmore for participation in the East Inland Empire Employment Relations Consortium.

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Prepared by:

*Gary B. Charlton*

Proofed by:

*Kathy Dalton*

Reviewed and  
Approved by:

Presented by:

*[Handwritten signatures]*

**AGREEMENT FOR SPECIAL SERVICES**

This Agreement is entered into between the CITY OF MONTCLAIR, A Municipal Corporation hereinafter referred to as "City," and the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation, hereinafter referred to as "Attorney."

WHEREAS City has the need to secure expert training and consulting services to assist City in its relations and negotiations with its employee organizations; and

WHEREAS City has determined that no less than thirteen (13) public agencies in the East Inland Empire area have the same need and have agreed to enter into identical agreements with Attorney; and

WHEREAS Attorney is specially experienced and qualified to perform the special services desired by the City and is willing to perform such services;

NOW, THEREFORE, City and Attorney agree as follows:

**Attorney's Services:**

During the year beginning July 1, 2011, Attorney will provide the following services to City (and the other aforesaid public agencies):

1. Five (5) days of group training workshops covering such employment relations subjects as management rights and obligations, negotiation strategies, employment discrimination and affirmative action, employment relations from the perspective of elected officials, performance evaluation (administering evaluations), grievance and discipline administration for supervisors and managers, planning for and responding to concerted job actions, current court, administrative and legislative developments in personnel administration and employment relations, etc., with the specific subjects covered and lengths of individual workshop presentations to be determined by City and the other said local agencies.

It is expressly understood that the material used during these presentations, including written handouts and projected power points are provided solely for the contracted workshops. This agreement warrants there will be no future use of Liebert Cassidy Whitmore material in other trainings or formats without the expressed written permission of Liebert Cassidy Whitmore. Any such use will constitute a violation of this agreement and copyright provisions.

2. Availability of Attorney for City to consult by telephone.
3. Providing of a monthly newsletter covering employment relations developments.

**Fee:**

Attorney will provide these special services to City for a fee of Two Thousand Five Hundred Twenty Eight Dollars (\$2,528.00) payable in one payment prior to August 1, 2011. ~~The fee, if paid after August 1, 2011 will be \$2,628.00.~~

Said fee will cover Attorney's time in providing said training and consultative services and the development and printing of written materials provided to attendees at the training programs.

**Additional Services:**

Attorney shall, as and when requested by City, make itself available to City to provide representational, litigation, and other employment relations services. The City will be billed for the actual time such representation services are rendered, including reasonable travel time, plus any necessary costs and expenses authorized by the City.

The range of hourly rates for Attorney time is from One Hundred Eighty to Three Hundred Dollars (\$180.00 - \$300.00) per hour for attorney staff and from One Hundred Five to One Hundred Forty Dollars (\$105.00 - \$140.00) per hour for services provided by paraprofessional staff. Attorneys and paraprofessional staff bill their time in minimum units of one-tenth of an hour. Communications advice (telephone, voice-mail, e-mail) is billed in a minimum increment of three-tenths (.30) of an hour. Attorney reviews its hourly rates in an annual basis and if appropriate, adjusts them effective July 1.

**Independent Contractor:**

It is understood and agreed that Attorney is and shall remain an independent contractor under this Agreement.

**Term:**

The term of this Agreement is twelve (12) months commencing July 1, 2011. The term may be extended for additional periods of time by the written consent of the parties.

**Condition Precedent:**

It is understood and agreed that the parties' aforesaid rights and obligations are contingent on no less than thirteen (13) local agency employers entering into a substantially identical Agreement with Attorney on or about July 1, 2011.

Dated: 6/7/11

**LIEBERT CASSIDY WHITMORE**  
A Professional Corporation

By 

Dated: \_\_\_\_\_

**CITY OF MONTCLAIR**  
A Municipal Corporation

By \_\_\_\_\_

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 11-90 WITH BARTEL ASSOCIATES, LLC, FOR COMPLETION OF THE REQUIRED GOVERNMENTAL ACCOUNTING STANDARDS BOARD STATEMENT NO. 45 ACTUARIAL VALUATION

**DATE:** July 5, 2011  
**SECTION:** AGREEMENTS  
**ITEM NO.:** 5  
**FILE I.D.:** PER250  
**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 11-90 with Bartel Associates, LLC, to meet the requirements of the Governmental Accounting Standards Board regarding completion of an actuarial valuation of the cost and obligations related to postemployment healthcare and other nonpension benefits. A copy of proposed Agreement No. 11-90 is attached for the City Council's review and consideration.

**BACKGROUND:** The Governmental Accounting Standards Board (GASB) issued Statement No. 45, "Accounting and Financial Reporting by Employers for Postemployment Benefit Plans Other Than Pensions," in June 2004. GASB 45 addresses how state and local governments should account for and report their costs and obligations related to postemployment healthcare and other nonpension benefits. Collectively, these benefits are commonly referred to as "other postemployment benefits" or OPEB.

GASB requires that an actuarial valuation be performed at least biennially (every two years) for retiree healthcare plans with 200 or more members and at least triennially (every three years) for plans with less than 200 members. Until now, the City of Montclair has relied upon internal accounting methods (which is allowed under GASB 43) to track the OPEB obligations. Because of the increasing number of retiree healthcare plan members (both active employees and retirees), the City's accounting firm is requiring that a valuation be completed by an outside agency.

Proposals received to complete the GASB 45 valuation ranged in cost from \$12,000 (Bartel Associates, LLC) to \$23,000 (McGinn Actuaries Ltd.). In addition to the more cost effective proposal, Bartel Associates, LLC, specializes in providing states, counties, cities, and other public agencies with actuarial consulting services.

**FISCAL IMPACT:** The cost for the GASB 45 actuarial valuation by Bartel Associates, LLC, is estimated at \$12,000 (but not to exceed \$13,500). Funds to cover the cost of the valuation are included in the Fiscal Year 2011-12 Administrative Services Budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-90 with Bartel Associates, LLC, for completion of the Governmental Accounting Standards Board Statement No. 45 actuarial valuation.

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Prepared by:

*Gary E. Charlton*

Reviewed and  
Approved by:

Proofed by:

*Rachy Dalton*

Presented by:

*[Handwritten signature]*

# BARTEL ASSOCIATES, LLC

April 16, 2011

Gary E. Charleston  
 Personnel Officer  
**City of Montclair**  
 5111 Benito Street  
 Montclair, CA 91763

**Re: GASB 45 OPEB Actuarial Valuation Fee Estimate & Data Request**

Dear Mr. Charleston:

Bartel Associates would be pleased to provide the City of Montclair actuarial consulting services. This letter summarizes the project scope and our fee estimate associated with the City's retiree healthcare obligation.

**Retiree Healthcare Benefits**

The City participates in CalPERS providing Miscellaneous employees the 2%@60 benefit (3%@60 if hired before 6/21/10) and Safety employees the 3%@55 benefit (3%@50 if hired before 6/27/05). The City provides medical benefits for service retirees providing a fixed dollar retiree contribution that varies by bargaining group, years of City service at retirement, and City's contribution limit in effect on the date of retirement. Any increases in retiree medical caps apply only to retirements on or after the date the increased caps become effective. At Medicare eligibility, the City contributes toward Medicare Part B premiums (and Part A premiums if hired before 4/1/86) subject to caps. City also contributes toward dental and vision for Management employees with 25 years of service at retirement who elect single medical coverage, subject to the cap. Medical benefits are provided through Anthem and Kaiser, dental benefits are provided through Delta Dental, and vision benefits are provided through Blue Shield. The City has approximately 200 active employees and 65 retirees currently receiving healthcare benefits.

Following is a summary of the retiree healthcare benefits from the current City MOUs:

Eligibility	SPBEA	Management <sup>1</sup>	Police	Fire
Age 50 and 15 years service (Retiree-only benefit)	Hired < 7/1/04 and ret < 7/1/20, Lesser of • \$200/mo, or • Act single cap	Hired < 7/1/04 and ret < 7/1/20, Lesser of • \$551/mo, or • Act single cap	Hired < 7/1/04 and ret < 7/1/20, Lesser of • \$200/mo, or • Act single cap	N/A effective 1/1/05
Age 50 and 25 years service (Retiree-only for SPBEA & Police, Retiree plus Spouse for Management & Fire)	Lesser of • \$532.16/mo, or • Act single cap	Lesser of • \$551/mo, or • Act single or 2-party cap Dental & vision if single medical	Lesser of • \$532.16/mo, or • Act single cap	Greater of • \$300/mo, or • Act single cap Max \$532.16/mo
Age 50 and 30 years service (Retiree plus Spouse)	N/A	N/A	N/A	Greater of • \$400/mo, or • Act single cap Max \$532.16/mo

<sup>1</sup> 48 consecutive months of City employment in a management position contiguous to retirement date.



### **Bartel Associates**

Bartel Associates was established to provide quality and cost effective actuarial consulting services to California public agencies. Our services include retiree medical and other postemployment benefit actuarial valuations, pension plan valuations and administration, retiree medical plan and pension plan design, actuarial audits, and CalPERS retirement plan consulting.

As a member of the special task force which assisted GASB in drafting Statement No. 45, I have consulted with many counties, cities, districts, and other public agencies on GASB 45 issues. I am currently a member of the California Actuarial Advisory Panel and have also served as a consultant to the Governor's Public Employee Post-Employment Benefits Commission. With approximately 250 GASB 45 clients, including over 150 California cities and counties, we are experts in this field. Our presentations are clear, concise, and understandable to non-actuaries.

### **GASB 45**

The Governmental Accounting Standards Board (GASB) issued Statement No. 45, "Accounting and Financial Reporting by Employers for Postemployment Benefit Plans Other Than Pensions," called "OPEB" by GASB in June 2004.

GASB 45 requires that any "implied subsidy" be included in the GASB 45 retiree costs and liabilities for non-community rated healthcare plans. Implied subsidies arise when retiree premiums do not represent the expected costs of the underlying retiree group, for example, when the same premium rates are charged for active employees and pre-Medicare eligible retirees. Certain retiree healthcare plans, for example PEMHCA (CalPERS healthcare program), are generally considered community rated and not required to value the implied subsidy.

GASB requires that an actuarial valuation be performed at least biennially for retiree healthcare plans with 200 or more members and at least triennially for plans with less than 200 members. However, a new valuation must be done if any significant changes have occurred since the last valuation, for example, to plan membership, benefit provisions, or the basis of any long-term actuarial assumptions. CalPERS, however, requires that agencies participating in the California Employers' Retiree Benefit Trust Fund (CERBT) perform actuarial valuations at least biennially in order for the trust to satisfy the requirements of GASB 43. Beginning in 2011, CalPERS will require valuations be prepared with valuation dates of June 30 of each odd numbered year.

The City must include GASB 45 disclosures in its financial statement for years for which a new valuation is not required. GASB 45 allows the use of a valuation for a fiscal year if the valuation date is not more than 24 months before the beginning of the 2-year or 3-year valuation cycle if there have been no significant changes.

### **Our Approach**

We believe that there are two levels to a GASB 45 actuarial valuation. The first level is technical compliance with GASB 45. Some public employers may hire an actuary to assist only with technical compliance with GASB 45, limiting the scope of services to preparing a compliance-only valuation that provides the required financial reporting and disclosure. The second level goes beyond reporting and disclosure issues and assists the City with an understanding of GASB 45, the actuarial assumptions and methods, valuation results, financial statement impact, funding policies and trust options, and a review of the plan design.



Our full consulting approach to an actuarial valuation is a four-step process consisting of:

- Requesting and reviewing participant data and plan information
- Selecting valuation methods and assumptions
- Valuation processing
- Meeting with the City to discuss valuation results, including:
  - Plan provisions, census data, methods and assumptions
  - Benefit Obligations
  - Annual Required Contribution
  - Annual OPEB Cost
  - Expected Net OPEB Obligation
  - 10-year benefit payments and Annual OPEB Cost projection

We will provide the City a discussion outline for our meeting including the above information.

### Estimated Fees

Our fee to prepare a GASB 45 valuation for the City's retiree healthcare plan will be approximately \$12,000, including a meeting to discuss the valuation results. While our fee estimate represents the likely cost of the valuation, it is possible that the valuation may require additional time. We understand the City's budgeting needs and agree not to bill more than \$13,500 for the valuation, including a meeting, unless the project scope changes.

Please note that our fee estimate assumes that:

- We will bill the City at the following hourly rates:

Partner	\$250 - \$300
Assistant Vice President	\$200 - \$225
Senior Actuarial Analyst	\$150
Actuarial Analyst	\$125
Administrative Support	\$75
- Participant census data requested will be provided completely and accurately in an Excel spreadsheet with one record per participant.
- All information requested will be provided and is internally consistent.
- Costs and liabilities will be provided using one funding method and one set of assumptions including 2 discount rates: a "no funding" discount rate representative of the expected future long-term return of the City's investment fund and a "full funding" discount rate representative of the expected future long-term return of a segregated fund. If the City is considering funding with the California Employers' Retiree Benefit Trust Fund (CERBT), the funded discount rate will be 7.75% as required by CalPERS.
- GASB 45 costs and liabilities will be presented for the plan as a whole with breakdowns for Miscellaneous, Police, and Fire employees.
- We will have one meeting with the City to review preliminary valuation results and will provide a discussion outline for our meeting. The discussion outline will summarize the plan provisions, census data, actuarial methods and assumptions, and the valuation results.
- There will be no additional charges for expenses (e.g., travel, telephone, copying, etc.). The hourly rates listed above include our costs for these items.
- We will invoice the City monthly based on time incurred, subject to the above maximum fee.



Please note that our fee estimate will be higher if:

- The City's retiree healthcare plan is more complicated than we have summarized above.
- Participant census data is not complete, accurate, and free from internal inconsistencies or is not provided in an Excel spreadsheet with one record per participant.
- Results are needed for additional assumptions, funding methods, contribution policies, or alternative plan designs.
- The City requests additional meetings. We will base our fee for additional meetings on our billing rates and the time needed for the meetings and preparation. For example, a 2-hour meeting where we can use our discussion outline with no additional preparation would cost about \$500.
- The City requests a formal valuation report, an executive summary, or a draft financial statement footnote. We estimate that our fees would be \$2,000 for a formal valuation report, \$1,500 for an executive summary, and \$600 for a draft financial statement footnote.
- If the City pre-funds its retiree healthcare benefits through CERBT, it will need to CalPERS a valuation report, an actuarial certification, a funding policy certification, and an Excel spreadsheet containing the valuation results and funding information. CalPERS will accept our discussion outline with an actuarial certification in lieu of a formal valuation report. Our estimated fee to prepare the certifications and Excel spreadsheet required by CalPERS is \$500. If the City prefers a formal valuation report, our fee will be \$2,000 as mentioned above.

#### Data Requirements

In order for us to begin the GASB 45 valuation, please provide:

- Summary of plan provisions.
- Medical, dental, and vision premium rates for active employees and retirees.
- Total retiree pay-as-you-go costs for the last 2 complete fiscal years (2008/09 and 2009/10) and an estimate for the fiscal year ending June 30, 2011 and for medical, dental, and vision separately, if possible.
- Active and retired participant data in electronic format (Excel workbook):
  - Active Data - name, employee number (not Social Security number), gender, birth date, hire date, healthcare plan elections (medical, dental, and vision), single/2-party/family coverage elections (medical, dental, and vision), CalPERS pension plan (Miscellaneous, Police, Fire), total CalPERS agency service (if available), bargaining or employee group, and annual PERSable compensation. Include any active employees who have waived healthcare coverage.
  - Retiree Data - name, employee number, gender, birth date, retirement type (service, disability, survivor), retirement date, healthcare plan elections (medical, dental, and vision), single/2-party/family coverage elections (medical, dental, and vision), CalPERS pension plan (Miscellaneous, Police, Fire), bargaining or employee group, spouse's birth date (if available), portion of premium paid by the City (medical, dental, and vision separately), and portion of premium paid by the retiree (medical, dental, and vision separately). Include retirees and surviving spouses of retirees who have retired under CalPERS and have waived coverage.
  - In lieu of individual PERSable compensation, the City can provide the current average PERS pay rate for Miscellaneous and Safety employees and for each bargaining unit or employee group if results are needed by employee group. Indicate the pay period for the compensation reported.

In order to maintain confidentiality, do not provide Social Security Numbers for the employee number. We will return any files that include Social Security numbers.

We may need additional data, depending on our review of the City's retiree healthcare plan.



**References**

We have attached several references that the City can call to understand the quality of our work. We can provide additional references at the City's request.

**Timing**

We are prepared to begin this project immediately. Normally, the valuation results meeting is set about 4-6 weeks after we receive all the requested information and the City replies to any questions we may have after our initial review of the requested data.

We look forward to working with you and the City.

Sincerely,

A handwritten signature in black ink that reads "John E. Bartel".

John E. Bartel  
President

enclosure

- c: Doug Pryor, Bartel Associates, LLC
- Joe D'Onofrio, Bartel Associates, LLC
- Cathy Wandro, Bartel Associates, LLC

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Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Paul M. Eaton, Mayor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Yvonne L. Smith, Deputy City Clerk

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 11-91 WITH INLAND EMPIRE UNITED  
WAY TO PROVIDE THE CASE MANAGEMENT  
PROGRAM

**DATE:** July 5, 2011

**SECTION:** AGREEMENTS

**ITEM NO.:** 6

**FILE I.D.:** HSV030

**DEPT.:** COMMUNITY DEV.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 11-91 accepting a grant from the Inland Empire United Way (IEUW) to fund the City's Case Management Program. A copy of proposed Agreement No. 11-91 is attached for the City Council's review and consideration.

**BACKGROUND:** The Montclair Community Collaborative (MCC) is receiving funding from IEUW to assist in providing a Case Management Program to members of the Montclair community. The goal of the Case Management Program is to ensure that children in the Montclair community are safe and healthy and that their families are safe, healthy, and self-sustaining. The Program is based on an empowerment model that engages parents and/or guardians to address underlying causes of family dysfunction by increasing family skills, assets, and resiliency. The Montclair Community Collaborative has been awarded funds from IEUW in support of the Case Management Program since 2007.

The term of proposed Agreement No 11-91 is July 1, 2011, through June 30, 2012.

**FISCAL IMPACT:** IEUW has offered the City a grant of \$15,000 for the Case Management Program. There would be no direct fiscal impact on the City's General Fund associated with the Council's approval of proposed Agreement No. 11-91.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-91 with the Inland Empire United Way to provide the Case Management Program.

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Prepared by:

*UM. Richter*

Reviewed and  
Approved by:

*[Signature]*

Proofed by:

*Christine Smudily*

Presented by:

**EASE SIGN & RETURN  
ORIGINAL**

**INLAND EMPIRE UNITED WAY  
2011-2011 PROGRAM FUNDING AGREEMENT**



**I. PURPOSE**

The Inland Empire United Way (consisting of board of directors, volunteers, employees, contractors), hereinafter referred to as "IEUW", and Montclair Community Collaborative (City of Montclair - Fiscal Agent) hereinafter referred to as "Organization" enter into this mutual Agreement, including Attachments A (Eligibility Standards) and B (Guidelines to use United Way name and logo) referred to herein, for the period commencing July 1, 2011 to June 30, 2012.

**II. RESPONSIBILITIES**

**A. The Organization agrees to:**

1. Program Responsibility:
  - a. Operate programs and deliver services as set forth during the application process.
  - b. Submit proposed changes or reductions in program outcomes affected by United Way funds.
2. Fiscal Responsibility:
  - a. Use the funds only for the purposes described in the proposal, and not use the funds for any purpose prohibited by law. Also repay any portion of the funding, which is not used for the purposes described in the proposal.
  - b. To maintain books, records and documents in accordance with generally accepted accounting procedures and practice which accurately and appropriately reflect all expenditures of funds listed in the Program Budget and the Organization Budget (submitted with the funding request).
  - c. To provide evidence of adequate financial accountability and accounting procedures documented by submission of a certified audit for agency budgets of \$500,000 or more; a CPA review for agency budgets of \$100,001 - \$500,000; a CPA compilation for agency budgets of \$100,000 or less and submission of a completed IRS Form 990, with a percentage of revenue directed to management/general/fund raising expenses (including required dues payments to national organizations) of less than 25%. The required documents shall be submitted to IEUW within six (6) months of the closing of the agency's fiscal year.
  - d. That all financial records and supporting documentation shall be subject at all times to inspection, review, or audit by IEUW personnel or its duly authorized agent.
  - e. To maintain and submit, in a timely fashion, documentation and progress reports related to services provided under this agreement.
  - f. To retain all financial records, supporting documentation, statistical records, and any other documents pertinent to this Agreement for a period of three (3) years after termination of this Agreement. If an audit has been initiated and audit findings have not been resolved at the end of three (3) years, all records shall be retained until resolution of audit findings.
  - g. Agency shall not assign the responsibility of this Agreement to another party or subcontract the program(s) funded under this Agreement, without prior written approval of IEUW.
3. Provide service data, demographics, and other information as requested.
4. Meet with IEUW staff to coordinate an in-house agency employee campaign for the IEUW community impact fund; participate in community campaign activities by providing campaign materials, speakers, tours and/or displays as requested.
5. Complete and submit Agency Profile, Program/Services Profile, and Sites Profile for the 2-1-1 database with, as a minimum, annual updates.
6. Complete and submit Agency Agreement and information about volunteer opportunities (as available) for the HandsOn Inland Empire website with, as a minimum, annual updates.

**B. IEUW agrees to:**

1. Recognize and respect the autonomy of the Organization, through its governing board, to determine its own policies and to manage its own programs.
2. Provide access to training, technical assistance and other opportunities for the purpose of the accomplishment of outcomes as set forth in this Agreement.



3. The Organization making substantial changes to the program activities and/or ceasing to provide the program without consulting with IEUW;
4. Events and/or activities attributable to the Organization or its personnel which result in:
  - a. Negative publicity to the Organization and/or IEUW, or
  - b. Call into question the ability of the Organization to satisfactorily perform under the terms of this Agreement, or
  - c. Unsatisfactory program performance by the Organization and of its responsibilities under this Agreement, and/or
  - d. Violation of the Program Funding Agreement.

Prior to suspension of agency funding by IEUW, the Organization shall be given an opportunity to explain its position to the President & CEO of IEUW, or other person designated by the IEUW Board of Directors.

**VIII. HOLD HARMLESS CLAUSE**

To the extent provided by law, the Organization agrees to indemnify and hold harmless the IEUW from liability on account of any injuries, damages, omissions, commissions, actions, causes of actions, claims, suits, judgments and damages accruing, including court costs and attorney's fees, as a result of services performed or not performed, or any negligent act by the Organization or funding granted or not granted by the IEUW or any action arising out of the operation of this funding Agreement.

**IX. EVALUATION REQUIREMENTS**

The Organization agrees to submit evaluation reports in such format and at such times as may be prescribed by IEUW, reporting the program progress. The Organization agrees to cooperate in an on-site monitoring if such is requested by IEUW. All financial and supporting documents should be available for review at all times.

**X. AGENCY ACKNOWLEDGMENT**

By execution of this Agreement, Organization accepts the working relationship between IEUW and the Organization providing the program; agrees to the conditions set forth in this Agreement. In addition, the Organization acknowledges the lack of an appeals process and accepts the funding level set forth in this Agreement.

**INLAND EMPIRE UNITED WAY**

**MONTCLAIR COMMUNITY COLLABORATIVE (CITY OF MONTCLAIR - FISCAL AGENT)**

  
 \_\_\_\_\_  
 Gregory Bradbard, President/CEO

\_\_\_\_\_  
 Paul M. Eaton, Mayor

6/13/11  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Dan Byrnes, Board Chair

ATTEST:  
 \_\_\_\_\_  
 Yvonne Smith, Deputy City Clerk

6/13/11  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date



## Attachment A & B

**Attachment A**  
**Standards Of Affiliation**

**Attachment B**  
**Name and Logo Usage Guidelines and Standards**

**LIVE UNITED.**

# Inland Empire United Way: Standards Of Affiliation



For an agency to be eligible to receive program grant or contract funding with Inland Empire United Way, it must meet all the criteria below. The agency must remain in compliance with the criteria at all times. All agency affiliations are subject to final approval by Inland Empire United Way Board of Directors.

## ELIGIBILITY STANDARDS

for 501(c)(3) organizations and select government/public entities

### 1. Legal

- a. Current IRS 501(c)(3) status, registration with the state of California as non-profit public benefit corporation. The applicant or funded agency shall have its own 501(c)(3), or have the authorized use of another agency's 501(c)(3) (\*\* see note). Government/public entities do not need to obtain 501(c)(3) status for the program.
- b. Current articles of incorporation and bylaws.
- c. Evidence of compliance with laws, codes, and regulations (including any required licensing standards) applicable to the particular type of business or organization.
- d. Must review and be able and willing to sign the funding agreement and operate under the agreement.

### 2. Non-discrimination

Board-adopted policy or policies for clients, staff, and volunteers emphasizing maintaining diversity reflective of community served.

### 3. Organizational/Management

- a. Volunteer board of directors which functions in accordance with agency bylaws, and which maintains accurate and complete records of its corporate functioning.
- b. Adequate liability and other applicable insurance coverage as required by law.
- c. Board-adopted, written agency policies as necessary (including personnel policies) to provide for legal, safe, and appropriate functioning of the agency, with consistent procedures for implementation, review, and revision as appropriate.
- d. Evidence of a functioning agency planning process, to include a minimum of board-approved agency goals and objectives for one year of operations.
- e. Evidence of regular communication with agency constituency regarding agency services and operations.
- f. Regular board, staff and volunteer training to maintain continuity, quality, and currency of agency operations.
- g. Minimum history of two (2) years of operations as a 501(c)(3).



Inland Empire United Way

#### 4. Fiscal Management

- a. Evidence of adequate financial accountability and accounting procedures to be documented by annual submission of a certified audit for budgets \$500,000 or more; a CPA review for agency budgets of \$100,001 – \$499,999; a CPA compilation for agency budgets of \$100,000 or less. All agencies are also required to submit a completed IRS Form 990 whether or not they are required to send one to the IRS. Agencies who file Form 990EZ with the IRS may submit that form as long as pages 1, 2, and 5 of the regular IRS Form 990 are attached and page 6 is signed and dated.
- b. Appropriate percentage of budget directed to program services; less than 25% of revenue to be spent on management/general (including required dues payments to National organizations) and fundraising expenses.
- c. Broad, stable funding base and/or plans for maintaining/developing adequate resources to cover projected needs.

#### 5. Program

- a. Mission statement that indicates a primary focus on provision of health/human services
- b. Program which is consistent with the agency's mission.
- c. Accurate program/service records specific to this United Way's service area, and appropriate data collection (to include demographic data on service recipients) and record-keeping procedures to ensure adequate reporting and accountability while protecting rights of service recipients.
- d. IEUW funding will only be available for programs provided to low-income households with income levels of up to 250% of the Federal Poverty Level.
- e. Evidence of appropriate program evaluation procedures, including a system to measure program outcomes.
- f. Appropriate physical facilities that comply with applicable health and safety codes.
- g. Non-profit agencies with primary missions in arts, competitive sports, housing services (other than shelter), legislative advocacy, religion, and other similar missions, are not eligible for funding from this United Way.

**\*\*Note:** The authorization consists of an original, current letter, signed by the chair of the board of directors of the authorizing agency including such statements as: the board of directors of (X agency) authorizes (Y agency) to use the not-for-profit status of our agency, and is taking full responsibility for (Y agency's) program, organizational, and fiscal management.

# Inland Empire United Way: United Way Name and Logo Usage Guidelines



United Way of America (UWA) has authorized Inland Empire United Way (IEUW) to issue guidelines for the usage of the United Way trademark and the United Way logo, under the terms and conditions set forth below:

1. This license is royalty-free, non-exclusive and for a Service Area not to exceed the Service Area assigned to the Agency licensing Inland Empire United Way.
2. The Agency may use the Licensed Marks only in connection with its charitable fundraising and health, education or human service, and more particularly may be described in the affiliation agreement.
3. The Agency may use the phrase **"Inland Empire United Way, A Community Partner"** on the same terms and conditions as the Licensed Marks. The Agency may **not** use the term "Member Agency" in association with IEUW and/or the use of the Licensed Marks.
4. The Agency shall use its best efforts to comply with written policies, quality and graphics standards and receive an approval of logo application/artwork from IEUW.
5. The Agency shall at all times use such notices of registration with the Licensed Marks as indicated in written policies, and shall display the licensed marks only in the format or formats as specified therein.
6. All advertising, promotional matter and other printed or graphic material whether print media, television or radio, of the Agency bearing the Licensed Marks shall comply with the guidelines and seek approval of logo application/artwork from IEUW.
7. Inland Empire United Way (IEUW) shall have the right to reasonably verify the Agency's compliance with the terms of this license.
8. The license hereby granted is personal to the Agency and shall not be assigned by the Agency, directly or indirectly, without the written consent of either UWA or Inland Empire United Way (IEUW), nor shall the Agency have the right to grant any sublicense to use the Licensed Marks.
9. This license will remain in effect for a term not to exceed the duration of the Program Funding Agreement with Inland Empire United Way. Upon termination of agreement, the Agency shall discontinue immediately all usage of the Licensed Marks.

## AGENDA REPORT

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 11-92 WITH BILINGUAL FAMILY  
COUNSELING SERVICES TO PROVIDE  
CASE MANAGEMENT AND MENTAL  
HEALTH SERVICES

**DATE:** July 5, 2011

**SECTION:** AGREEMENTS

**ITEM NO.:** 7

**FILE I.D.:** HSV047

**DEPT.:** COMMUNITY DEV.

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 11-92 with Bilingual Family Counseling Services (BFCS) to provide mental health-related services in the community. A copy of proposed Agreement No. 11-92 is attached for the City Council's review and consideration.

**BACKGROUND:** The Montclair Community Collaborative (MCC) was organized in 1996 to collectively strengthen the community. The mission of MCC is "to guarantee a progressive quality community for all by working together as diverse, committed individuals and organizations." As a result of the ongoing strategic planning process, MCC identifies resources and develops services for children, youth, and adults.

The City Council approved Agreement No. 10-79 on July 6, 2010, for a three-year grant award from First 5, the Children and Families Commission for San Bernardino, that will fund children's mental health-related services in the Montclair community. The City of Montclair is currently entering into the second year (Fiscal Year 2011-12) of this grant award.

Proposed Agreement No. 11-92 would allocate a portion of this grant funding to subcontract with Bilingual Family Counseling Services, a partner agency, for the following children's mental health related services in the community:

- Case management funding to cover at least 200 at-risk children ages 0 to 5 and their families.
- Short-term service need referrals for 850 parents.
- Mental health support and counseling services for children ages 0 to 5 and their families.
- Fiscal and data management and reporting to meet First 5 requirements.

Prepared by:

*M. Richter*

Reviewed and  
Approved by:

*[Signature]*

Proofed by:

*Christine Smidley*

Presented by:

The term of proposed Agreement No. 11-92 is July 1, 2011, through June 30, 2012.

**FISCAL IMPACT:** Agreement No. 10-79 provides grant funding in the amount of \$128,916 to pay subcontracted case management and mental health services. Proposed Agreement No. 11-92 would award \$121,720 to Bilingual Family Counseling Services to pay for subcontracted case management and mental health services.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-92 with Bilingual Family Counseling Services to provide case management and mental health services.

**CITY OF MONTCLAIR  
5111 BENITO STREET  
MONTCLAIR, CALIFORNIA 91763  
(909) 626-8571**

## AGREEMENT FOR CONTRACTED SERVICES

**THIS AGREEMENT** is made and entered into this 5th day of July, 2011, by and between the City of Montclair, hereinafter referred to as the "**CITY**," and Bilingual Family Counseling Services, hereinafter referred to as the "**BFCS**."

### **1. Services To Be Performed by BFCS.**

(a) **BFCS** agrees to perform the following services on the dates and times herein stated in accordance with directions stipulated by the **CITY**.

(b) **BFCS** may, at **BFCS**'s own expense, employ such assistants as **BFCS** deems necessary to perform the services required of **BFCS** by this Agreement.

(c) **BFCS** is, and shall at all times be deemed to be an independent contractor, and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between **CITY** and **BFCS** or any of **BFCS**'s agents or employees. **BFCS** assumes exclusively the responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. **BFCS**, its agents and employees, shall not be entitled to any rights and/or privileges of **CITY**'s employees and shall not be considered in any manner to be **CITY**'s employees.

### **2. Compensation.**

(a) Except as otherwise provided in this Agreement, **CITY** agrees to compensate **BFCS** for services rendered under this Agreement for a maximum of \$10,143.33 a month, or \$121,720 based on the Scope of Work, Attachment A.

(b) **CITY** will pay no additional amount for travel or other expenses of **BFCS** under this Agreement.

(c) **CITY** will provide **BFCS** with forms, which **BFCS** will use to request payment under this Agreement unless **BFCS** can provide such forms. For each one-month period of service, a "Request for Payment" form must be returned to **CITY** in triplicate.

(d) **CITY** will not withhold any federal or state income tax for payment made pursuant to this Agreement. **BFCS** is hereby advised that such statement of earnings shall, if required, be provided to the Internal Revenue Service and the State Franchise Tax Board.

### **3. Term of Agreement.**

The term of this Agreement is July 1, 2011, through June 30, 2012. Termination is pursuant to the provisions of Section 6 of this Agreement. CITY shall not be obligated to pay BFCS any additional consideration unless BFCS undertakes additional services, in which instance the consideration shall be increased as CITY and BFCS shall agree in writing.

### **4. Obligations of BFCS.**

(a) During the term of this Agreement, BFCS agrees to diligently prosecute the work specified in the attached "Description of Services" to completion.

(b) At all times during the term of this Agreement, BFCS agrees to provide workers' compensation insurance for BFCS's employees and agents as required by law. BFCS shall comply with all federal, state and local laws and ordinances applicable to the work to be performed under this Agreement.

(c) BFCS shall indemnify, pay for the defense of, and hold harmless CITY and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of BFCS's negligent or willful acts and/or omissions in rendering any services hereunder. BFCS shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning BFCS or any employee and shall further indemnify, pay for the defense of, and hold harmless CITY of and from any such payment or liability arising out of or in any manner connected with BFCS 's performance under this Agreement.

### **5. Obligations of City.**

(a) CITY agrees to comply with all reasonable requests by BFCS and to provide access to all documents reasonably necessary for the performance of BFCS's duties under this Agreement.

(b) CITY shall indemnify, pay for the defense of, and hold harmless BFCS and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of CITY's negligent or willful acts and/or omissions in rendering any services hereunder.

### **6. Termination of Agreement.**

(a) Unless otherwise terminated as provided below, this Agreement shall continue to be ongoing, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.

(b) Should **BFCS** default in the performance of this Agreement or breach any of its provisions, **CITY** may terminate this Agreement by giving written 30-day notification to **BFCS**.

(c) If at any time during the performance of this Agreement **CITY** determines, at its sole discretion, to suspend indefinitely or abandon the work under this Agreement, **CITY** shall have the right to terminate the performance of **BFCS's** services hereunder by giving written notification to **BFCS** of its intention to terminate. At any time during the performance of this Agreement the **BFCS** may terminate this Agreement by giving written 30-day notification to **CITY**.

(d) In the event that **CITY** terminates this Agreement under paragraph (b) or (c) of this Section, **BFCS** shall only be paid for those services rendered to the date of termination. All cash deposits made by **CITY** to **BFCS**, if any, shall be refundable to **CITY** in full upon termination of this Agreement unless specified to the contrary below.

## **7. General Provisions.**

(a) Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Notices shall be deemed given and served upon delivery personally, or three (3) days after depositing in the United States Mail. Mailed notices shall be addressed to the parties at the addresses set forth in this Agreement for **CITY** and **BFCS**. The foregoing addresses may be changed by written notice to the other party as provided herein.

(b) This Agreement supersedes any and all agreements either oral or written, between the parties hereto with respect to the rendering of services by **BFCS** and contains all of the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by both parties, except **CITY** may unilaterally amend the Agreement to accomplish the changes listed below:

- (1) Increase dollar amount
- (2) Administrative changes
- (3) Suspend funding in whole or in part if there is a reduction in availability of funds from the Children and Families Commission for San Bernardino County
- (4) Changes as required by law or the Children and Families Commission for San Bernardino County

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

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Pursuant to and in accordance with the provisions of Government Code Section 8546.7, or any amendments thereto, all books, records and files of CITY, BFCS, or any subcontractor connected with the performance of this Agreement involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to the administration thereof, shall be subject to the examination and audit of the State Auditor or the State of California, at the request of CITY or as part of any audit of CITY, for a period of three (3) years after final payment is made under this Agreement. BFCS shall preserve and cause to be preserved such books, records and files for the audit period.

(f) Each person executing this Agreement warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first written.

**"CITY"**  
5111 Benito Street  
Montclair, CA 91763  
(909) 626-8571

**"BFCS"**  
317 F Street  
Ontario, CA 91762  
(909) 986-7111

By: \_\_\_\_\_  
Paul M. Eaton  
Mayor

By: \_\_\_\_\_  
Olivia Sevilla  
Executive Director

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

**ATTEST:**

\_\_\_\_\_  
Yvonne Smith  
Deputy City Clerk

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## ATTACHMENT A

### Scope of Work

#### **Services to be provided:**

- Case management for at least 200 at-risk children ages 0-5 and their families.
- Short-term service need referrals for 850 parents.
- Mental health support and counseling services for children ages 0-5 and their families.
- Fiscal and data management and reporting to meet First 5 requirements.

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 11-93, A JURISDICTION MASTER AGREEMENT WITH SAN BERNARDINO ASSOCIATED GOVERNMENTS

**DATE:** July 5, 2011

**SECTION:** AGREEMENTS

**ITEM NO.:** 8

**FILE I.D.:** TRN510

**DEPT.:** PUBLIC WORKS

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**REASON FOR CONSIDERATION:** The San Bernardino Associated Governments (SANBAG) has adopted a model Jurisdiction Master Agreement for Measure I 2010-2040 Valley Major Street Program/Arterial Subprogram as the basis for new agreements with individual Valley jurisdictions. Jurisdiction Master Agreements with SANBAG are required by Measure I before reimbursement with Measure I funds allocated to the jurisdiction under the Arterial Subprogram can occur. The City Council is requested to consider approval of Agreement No. 11-93 for this purpose. A copy of proposed Agreement No. 11-93 is attached for the City Council's review and consideration.

**BACKGROUND:** The passage of Measure I 2010-2040 in San Bernardino County created several subprograms for various types of transportation-related projects including grade separations, interchange reconstructions, arterial projects, and local subventions. SANBAG Policy No. 40006 requires the execution of a Jurisdiction Master Agreement with each San Bernardino County city before that city can be reimbursed for projects in the Valley Major Street Program/Arterial Subprogram. Proposed Agreement No. 11-93 would serve as a multi-year agreement throughout the remaining life of Measure I 2010-2040.

The proposed Agreement refers to a "Funding Allocation and Project List," which would specify the Measure I arterial funds to be allocated to the City annually and the projects eligible for reimbursement. This eliminates the need to execute annual contract amendments with SANBAG. Instead, the SANBAG Board would approve an allocation and project list each fiscal year developed in consultation with City staff. This would simplify the administration of the program.

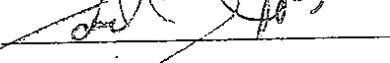
The attached table, "Funding Allocation for FY 2011-2012," contains allocation information for the Measure I Valley Major Street Program/Arterial Subprogram for Fiscal Years 2010-2011 and 2011-2012, as well as the cumulative allocation to date. The City may be reimbursed up to its cumulative allocation.

The "Measure I Valley Major Street Program/Arterial Subproject List" displays the projects eligible for reimbursement in Fiscal Year 2011/2012. It is based on projects submitted by the jurisdictions as part of the Capital Project Needs Analysis. The two projects listed for Montclair are the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project and

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Prepared by:   
Proofed by: 

Reviewed and Approved by:   
Presented by: 

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the widening of Monte Vista Avenue to six lanes between San Bernardino Street and Arrow Highway. It is intended as part of the latter project to prepare a cost estimate for reconstructing the Monte Vista Avenue/I-10 Freeway interchange to accommodate the additional lanes.

**FISCAL IMPACT:** Approval of proposed Agreement No. 11-93 would allow the City to be reimbursed for costs associated with listed projects in the table titled "Measure I Valley Major Street/Arterial Project List."

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-93, a Jurisdiction Master Agreement with the San Bernardino Associated Governments.

**ATTACHMENT 1  
FUNDING ALLOCATION FOR FY 2011-2012**

Allocations for the Measure I Major Street/Arterial Program for FY 2011-2012  
(Dollars are in 1,000s)

Jurisdiction	Equitable Share	FY 10/11 Allocation (Approved Last Year)	FY 11/12 Allocation (Column Being Approved)*	Cumulative Allocation (Total of Both Years)
Chino	7.60%	\$482.68	\$638.40	\$1,121.08
Chino Hills	2.20%	\$139.72	\$184.80	\$324.52
Colton	2.50%	\$158.78	\$210.00	\$368.78
Fontana	19.50%	\$1,238.45	\$1,638.00	\$2,876.45
Grand Terrace	1.40%	\$88.91	\$117.60	\$206.51
Highland	6.80%	\$431.87	\$571.20	\$1,003.07
Loma Linda	4.10%	\$260.39	\$344.40	\$604.79
Montclair	0.60%	\$38.11	\$50.40	\$88.51
Ontario	12.30%	\$781.17	\$1,033.20	\$1,814.37
Rancho Cucamong	5.10%	\$323.90	\$428.40	\$752.30
Redlands	4.90%	\$311.20	\$411.60	\$722.80
Rialto	3.90%	\$247.69	\$327.60	\$575.29
San Bernardino	7.90%	\$501.73	\$663.60	\$1,165.33
Upland	2.30%	\$146.07	\$193.20	\$339.27
Yucaipa	6.00%	\$381.05	\$504.00	\$885.06
County	12.90%	\$819.28	\$1,083.60	\$1,902.88
<b>Total</b>	<b>100.00%</b>	<b>\$6,351.00</b>	<b>\$8,400.00</b>	<b>\$14,751.00</b>

\*Column being approved by MPC in June 2011 and by Board in July 2011

**ATTACHMENT 2**

Measure I Valley Major Street/Arterial Project List for Application to Jurisdiction Master Agreements for FY 2011-2012  
(Note: Jurisdictions may be reimbursed in FY 11-12 for expenditures on projects in Prior, 11-12, or 12-13 columns)

City	Project	CPNA Measure I Need by FY (\$1,000)		
		Prior	11-12	12-13
Montclair	Monte Vista RDW for UPRR Grade Separation	\$ 38		
Montclair	Widen Monte Vista Ave from San Bernardino St to Arrow Hwy from 4 to 6 lanes		\$ 8	
<b>Montclair</b>	<b>Total</b>	<b>\$ 38</b>	<b>\$ 8</b>	<b>\$</b>

**JURISDICTION MASTER AGREEMENT NO. C12019  
BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**CITY OF MONTCLAIR**

**THIS AGREEMENT** is made and entered into as of the effective date, as defined herein, by and between the San Bernardino County Transportation Authority (hereinafter referred to as "SANBAG") and the City of Montclair (hereinafter referred to as "CITY").

**RECITALS**

WHEREAS, the Measure I 2010-2040 Strategic Plan identified Valley Major Street Program- Arterial Sub-program projects eligible for partial funding from Measure I 2010-2040 revenues; and

WHEREAS, this Jurisdiction Master Agreement (AGREEMENT) is to be carried out in accordance with the policies in the most current Measure I 2010-2040 Strategic Plan, as adopted by the SANBAG Board of Directors; and

WHEREAS, SANBAG will annually adopt a Measure I funding allocation and project list for the Valley Major Street Program – Arterial Subprogram, based on SANBAG's annual budget and CITY'S Capital Project Needs Analysis (CPNA); and

WHEREAS, SANBAG will reimburse CITY for the public share of eligible project expenditures with Measure I 2010-2040 Major Street Program- Arterial Sub-program funds in an amount that is determined by SANBAG as part of its annual approval of the Measure I allocation for that program;

NOW, THEREFORE, SANBAG and CITY agree to the following:

## SECTION I

### SANBAG AGREES:

1. To reimburse CITY, as provided for in Section III, within thirty (30) days after CITY submits to SANBAG an original and two copies of the signed invoices in the proper form covering those actual allowable project expenditures that were incurred by CITY, consistent with the invoicing requirements of the Measure I 2010-2040 Strategic Plan, including backup information. Invoices may be submitted to SANBAG as frequently as monthly.
2. To annually adopt a Measure I funding allocation and project list (hereinafter referred to as "FUNDING ALLOCATION AND PROJECT LIST") for the Valley Major Street Program – Arterial Subprogram, based on SANBAG's annual budget and CITY'S Capital Project Needs Analysis (CPNA) submittal to SANBAG for the applicable fiscal year. SANBAG will notify CITY of the Measure I allocation and the list of projects eligible for reimbursement within approximately thirty (30) days of such action, which will also constitute authorization for CITY to begin invoicing for the applicable fiscal year.
3. Except as provided below in Section II Article 8, when conducting an audit of the costs claimed under the provisions of this AGREEMENT, to rely to the maximum extent possible on any prior audit of CITY performed pursuant to the provisions of State and Federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to SANBAG when planning and conducting additional audits.

## SECTION II

### CITY AGREES:

1. That only eligible project-specific work activities, as set forth in SANBAG's annually adopted FUNDING ALLOCATION AND PROJECT LIST, that also conform to the SANBAG Nexus Study and are included as projected expenditures in the first two years of the applicable Capital Project Needs Analysis (CPNA) or referenced as "prior" expenditures in the CPNA will be eligible for reimbursement with Measure I Major Street Program- Arterial Sub-program funds. Prior expenditures must be eligible under the Advance Expenditure policies in Section V.C of the SANBAG Measure I 2010-2040 Strategic Plan Policy 40002.
2. To prepare and submit to SANBAG an original and two copies of signed invoices for reimbursement of those eligible project expenses contained in SANBAG's adopted FUNDING ALLOCATION AND PROJECT LIST. Invoices may be submitted to SANBAG as frequently as monthly, up to the

cumulative allocation limit specified in the FUNDING ALLOCATION AND PROJECT LIST.

3. To repay to SANBAG any reimbursement for Measure I costs that are determined by subsequent audit to be unallowable within ninety (90) days of CITY receiving notice of audit findings, which time shall include an opportunity for CITY to respond to and/or resolve the finding. Should the finding not be otherwise resolved and CITY fail to reimburse moneys due SANBAG within ninety (90) days of audit finding, or within such other period as may be agreed between both parties hereto, SANBAG reserves the right to withhold future payments due CITY from any source under SANBAG's control.
4. To provide (select one of two options):
  - A. (If no specification of reserved and unreserved accounts) the percentage share of total eligible project expenses as specified in the most current, approved version of the SANBAG Development Mitigation Nexus Study, which represents the development share.
  - B. (If reserved and unreserved accounts are specified) 50% share of total eligible project expenses allocated to the reserved account, as documented in SANBAG's annually adopted FUNDING ALLOCATION AND PROJECT LIST.
5. To maintain copies of all consultant/contractor invoices, source documents, books and records connected with its performance under this AGREEMENT for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to SANBAG or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of SANBAG. Copies will be made and furnished by CITY upon request.
6. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support CITY request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of project work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by CITY.
7. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible project costs expended for those activities described in the work activities, and to submit that Final Report and invoice no later than one hundred twenty (120) days following the completion of those expenditures. The Final Report of Expenditures, an original and two copies of which report shall be submitted to SANBAG, must state that these project funds were used

in conformance with this AGREEMENT and for those project-specific work activities described.

8. To allow for the preparation of a project-specific audit by CITY or by SANBAG, at SANBAG's option and expense, and to cooperate in the audit as described in Section I Article 3, upon completion of the project. The audit must find that all funds expended on the project were used in conformance with this AGREEMENT.
9. To notify SANBAG of Project Development Team (PDT) meetings, if and when such meetings are held, and provide related communications on project progress when requested by SANBAG.
10. As an eligible project expense, to post signs when project construction begins at the boundaries of the project noting that project is funded with Measure I funds. Signs shall bear the logo of San Bernardino Associated Governments.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. To abide by all applicable federal, state and local laws and regulations pertaining to projects funded through this AGREEMENT, including policies in the applicable program in the Measure I 2010-2040 Strategic Plan, as amended, as of the date of SANBAG's adoption of the FUNDING ALLOCATION AND PROJECT LIST for the applicable fiscal year.
2. SANBAG's financial responsibility shall be (select one of two options for each individual year of allocation):
  - A. (if no specification of reserved and unreserved accounts) the percentage of actual cost for eligible project expenditures as specified in the most current, approved version of the SANBAG Development Mitigation Nexus Study, up to the cumulative allocation limit specified in the adopted FUNDING ALLOCATION AND PROJECT LIST.
  - B. (if reserved and unreserved accounts are specified) 100% of actual cost for eligible project expenditures up to the limit specified in the adopted FUNDING ALLOCATION AND PROJECT LIST for the unreserved account, and 50% of actual cost for eligible project expenditures up to the limit specified in the adopted FUNDING ALLOCATION AND PROJECT LIST for the reserved account.
3. CITY may be reimbursed in a subsequent fiscal year for expenditures in excess of the cumulative allocation limit for the current fiscal year, based on invoices for eligible project expenditures. SANBAG retains the option to

reimburse CITY no more than 50% of the public share of excess expenditures for the current fiscal year within the first six (6) months of the subsequent fiscal year, with the remaining 50% to be reimbursed in the second six months of the fiscal year. SANBAG shall inform the jurisdiction within thirty (30) days of receipt of an invoice for the excess expenditures, if it chooses to exercise that option.

4. If CITY does not expend funds up to the cumulative allocation limit as referenced in the adopted FUNDING ALLOCATION AND PROJECT LIST within the current fiscal year, the unused portion may be applied to eligible PROJECT expenditures in the subsequent fiscal year, in addition to the allocation received for the subsequent year. Eligible project reimbursements shall include only those costs incurred by CITY for project-specific work activities that are described in the adopted FUNDING ALLOCATION AND PROJECT LIST.
5. Neither SANBAG nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY in connection with any work, authority or jurisdiction delegated to CITY under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless SANBAG, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) or damage occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this AGREEMENT. CITY's indemnification obligation applies to SANBAG's "passive" negligence but does not apply to SANBAG's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. CITY is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrants that through its programs of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT. SANBAG warrants that it maintains insurance for these purposes.
6. This Agreement is expressly subordinated to any bonds, notes, certificates or other evidences of indebtedness involved in bond financings as are now outstanding or as may hereafter be issued by SANBAG.
7. The terms of this AGREEMENT represent the consent of the CITY to provide the full development share for the project required by the SANBAG Nexus Study and that failure to contribute the development share according to the terms of this AGREEMENT does not obligate SANBAG to provide supplemental funds or otherwise remedy that failure. SANBAG may terminate or modify this AGREEMENT if the CITY fails to perform

according to the terms of this AGREEMENT and if this failure jeopardizes the delivery of the project according to the terms herein.

8. SANBAG shall track the CITY equitable share of the Valley Arterial Sub-program, including adjustments for the time-value of money based on time of allocation of Measure I funds in the SANBAG budget.
9. The Recitals stated above are true and correct and are incorporated by this reference into the AGREEMENT.
10. The effective date shall be the date upon which SANBAG executes this AGREEMENT.

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

**CITY of MONTCLAIR**

By: \_\_\_\_\_  
Larry McCallon  
President  
SANBAG Board of Directors

By: \_\_\_\_\_  
Paul Eaton  
Mayor

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

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

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
SANBAG Counsel

By: \_\_\_\_\_  
City Attorney

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

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

**CONCURRENCE:**

**ATTEST:**

By: \_\_\_\_\_  
Kathleen Murphy-Perez  
Contracts Manager

By: \_\_\_\_\_  
Yvonne Smith  
Deputy City Clerk

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF RESOLUTION NO. 11-2913 AUTHORIZING SUBMISSION OF FISCAL YEAR 2011-12 USED OIL PAYMENT PROGRAM APPLICATION TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY	<b>DATE:</b> July 5, 2011
	<b>SECTION:</b> RESOLUTIONS
	<b>ITEM NO.:</b> 1
	<b>FILE I.D.:</b> REF165
CONSIDER DESIGNATING CITY MANAGER EDWARD C. STARR OR HIS DESIGNEE AS THE PERSON AUTHORIZED TO EXECUTE ALL NECESSARY DOCUMENTS FOR THE PURPOSE OF SECURING PAYMENT FUNDS	<b>DEPT.:</b> ADMIN. SVCS

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**REASON FOR CONSIDERATION:** Section 48653 of the California Public Resources Code authorizes The Department of Resources Recycling and Recovery (CalRecycle) to issue payments to local governments for the establishment of new programs or the enhancement of existing programs that address the proper management of used oil and oil filters. The City of Montclair is eligible to receive payment in the estimated amount of \$5,000 from the State of California for development and maintenance of used oil/oil filter recycling programs.

**BACKGROUND:** The State of California enacted the California Oil Recycling Enhancement Act (Act) authorizing CalRecycle to issue payments to enhance the collection and recycling of used oil. Under the Act, oil manufacturers make a four cents per quart payment on every quart of oil sold, transferred, or imported into California. The Act mandates CalRecycle use these funds for specified activities that encourage the proper disposal of used oil and oil filters and set up necessary procedures governing payment applications by cities and counties. In previous years, the used oil grant was administered by the City's solid waste division staff. For Fiscal Year 2011-12, and in future years, the administration of the grant will be transferred to the Public Works Department.

The City's Fiscal Year 2011-12 Used Oil Payment Program Application proposes inclusion of the following program activities:

- Development and distribution of public education materials related to disposal of used oil and oil filters
- Elementary school presentations/demonstrations teaching children about the proper disposal of used oil and oil filters
- Radio, newspaper, and direct-mail advertisement related to used oil and oil filter collection information and locations

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Prepared by: <i>Jane Kullebeck</i>	Reviewed and Approved by: <i>[Signature]</i>
Proofed by: <i>Nathy Dalton</i>	Presented by: <i>[Signature]</i>

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- Promotion of used oil and oil filter recycling at the certified oil collection centers in the City of Montclair through newspaper and radio advertisements

**FISCAL IMPACT:** The City is eligible to receive payment in the estimated amount of \$5,000 for Fiscal Year 2011-12.

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

1. Adopt Resolution No. 11-2913 authorizing the submission of a Fiscal Year 2011-12 Used Oil Payment Program Application to the Department of Resources Recycling and Recovery.
2. Designate City Manager Edward C. Starr or his designee as the person authorized to execute all necessary documents for the purpose of securing payment.

**RESOLUTION NO. 11-2913**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING SUBMITTAL OF FISCAL YEAR 2011-12 USED OIL PAYMENT PROGRAM APPLICATION TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

**WHEREAS**, the people of the State of California have enacted the California Oil Recycling Enhancement Act that provides funds to cities and counties for establishing and maintaining local used oil collection programs that encourage recycling or appropriate disposal of used oil; and

**WHEREAS**, The Department of Resources Recycling and Recovery has been delegated responsibility for administration of used oil collection/disposal programs and setting up procedures governing payment applications by cities and counties; and

**WHEREAS**, applicants are required to enter into an agreement with the State of California for implementation of used oil programs.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair authorizes submittal of an application to The Department of Resources Recycling and Recovery for a Fiscal Year 2011-12 Used Oil Payment Program.

**BE IT FURTHER RESOLVED** that City Manager Edward C. Starr or his designee is hereby authorized and empowered to execute in the name of the City of Montclair all necessary applications, contracts, payment requests, agreements, and amendments hereto for the purposes of securing grant funds and to implement and carry out the purposes specified in the grant application.

**APPROVED AND ADOPTED** this XX day of XX, 2011.

**ATTEST:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 11-2913 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council, held on the XX day of XX, 2011, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Yvonne L. Smith  
Deputy City Clerk



# Used Oil Payment Program Application Certification

**City of Montclair**

**Fiscal Year: 2011-2012**

**Cycle: OPP2**

**Program Requirements Summary**

**1) Public Resources Code 48691(a)(1)(2)**

Ensures there is one Certified Used Oil Collection Center for every 100,000 residents.

**2) Public Resources Code 48691(b)**

Our program has a public education component that informs the public of locally available used oil recycling opportunities.

**Acceptance of Used Oil Payment Program Provisions**

Applicant acknowledges that submittal of this application constitutes acceptance of all provisions as contained in the Used Oil Payment Program Guidelines. The Guidelines document is available at:

<http://www.calrecycle.ca.gov/UsedOil/LGPayments/2ndCycle/Guidelines.pdf>

**Payment Information**

**Payment Option:** April Payment Requested: Standard payment request

**Payment Address:** Finance , 5111 Benito St , Montclair , CA 91763

Contact Type	Name	Title
Signature Authority	Edward Starr	City Manager
Primary Contact	Nicole Greene	Environmental Manager

Document Type	Date	Title
Resolution		Pending Upload
Application Certification		Pending Upload
Letter of Designation (LOD)		Pending Upload

\* Document Due Date: 08/01/2011

Participant Jurisdiction	Document Type	Date

**Penalty of Perjury Statement:**

"I certify under penalty of perjury, under the laws of the State of California that I am authorized to sign this application on behalf of Applicant, that I have read the Used Oil Payment Guidelines and that to the best of my knowledge and belief that information provided in this Application is true and correct."

X

*(Signature)*  
Signature of Signature Authority (as authorized in Resolution) or  
Authorized Designee (as authorized in Letter of Designation)

Date

**EDWARD C. STARR**

**CITY MANAGER**

Print Name

Print Title

**IMPORTANT!** Applicant must print out this page, have Signature Authority sign it, upload signed page to the OPPO system, and retain the original hard copy document in your cycle file.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF RESOLUTION NO. 11-2914 AUTHORIZING SUBMITTAL OF A FISCAL YEAR 2011-12 FUNDING REQUEST FORM FOR BEVERAGE CONTAINER RECYCLING AND LITTER CLEANUP TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY	<b>DATE:</b> July 5, 2011 <b>SECTION:</b> RESOLUTIONS <b>ITEM NO.:</b> 2 <b>FILE I.D.:</b> REF275-02 <b>DEPT.:</b> ADMIN. SVCS.
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**REASON FOR CONSIDERATION:** Pursuant to Section 14581(a)(4)(E) of the California Beverage Container Recycling and Litter Reduction Act, the Department of Resources Recycling and Recovery (CalRecycle) is required to distribute moneys to eligible cities and counties for beverage container recycling and litter cleanup activities. Funds are made available on a per capita basis, and cities must submit funding request forms on an annual basis.

**BACKGROUND:** The City of Montclair is eligible to receive funds in the amount of \$9,819 from CalRecycle for beverage container recycling and litter reduction. Eligible participants are required to complete a "Funding Request Form" detailing the recycling and/or litter-reduction activities for which funds will be expended. A Resolution identifying the individual authorized by the City to receive and expend funds from CalRecycle and carry out required activities must be submitted with the Funding Request Form.

Funding received from this grant must be used for activities related to beverage container recycling and/or litter reduction and must be approved by CalRecycle. Proposed activities would include recycling at community events and the development of educational and promotional materials related to beverage container recycling and litter cleanup. In previous years, the beverage grant was administered by the City's Solid Waste Division staff. For Fiscal Year 2011-12 and future years, the administration of the grant will be transferred to the Public Works Department.

**FISCAL IMPACT:** The City of Montclair is eligible to receive grant funds in the amount of \$9,819 for Fiscal Year 2011-12.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 11-2914 authorizing submittal of a Fiscal Year 2011-12 Funding Request Form related to beverage container recycling and litter cleanup to the Department of Resources Recycling and Recovery.

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Prepared by: <u><i>Jane Kulleck</i></u>	Reviewed and Approved by: <u><i>[Signature]</i></u>
Proofed by: <u><i>Kathy Dalton</i></u>	Presented by: <u><i>[Signature]</i></u>

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RESOLUTION NO. 11-2914

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING SUBMISSION OF A FISCAL YEAR 2011-12 FUNDING REQUEST FORM FOR BEVERAGE CONTAINER RECYCLING AND LITTER CLEANUP TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

WHEREAS, the people of the State of California have enacted the California Beverage Container Recycling and Litter Reduction Act that provides funds to cities and counties for beverage container recycling and litter cleanup activities; and

WHEREAS, the California Department of Resources Recycling and Recovery has been delegated the responsibility for the administration of the program within the state, setting up necessary procedures for cities and counties or their designees under the program; and

WHEREAS, pursuant to Section 14581(a)(4)(E) of the California Beverage Container Recycling and Litter Reduction Act, the eligible participant must submit a Funding Request Form by the due date and time in order to request funding from the Department of Resources Recycling and Recovery.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby determine and order as follows:

**Section 1.** The City Council authorizes submittal of a Funding Request Form to the Department of Resources Recycling and Recovery. The Environmental Manager or the City of Montclair is hereby authorized and empowered to execute, in the name of the City of Montclair, all necessary forms hereto for the purpose specified in Section 14581(a)(4)(E) of the California Beverage Container Recycling and Litter Reduction Act and provide information regarding operation of beverage container recycling and litter cleanup activities in the City of Montclair to the Department of Resources Recycling and Recovery upon request.

**Section 2.** The Deputy City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

APPROVED AND ADOPTED this XX day of XX, 2011.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 11-2914 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2011, and that it was adopted by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk



# City/County Annual Payment Request System Funding Request

**Montclair**

**Funding Request Cycle :** FY 2010-2011    **Submitted On:** 5/16/2011    **Eligible Funds:** 9,819

**Status:** Recommended for Payment    **Submitted By:** Janet Kulbeck    **Redistribution Amount:** 279

**Vendor Number:**    **Total Payment Amount:** 10,098

**Program Requirements**

**1) Provide a brief description of the proposed project(s) that you plan to implement with city/county payment program funds. Public Resources Code 14581 (a)(4)(B).**

Placement of ads in newspapers promoting beverage container recycling as well as getting information out to the schools and getting beverage container recycling literature out to the general public.

**2) Please specify supermarket siting information pursuant to Public Resources Code 14581 (a)(4)(F).**

Have you prohibited the siting of a supermarket site? :

No

Have you caused a supermarket to close its business? :

No

Have you adopted a land use policy that restricts or prohibits the siting of a supermarket site within your jurisdiction? :

No

**3) These funds shall not be used for activities unrelated to beverage container recycling or litter reduction, Public Resources Code 14581 (a)(4)(C).**

Yes, I Accept

Name	Contact Type	Title	Phone	Email
Mr. Edward Starr	Primary	City Manager	(909) 625-9405	lee@ci.montclair.ca.us
Ms. Nicole Greene	Funding Request, Secondary	Environmental Manager	(909) 625-9446	ngreene@ci.montclair.ca.us

Address	Address Type	County
5111 Benito Street Montclair	Mailing Payment Physical	San Bernardino

Activity Group	Activity Item	Budgeted Funds
Advertising/Promotional	Print Ads / Flyers / Posters	4,000
Recycling Education	Schools - Elementary Schools - Middle Schools - High General Public Recycling Guides / Booklets / Brochures	5,819

## AGENDA REPORT

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**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION  
NO. 11-2915 AUTHORIZING PLACEMENT  
OF LIENS ON CERTAIN PROPERTIES FOR  
DELINQUENT SEWER AND TRASH CHARGES

**DATE:** July 5, 2011  
**SECTION:** RESOLUTIONS  
**ITEM NO.:** 3  
**FILE I.D.:** STB300-17  
**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** Staff has identified 230 sewer and trash accounts in the odd-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien. The City Council is requested to consider adoption of Resolution No. 11-2915 authorizing placement of liens on these properties for these delinquencies.

A copy of Resolution No. 11-2915 is attached for the City Council's review and consideration.

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

The 230 liens presented for approval are for accounts which are at least 90 days delinquent.

**FISCAL IMPACT:** Recoverable amount is \$43,939.76 plus \$11,500.00 in lien fees, for a total of \$55,439.76.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 11-2915 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

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Prepared by: Janet Kulbeck Reviewed and Approved by: \_\_\_\_\_  
Proofed by: Kathy Dalton Presented by: \_\_\_\_\_

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**RESOLUTION NO. 11-2915**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MONTCLAIR AUTHORIZ-  
ING PLACEMENT OF LIENS ON CERTAIN  
PROPERTIES FOR DELINQUENT SEWER  
AND TRASH ACCOUNTS**

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

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

**WHEREAS**, it has been determined that there are 230 sewer and/or trash accounts on which there are delinquencies in excess of 90 days; and

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

**WHEREAS**, the owners of these properties were notified on June 8, 2011, that their delinquent accounts are subject to causing a lien to be placed on their properties for settlement of such delinquencies; and

**WHEREAS**, the owners of these properties were again notified on June 23, 2011, and that such liens would be considered for approval by the Montclair City Council on Tuesday, July 5, 2011.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair approves the placement of liens on the properties and in the amounts specified in Exhibit A, entitled *Report of Delinquent Civil Debts - July 2011*, attached hereto.

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

**APPROVED AND ADOPTED** this XX day of XX, 2011.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 11-2915 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2011, and that it was adopted by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

Exhibit A to Resolution No. 11-2915  
Report of Delinquent Civil Debts - July 2011

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
9222	Vernon Avenue	Residential	\$ 186.53	\$ 50.00	\$ 236.53
9859	Camulos Avenue	Residential	182.79	50.00	232.79
10056	Santa Anita Avenue	Residential	256.46	50.00	306.46
4328	Granada Street	Residential	182.89	50.00	232.89
10060	Camulos Avenue	Residential	138.59	50.00	188.59
9834	Galena Avenue	Residential	267.77	50.00	317.77
9641	Surrey Avenue	Residential	182.89	50.00	232.89
4274	San Bernardino Street	Residential	192.34	50.00	242.34
9425	Pradera Avenue #2	Residential	182.41	50.00	232.41
5628	Granada Street	Residential	182.89	50.00	232.89
4386	Harvard Street	Residential	162.71	50.00	212.71
9884	Coalinga Avenue	Residential	182.89	50.00	232.89
9585	Poulsen Avenue	Residential	182.89	50.00	232.89
9795	Coalinga Avenue	Residential	182.89	50.00	232.89
4426	Princeton Street	Residential	182.89	50.00	232.89
5438	Cambridge Street	Residential	180.19	50.00	230.19
5489	San Bernardino Street	Residential	212.08	50.00	262.08
10153	Camulos Avenue	Residential	187.61	50.00	237.61
4832	Olive Street	Residential	256.46	50.00	306.46
9136	Ramona Avenue	Residential	182.89	50.00	232.89
5602	Deodar Street	Residential	234.85	50.00	284.85
5544	Caroline Street	Senior	143.81	50.00	193.81
9352	Rose Avenue	Residential	182.90	50.00	232.90
5596	Hawthorne Street	Residential	182.89	50.00	232.89
5629	Bonnie Brae Street	Residential	182.72	50.00	232.72
9413	Rose Avenue	Residential	182.89	50.00	232.89
9414	Rose Avenue	Residential	182.89	50.00	232.89
9482	Rose Avenue	Residential	162.71	50.00	212.71
9567	Fremont Avenue	Residential	208.88	50.00	258.88
5257	Palo Verde Street	Senior	136.96	50.00	186.96
5490	Cambridge Street	Residential	182.83	50.00	232.83
5448	Cambridge Street	Residential	182.90	50.00	232.90
5570	Cambridge Street	Residential	158.28	50.00	208.28
5607	Palo Verde Street	Residential	162.71	50.00	212.71
9680	Bel Air Avenue	Residential	187.29	50.00	237.29
4522	Bonnie Brae Street	Residential	188.80	50.00	238.80
9387	Felipe Avenue	Residential	165.32	50.00	215.32
4485	San Jose Street	Residential	206.49	50.00	256.49
9547	Camulos Avenue	Residential	213.53	50.00	263.53
9511	Camulos Avenue	Residential	173.28	50.00	223.28
9522	Tudor Avenue	Residential	182.89	50.00	232.89
9554	Tudor Avenue	Residential	293.90	50.00	343.90
4382	San Bernardino Court	Residential	162.71	50.00	212.71
4372	San Bernardino Court	Residential	182.89	50.00	232.89

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
4418	Harvard Street	Residential	\$ 214.33	\$ 50.00	\$ 264.33
4833	San Bernardino Street	Residential	176.00	50.00	226.00
5366	Alamitos Street	Senior	186.69	50.00	236.69
5356	Alamitos Street	Residential	182.89	50.00	232.89
5353	Rosewood Street	Residential	137.03	50.00	187.03
9863	Vernon Avenue	Residential	182.65	50.00	232.65
5389	Benito Street	Senior	121.44	50.00	171.44
9851	Camarena Avenue	Residential	183.48	50.00	233.48
9877	Camulos Avenue	Residential	208.88	50.00	258.88
4585	James Street	Residential	182.89	50.00	232.89
9757	Camulos Avenue	Residential	182.89	50.00	232.89
9737	Camulos Avenue	Residential	182.89	50.00	232.89
4400	Benito Street	Residential	190.77	50.00	240.77
4164	Rudisill Street	Residential	190.77	50.00	240.77
4277	Granada Street	Residential	182.89	50.00	232.89
9910	Amherst Avenue	Residential	192.13	50.00	242.13
4436	Granada Street	Residential	256.75	50.00	306.75
4426	Granada Street	Residential	316.93	50.00	366.93
4461	El Morado Street	Residential	283.50	50.00	333.50
9935	Poulsen Avenue	Residential	255.52	50.00	305.52
5360	Rudisill Street	Residential	208.88	50.00	258.88
5401	Granada Street	Residential	102.36	50.00	152.36
9982	Bel Air Avenue	Residential	182.89	50.00	232.89
5616	Denver Street	Residential	182.56	50.00	232.56
5690	Orchard Street	Residential	252.79	50.00	302.79
10015	Vernon Avenue	Residential	142.87	50.00	192.87
10043	Poulsen Avenue	Residential	182.88	50.00	232.88
5210	Orchard Street	Residential	173.48	50.00	223.48
5032	Orchard Street	Residential	183.01	50.00	233.01
10037	Geneva Avenue	Residential	183.66	50.00	233.66
10041	Lindero Avenue	Residential	153.95	50.00	203.95
4322	Orchard Street	Residential	100.05	50.00	150.05
4262	Orchard Street	Residential	162.71	50.00	212.71
9601	Carrillo Avenue	Residential	214.33	50.00	264.33
4343	Alamitos Street	Senior	143.07	50.00	193.07
10086	Lindero Avenue	Senior	146.72	50.00	196.72
5163-65	Harvard Street	Multifamily	154.96	50.00	204.96
4630	San Jose Street P	Residential	150.66	50.00	200.66
9464	Carrillo Avenue	Residential	190.76	50.00	240.76
4424	San Jose Street #27	Residential	182.89	50.00	232.89
9220	Bel Air Avenue	Residential	182.88	50.00	232.88
9250	Bel Air Avenue	Residential	123.51	50.00	173.51
5429	Benito Street	Residential	104.41	50.00	154.41
4456	Denver Street	Residential	164.57	50.00	214.57
4712	Benito Street	Residential	182.90	50.00	232.90
5422	Granada Street	Residential	190.77	50.00	240.77
10133	Camulos Avenue	Residential	162.71	50.00	212.71

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
5635	Caroline Street	Residential	\$ 162.71	\$ 50.00	\$ 212.71
4575	Allesandro Street	Residential	193.42	50.00	243.42
9112	Camulos Avenue	Residential	183.17	50.00	233.17
9472	Rose Avenue	Residential	182.89	50.00	232.89
5065	Brooks Street	Commercial	107.45	50.00	157.45
4864	Highland Street	Residential	208.88	50.00	258.88
5572	Princeton Street	Residential	182.89	50.00	232.89
9598	Bolton Avenue	Residential	199.01	50.00	249.01
9243	Camulos Avenue	Residential	182.89	50.00	232.89
9860	Kimberly Avenue	Residential	284.14	50.00	334.14
5120	Howard Street	Multifamily	145.42	50.00	195.42
4711	San Bernardino Street	Residential	182.89	50.00	232.89
4955	Denver Street	Residential	280.20	50.00	330.20
9788	Bolton Avenue	Residential	171.82	50.00	221.82
9617	Surrey Avenue	Residential	182.89	50.00	232.89
5190	Howard Street A & B	Multifamily	408.56	50.00	458.56
9163	Camulos Avenue	Residential	233.83	50.00	283.83
9539	Ramona Avenue	Residential	187.91	50.00	237.91
10031	Ramona Avenue	Residential	194.98	50.00	244.98
5371	Alamitos Street	Residential	179.93	50.00	229.93
4430	Harvard Street	Residential	182.90	50.00	232.90
5133	San Bernardino Street	Residential	183.04	50.00	233.04
4854	San Bernardino Street	Residential	162.71	50.00	212.71
9380	Columbine Avenue	Residential	292.87	50.00	342.87
9587	Ramona Avenue	Residential	181.62	50.00	231.62
4151	Orchard Street	Senior	161.75	50.00	211.75
4683	Rosewood Street	Residential	193.72	50.00	243.72
4785	Harvard Street	Residential	208.78	50.00	258.78
9950	Bel Air Avenue	Residential	106.77	50.00	156.77
9151	Camulos Avenue	Residential	182.97	50.00	232.97
5409	Rudisill Street	Residential	202.78	50.00	252.78
9824	Tudor Avenue	Residential	183.66	50.00	233.66
10084	Greenwood Avenue	Residential	255.53	50.00	305.53
9864	Vernon Avenue	Residential	183.66	50.00	233.66
9254	Ramona Avenue	Residential	182.89	50.00	232.89
5273	Benito Street	Residential	188.68	50.00	238.68
9566	Central Avenue	Residential	182.90	50.00	232.90
9512	Camulos Avenue	Residential	182.89	50.00	232.89
9957	Lindero Avenue	Residential	183.32	50.00	233.32
5606	Granada Street	Residential	305.02	50.00	355.02
9795	Monte Vista Avenue	Residential	182.89	50.00	232.89
9656	Benson Avenue	Residential	182.89	50.00	232.89
4424	San Jose Street #12	Residential	202.48	50.00	252.48
9584	Surrey Avenue	Residential	192.13	50.00	242.13
4460	Benito Street	Residential	182.89	50.00	232.89
9537	Marion Avenue	Residential	182.89	50.00	232.89
5456	Princeton Street	Residential	278.49	50.00	328.49

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
9986	Central Avenue	Residential	\$ 208.88	\$ 50.00	\$ 258.88
4327	Benito Street	Residential	147.24	50.00	197.24
5425	Yale Street	Residential	157.77	50.00	207.77
5141-43	Harvard Street	Multifamily	365.80	50.00	415.80
5421	Rudisill Street	Residential	208.88	50.00	258.88
4424	San Jose Street #18	Residential	182.90	50.00	232.90
5666	Caroline Street	Residential	182.89	50.00	232.89
9720	Rose Avenue	Residential	215.39	50.00	265.39
9985	Mills Avenue	Residential	184.27	50.00	234.27
9762	Monte Vista Avenue	Residential	183.05	50.00	233.05
9985	Geneva Avenue	Residential	182.89	50.00	232.89
9855	Central Avenue	Residential	182.93	50.00	232.93
5577	Armsley Street	Residential	183.66	50.00	233.66
4788	Benito Street	Residential	162.71	50.00	212.71
9597	Bolton Avenue	Residential	104.63	50.00	154.63
9611	Camulos Avenue	Residential	143.96	50.00	193.96
9025	Helena Avenue	Residential	182.89	50.00	232.89
4853	Cambridge Street	Residential	182.89	50.00	232.89
4531	Bonnie Brae Street	Residential	190.77	50.00	240.77
5540	San Jose Street	Residential	120.91	50.00	170.91
4921	Benito Street	Residential	301.15	50.00	351.15
5121	Merle Street	Multifamily	365.80	50.00	415.80
5103	Aspen Drive	Residential	182.55	50.00	232.55
5606	Cambridge Street	Residential	256.46	50.00	306.46
9610	Poulsen Avenue	Residential	208.78	50.00	258.78
5082	Moreno Street	Residential	162.71	50.00	212.71
9831	Vail Drive	Residential	156.46	50.00	206.46
4667	Allesandro Street	Residential	182.89	50.00	232.89
9966	Rose Avenue	Residential	256.46	50.00	306.46
10032	Benson Avenue	Residential	183.06	50.00	233.06
4773	State Street	Residential	127.88	50.00	177.88
4787	State Street	Residential	157.37	50.00	207.37
9613	Poulsen Avenue	Residential	116.07	50.00	166.07
9763	Camarena Avenue	Residential	182.46	50.00	232.46
5450	El Morado Street	Residential	191.45	50.00	241.45
9878	Galena Avenue	Residential	183.01	50.00	233.01
5515	La Deney Street	Residential	182.88	50.00	232.88
9845	Central Avenue	Residential	369.11	50.00	419.11
9434	Rose Avenue	Residential	182.89	50.00	232.89
9043	Geneva Avenue	Residential	182.67	50.00	232.67
10068	Rose Avenue	Residential	182.72	50.00	232.72
5470	Granada Street	Residential	182.89	50.00	232.89
9866	Rose Avenue	Senior	161.78	50.00	211.78
9823	Fremont Avenue	Residential	182.89	50.00	232.89
4667	Holt Boulevard	Commercial	107.45	50.00	157.45
9345	Mills Avenue	Multifamily	309.92	50.00	359.92
5429	El Morado Street	Senior	143.81	50.00	193.81

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
4304	Denver Street	Residential	\$ 208.88	\$ 50.00	\$ 258.88
4827	Howard Street	Residential	169.58	50.00	219.58
5562	San Bernardino Street	Residential	175.50	50.00	225.50
5544	Hawthorne Street	Residential	182.88	50.00	232.88
9803	Lindero Avenue	Residential	182.89	50.00	232.89
9705	Kimberly Avenue	Residential	256.46	50.00	306.46
5588	Palo Verde Street	Residential	192.13	50.00	242.13
5144	June Mountain Drive	Residential	178.02	50.00	228.02
9024	Lindero Avenue	Residential	112.17	50.00	162.17
5471	Cambridge Street	Residential	105.48	50.00	155.48
4613	Rosewood Street	Residential	182.33	50.00	232.33
5416	El Morado Street	Residential	192.14	50.00	242.14
4380	Benito Street	Residential	253.41	50.00	303.41
9641	Helena Avenue	Residential	182.89	50.00	232.89
9576	Central Avenue	Residential	213.43	50.00	263.43
4777	State Street	Residential	149.01	50.00	199.01
10067	Carrillo Avenue	Residential	228.58	50.00	278.58
9932	Santa Anita Avenue	Residential	182.90	50.00	232.90
4560	Rosewood Street	Residential	190.77	50.00	240.77
4337	State Street	Residential	208.93	50.00	258.93
4853	Harvard Street	Residential	185.81	50.00	235.81
9995	Columbine Avenue	Residential	189.15	50.00	239.15
5446	San Jose Street	Residential	292.87	50.00	342.87
5564	La Deney Street	Residential	256.46	50.00	306.46
9771	Galena Avenue	Residential	188.37	50.00	238.37
5105	Aspen Drive	Residential	161.87	50.00	211.87
4854	Highland Street	Residential	175.98	50.00	225.98
5481	Palo Verde Street	Residential	182.88	50.00	232.88
5630	Holt Boulevard	Commercial	160.59	50.00	210.59
9606	Camulos Avenue	Residential	183.66	50.00	233.66
5414	Palo Verde Street	Senior	179.70	50.00	229.70
5382	Berkeley Street	Residential	162.71	50.00	212.71
9643	Marion Avenue	Residential	256.46	50.00	306.46
9660	Pradera Avenue	Residential	172.58	50.00	222.58
9324	Rose Avenue	Senior	226.67	50.00	276.67
9866	Helena Avenue	Residential	216.51	50.00	266.51
5537	Armsley Street	Residential	162.71	50.00	212.71
9969	Mills Avenue	Residential	162.71	50.00	212.71
9815	Columbine Avenue	Residential	162.71	50.00	212.71
9423	Exeter Avenue	Residential	162.71	50.00	212.71
5042	Moreno Street	Residential	256.35	50.00	306.35
5607	Cambridge Street	Residential	162.71	50.00	212.71
5399	Benito Street	Residential	183.06	50.00	233.06
10036	Tudor Avenue	Residential	256.46	50.00	306.46
4267	Orchard Street	Residential	208.88	50.00	258.88
<b>TOTALS</b>			<b>\$43,939.76</b>	<b>\$11,500.00</b>	<b>\$55,439.76</b>

**MINUTES OF THE MEETING OF THE MONTCLAIR  
CODE ENFORCEMENT COMMITTEE HELD ON  
MONDAY, MAY 16, 2011, AT 6:00 P.M. IN THE  
CITY HALL CONFERENCE ROOM, 5111 BENITO  
STREET, MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Council Member Paulitz called the meeting to order at 6:03 p.m.

**II. ROLL CALL**

Present: Council Member Paulitz; Council Member Dutrey; City Manager Starr; Police Chief Jones; Director of Community Development Lustro

**III. APPROVAL OF MINUTES**

**A. Minutes of Code Enforcement Committee Meeting of April 18, 2011**

It was the consensus of the Code Enforcement Committee to approve the minutes of the Code Enforcement Committee meeting of April 18, 2011.

**IV. PUBLIC COMMENT - None**

**V. OLD BUSINESS**

- A. Director of Community Development Lustro updated the Committee on the status of a marijuana dispensary that is located at 4238 Mission Boulevard, indicating that a letter was sent to the business owner and property owner by the City Prosecutor on April 18 giving them until May 2, 2011, to vacate. The City Prosecutor was contacted by their attorney and asked to amortize vacation of the property over an extended period of time. The City Prosecutor advised the attorney that City Council was not likely to support that request. The matter is scheduled to be considered by Council tonight in closed session.

City Manager Starr commented the business owner and his attorney are anticipating a pending ruling by the Supreme Court that would keep local jurisdictions from banning marijuana dispensaries.

City Attorney Robbins commented local courts have so far upheld local ordinances banning dispensaries.

Council Member Dutrey asked about the building itself and whether any work they have there would require building permits. Director Lustro reported that staff, including Building Official Merry Westerlin, toured the inside of the building and the property and found nothing that required a building permit. Also, there was no signage indicating they are open for business, and parking outside is adequate.

Council Member Paulitz asked about whether they have an occupancy permit. Director Lustro replied no, because there was no change of occupancy. City Manager Starr commented that is part of the problem; the business owner did not come in to obtain any type of building or occupancy permit or business license.

Council Member Paulitz asked what business was there prior to this. Director Lustro responded that it was a RV rental business. Council Member Paulitz asked whether the utility company turned off the utilities after the previous business vacated the property. Director Lustro explained that it would depend whose name the utility billing was in.

- B. Director of Community Development Lustro updated the Committee on the status of the yard sale survey. He sent out an electronic survey through the League of California Cities' ListServ, plus added in Pomona's policy because he was already familiar with theirs. No other local city was included because no other local city responded to the ListServ request and staff did not directly contact them.

Council Member Paulitz asked how Pomona's policy on yard sales was going. City Manager Starr commented that he felt most people, including businesses, liked having set dates for yard sales better because they know what weekends to expect an increase in people going through the city.

The Committee asked staff to directly contact other local cities about how they handle yard sales.

- C. Director of Community Development Lustro indicated to the Committee that the push cart vendor survey through the ListServ yielded 20-22 responses. He has not yet had an opportunity to sort through the responses, but will bring the results to the next meeting.

City Attorney Robbins reported that she checked into the legality of regulating the push carts and the City can regulate non-motorized push carts.

## VI. NEW BUSINESS

- A. Director of Community Development Lustro reported on unpermitted street vendors on Mother's Day. He sent an email to Code Enforcement the Thursday before Mother's Day asking Code Enforcement to be on the lookout for illegal operations that weekend. He received an email back from Alan Romansky, one of the volunteers, reporting that they shutdown approximately four illegal operations.

Director Lustro stated that Code Enforcement is doing a very good job overall.

## VII. ROUNDTABLE DISCUSSION ON PROBLEM PROPERTIES

Director of Community Development Lustro updated the Committee on the status of previously mentioned problem properties and provided a written status report:

- 9845 Central Avenue
- 11144 Shetland Avenue

Council Member Dutrey commented that the Shetland Avenue property is getting cleaned up and is looking much better.

- 11096 Central Avenue
- 4269 Denver Street
- 9575 Helena Avenue
- 5473 San Jose Street
- 5010 Mission Boulevard

Director Lustro reported that the property at 5010 Mission Boulevard is a large parcel with a number of violations. Director Lustro and Senior Code Enforcement Officer Gabe Fondario walked the property with the owner's representative on Thursday, May 12, to advise her of the work that needed to be done. Director Lustro drove by the property today and it looked significantly better.

Council Member Paulitz asked about the area near Mission Boulevard that was recently annexed. Director Lustro reported that he has advised Code Enforcement staff to hold those property owners to the same expectations as the rest of the City.

Director Lustro reported that with regard to the newly annexed area, there is a hoarder in the 4700 block of State Street. Staff conducted a multi-department visit with the family at the site a few weeks ago to go over the violations. There are three generations residing on the property: the mom and dad (Dad is the hoarder), the son and daughter-in-law and their child. Staff is giving them a chance to clean up the property

as they seem to want to cooperate. Staff observed that the other family members seemed relieved that City personnel came by regarding the matter.

Police Chief Jones advised Director Lustro that he received his email regarding the illegal taco stands in the DiCarlo Center outside Lou's Liquor and Chaparral Market and will look into it.

Director Lustro reported regarding 4797 Phillips Boulevard (the proposed religious center) that he made contact with Christine Kelly at the County on March 21 and asked if the owner submits any plans, etc., that they notify us. Ms. Kelly advised the owner was revising plans and she did not expect anything soon but would keep City staff in the loop.

Council Member Paulitz asked about the property at 5473 San José Street. Director Lustro reported that Senior Code Enforcement Officer Fondario has a meeting scheduled tomorrow (May 17) with the property owner to discuss what needs to be done. Council Member Paulitz observed no difference in the appearance of the property.

Council Member Paulitz asked about brown lawns and weed abatement. Director Lustro replied that the first step in weed abatement is handled by the Fire Department.

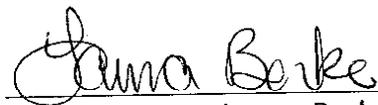
#### **VIII. NEXT MEETING**

It was the consensus of the Committee to cancel the June meeting. The next Code Enforcement Committee meeting is scheduled for Monday, July 18, 2011, at 6:00 p.m. in the City Hall Conference Room.

#### **IX. ADJOURNMENT**

At 6:26 p.m., Council Member Paulitz adjourned the Code Enforcement Committee.

Submitted for Code Enforcement  
Committee approval,



Laura Berke  
Administrative Secretary

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
JUNE 20, 2011, AT 8:17 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Mayor Eaton called the meeting to order at 8:17 p.m.

**II. ROLL CALL**

Present: Mayor Eaton; Council Member Ruh; and City Manager Starr

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of  
June 6, 2011.**

Moved by City Manager Starr, seconded by Council Member Ruh,  
and carried unanimously to approve the minutes of the Personnel  
Committee meeting of June 6, 2011.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

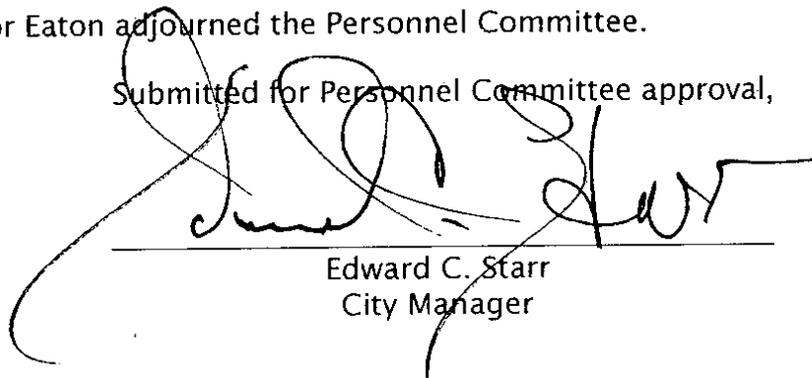
At 8:18 p.m., the Personnel Committee went into Closed Session  
regarding personnel matters related to appointments, resignations/  
terminations, and evaluations of employee performance.

At 8:29 p.m., the Personnel Committee returned from Closed Session.  
Mayor Eaton stated that no announcements would be made at this time.

**VI. ADJOURNMENT**

At 8:29 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr  
City Manager