

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

June 6, 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 and Redevelopment Agency and  
Montclair Housing Corporation Boards of Directors

**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 Board/MHC Board is prohibited from taking action on items not listed on the agenda.*

**VII. PUBLIC HEARINGS**

- A. Second Reading - Consider Adoption of Ordinance No. 11-922 Replacing Section 8.32.010 of the Montclair Municipal Code Pertaining to Maximum Speed Limits in the City [CC] 5

**VIII. CONSENT CALENDAR**

- A. Approval of Minutes
  - 1. Minutes of the Regular Joint Council/Agency Board/MHC Board Meeting of May 16, 2011 [CC/RDA/MHC]
- B. Administrative Reports
  - 1. Consider Setting a Public Hearing to Consider Adoption of Resolution No. 11-2908 Amending the Fee Schedule for the Collection and Disposal of Residential Refuse [CC] 19
  - 2. Consider Setting a Public Hearing to Consider Ordinance No. 11-923 Adding Chapter 11.75 to Title 11 of the Montclair Municipal Code Related to Undergrounding Utilities [CC] 31
  - 3. Consider Authorization to Receive \$3,018 From the Homeland Security Grant Program for Purchase of DuoDote Auto-Injectors and Training Simulators [CC]
    - Consider Authorization of a \$3,018 Appropriation From the Contingency Account to Purchase 60 DuoDote Auto-Injectors and Training Simulators From Meridian Medical Technologies [CC] 37
  - 4. Consider Declaring 14 Motorola MTS Portable Radios as Surplus and Available for Trade In to San Bernardino County Communications for Current Radio Accessories [CC] 39
  - 5. Consider Receiving and Filing Alcoholic Beverage Permit Application - Theo's Café [CC] 40
  - 6. Consider Receiving and Filing Alcoholic Beverage Permit Application - The Upsidedown Bar [CC] 41
  - 7. Consider Approval of Warrant Register and Payroll Documentation [CC] 42
- C. Agreements
  - 1. Consider Approval of Agreement No. 11-57, Superseding Agreement No. 93-6 and All Amendments Thereto, Between the City of Montclair and Burrtec Waste Industries, Inc., (Vendor) and Granting Vendor an Exclusive Franchise for Solid Waste Management Services [CC]

(Continued on next page)

	<u>Page No.</u>
Consider Authorization for Conversion to Automated Residential Greenwaste Collection Program [CC]	43
2. Consider Approval of Agreement No. 11-58 With Carl Warren & Company for Liability Claims Administration [CC]	105
3. Consider Approval of Agreement No. 11-59 Authorizing the City Manager to Sign Engagement Letter With Burhenn & Gest LLP for Filing Test Claim With the Commission on State Mandates Concerning the 2010 National Pollutant Discharge Elimination System MS4 Permit (Regional Board Order No. R8-2010-0036/NPDES Permit No. CAS618036 [CC]	113
<b>D. Resolutions</b>	
1. Consider Adoption of Resolution No. 11-2909 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges [CC]	119
<b>IX. PULLED CONSENT CALENDAR ITEMS</b>	
<b>X. RESPONSE - None</b>	
<b>XI. COMMUNICATIONS</b>	
<b>A. City Attorney/Agency Counsel</b>	
1. Closed Session Pursuant to Section 54957.6 of the Government Code Regarding Conference With Designated Labor Negotiator	
Agency: City of Montclair	
Employee Organizations: Management Montclair Fire Fighters Association Montclair Police Officers Association San Bernardino Public Employees Assn.	
<b>B. City Manager/Executive Director</b>	
<b>C. Mayor/Chairman</b>	
<b>D. Council/Agency Board</b>	
<b>E. Committee Meeting Minutes (For Informational Purposes Only)</b>	
1. Minutes of the Public Works Committee Meeting of April 21, 2011	127
2. Minutes of the Personnel Committee Meeting of May 16, 2011	132

**XII. COUNCIL/AGENCY/MHC WORKSHOP**

**A. Preliminary Budget Review**

(Council/Agency Board/MHC Board may consider continuing this item to an adjourned joint meeting on Thursday, June 16, 2011, at 6:30 p.m. in the City Council Chambers.)

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

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

**XIV. CLOSED SESSION ANNOUNCEMENTS**

**XV. ADJOURNMENT OF CITY COUNCIL**

*The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, June 20, 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 2, 2011.*

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF ORDINANCE NO. 11-922 REPLACING SECTION 8.32.010 OF THE MONTCLAIR MUNICIPAL CODE PERTAINING TO MAXIMUM SPEED LIMITS IN THE CITY  <u>SECOND READING</u>	<b>DATE:</b> June 6, 2011 <b>SECTION:</b> PUBLIC HEARINGS <b>ITEM NO.:</b> A <b>FILE I.D.:</b> TRC625 <b>DEPT.:</b> PUBLIC WORKS
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**REASON FOR CONSIDERATION:** The City Council is requested to consider adoption of Ordinance No. 11-922 replacing Section 8.32.010 of the Montclair Municipal Code pertaining to maximum speed limits in the City. A copy of proposed Ordinance No. 11-922 is attached for the City Council's review and consideration.

**BACKGROUND:** The California Motor Vehicle Code allows cities to set speed limits on City streets subject to the process set forth in that Code. Speed limits must be determined by traffic engineering speed surveys, which must be periodically redone. Once a speed survey has been completed, the City may set the speed limits by adoption of an Ordinance.

All 50 states base their speed regulations on the Basic Speed Law. In general, this law states:

No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

Under California law, the maximum speed limit in urban areas is 55 miles per hour on two-lane undivided roads and 65 miles per hour on divided or multilane roads. All other speed limits are called prima facie limits, which are considered by law to be safe and prudent under normal conditions. Certain prima facie limits are established by state law and include the 25 mile per hour speed limits in business and residential districts; the 25 mile per hour speed limit in school zones when children are present; and the 15 mile per hour speed limits in alleys and at uncontrolled intersections and railroad crossings where visibility is very limited. These speed limits do not need to be posted to be enforced.

All other speed limits between 25 and 65 miles per hour are established on the basis of traffic engineering surveys and adopted by Ordinance of the City Council. These surveys include an analysis of roadway conditions, accident records, and a sampling of

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Prepared by: <u>M. S. C. H.</u>	Reviewed and	Approved by: <u>M. STRAITS</u>
Proofed by: <u>Ally</u>	Presented by:	<u>[Signature]</u>

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the prevailing speed of traffic. A speed limit that is set at or slightly below the speed at which 85 percent of the drivers drive is generally considered safe and reasonable. Traffic flowing at uniform speeds results in increased safety and fewer accidents. Drivers are less impatient, pass less often, and tailgate less, which reduces both head-on and rear-end collisions.

Most drivers can be relied upon to behave in a reasonable manner as they go about their daily driving routine. Many existing laws reflect observation of the way reasonable people behave under most circumstances. Traffic regulations are also based upon observations of the behavior of groups of motorists under various conditions. Generally speaking, traffic laws that reflect the behavior of the majority of motorists are found to be successful. Laws that arbitrarily restrict the majority of drivers tend to encourage disrespect, lack of public support, and other wholesale violations of the law.

This is especially true when establishing speed limits. The posting of the appropriate speed limit also simplifies the job of traffic enforcement officers. Most of the traffic is voluntarily moving at or near the posted speed. Blatant speeders are easily spotted, safe drivers are not penalized, and patrol officers aren't asked to enforce and defend unrealistic and arbitrary speed limits.

Realistic speed limits are important in that they:

1. Satisfy requirements of state law for establishing prima facie speed limits on public roadways.
2. Invite compliance by conforming to the behavior of the majority of drivers.
3. Offer an effective enforcement tool to law enforcement officers by clearly separating the occasional violator from the reasonable majority.
4. Aid the motorist in adjusting his speed to the conditions of the road.
5. Facilitate the orderly movement of traffic in a reasonable and safe manner.
6. Alleviate bad accident records that are attributable to excessive speed as a result of hazards not readily apparent to drivers.

In accordance with the Motor Vehicle Code, the 2010 Speed Survey Study for the City of Montclair was conducted between September 2010 and March 2011. Radar speed checks were performed by Montclair Police Department personnel. The results of the speed surveys were tabulated and analyzed by Engineering Division staff in March 2011 and presented to the Public Works Committee at its meeting on April 21, 2011.

Based on the traffic engineering speed surveys and analysis, several speed limits in the City will increase. The complete study, showing both the existing and proposed speed limits, is included with this report.

**FISCAL IMPACT:** Changing the speed limits on various streets in the City would require replacement of signs and repainting of legends. The cost is anticipated to be approximately \$5,000 and is presently included in the Public Works Fiscal Year 2011-12 Preliminary Budget.

**RECOMMENDATION:** Staff recommends the City Council adopt Ordinance No. 11-922 replacing Section 8.32.010 of the Montclair Municipal Code pertaining to maximum speed limits in the City.

**ORDINANCE NO. 11-922**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MONTCLAIR REPLACING  
SECTION 8.32.010 OF THE MONTCLAIR  
MUNICIPAL CODE RELATED TO MAXIMUM  
SPEED LIMITS**

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

**SECTION I. Amendment to Code.** Section 8.32.010 of Title 8 of the Montclair Municipal Code is hereby replaced with the following:

**Sec. 8.32.010 Prima facie speed limits on certain streets.**

The City Council of the City of Montclair determines and declares, upon the basis of engineering and traffic surveys made on or after September 28, 2010, which surveys are public records on file in the offices of the Engineering Division of the Public Works Department of the City, that the prima facie speed limits specified in those sections are reasonable, safe, and most appropriate to facilitate the orderly movement of traffic upon the streets and portions of streets specified in those sections, which streets and portions of streets would otherwise be subject to the prima facie speed limits established in the California Vehicle Code.

These prima facie speed limits shall be effective when appropriate signs giving notice thereof are erected upon the streets and portions of streets to which they pertain.

The provisions of this article shall not apply to any twenty-five (25) mile per hour prima facie speed limit that is applicable when passing a school or the grounds thereof.

<b>Name of Street or Portion of Street Affected</b>	<b>Declared Prima Facie Speed Limit</b>
1. Arrow Highway from the west City Limits to Benson Avenue	45 miles per hour
2. Benito Street from Mills Avenue to Benson Avenue	35 miles per hour
3. Benson Avenue from north City Limits to Moreno Street	40 miles per hour
4. Benson Avenue from Moreno Street to UPRR tracks	35 miles per hour
5. Brooks Street from Silicon Avenue to Benson Avenue	40 miles per hour
6. Central Avenue from the north City Limits to Mission Boulevard	40 miles per hour
7. Central Avenue from Mission Boulevard to Phillips Boulevard	45 miles per hour

8. Fremont Avenue from Arrow Highway to Moreno Street	40 miles per hour
9. Fremont Avenue from State Street to Mission Boulevard	35 miles per hour
10. Fremont Avenue from Mission Boulevard to Phillips Boulevard	30 miles per hour
11. Holt Boulevard from Mills Avenue to Benson Avenue	45 miles per hour
12. Kingsley Street from Mills Avenue to Benson Avenue	35 miles per hour
13. Mills Avenue from Moreno Street to San Jose Street	40 miles per hour
14. Mills Avenue from San Jose Street to the UPRR tracks	45 miles per hour
15. Mission Boulevard from the west City Limits to Central Avenue	45 miles per hour
16. Monte Vista Avenue from the north City Limits to Arrow Highway	45 miles per hour
17. Monte Vista Avenue from Arrow Highway to San Bernardino Street	40 miles per hour
18. Monte Vista Avenue from San Bernardino Street to Holt Boulevard	35 miles per hour
19. Monte Vista Avenue from Holt Boulevard to Phillips Boulevard	40 miles per hour
20. Moreno Street from Mills Avenue to Monte Vista Avenue	35 miles per hour
21. Moreno Street from Monte Vista Avenue to Benson Avenue	40 miles per hour
22. Orchard Street from Mills Avenue to Benson Avenue	40 miles per hour
23. Palo Verde Street from Mills Avenue to Helena Avenue	40 miles per hour
24. Palo Verde Street from Monte Vista Avenue to Central Avenue	40 miles per hour
25. Palo Verde Street from Central Avenue to Benson Avenue	35 miles per hour
26. Ramona Avenue from Palo Verde Street to Holt Boulevard	35 miles per hour
27. Ramona Avenue from Holt Boulevard to Phillips Boulevard	40 miles per hour
28. Richton Street from Monte Vista Avenue to Central Avenue	40 miles per hour
29. San Bernardino Street from Mills Avenue to Benson Avenue	40 miles per hour
30. San Jose Street from Mills Avenue to Monte Vista Avenue	35 miles per hour
31. San Jose Street from Central Avenue to Benson Avenue	35 miles per hour
32. State Street from the west City Limits to Benson Avenue	45 miles per hour

**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.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
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. 11-922 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

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



**CITY OF MONTCLAIR**  
**ENGINEERING AND TRAFFIC SURVEY**

**May 2011**

**PREPARED BY THE CITY OF MONTCLAIR DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION**

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## General

All 50 states base their speed regulations on the Basic Speed Law. In general, this law states:

No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

Under California law, the maximum speed limit in urban areas is 55 MPH on 2-lane undivided roads and 65 MPH on divided or multi-lane roads. All other speed limits are called prima facie limits, which are considered by law to be safe and prudent under normal conditions. Certain prima facie limits are established by state law and include the 25 MPH speed limit in business and residential districts; the 25 MPH speed limit in school zones when children are present; and the 15 MPH speed limit in alleys and at uncontrolled intersections and railroad crossings where visibility is very limited. These speed limits do not need to be posted to be enforced.

All other speed limits between 25 and 65 MPH are established on the basis of traffic engineering surveys and adopted by the City Council. These surveys include an analysis of roadway conditions, accident records, and a sampling of the prevailing speed of traffic. A safe and reasonable limit is set at or below the speed at which 85% of the drivers drive.

Traffic flowing at uniform speeds results in increased safety and fewer accidents. Drivers are less impatient, pass less often, and tailgate less, which reduces both head-on and rear-end collisions.

Most drivers can be relied upon to behave in a reasonable manner as they go about their daily driving routine. Many existing laws reflect observation of the way reasonable people behave under most circumstances. Traffic regulations are also based upon observations of the behavior of groups of motorists under various conditions. Generally speaking, traffic laws that reflect the behavior of the majority of motorists are found to be successful. Laws that arbitrarily restrict the majority of drivers tend to encourage disrespect, lack of public support, and other wholesale violations of the law. This is especially true when establishing speed limits. The posting of the appropriate speed limit also simplifies the job of traffic enforcement officers. Most of the traffic is voluntarily moving at or near the posted speed. Blatant speeders are easily spotted, safe drivers are not penalized, and patrol officers aren't asked to enforce and defend unrealistic and arbitrary speed limits.

Realistic speed limits are important in that they:

1. Satisfy requirements of state law for establishing prima facie speed limits on public roadways.
2. Invite compliance by conforming to the behavior of the majority of drivers.
3. Offer an effective enforcement tool to law enforcement officers by clearly separating the occasional violator from the reasonable majority.
4. Aid the motorist in adjusting his speed to the conditions of the road.
5. Facilitate the orderly movement of traffic in a reasonable and safe manner.
6. Alleviate bad accident records that are attributable to excessive speed as a result of hazards not readily apparent to drivers.

In accordance with the Vehicle Code, the 2011 Speed Zone Study for the City of Montclair was conducted. Radar speed checks were performed by Montclair Police Department personnel beginning September 2010 and completed March 2011.

The results of the speeds were tabulated and analyzed by staff in the Engineering Division of the Redevelopment/Public Works Department beginning in March 2011 and completed April 2011. This report updates and supersedes the previous Speed Zone Study completed in January 2004.

### Terms

The following terms are frequently used in traffic engineering surveys and are used in this report:

- **Speed Survey** – Also known as a traffic engineering survey. A survey of motorists' speeds on selected streets, generally using a radar or laser gun. Surveys are conducted using stealth devices or unmarked cars so as not to artificially influence the results. Surveys are also conducted during periods of free flow and contain a sampling of 100 vehicles. (In some instances there may be fewer than 100 vehicles available. The state traffic manual requires a sampling of at least 50 vehicles.) The purpose of the survey is to determine the speed that a vehicle will travel when not influenced by the presence of a police car or heavy traffic.
- **10 mph Pace Speed** - This is the ten-mile per hour range of speeds at which the largest number of motorists are traveling.
- **Maximum speed** - This is the highest speed registered by the speed survey.
- **85<sup>th</sup> percentile speed** - This is the speed at which 85 percent of all vehicles were traveling at or below. The 85<sup>th</sup> percentile speed is also called the critical speed.
- **Speed Trap** – The California Vehicle Code, in Section 40802, provides two definitions of a speed trap. One definition relates to calculating the speed of a vehicle by measuring the time necessary for that vehicle to travel a preset distance. The definition more relevant to speed surveys states as follows:

A particular section of a highway with a prima facie speed limit that is provided by this code or by local ordinance under subparagraph (A) of paragraph (2) of subdivision (a) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects. This paragraph does not apply to a local street, road, or school zone.

## **Methods Used to Establish Speed Limits**

Realistic speed limits do not result from mere arbitrary viewing of traffic and emotional response. Major factors considered in establishing speed limits are summarized as follows:

1. Existing speeds which represent the majority of free-flowing traffic, unimpeded by traffic, traffic signals, stop signs, or any other restrictions interrupting normal flow.
2. Accident records, if any, are analyzed to determine factors contributing to these accidents.
3. Roadside conditions including the capacity of the roadway, restrictions, alignment, and points of access (driveways, intersections, etc.).

It is generally agreed that without traffic controls a driver will adopt the speed that he or she reasonably desires to travel under prevailing conditions. Studies made on driving habits have shown that fifteen percent of the drivers will drive faster than existing conditions permit. These studies have developed two characteristics that are of primary importance in the selection of a reasonable speed limit:

- Critical speed (the 85<sup>th</sup> percentile)
- Pace speed (or 10 mph pace)

The Vehicle Code provides for the establishment of speed limits starting with 25 miles per hour (mph) through 70 mph in 5 mph increments. According to the Manual on Uniform Traffic Control Devices, speed limits should be established at or near the 85<sup>th</sup> percentile. Normal mathematical rules apply in rounding up or down to the nearest 5 mph increment. The manual further states that engineering judgment may indicate the need for a further reduction of five miles per hour. Such judgment considers accident history and roadside conditions when making that reduction. The establishment of a speed limit of more than five miles per hour below the 85<sup>th</sup> percentile speed should be done with great care as this may make violators of a disproportionate number of the reasonable majority of drivers.

## **Field Procedure**

Montclair Police Department staff conducted speed surveys throughout the City of Montclair on all major, secondary, and collector streets. A total of 128 test areas were used with speeds checked on over 10,000 vehicles. The speeds of all automobiles passing a point were obtained using a radar unit placed on an unmarked vehicle. The radar unit made it possible to obtain very accurate traveling speeds of the sampled automobiles.

The results of the speeds were then tabulated and analyzed to determine the following statistical measures:

1. Critical speed (85<sup>th</sup> percentile).
2. Indicated speed (speed based on critical speed without any adjustments for accident history, sight distance, or other roadside conditions).
3. Recommended speed

Also indicated in the table are the dates the speed surveys were performed and the currently posted speeds.

Street	Segment	Date of Survey	85th %Tile (mph)	Posted Speed (mph)	Indicated Speed (mph)
Arrow Highway	West City Limit to Monte Vista Ave.	9/28/10	44	45	45
	Monte Vista Ave. to Central Ave.	9/28/10	46	45	45
	Central Ave. to Benson Ave.	10/13/11	46	45	45
	<b>Recommended Speed Limit: 45 mph</b> based on 85 <sup>th</sup> percentile speed.				
Benito Street	Mills Ave. to Monte Vista Ave.	11/23/11	40	35	40
	Monte Vista Ave. to Central Ave.	12/28/10	34	35	35
	Central Ave. to Vernon Ave.	12/15/10	40	35	40
	Vernon Ave. to Benson Ave.	12/16/10	39	35	40
	<b>Recommended Speed Limit: 35 mph.</b> While an 85 <sup>th</sup> percentile speed of 40 mph is indicated in some segments, development along both sides of this two-lane collector street is primarily residential with frequent driveways and parked cars limiting visibility. The presence of Montclair High School, Montclair Civic Center, Montclair post office, and a small amount of commercial development generate considerable foot traffic and pedestrian crossings.				
Benson Avenue	Metrolink Tracks to Moreno Ave.	9/30/10	42	35	40
	Moreno Ave. to UPRR Tracks	9/30/10	43	35	40
	<b>Recommended Speed Limit:</b> <b>Metrolink Tracks to Moreno Avenue-40 mph</b> based on 85 <sup>th</sup> percentile speed. <b>Moreno Avenue to Union Pacific Tracks-35 mph.</b> While an 85 <sup>th</sup> percentile speed of 40 mph is indicated, development along both sides of this street is residential with frequent driveways, pedestrian traffic associated with two elementary schools, and a City park. Parking is frequently heavy associated with softball activities at the park.				
Brooks Street	Monte Vista Ave. to Ramona Ave.	3/3/11	39	35	40
	Rose Ave. to Benson Ave.	2/24/11	39	35	40
	<b>Recommended Speed Limit: 40 mph</b> based on 85 <sup>th</sup> percentile speed.				
Central Avenue	Arrow Hwy. to Moreno Ave.	12/7/10	39	40	40
	Moreno Ave. to I-10 Freeway	1/24/11	41	40	40
	Palo Verde St. to San Bernardino St.	12/7/10	41	40	40
	San Bernardino St. to Benito St.	12/27/10	43	40	40
	Benito St. to Orchard St.	1/4/11	44	40	40
	Orchard St. to Kingsley St.	1/4/11	43	40	40
	Kingsley St. to Holt Blvd.	1/4/10	42	40	40
	Mission Blvd. to Phillips Blvd.	1/10/11	46	45	45
<b>Recommended Speed Limit:</b> <b>North City boundary to Mission Boulevard-40 mph</b> based on 85 <sup>th</sup> percentile. <b>Mission Boulevard to Phillips Boulevard-45 mph</b> based on 85 <sup>th</sup> percentile.					

Street	Segment	Date of Survey	85th %Tile (mph)	Posted Speed (mph)	Indicated Speed (mph)
Fremont Avenue	Arrow Hwy. to Moreno St.	2/7/11	39	35	40
	State St. to Mission Blvd.	3/7/11	34	NA	35
	Mission Blvd. to Phillips Blvd.	3/16/11	32	NA	30
	<b>Recommended Speed Limit:</b> <b>Arrow Highway to Moreno Street-40 mph</b> based on 85 <sup>th</sup> percentile. <b>State Street to Mission Boulevard-35 mph</b> based on 85 <sup>th</sup> percentile. <b>Mission Boulevard to Phillips Boulevard-30 mph</b> based on 85 <sup>th</sup> percentile.				
Holt Boulevard	Mills Ave. to Ramona Ave.	12/15/10	46	45	45
	Ramona Ave. to Monte Vista Ave.	12/15/10	46	45	45
	Monte Vista Ave. to Central Ave.	12/15/10	45	45	45
	Central Ave. to Benson Ave.	12/27/10	48	45	50
<b>Recommended Speed Limit: 45 mph based on 85<sup>th</sup> percentile.</b> Note that the indicated speed for the segment from Central Avenue to Benson Avenue is 50 mph, but for continuity with the segments west of this segment and east of this segment in Ontario, the recommended speed limit is 45 mph.					
Kingsley Street	Mills Ave. to Monte Vista Ave.	10/12/10	40	35	40
	Monte Vista Ave. to Central Ave.	10/12/10	37	35	35
	Central Ave. to Benson Ave.	10/28/10	38	35	40
	<b>Recommended Speed Limit: 35 mph.</b> Kingsley Street is a 2-lane residential collector street throughout the City of Montclair. While an 85 <sup>th</sup> percentile speed of 40 mph is indicated, parking is permitted on both sides of the street, and is generally heavily parked. Each property has at least one drive approach providing access to the street. Two elementary schools and parks are also located on this street with a heavy volume of pedestrian traffic.				
Mills Avenue	Moreno St. to San José St.	10/28/10	42	40	40
	San José St. to San Bernardino St.	10/28/10	44	40	45
	San Bernardino St. to Holt Blvd.	10/28/10	43	40	45
	<b>Recommended Speed Limit:</b> <b>Moreno Street to San José Street-40 mph</b> based on 85 <sup>th</sup> percentile. <b>San José Street to Holt Boulevard-45 mph</b> based on 85 <sup>th</sup> percentile.				
Mission Boulevard	West City Limit to Pipeline Ave.	12/28/10	45	40	45
	Pipeline Ave. to Ramona Ave.	12/28/10	49	45	50
	Ramona Ave. to Monte Vista Ave.	12/28/10	47	45	45
	Monte Vista Ave. to Central Ave.	12/28/10	47	45	45
<b>Recommended Speed Limit: 45 mph based on 85<sup>th</sup> percentile.</b> Note that the indicated speed for the segment between Pipeline Avenue and Ramona Avenue is 50 mph, but for continuity with the segments both east and west of this segment, the recommended speed limit is 45 mph.					

Street	Segment	Date of Survey	85th %Tile (mph)	Posted Speed (mph)	Indicated Speed (mph)
Monte Vista Avenue	North City Limit to Arrow Hwy.	12/27/10	46	45	45
	Arrow Hwy. to Moreno St.	10/26/10	41	35	40
	Moreno St. to I-10 Freeway	12/27/10	37	35	40
	I-10 Freeway to San Bernardino St.	12/29/10	41	35	40
	San Bernardino St. to Orchard St.	11/9/10	42	35	40
	Orchard St. to Holt Blvd.	12/28/10	41	35	40
	Holt Blvd. to Mission Blvd.	12/9/10	43	35	40
	Mission Blvd. to Phillips Blvd.	1/25/11	41	35	40
<p><b>Recommend Speed Limit:</b>  <b>North City boundary to Arrow Highway-45 mph</b> based on 85<sup>th</sup> percentile.  <b>Arrow Highway to San Bernardino Street-40 mph</b> based on 85<sup>th</sup> percentile.  <b>San Bernardino Street to Holt Boulevard-35 mph.</b> This segment of Monte Vista Avenue varies from two lanes to four lanes. While an 85<sup>th</sup> percentile speed of 40 mph is indicated, development on both sides of the street is residential with parking generally permitted on both sides. Occasional driveways with limited sight distance create hazards for motorists. There are also two elementary schools within this segment and associated playground activities.  <b>Holt Boulevard to Phillips Boulevard-40 mph</b> based on 85<sup>th</sup> percentile.</p>					
Moreno Street	Mills Ave. to Monte Vista Ave.	12/27/10	39	35	40
	Monte Vista Ave. to Central Ave.	11/9/10	42	35	40
	Central Ave. to Benson Ave.	10/14/10	46	40	45
	<p><b>Recommended Speed Limit:</b>  <b>Mills Avenue to Monte Vista Avenue-35 mph.</b> This segment of Moreno Street is primarily residential development with numerous driveways. Parking is permitted on both sides of the street, potentially creating sight distance issues for exiting residents. An elementary school is also located along this segment with considerable pedestrian traffic.  <b>Monte Vista Avenue to Benson Avenue-40 mph</b> based on 85<sup>th</sup> percentile. Note that the indicated speed for the segment between Central Avenue and Benson Avenue is 45 mph, but for continuity with the segments both west and east of this segment in Upland, the recommended speed limit is 40 mph.</p>				
Orchard Street	Mills Ave. to Monte Vista Ave.	10/12/10	42	35	40
	Monte Vista Ave. to Central Ave.	10/25/10	40	35	40
	Central Ave. to Benson Ave.	10/28/10	40	35	40
	<p><b>Recommended Speed Limit: 40 mph</b> based on the 85<sup>th</sup> percentile</p>				
Palo Verde Street	Mills Ave. to Helena Ave.	1/13/11	41	35	40
	Monte Vista Ave. to Central Ave.	12/28/10	41	35	40
	Central Ave. to Benson Ave.	1/13/11	37	35	35
	<p><b>Recommended Speed Limit:</b>  <b>Mills Avenue to Helena Avenue-40 mph</b> based on 85<sup>th</sup> percentile.  <b>Monte Vista Avenue to Central Avenue-40 mph</b> based on 85<sup>th</sup> percentile.  <b>Central Avenue to Benson Avenue-35 mph</b> based on 85<sup>th</sup> percentile.</p>				

Street	Segment	Date of Survey	85th %Tile (mph)	Posted Speed (mph)	Indicated Speed (mph)
Ramona Avenue	Palo Verde St. to San Bernardino St.	1/4/11	35	35	35
	San Bernardino St. to Orchard St.	1/4/11	37	35	35
	Orchard St. to Holt Blvd.	1/27/11	36	35	35
	Holt Blvd. to Mission Blvd.	2/14/11	46	35	40
	Mission Blvd. to Phillips Blvd.	2/24/11	41	35	40
	<b>Recommended Speed Limit:</b> <b>Palo Verde Street to Holt Boulevard-35 mph</b> based on 85 <sup>th</sup> percentile. <b>Holt Boulevard to Phillips Boulevard-40 mph</b> based on 85 <sup>th</sup> percentile.				
Richton Street	Monte Vista Ave. to Central Ave.	9/23/10	41	40	40
	<b>Recommended Speed Limit: 40 mph</b> based on 85 <sup>th</sup> percentile.				
San Bernardino Street	Mills Ave. to Ramona Ave.	11/20/10	40	40	40
	Ramona Ave. to Central Ave.	12/9/10	40	40	40
	Central Ave. to Benson Ave.	12/7/10	39	40	40
	<b>Recommended Speed Limit: 40 mph</b> based on 85 <sup>th</sup> percentile.				
San José Street	Mills Ave. to Monte Vista Ave.	12/27/10	42	35	40
	Central Ave. to Benson Ave.	12/27/10	38	35	40
	<b>Recommended Speed Limit: 35 mph.</b> While an 85 <sup>th</sup> percentile speed of 40 mph is indicated, site conditions warrant a reduction in speed by 5 mph. San José Street is a 2-lane residential collector street throughout the City of Montclair. Street Parking is permitted on both sides of the street, and in some areas is heavily parked. Each property has at least one drive approach providing access to the street. A middle school is located along one segment of San José Street.				
State Street	West City Limit to Monte Vista Ave.	9/30/10	48	35	50
	Monte Vista Ave. to Benson Ave.	9/29/10	48	35	50
	<b>Recommended Speed Limit: 45 mph.</b> While an 85 <sup>th</sup> percentile speed of 50 mph is indicated, site conditions warrant a reduction in speed by 5 mph. State Street is an industrial area with considerable truck traffic entering and exiting various properties. Side streets intersecting State Street generally have limited visibility.				

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER SETTING A PUBLIC HEARING TO CONSIDER ADOPTION OF RESOLUTION NO. 11-2908 AMENDING THE FEE SCHEDULE FOR THE COLLECTION AND DISPOSAL OF RESIDENTIAL REFUSE	<b>DATE:</b> June 6, 2011
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 1
	<b>FILE I.D.:</b> REF285
	<b>DEPT.:</b> ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** Setting a public hearing for City Council consideration of Resolution No. 11-2908 would allow for public comment on the proposed revised fee schedule for collection and disposal of residential refuse.

A copy of proposed Resolution No. 11-2908 amending the fee schedule for the collection and disposal of residential refuse is attached for the City Council's review and consideration.

**BACKGROUND:** Chapter 6.16 of the Montclair Municipal Code requires all refuse and waste material accumulating within Montclair's jurisdictional boundaries be removed by the City or its duly authorized agent. The City, through separate agreements with Burrtec Waste Industries, Inc. (Burrtec) for solid waste removal and the County of San Bernardino for household hazardous waste disposal, provides for elimination of residential-generated refuse.

The full range of refuse services includes weekly curbside pickup of solid waste, green-waste, and recyclables; the disposal of household hazardous waste at designated sites; and on-demand haul away of refuse and large bulky items. For this convenience, residents and businesses are assessed a monthly charge, billed bimonthly—every two months, or six billings annually. Furthermore, with City Council approval this evening of Agreement No. 11-57 with Burrtec Waste Industries, Inc. for solid waste services, all residential regular route solid waste collection provided under contract with Burrtec would become fully automated in Fiscal Year 2011-12.

Proposed Agreement No. 11-57 provides for the annual adjustment of residential refuse service rates by a percentage increase not to exceed the *All Cities Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange Co. Area, All-Items Indexes, All Urban Consumers, for the year ending in January*, not to exceed 5 percent per annum. Burrtec last requested and received a cumulative 5 percent residential Refuse Service Rate adjustment effective June 1, 2009. Burrtec is not requesting a residential refuse rate adjustment for Fiscal Year 2011-12; however, City staff is proposing the addition of a new rate component to residential refuse rates: the general sanitation fee—an assessment to reimburse for the cost of general community maintenance issues including graffiti abatement,

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Prepared by:

Proofed by:

Reviewed and  
Approved by:

Presented by:

alleyway maintenance, illegal dumping, property cleanup, sanitation services, and removal of abandoned bulky items in neighborhoods and alleyways.

**Table 1** below identifies cost components of Montclair's *Total Monthly Household Refuse Rate* including current and proposed rates. **Table 1** also indicates that adoption of proposed Resolution No. 11-2908 would increase the *Total Monthly Household Refuse Rate* from \$22.51 to \$25.36, an increase of \$2.85. Senior households would continue to be charged a refuse rate that is 20 percent below the monthly refuse fee for nonsenior households—the monthly senior household rate would increase from \$18.01 to \$20.29, an increase of \$2.28.

**Table 1**  
**Total Monthly Household Refuse Rate Components**  
**Current and Proposed Residential Refuse Rates**

<i>Fee Components</i>	<i>Current</i>	<i>Proposed</i>
Refuse service rate	\$ 10.32	\$ 10.32
Recycling service rate	\$ 3.19	\$ 3.19
Refuse landfill/Transfer rate	\$ 3.69	\$ 3.69
MRF fees	\$ 0.09	\$ 0.09
Greenwaste disposal rate	\$ 0.81	\$ 0.81
<b>Total cost of services—paid to Burrtec</b>	<b>\$ 18.10</b>	<b>\$ 18.10</b>
General sanitation fee	N/A	\$ 2.82
Administrative fee	\$ 3.99	\$ 3.99
Household Hazardous Waste fee	\$ 0.42	\$ 0.45
<b>Total monthly cost to provide refuse collection</b>	<b>\$ 22.51</b>	<b>\$ 25.36</b>
<b>TOTAL MONTHLY HOUSEHOLD RATE</b>	<b>\$ 22.51</b>	<b>\$ 25.36</b>
<b>TOTAL MONTHLY SENIOR HOUSEHOLD RATE</b>	<b>\$ 18.01</b>	<b>\$ 20.29</b>
Monthly City subsidy per senior household	\$ 4.17	\$ 5.07
<b>Miscellaneous:</b>		
<b>Multifamily bin</b>	<b>\$ 3.11</b>	<b>\$ 3.11</b>
<b>Extra Cart: Refuse/Recycling/Greenwaste</b>	<b>\$5.50/\$1.25/ N/A</b>	<b>\$5.50/\$1.25/ \$ 3.75</b>
<b>Large item collection: Monthly Burrtec charge—all City households; cost incorporated in administrative fee</b>	<b>\$2,400.00</b>	<b>\$2,400.00</b>

### July 2011 Proposed Adjustments to Residential Refuse Rate Components

Under terms of the previous exclusive franchise Agreement between the City and Burrtec (Agreement No. 93-6 and amendments thereto), the process for development of the monthly refuse rate includes consideration of various rate components. Under successor Agreement No. 11-57, the refuse rate calculation process has been modified and would be reflected in future Burrtec-requested rate adjustments. However, to maintain consistency in explaining the existing monthly refuse rate, this discussion relies on the rate structure identified in Agreement No. 93-6 and amendments thereto.

Following is a description of each rate component, the respective methods of adjustment, and the proposed adjustments effective July 1, 2011:

1. *Refuse Service Rate:* The refuse service rate is that portion of the rate paid to the waste hauler for collecting refuse and transporting it to the Materials Recovery Facility (MRF). Proposed Agreement No. 11-57 with Burrtec would allow for the refuse service rate to be adjusted each year by the Consumer Price Index (CPI), not to exceed 5 percent annually. The refuse service rate will be the primary rate component under successor Agreement No. 11-57:

*Proposed adjustment: Burrtec is not proposing a refuse rate adjustment for Fiscal Year 2011-12.*

2. *Landfill Rate:* The landfill rate represents a pass-through of actual transportation and tipping fees paid by the waste hauler. Currently, refuse generated in Montclair is transported from Burrtec's MRF in Fontana to an Orange County landfill. The tipping fee at the Orange County landfill is \$18.55 per ton and transportation costs are \$20.95 per ton, for a total of \$39.50 per ton. Approximately 37,000 tons of refuse are generated in Montclair each year. The landfill rate (Disposal/Processing Facility Tip Fee adjustment under proposed Agreement No. 11-57) is a pass-through fee. The rate is adjusted based on a specified distribution formula.

Landfill/recycling records for 2009 indicate that after removing recyclables from the waste stream, the average Montclair household currently generates approximately 1.12 tons of refuse annually, consistent with the 2007 estimate and down from 1.309 tons in June 2005 and 2.2 tons in the year before implementation of the curbside residential recycling program.

*Proposed adjustment: There is no anticipated adjustment in the landfill rate for Fiscal year 2011-12.*

3. *Recycling Service Rate:* The recycling service rate represents the cost of collecting and transporting recyclables to the MRF. The rate is adjusted by the CPI.

*Proposed adjustment: There is no anticipated adjustment in the recycling service rate for Fiscal Year 2011-12.4.*

4. *MRF Fee:* The MRF component is affected by (1) the volume of recyclables processed; (2) the amount of refuse (contamination) found in the recyclables; and (3) the market value of recycled commodities over the preceding 12 months. For the June 2009 refuse rate adjustment, this cost component was lowered because of a reduction in the volume of recyclables per household: from .2977 tons per household per year to .2911. Typically, a decrease in the volume of a commodity would affect market price by raising the cost to acquire the commodity—basic supply and demand. However, volume growth in recyclable commodities from sources outside of Montclair produced a downward trend in commodity prices; furthermore, contamination of the recycled materials stream at the local MRF remains low. Together, these favorable factors combined to reduce processing costs from \$8.04 to \$3.76 per ton. Under proposed Agreement No. 11-57, this rate component would be recommended for modification only as an extraordinary rate adjustment when there is a change in the market value of recyclables.

*Proposed adjustment: There is no anticipated adjustment in the MRF fee component for Fiscal Year 2011-12.*

5. *Greenwaste Disposal:* In 2009, when this rate component was last adjusted, the greenwaste disposal fee increased from \$23 per ton to \$28 per ton. The increase was based, in part, by an overall decline in greenwaste disposal over the previous four years: e.g., in 2009 the average household in Montclair generated 3,490 tons of greenwaste per year, down from 4,407 tons in 2005. Typically, decreases in the volume of a commodity affect market price by raising the cost to acquire the commodity. However, the cost increase for greenwaste disposal is also driven by other factors including fuel costs.

Despite the cost increases cited above, the formula used to calculate the greenwaste component is essentially based on disposal volume, plus the disposal charge per ton. As indicated, the volume of greenwaste per household has decreased significantly; therefore, in June 2009 this cost component was reduced based on the formula agreed upon in the existing Agreement between the City and Burrtec.

It is noted that pursuant to proposed Agreement No. 11-57, Burrtec would implement an automated greenwaste collection program. The program is scheduled to go into effect during the second half of calendar year 2011. Despite this change-over, Burrtec is not proposing a rate adjustment related to greenwaste disposal—instead, the cost of conversion is amortized over the ten-year exclusive franchise period. Furthermore, Burrtec is transitioning to a fleet of alternative fuel vehicles to operate its regular route residential services in the City of Montclair. This transition will provide a cleaner, nonpolluting solid waste collection program for the Montclair community. Introduction of new vehicles is scheduled to occur over the balance of 2011 and into calendar year 2012—transition to alternative fuel vehicles will also be amortized over the ten-year franchise period.

*Proposed adjustment: There is no anticipated adjustment in the greenwaste disposal fee component for Fiscal Year 2011-12.*

6. *Household Hazardous Waste:* The City is in the 16th year of an agreement with San Bernardino County to provide household hazardous waste disposal facilities—facilities are located at:

5050 Schaefer Avenue, Chino  
1408 East Francis Street, Ontario  
1370 North Benson Avenue, Upland

Montclair residents may dispose of their household hazardous waste at any of the above locations, with no charge at time of disposal. Montclair refuse ratepayers are currently charged approximately \$5.04 per household annually (\$0.42 monthly) for this service. The proposed annual rate for Fiscal Year 2011-12 would be \$5.39 annually (\$0.45 monthly). The household hazardous waste fee is based on the actual cost charged to the City by the County of San Bernardino and is intended as a pass-through cost to each ratepayer.

*Proposed adjustment: An increase in this component from \$0.42 to \$0.47 per month is proposed based on the following formula: \$48,763 (proposed annual*

*County contract rate) + 36,664 (per capita/population) = \$1.33 (annual per capita rate); 36,664 (per capita) x \$1.33 (annual per capita rate) = \$48,763 (annual County contract rate) + 9,039 (households) = \$5.39 (annual household rate) + 12 (months per year) = \$0.45 (monthly household rate).*

7. *General Sanitation Fee:* The general sanitation fee is a proposed rate component assessed to residential and commercial rate payers to reimburse for the cost of general community maintenance issues including graffiti abatement, alleyway maintenance, illegal dumping, property cleanup, sanitation services, and removal of abandoned bulky items in neighborhoods and alleyways. Service charges approximate the actual/estimated cost of service.

Over the past decade, public facilities and residential and commercial neighborhoods throughout Montclair have experienced increases in various forms of graffiti, window etching, vandalism, illegal dumping, and other forms of public abuse requiring significant redirection and expenditure of General Fund resources to provide abatement, sanitation, disposal, and cleanup services. To address one single issue—graffiti abatement—the City now expends approximately \$200,000 annually in cleanup activities and in excess of \$300,000 in code enforcement, police investigation, and contract-related services. Maintenance and cleanup of the community, contracting for specialized maintenance and investigation services, and disposal of illegally and inappropriately discarded and abandoned waste and household items are appropriately charged as special services delivered through solid waste and sanitation service programs. Accordingly, City staff recommends the City Council consider including a general sanitation fee component as part of the monthly refuse service rate.

*Proposed adjustment: The proposed rate is \$2.82 per month per household. Combined, the general sanitation fee would generate approximately \$305,880 annually to reimburse the City for cost of services: \$2.82 (proposed monthly rate per household) x 9,039 (households) = \$25,490 (monthly) x 12 = \$305,880 (annually).*

*The proposed fee is inadequate to pay for the full cost of services related to maintenance and cleanup of the community, contracting for specialized maintenance and investigation services, and disposal of illegally and inappropriately discarded and abandoned waste and household items; the proposed rate does, however, fall within the monthly maximum rate allowed under Proposition 218, effective January 1, 2011. The rate may be adjusted annually, subject to the adjustment of other components of the monthly refuse rate.*

8. *Administrative Fee:* The administrative fee is a charge imposed by the City to reimburse for the cost of administering the refuse service program. Service charges should approximate the actual/estimated cost of service.

*Proposed adjustment: The current rate is \$3.99 per month per household and generates approximately \$432,780 annually to reimburse the City for cost of services: \$3.99 (existing monthly rate per household) x 9,039 (households) = \$36,065 (monthly) x 12 = \$432,780 (annually).*

## Senior Household Subsidy Program

Montclair currently provides a monthly refuse rate subsidy program for senior households—the account holder must be 65 years of age or older to qualify. The current monthly household refuse rate for senior households is \$18.01—a savings of \$4.50 off the current *Total Monthly Household Refuse Rate* of \$22.51; the proposed rate is \$20.29—a savings of \$5.07 off the proposed *Total Monthly Household Refuse Rate* of \$25.36. Continuation of a discount program for senior households was discussed at the November 21, 2005 meeting of the City Council the City Council considered alternatives related to discounting refuse service rates and ultimately approved maintaining a 20 percent discount off the *Total Monthly Household Refuse Rate*.

The subsidy program is not a rate discount on the *Total Monthly Household Refuse Rate*; it is a Refuse Impound Fund subsidy that offsets the *Total Monthly Household Refuse Rate* currently charged to the households of nonsenior residential refuse ratepayers. The Refuse Impound Fund is used to make full payment to Burrtec for refuse services, and to reimburse the General Fund for refuse program-related costs.

## Proposition 218 and the Total Monthly Refuse Rate

City Council Members may recall that during the Strategic Planning Session on June 6, 2006, City staff was directed to conduct a Proposition 218 notification and hearing process in early 2007 to set new maximum monthly rates for sewer and refuse services. The appropriate notification documents were prepared and, at the February 5, 2007 meeting of the City Council, authorization was granted to ask residents to consider long-term monthly rate caps for refuse services pursuant to Proposition 218's notification and hearing requirements.

Notices were sent to approximately 10,000 property owners of record in February 2007. Residents were notified that the City Council, at a meeting scheduled for April 16, 2007, would consider future annual rate adjustments encompassing a period of ten years, with an overall total maximum rate cap not to exceed \$32.34 per month, effective January 2016. At the public hearing, property owners and residents were provided an opportunity to protest against the maximum proposed rate caps for refuse services. Ten written protests were filed with the City Clerk and no members of the public protested. Upon completion of the public hearing, the City Council adopted the maximum schedule of monthly rates for sewer and refuse services.

**Table 2** on the following page indicates the maximum monthly refuse rates that can now be charged to residential refuse ratepayers effective on the specified dates for the period June 2007 through January 2016 the schedule of rates is the product of the April 16, 2007, Proposition 218 public hearing on maximum monthly refuse and sewer rates. State law provides that, pursuant to Proposition 218, utility rates could be adjusted on an annual basis provided the formula for adjusting rates does not change or does not change in a way that would otherwise impose future increases that are higher than the adopted fee formula.

**Table 2**  
**Proposition 218**  
**Annual Residential Refuse Rate Caps**  
**June 2007 through January 2016**

Proposed Nonsenior/Senior Monthly Household Rates  Effective 6-1-2007	Proposed Nonsenior/Senior Monthly Household Rates  Effective 1-1-2008	Proposed Nonsenior/Senior Monthly Household Rates  Effective 1-1-2009	Proposed Nonsenior/Senior Monthly Household Rates  Effective 1-1-2010	Proposed Nonsenior/Senior Monthly Household Rates  Effective 1-1-2011
\$20.87/\$16.70	\$21.91/\$17.53	\$23.01/\$18.41	\$24.16/\$19.33	\$25.36/\$20.29
Proposed Nonsenior/Senior Monthly Household Rates  Effective 1-1-2012	Proposed Nonsenior/Senior Monthly Household Rates  Effective 1-1-2013	Proposed Nonsenior/Senior Monthly Household Rates  Effective 1-1-2014	Proposed Nonsenior/Senior Monthly Household Rates  Effective 1-1-2015	Proposed Nonsenior/Senior Monthly Household Rates  Effective 1-1-2016
\$26.63/\$21.30	\$27.96/\$22.37	\$29.36/\$23.49	\$30.83/\$24.66	\$32.34/\$25.87

The maximum monthly refuse rate caps adopted by the City Council at its April 16, 2007 meeting satisfy the following requirements:

1. Comply with Proposition 218 notification/hearing requirements without retriggering such requirements each year the City Council is asked to consider a refuse rate adjustment, through 2016. City staff projects that maximum monthly refuse rate caps indicated in **Table 2** are sufficient to address annual refuse rate adjustments without the need to comply annually with Proposition 218 notification/hearing requirements.
2. Allow for annual fee adjustments indexed to the CPI and/or other rate calculation methodologies.
3. Allow for recovery of costs related to household hazardous waste collection, administrative fees, C.A.U.T.I.O.N. cleanups, legal fees, graffiti abatement, alleyway maintenance, illegal dumping, and collection of oversized household items dumped in alleyways, on commercial properties, and in residential neighborhoods.

### **Refuse Rate Comparison with Neighboring Cities**

As indicated in **Table 3** on the following page, the Council's adoption of proposed Resolution No. 11-2908 would take Montclair from having the fourth lowest monthly household refuse rate (currently \$22.51) in a survey of eight area cities to the third lowest at \$25.36. Only four cities in the survey group offer a senior household refuse rate; among these four cities, Montclair's senior household rate would remain the second lowest to the highest at \$20.29.

City Council Members are reminded that Montclair's *Total Monthly Household Refuse Rate* has remained one of the lowest of the eight survey cities during the last 20 years. Historically, the Montclair City Council adjusts refuse rates every second or third year, not

annually—the last increase to the residential refuse rate occurred in June 2009, two years ago. Unlike refuse rate increases in the past, the proposed rate adjustment is not related to the curbside pickup of refuse, but general maintenance issues related to increasing occurrences of graffiti; illegal dumping; abandonment of large and bulky items in alleyways, on commercial properties, and in residential neighborhoods; and contractual requirements related to household hazardous waste. Furthermore, each city in the survey is expected to implement new refuse rates in 2011 or 2012—again distinguishing Montclair as having one of the area's lowest monthly residential refuse rates. A comparison of residential refuse rates for survey cities is indicated in **Table 3**.

**Table 3  
Comparison of Residential Refuse Rates**

<b>Agency</b>	<b>Monthly Residential Refuse Rate</b>	<b>Monthly Senior Residential Refuse Rate</b>
Ontario	\$29.48—Colony Development \$26.09—All other areas	Not offered
Pomona	\$25.76	Not Offered
<i>Montclair current/proposed</i>	<i>\$22.51/\$25.36</i>	<i>\$18.01/\$20.29</i>
Upland	\$22.55	Not offered
Chino	\$22.47	\$20.22
Fontana	\$22.26	\$18.92
Rancho Cucamonga	\$21.74—Above Banyan Street \$20.99—All other areas	\$14.57—Above Banyan Street \$14.06—All other areas
La Verne	\$20.84—95-Gallon Container	Not offered

The proposed July 1, 2011 refuse rate adjustment continues the City Council's pattern of implementing refuse rate adjustments that are significantly below contractually authorized limits. Pursuant to the terms of proposed Agreement No. 11-57, Burrtec is technically eligible for an increase of 3.6 percent—the cumulative CPI for the years ending January 2010 (1.8 percent) and January 2011 (1.8 percent). At this time, City staff is not recommending a rate adjustment to the cost of services paid to Burrtec.

**FISCAL IMPACT:**

1. *Administrative Fee.* The administrative fee is not recommended for adjustment. The current administrative fee of \$3.99 per month per household would continue to generate approximately \$432,780 annually to reimburse the City for service costs related to operation of the refuse program.
2. *General Sanitation Fee.* The proposed general sanitation fee of \$2.82 per month per household would generate approximately \$305,880 annually to reimburse the City for general maintenance issues related to increasing occurrences of graffiti; illegal dumping; abandonment of large and bulky items in alleyways, on commercial properties, and in residential neighborhoods; and contractual requirements related to household hazardous waste.

3. *Total Cost of Services Paid to Burrtec.* The monthly cost of services passed through to Burrtec would remain at \$18.10 per household. This monthly service charge represents an annual cost of approximately \$1,878,780 for residential refuse services. This annual estimate is incorporated into the Fiscal Year 2011-12 Budget.
4. *Household Hazardous Waste Fee.* The household hazardous waste fee is a pass-through fee for the cost to San Bernardino County to provide this disposal service. The proposed monthly rate for Fiscal Year 2011-12 would be \$0.45 (\$5.39 annually)—an increase of \$0.03 above the current monthly rate of \$0.42 (\$5.04). The household hazardous waste fee is based on the actual cost charged to the City by the County of San Bernardino and is intended as a pass-through cost to each ratepayer. Adjusting the rate has no impact on General Fund revenues.
5. Continuing a monthly residential refuse discount program for senior households at a discount rate of 20 percent would result in a loss of approximately \$59,502 in revenue to the Refuse Impound Fund [978 (senior households) x \$5.07 (monthly senior household subsidy) = \$4,958 x 12 (months) = \$59,502].

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Monday, June 20, 2011, at 7:00 p.m. in the City Council Chambers to consider adoption of Resolution No. 11-2908 amending the fee schedule for the collection and disposal of residential refuse.

**RESOLUTION NO. 11-2908**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MONTCLAIR AMENDING THE  
FEE SCHEDULE FOR THE COLLECTION  
AND DISPOSAL OF RESIDENTIAL REFUSE**

**WHEREAS**, the City Council approved Agreement No. 11-57 at its meeting of June 6, 2011, approving a new ten-year exclusive franchise agreement with Burrtec Waste Industries, Inc. (Burrtec) for solid waste management services; and

**WHEREAS**, Section 6.16.050 of the Montclair Municipal Code and Agreement No. 11-57 between the City of Montclair and Burrtec provide for annual adjustments of rates related to collection and disposal of residential refuse not to exceed the *All Cities Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange Co. Area, All-Items Indexes, All Urban Consumers, for the year ending in January*; and

**WHEREAS**, the Montclair City Council last approved, and Burrtec last requested and received a 5 percent residential refuse service rate adjustment with an effective date of June 1, 2009; and

**WHEREAS**, pursuant to the terms of Agreement No. 11-57, Burrtec is technically eligible for an increase of 3.6 percent—the cumulative CPI for the years ending January 2010 (1.8 percent) and January 2011 (1.8 percent)—for the refuse service rate component of the *Total Monthly Household Refuse Rate*; and

**WHEREAS**, for Fiscal Year 2011-12, Burrtec, as part of negotiations for adoption of Agreement No. 11-57, has declined to request an increase in the refuse service rate, recycling service rate, refuse landfill/transfer rate, MRF fee, and greenwaste disposal fee components of the *Total Monthly Household Refuse Rate*; and

**WHEREAS**, the City Council is required to consider adjustments to other components of the *Total Monthly Household Refuse Rate*; and

**WHEREAS**, the County of San Bernardino has requested an increase to the household hazardous waste component of the *Total Monthly Household Refuse Rate*; and

**WHEREAS**, the City Council has directed inclusion of a general sanitation fee component to the *Total Monthly Household Refuse Rate*, such fee to be calculated in part on the cost of providing services related to general community maintenance issues including graffiti abatement, alleyway maintenance, illegal dumping, property cleanup, sanitation services, and removal of abandoned bulky items in neighborhoods and alleyways; and

**WHEREAS**, at the November 21, 2005 meeting of the City Council, authorization was provided to continue a program for senior households that would provide a 20 percent discount off the *Total Monthly Household Refuse Rate*; and

WHEREAS, the proposed *Total Monthly Household Refuse Rate*, inclusive of each of the rate components identified herein, is \$25.36 and the *Total Monthly Senior Household Rate* is \$20.29, both rates proposed to be effective July 1, 2011; and

WHEREAS, on April 16, 2007, the Montclair City Council conducted a public hearing, pursuant to requirements of Proposition 218 on proposed refuse rate increases and adopted a maximum schedule of monthly household rates as indicated in **Table 1**.

**Table 1**  
**Proposition 218**  
**Annual Residential Refuse Rate Caps**  
**June 2007 through January 2016**

Proposed Nonsenior/Senior Monthly Household Rates Effective 6-1-2007	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2008	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2009	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2010	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2011
\$20.87/\$16.70	\$21.91/\$17.53	\$23.01/\$18.41	\$24.16/\$19.33	\$25.36/\$20.29
Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2012	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2013	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2014	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2015	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2016
\$26.63/\$21.30	\$27.96/\$22.37	\$29.36/\$23.49	\$30.83/\$24.66	\$32.34/\$25.87

WHEREAS, pursuant to the maximum schedule of rates as indicated in **Table 1**, the maximum *Total Monthly Household Refuse Rate* in effect as of January 1, 2011, cannot exceed \$25.36; and the proposed *Total Monthly Household Rate* of \$25.36, scheduled to be effective July 1, 2011, is in compliance with the maximum schedule of rates adopted pursuant to a Proposition 218 public hearing and notice process; and

WHEREAS, the Montclair City Council examined the proposed rate schedule and determined residential refuse service rates hereinafter enumerated are fair, reasonable, and necessary and bear a reasonable relationship between actual cost to provide such services and the benefit received by residents; and

WHEREAS, Montclair households subject to the proposed refuse rate adjustment have been notified or will be notified through the public notice process and through utility billing statements regarding the proposed increase to the *Total Monthly Household Refuse Rate*.

**NOW, THEREFORE, BE IT RESOLVED** the City Council of the City of Montclair hereby sets forth a schedule of service rates for the collection and disposal of residential refuse, effective July 1, 2011, and as set forth in **Table 2** herein.

**Table 2  
Total Monthly Household Refuse Rate Components  
Current and Proposed Residential Refuse Rates**

<i>Fee Components</i>	<i>Current</i>	<i>Proposed</i>
Refuse service rate	\$ 10.32	\$ 10.32
Recycling service rate	\$ 3.19	\$ 3.19
Refuse landfill/Transfer rate	\$ 3.69	\$ 3.69
MRF fees	\$ 0.09	\$ 0.09
Greenwaste disposal rate	\$ 0.81	\$ 0.81
<b>Total cost of services—paid to Burrtec</b>	<b>\$ 18.10</b>	<b>\$ 18.10</b>
General sanitation fee	N/A	\$ 2.82
Administrative fee	\$ 3.99	\$ 3.99
Household Hazardous Waste fee	\$ 0.42	\$ 0.45
<b>Total monthly cost to provide refuse collection</b>	<b>\$ 22.51</b>	<b>\$ 25.36</b>
<b>TOTAL MONTHLY HOUSEHOLD RATE</b>	<b>\$ 22.51</b>	<b>\$ 25.36</b>
<b>TOTAL MONTHLY SENIOR HOUSEHOLD RATE</b>	<b>\$ 18.01</b>	<b>\$ 20.29</b>
Monthly City subsidy per senior household	\$ 4.17	\$ 5.07
<b>Miscellaneous:</b>		
Multifamily bin	\$ 3.11	\$ 3.11
Extra Cart: Refuse/Recycling/ Greenwaste	\$5.50/\$1.25/ N/A	\$5.50/\$1.25/ \$ 3.75
<b>Large item collection: Monthly Burrtec charge—all City households; cost incorporated in administrative fee</b>	<b>\$2,400.00</b>	<b>\$2,400.00</b>

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. 11-2908 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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<b>SUBJECT:</b> CONSIDER SETTING A PUBLIC HEARING TO CONSIDER ORDINANCE NO. 11-923 ADDING CHAPTER 11.75 TO TITLE 11 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO UNDERGROUNDING OF UTILITIES	<b>DATE:</b> June 6, 2011 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 2 <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 in-fill single lot or an addition to an existing house, the potential cost of undergrounding can be significant. Proposed Ordinance No. 11-923 would provide the City with some flexibility on 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.

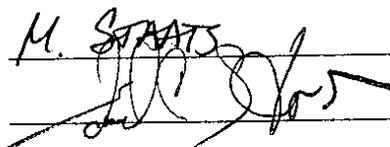
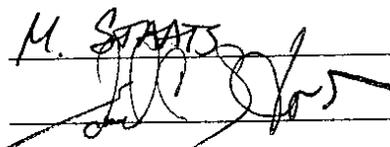
Undergrounding funds are made available to cities through Rule 20 and Southern California Edison to underground overhead electrical facilities. Cities also typically require developers to underground electrical and telecommunication facilities as conditions of approval for their developments. Many cities include undergrounding requirements in their municipal codes. Having undergrounding requirements associated with development activities codified generally allow 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.

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.

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

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Prepared by: <u></u>	Reviewed and Approved by:	M. STRAATS <u></u>
Proofed by: <u></u>	Presented by:	<u></u>

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- 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: bathroom addition previously cited)

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 in-fill 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. 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 is included in this Council report for information related to those fees, but no action on the Resolution is required until the second reading and adoption of Ordinance No. 11-923, should that be the City Council's decision.

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          |

**FISCAL IMPACT:** Publication costs 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, June 6, 2011, at 7:00 p.m. to consider Ordinance No. 11-923 adding Chapter 11.75 to Title 11 of the Montclair Municipal Code related to undergrounding of utilities.

**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 1. 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

**SUBJECT:** CONSIDER AUTHORIZATION TO RECEIVE \$3,018 FROM THE HOMELAND SECURITY GRANT PROGRAM FOR PURCHASE OF DUODOTE AUTO-INJECTORS AND TRAINING SIMULATORS

CONSIDER AUTHORIZATION OF A \$3,018 APPROPRIATION FROM THE CONTINGENCY ACCOUNT TO PURCHASE 60 DUODOTE AUTO-INJECTORS AND 25 TRAINING SIMULATORS FROM MERIDIAN MEDICAL TECHNOLOGIES

**DATE:** June 6, 2011

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 3

**FILE I.D.:** EQS215-02/GRT115

**DEPT.:** FIRE

**REASON FOR CONSIDERATION:** The City Council is requested to consider authorizing the Fire Department to receive \$3,018 from the Homeland Security Grant Program (HGSP) and a \$3,018 appropriation from the Contingency Account to purchase 60 DuoDote auto-injectors and 25 DuoDote training simulators from Meridian Medical Technologies. The Fire Department would be entitled to a 100 percent reimbursement of the cost to purchase this equipment from the HSGP.

**BACKGROUND:** The HSGP is responsible for the distribution of nonmatching grants to local first responders to provide financial assistance in purchasing equipment to improve emergency response capabilities to terrorist events. All eligible applicants are required to purchase the equipment in advance and would be entitled to 100 percent reimbursement through the grant program. Through HSGP, the Fire Department has been authorized to receive \$3,018 in nonmatching grant funds. The distribution of grant funds shall be coordinated through each Operational Area. The coordinating agency for the City of Montclair is the San Bernardino County Fire Protection District Office of Emergency Services.

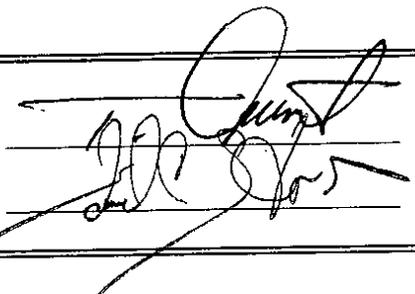
The DuoDote auto-injector provides a single intramuscular dose of atropine and pralidoxime chloride in a self-contained unit specifically designed for first responders. The auto-injectors provide initial treatment for symptoms resulting from exposure to chemical nerve agent poisonings or organophosphorus insecticide poisonings. The allocated quantity of 60 DuoDote auto-injectors would ensure all Montclair Fire personnel responding on all frontline and reserve fire apparatus are adequately protected in the event of exposure to organophosphorus nerve agents as well as organophosphorus insecticides.

The total grant allocation from the Fiscal Year 2008 HSGP for the Montclair Fire Department is \$3,034. Staff collaborated with the County of San Bernardino Public Health Department, which acted as the lead agency soliciting bids for the grant project. Meridian

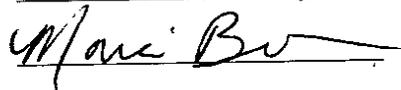
Prepared by:



Reviewed and Approved by:



Proofed by:



Presented by:

Medical Technologies (a wholly-owned subsidiary of King Pharmaceuticals, Inc.) was identified as the only producer and sole source vendor of the DuoDote auto-injectors.

**FISCAL IMPACT:** The cost to purchase 60 DuoDote auto-injectors and 25 DuoDote training simulators is \$3,018. Should the City Council approve this item, \$3,018 would be transferred from the Contingency Account to Emergency Services Capital Outlay Account No. 1180-400-4539-006205 to pay for the equipment. The City would be reimbursed \$3,018 by HGSP for the cost of the equipment.

**RECOMMENDATION:** Staff recommends the City Council authorize the following related to the purchase of 60 DuoDote auto-injectors and 25 DuoDote training simulators:

1. The Fire Department to receive \$3,018 from the Homeland Security Grant Program for purchase of the equipment.
2. A \$3,018 appropriation from the Contingency Account for purchase of the equipment from Meridian Medical Technologies.

## AGENDA REPORT

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**SUBJECT:** CONSIDER DECLARING 14 MOTOROLA  
MTS 2000 PORTABLE RADIOS AS SURPLUS  
AND AVAILABLE FOR TRADE IN TO  
SAN BERNARDINO COUNTY COMMUNICA-  
TIONS FOR CURRENT RADIO ACCESSORIES

**DATE:** June 6, 2011  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 4  
**FILE I.D.:** EQS052  
**DEPT.:** POLICE

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**REASON FOR CONSIDERATION:** The City Council is requested to consider declaring 14 Motorola MTS 2000 portable radios as surplus and available for trade in to San Bernardino County Communications for current radio accessories.

**BACKGROUND:** Fourteen Motorola MTS 2000 portable radios were replaced with Motorola XTS 3000 and XTS 5000 models over two years ago. San Bernardino County Communications has agreed to take the out-of-service radios as trade-ins toward the purchase of accessories, such as lapel microphones and radio chargers, for the current radios.

Following are the serial numbers of the 14 Motorola MTS 2000 radios:

466 AWU 1869	466 AUS 1140
466 AWU 1865	466 CCU 3652
466 AWU 1867	466 CCU 3650
466 AWU 1866	466 CCU 3651
466 AWU 1868	466 AWA 3654
466 AWU B343	466 AWA 3655
466 AUS 1141	466 ATG 0530

**FISCAL IMPACT:** There would be no direct fiscal impact to the City's General Fund should this item be approved.

**RECOMMENDATION:** Staff recommends the City Council declare 14 Motorola MTS 2000 portable radios as surplus and available for trade in to San Bernardino County Communications for current radio accessories.

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Prepared by: *Janet Pherson* Reviewed and Approved by: *[Signature]*  
Proofed by: *Judy B.* Presented by: *[Signature]*

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# AGENDA REPORT

**SUBJECT:** CONSIDER RECEIVING AND FILING  
ALCOHOLIC BEVERAGE PERMIT  
APPLICATION - THEO'S CAFÉ

**DATE:** June 6, 2011  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 5  
**FILE I.D.:** FLP025  
**DEPT.:** ADMIN. SVCS.

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

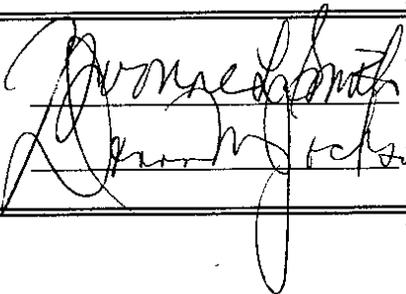
**BACKGROUND:** Mr. Johnny Paul Blane Amaro is the new owner of Theo's Café located at 9197 Central Avenue, Suite J. Mr. Blane Amaro has requested approval from the California Department of Alcoholic Beverage Control (ABC) to have the existing Type 41 - "On-Sale Beer and Wine" license transferred into his name and thereby allow him to continue the service of beer and wine in conjunction with prepared meals at the restaurant.

Theo's Café has operated at the present location since 1989 and has had a license to serve beer and wine with meals since 1991. According to ABC representatives, there are no reported violations or issues with the current use. Staff has no objection to the transfer request.

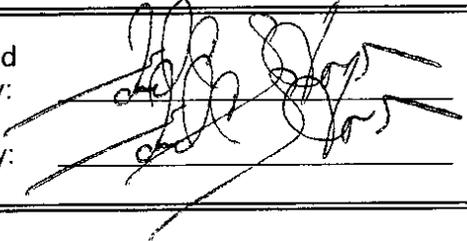
**FISCAL IMPACT:** No fiscal impact

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

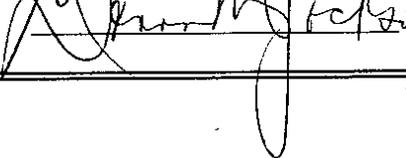
Prepared by:



Reviewed and  
Approved by:



Proofed by:



Presented by:

## AGENDA REPORT

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

**DATE:** June 6, 2011  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 6  
**FILE I.D.:** FLP025  
**DEPT.:** ADMIN. SVCS.

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

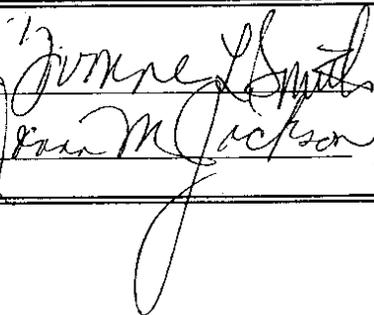
**BACKGROUND:** Living S & G Inc. is the new owner of The Upsidedown Bar located at 10555 Mills Avenue. Mr. Dewitt Vercher III, representing Living S & G Inc., has requested approval from the California Department of Alcoholic Beverage Control (ABC) to have the existing Type 48 - "On-Sale General Public Premises (Bar, Night Club)" license transferred into the company's name, thereby allowing the continued sale and service of beer, wine, and distilled spirits at the establishment that is currently known as El Capo.

The subject site has been home to a bar and/or nightclub use since 1981, most recently known as El Encanto (2007-2010) and El Capo (2010-2011). "The Upsidedown Bar" will be the new name for the establishment once ABC approves the application.

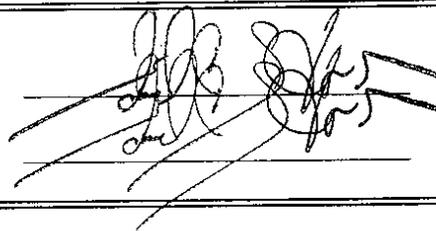
**FISCAL IMPACT:** No fiscal impact

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

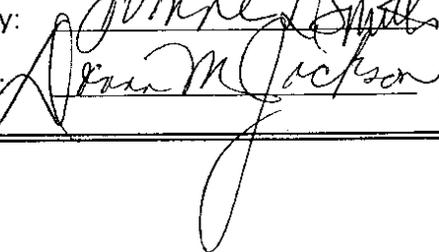
Prepared by:



Reviewed and  
Approved by:



Proofed by:



Presented by:

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION

**DATE:** June 6, 2011

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 7

**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 June 6, 2011, and Payroll Documentation dated April 10, 2011; finds them to be in order; and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated June 6, 2011, totals \$945,205.23. The Payroll Documentation dated April 10, 2011, totals \$611,204.90, with \$425,586.82 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:

Proofed by:

Reviewed and  
Approved by:

Presented by:

## AGENDA REPORT

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 11-57, SUPERSEDING AGREEMENT NO. 93-6 AND AMENDMENTS THERETO, BETWEEN THE CITY OF MONTCLAIR AND BURRTEC WASTE INDUSTRIES, INC., (VENDOR) AND GRANTING VENDOR AN EXCLUSIVE FRANCHISE FOR SOLID WASTE MANAGEMENT SERVICES

**DATE:** June 6, 2011  
**SECTION:** AGREEMENTS  
**ITEM NO.:** 1  
**FILE I.D.:** REF100-50  
**DEPT.:** ADMIN. SVCS.

CONSIDER AUTHORIZATION FOR CONVERSION TO AUTOMATED RESIDENTIAL GREENWASTE COLLECTION PROGRAM

**BUSINESS PLAN:**

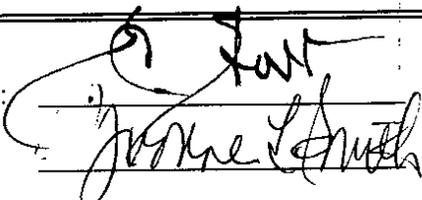
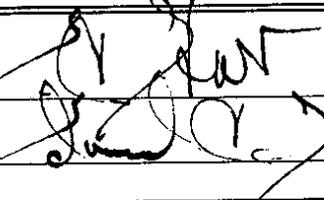
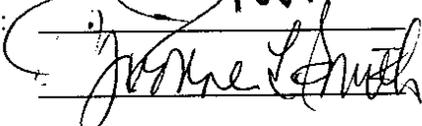
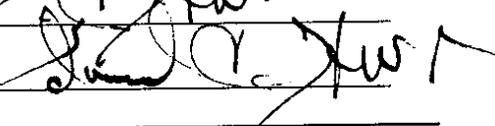
FEBRUARY 1, 2011 STRATEGIC PLANNING SESSION: CITY COUNCIL DIRECTION TO NEGOTIATE SUCCESSOR FRANCHISE AGREEMENT WITH BURRTEC WASTE INDUSTRIES, INC., MIGRATE TO AN AUTOMATED GREENWASTE COLLECTION PROGRAM, AND SECURE REVENUE IMPROVEMENTS

**REASON FOR CONSIDERATION:** The current Solid Waste Management Services Agreement between the City of Montclair and Monte Vista Disposal, Inc. (Agreement No. 93-6 and amendments thereto with Monte Vista Disposal, Inc., doing business as Burrtec Waste Industries, Inc.) has exceeded its original five-year franchise period, plus annual extensions, and its conceptual ten-year extension effective July 1, 2000, through June 30, 2010. The Agreement now extends automatically by one-year increments, and would continue in force until notice of nonrenewal is provided—upon such notice, Agreement No. 93-6 would continue for four years until date of termination. As of June 1, 2011, the earliest date of termination would be June 30, 2015.

Approving Agreement No. 11-57, as proposed, with Burrtec Waste Industries, Inc. (Burrtec), would provide for a successor agreement providing an exclusive ten-year franchise period. The proposed Agreement would achieve significant improvements in solid waste services including provision of an automated greenwaste collection program, provide enhanced protections for the City and customers, provide the City with greater control over service-related issues, and provide for enhanced revenue options for the City.

**BACKGROUND:** Agreement No. 93-6, an exclusive five-year franchise agreement (plus annual extensions) with Monte Vista Disposal, Inc., (DBA Burrtec Waste Industries, Inc.) continues in force with provision for automatic one-year renewals. The current Agreement and amendments thereto lack critical protections for the City and public; provide for no direct increase in the City's franchise fee related to commercial service;

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

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provide for no compensation related to pavement impact; utilize complex formulas for refuse rate calculations; and are unresponsive to state mandates—although Burrtec voluntarily assists in meeting reporting requirements related to AB 939 waste diversion mandates.

In late 2010, the City Manager and Junior Accountant entered into negotiations with Burrtec representatives to achieve a successor franchise agreement to Agreement No. 93-6 and amendments thereto. As proposed, Agreement No. 11-57 contains a number of service improvements, protections, and features designed to provide Montclair customers with a superior level of solid waste services.

Major provisions of proposed Agreement No. 11-57 are identified in **Table 1** below.

**Table 1**  
**Comparison of Contract Provisions**  
**Agreement No. 93-6 and Amendments**  
**and**  
**Proposed Successor Agreement No. 11-57**

Provision	Agreement No. 93-6	Agreement No. 11-57	Page/Section
<i>Company Name</i>	Monte Vista Disposal Inc.	Burrtec Waste Industries, Inc.	1
<i>Franchise and Franchise Area</i>	Exclusive right to collect all refuse within City Limits	Exclusive right to collect all solid and greenwaste and recyclable material in all residential, commercial, institutional, industrial, and construction premises within City and future annexed areas.	4/3.01 to 3.02.12 & 6/3.03
<i>Exclusive Franchise</i>	Effective February 1, 1993, for minimum five-year period (June 30, 1998).	Ten years (July 1, 2011 to June 30, 2021)—franchise period required to amortize conversion of fleet to alternative fuel and automated green-waste service.	6/4.01 to 4.02
<i>Extension of Franchise</i>	At end of each year of Agreement, automatically extends for additional one year, unless 30-day notice of nonrenewal is provided; if notice is provided, franchise terminates in four years, but no earlier than June 30, 1998.  January 2000, conceptual approval to continue franchise through 2010 to amortize fleet conversion for automated refuse service.	Automatic one-year extension, and every July 1 thereafter unless Notice of Nonrenewal is provided.	7/4.03
<i>Notice of Nonrenewal</i>	Notice of nonrenewal, 30 days prior to extension date—Agreement terminates four years after notice of nonrenewal.	Notice of nonrenewal at least 120 days but not more than 180 days prior to effective date of automatic extension date on July 1, 2021, and each July 1 extension thereafter.	7/4.03

<i>Conversion to Automated Green-waste Collection</i>	Manual collection, user-provided cans; conversion in 2000 to automated service for solid waste and recyclables.	Within three months of the effective date, contractor to convert from manual to automated collection, including distribution of 95-gallon greenwaste carts (\$3.50 monthly for extra cart). City staff to notify residents of conversion and impact.	10/5.04
<i>Alternative Fuel Vehicles</i>	Not applicable	Within 24-months of effective date, contractor's regular route vehicles for residential, commercial, institutional, and industrial service shall be transitioned to alternative fuel vehicles. Nonalternative fuel can be used for backup—up to 30-days—and for emergency purposes.	10/5.05.2
<i>Resolution of Customer Disputes</i>	Not defined	Establishes complaint resolution procedures.	13/5.11 to 5.11.4
<i>Franchise Fee</i>	4 percent of revenues received for collection of commercial and industrial refuse. Deducted monthly from residential rate paid to contractor. Not a pass-through fee.	10 percent of gross revenue from services to commercial, institutional, and industrial premises, exclusive of revenue from sale of recyclable materials and disposal tip fees. Payments made quarterly. Not a pass-through fee.	14/6.02
<i>Pavement Impact Fee</i>	Not defined	3.5 percent of gross revenue from services to commercial, institutional, and industrial premises, exclusive of revenue from sale of recyclable materials and disposal tip fees. Payments made quarterly. Not a pass-through fee.	14/6.03
<i>Late Payment Fee/Underpayment</i>	Not defined	Full payment, plus 1.5 percent of unpaid fees due for quarter.  Full payment, plus 7 percent interest.	14/6.04 03  19/8.03 4
<i>One Time Administrative Fee</i>	Not defined	\$2,500, plus attorney fees, for processing Agreement.	15/6.06
<i>Initial Refuse Rate</i>	As negotiated for 1993 based on set assumptions, CPI, and other base factors.	Initial year (Fiscal Year 2011–12) allows for CPI adjustment; however, contractor is not requesting a rate increase at this time.	15/7.02
<i>Annual Rate Adjustment Formula</i>	Residential Rate: Complex formula based on various rate components and calculation requirements.  Commercial Rate: Consumer Price Index; with "frequency factor" calculation.	Residential and Commercial: Each July 1, based on Consumer Price Index for preceding calendar year, not to exceed 5 percent; plus "frequency factor" adjustment for commercial users.	15/7.03
<i>Tip Fee Adjustment</i>	Not defined	A pass-through expense adjusted annually to reflect any change in fees charged by processing facility.	16/7.04 to 7.04.2

<i>Extraordinary Rate Adjustments</i>	Not defined	Extraordinary rate changes related to scope of services, changes in law, extraordinary costs, change in disposal facility, value of recyclables, clean fuel requirements, and fuel surcharge.	16/7.05 to 7.05.3
<i>AB 939 Reporting Requirements/Indemnification</i>	Not defined	Contractor shall prepare and submit City's annual AB 939 waste diversion report.  Contractor indemnifies against fines.	18/8.02 to 8.03.4  20/9.03
<i>Insurance Provisions</i>	Workers' Compensation: legal requirement; General Liability: \$1 million per occurrence/\$2 million aggregate; Property Damage: \$500,000	Workers' Compensation: \$100,000 per occurrence/excess, \$5 million umbrella; General Liability: \$1 million per occurrence/\$2 million aggregate; Vehicle: \$2 million per occurrence.	21/ 10.01.01 to 10.01.06
<i>Faithful Performance Bond</i>	\$200,000	\$200,000	24/10.02
<i>Administrative Hearing Process</i>	Not defined	Administrative hearing for alleged breach of contract. Establishes hearing process.	27/11.09 to 11.09.09
<i>Material Breach</i>	Not defined	For failure to cure, \$100 per day in material default.	29/11.10 to 11.10.11
<i>City Right to Perform in Emergency</i>	Not defined	If Contractor fails to provide service, upon 24-hour notice City has emergency power to take possession of Contractor's equipment and facilities, at cost to Contractor for purpose of protecting public health, safety, or welfare.	30/11.12 to 11.12.11

**Conversion to Alternative Fuel Fleet.** Within 24 months of the effective date of the Agreement Burrtec proposes converting its Montclair collection fleet for residential, commercial, institutional, and industrial service to alternative fuel vehicles. Conversion to alternative fuel vehicles would produce a positive impact in reducing particulates in the air, provide a quieter fleet for early-morning collection operations, and put in service a new fleet of vehicles with limited mechanical and hydraulics problems, thereby reducing the impact of spilled oils and fluids on City streets, sidewalks, and parking areas. Burrtec would be permitted to maintain and operate diesel vehicles as backup for regular route vehicles out of service for repair or scheduled maintenance, and to supplement the regular route vehicles for special programs and emergencies. Conversion to a fleet of alternative fuel vehicles produces no fiscal impact on the City's General Fund—Burrtec would amortize the cost of conversion over the proposed ten-year franchise period.

**Billing Services.** Burrtec representatives indicate the ability to consolidate utility billing services in house at no cost, potentially relieving the City of this current, internal responsibility. Services would include the mailing of bills/notices, payment collection, disbursement, problem resolution, and lien processing. City staff will evaluate utilizing Burrtec

for billing services as a means to address fiscal-related issues and report back to the City Council should this recourse become a recommended direction to pursue.

As an alternative, the billing process can now be incorporated into the property tax payment process. City staff will explore this alternative and, if feasible, survey the interest of residents. The payment of utility bills through property tax rolls could have potential short-term impacts on the City's cash flow, but would provide greater assurance of payment by property owners. The property tax payment process may also prove problematic for property owners requiring the payment of refuse and sewer services by tenants.

Information contained in the preceding two paragraphs is informational only—no action is required.

*Greenwaste Collection Program.* Agreement No. 11-57 also seeks transition to an automated greenwaste collection program for all residential customers. The City, with cooperation of Burrtec, migrated to an automated solid waste and recyclables collection program in 2000. The existing program has been well received by the community and produces significantly fewer waste-related problems on respective collection days. As proposed, the greenwaste collection program would provide each residential property with a 95-gallon greenwaste disposal cart supplied by Burrtec at no additional charge—rental rate for each additional cart is \$3.50 per month; however, Burrtec will pick up excess greenwaste properly disposed of in customer-provided containers if a request is made to Burrtec for the additional service. Participation in the automated greenwaste collection program would be mandatory; however, a customer may request transition to an alternate size container, if available. Residents will be advised in advance of any City Council authorized conversion to a greenwaste collection program.

*Franchise Fee/Pavement Impact Fee/Administrative Fee.* In consideration of the exclusive franchise granted under proposed Agreement No. 11-57, Burrtec shall pay to the City a franchise fee equal to 10 percent of gross revenue from services to commercial, institutional, and industrial users in Montclair—excluding revenue from the sale of recyclable materials and disposal/processing tip fees. Under Agreement No. 93-6, the franchise fee is 4 percent.

Burrtec has also agreed to pay the City a pavement impact fee related to wear and tear on City streets by Burrtec vehicles. The fee would begin July 1, 2011, and would be based on 3.5 percent of gross revenue from services to commercial, institutional, and industrial users in Montclair—excluding revenue from the sale of recyclable materials and disposal/processing tip fees. Agreement No. 93-6 contains no provision for a pavement impact fee.

Both the franchise fee and pavement impact fee would be paid to the City on a quarterly basis, and are not pass-through fees to customers.

In consideration for the City's time and effort to work with Burrtec in developing and processing proposed Agreement No. 11-57, Burrtec agrees to pay a one-time administrative fee up to \$2,500, plus legal fees—payable within 10 days following approval of Agreement No. 11-57.

**FISCAL IMPACT:** Agreement No. 11-57 provides for a number of fee-related impacts that, if approved, would produce a significant and positive annual net impact for the City's General Fund—for Fiscal Year 2011-12, the estimated General Fund impact is \$265,945. Fiscal components of Agreement No. 11-57 include the following:

1. *Franchise Fee.* Under Agreement No. 93-6 the franchise fee for commercial, industrial, and institutional solid waste services is 4 percent of Contractor's gross revenue from services to commercial, institutional, and industrial premises in the City's service area—the 4 percent franchise fee currently generates approximately \$110,928 in annual franchise fees.

Agreement No. 11-57 increases the franchise fee from 4 percent to 10 percent of Contractor's gross revenue from services to commercial, institutional, and industrial premises in the City's service area—the 10 percent franchise fee is expected to generate approximately \$277,313 in Fiscal Year 2011-12, or \$166,385 above the current 4 percent franchise fee.

2. *Administrative Fee.* Agreement No. 11-57 provides for a one-time administrative/processing fee of up to \$2,500, plus attorneys fees.
3. *Pavement Impact Fee.* Agreement No. 11-57 provides for a pavement impact fee, equal to 3.5 percent of Contractor's gross revenue from services to commercial, institutional, and industrial premises in the City's service area, exclusive of revenue from the sale of recyclable materials and disposal/ processing tip fees. The pavement impact fee is expected to generate approximately \$97,060 in Fiscal Year 2011-12.

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

1. Approve Agreement No. 11-57, superseding Agreement No. 93-6 and amendments thereto, between the City of Montclair and Burrtec Waste Industries, Inc. (vendor) and granting vendor an exclusive franchise agreement for solid waste management services.
2. Authorize conversion to an automated greenwaste collection program, with start date to occur in Fiscal Year 2011-12.

**AGREEMENT NO. 11-57**

**SOLID WASTE MANAGEMENT SERVICES AGREEMENT  
BETWEEN THE CITY OF MONTCLAIR AND  
BURRTEC WASTE INDUSTRIES, INC.**

This EXCLUSIVE FRANCHISE AGREEMENT ("Agreement") is entered into this 1st day of July, 2011, between the CITY OF MONTCLAIR, a California municipal corporation ("City") and BURRTEC WASTE INDUSTRIES, INC., a California corporation ("Contractor") for solid waste management services.

**RECITALS**

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste and construction debris handling within their jurisdictions; and

**WHEREAS**, the California Public Resources Code Section 40059(a) (1) makes solid waste handling a matter of local concern; and

**WHEREAS**, California Public Resources Code Section 41900, *et seq.*, provides that local agencies may levy fees for solid waste collection, transfer, and disposal, and for recyclable and compostable collection and transfer; and

**WHEREAS**, California Public Resources Code Section 41780 requires each local agency to divert 50 percent of all solid waste generated within the agency's jurisdiction from landfilling; and

**WHEREAS**, the City Council of the City determines that public convenience and necessity and public health, safety, and well being are served by the award of an exclusive franchise to a qualified enterprise for the collection, transportation, recycling, composting, and disposal of solid waste from residential, commercial, and industrial premises in the City; and

**WHEREAS**, the City has previously entered into exclusive franchise agreements with the Contractor under the name of Monte Vista Disposal, Inc., Agreement No. 93-6, Settlement Agreement No. 94-57, and Agreement No. 97-56; and

**WHEREAS**, the City finds that the Contractor possesses the labor, equipment, facilities, expertise, and financial capability to provide solid waste collection and disposal services, recycling collection services, greenwaste collection services, and construction debris diversion services to all residential, commercial, and industrial premises in the City; and

**WHEREAS**, the City finds that Contractor has performed as the franchise contractor in a good and workmanlike manner; and

**WHEREAS**, the City finds that Contractor proposes to invest in the conversion of its collection vehicle fleet from diesel to clean alternative fuels; and

**WHEREAS**, the City finds that Contractor is providing automated collection of solid waste, recyclables and proposes to invest in the conversion from manual greenwaste collection to automated greenwaste collection; and

**WHEREAS**, the City finds that the Contractor's 2007 pilot program for the year-round collection of bulky items offers a greater service and convenience to residential customers and that Contractor proposes to continue on-call collection of bulky items; and

**WHEREAS**, the City desires to enter into a new agreement with Contractor.

**NOW, THEREFORE BE IT RESOLVED** that the parties agree as follows:

## **ARTICLE 1. DEFINITIONS**

### **1.01 DEFINITIONS**

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth in the definitions contained in Attachment A.

### **1.02 STATUTORY DEFINITIONS**

Unless a term is otherwise defined in this Agreement, terms used in this Agreement shall have the same meaning as the definitions of those terms contained in the Act. In the event of a conflict between the definition of a term in the Act and in this Agreement, the definition in the Agreement shall prevail.

## **ARTICLE 2. REPRESENTATIONS AND WARRANTIES**

### **2.01 OF CONTRACTOR**

**2.01.01 Status.** Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business in the State of California.

**2.01.02 Authority and Authorization.** Contractor has full legal right, power and authority to execute and deliver this Agreement and perform its obligations hereunder. This Agreement has been duly executed and delivered by Contractor and constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

**2.01.03 Accuracy of Representations.** Contractor's representations and warranties made throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.

**2.01.04 No Conflicts.** Neither the execution or delivery by Contractor of this Agreement, the performance by Contractor of its performance obligations, nor the fulfillment by Contractor of the terms and conditions hereof: (i) conflicts with, violates or results in a breach of applicable law; (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other government authority, or any agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

**2.01.05 No Approvals Required.** No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by Contractor, except such as have been duly obtained from its Board.

**2.01.06 No Litigation.** There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of Contractor's knowledge, threatened, against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby.

**2.01.07 Due Diligence.** Contractor has made an independent investigation satisfactory to it of the conditions and circumstances surrounding the Agreement and services it is required to perform.

**2.01.08 Duty.** Contractor shall be at all times during the term of this Agreement, ready, willing and able to collect and transport all solid waste generated within the City in accordance with the provision of the Agreement and all applicable laws, rules and regulations.

**2.01.09 Insurance and Bonds.** Contractor will furnish evidence of the insurance and bonds required under this Agreement prior to the effective date of this Agreement.

**2.01.10 Criminal Activity.** Contractor has represented that none of its officials or directors have a criminal conviction from a court of competent jurisdiction with respect to conviction for any crime, including racketeering, which indicates a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contractor or its officers or directors; nor has Contractor or any of its respective officers or directors made an admission of guilt or pled *nolo contendere* to the conduct as described above.

## 2.02 OF CITY

**2.02.01 Status.** The City is a municipal corporation of the State of California, duly organized and validly existing under the Constitution and laws of the State of California.

**2.02.02 Authority and Authorization.** The City has full legal right, power and authority to execute, deliver, and perform its obligations hereunder. This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

**2.02.03 No Conflicts.** Neither the execution or delivery by the City of this Agreement, the performance by the City of its performance obligations, nor the fulfillment by the City of the terms and conditions hereof: (i) conflicts with, violates or results in a breach of applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other government authority, or any agreement or instrument to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.

**2.02.04 No Approvals Required.** No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by the City, except such as have been duly obtained from its City Council.

**2.02.05 No Litigation.** There is no action, suit, proceeding, or investigation at law or in equity before or by any court or governmental authority, commission, board, agency, or instrumentality pending or, to the best of the City's knowledge, threatened, against the City wherein an unfavorable decision, ruling, or finding in any single case or in the aggregate, would materially adversely affect the performance by the City of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

**2.02.06 No Warrant Regarding Waste Characterization.** The City makes no warranties with respect to the characterization of solid waste within the City. The City expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of solid waste or recyclable materials collected by Contractor.

## ARTICLE 3. GRANT OF EXCLUSIVE FRANCHISE

### 3.01 GRANT OF FRANCHISE

Upon the effective date of this Agreement and continuing for the term of the Agreement or any extension or renewal thereof, the City hereby grants Contractor the exclusive right and duty to collect, transfer, transport, recycle, process, and dispose of solid waste, greenwaste, and recyclable material generated or accumulated within the

City by any residential, commercial, institutional or industrial premises. The exclusive nature of this franchise shall be subject to the U.S. Environmental Protection Agency and shall specifically include: (i) construction and demolition waste generated at all premises within the City and (ii) cement truck washout remains, solids, and liquids, generated at all premises within the City and not transported out of the City in the cement truck. This grant of franchise shall be exclusive except as provided in Section 3.02 and shall be subject to all of the terms and conditions of this Agreement.

### **3.02 LIMITATIONS ON EXCLUSIVE FRANCHISE**

The franchise granted to Contractor shall be exclusive except as to the categories of solid waste listed in this Section. The granting of this franchise shall not preclude the categories of solid waste listed below from being delivered to and collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any person from obtaining authorization from the City which is otherwise required by law:

**3.02.1** The sale or donation of recyclable material by the waste generator to any person or entity other than Contractor; provided however, to the extent permitted by law, if the generator is required to pay monetary or nonmonetary consideration for the collection, transportation, transfer, or processing of recyclable material, the fact that the generator receives a reduction or discount in price (or in other terms of the consideration the generator is required to pay) shall not be considered a sale or donation.

**3.02.2** Recyclable materials and greenwaste, which are removed from any premises by the waste generator, and which is transported personally by such generator (or his or her full-time employees) to a processing or disposal facility in a manner consistent with all applicable laws and regulations.

**3.02.3** Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act (California Public Resources Code, Section 14500, *et seq.*).

**3.02.4** Greenwaste removed from a premises by a gardening, landscaping, or tree trimming contractor, including residential gardeners, utilizing its own equipment, as an incidental part of a total service offered by that contractor rather than as a hauling service;

**3.02.5** The collection, transfer, transport, Recycling, processing, and disposal of animal waste (excluding horse manure which is included in the scope of this Agreement) and remains from slaughterhouse or butcher shops for use as tallow;

**3.02.6** The collection, transfer, transport, recycling, processing, and disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings;

**3.02.7** The collection, transfer, transport, recycling, processing, and disposal of street sweepings regardless of source;

**3.02.8** The collection, transfer, transport, recycling, processing, and disposal of hazardous substances, hazardous waste, and radioactive waste regardless of its source;

**3.02.9** The collection, transfer, transport, recycling, processing, and disposal of solid waste by the City, its officers, employees, agents, other government agencies, or contractors in the normal course of their employment;

**3.02.10** Solid waste handling services for governmental agencies other than the City, which may have facilities in the City, but over which the City has no jurisdiction in connection with the regulation of solid waste;

**3.02.11** Solid waste handling services provided by any person having a legal right to continue doing so, pursuant to California Public Resources Code Section 49520, *et seq.*, or otherwise, as long as and to the extent such legal right continues to exist.

**3.02.12** In addition to the foregoing, in the event that future interpretations of current law, future enactments or developing legal trends limit the ability of the City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that the City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

While the grant contained herein shall not be exclusive with respect to the above noted matters, Contractor shall still be obligated to provide those services which may be included in the above (*i.e.*, collection of bulky items) pursuant to the rates, and other terms, as set forth in this Agreement.

### **3.03 FRANCHISE AREA DEFINED**

The franchise area granted by this Agreement shall be all residential, commercial, institutional, industrial, and construction premises as set forth herein. As provided for below, the franchise area may be changed by annexation.

### **3.04 ANNEXATION COVERED BY EXISTING AGREEMENT**

Territory annexed into the City that is covered by an existing solid waste permit, license, contract, agreement or franchise granted by another public entity may continue to be served by the same Contractor for the balance of the term of its permit, license, agreement or franchise, subject to the provisions of the Montclair Municipal Code and the provisions of this Agreement.

## **ARTICLE 4. TERM OF AGREEMENT**

### **4.01 EFFECTIVE DATE**

This Agreement shall become effective July 1, 2011.

## 4.02 TERM

The term of this Agreement shall begin on the effective date and continue in full force and effect ten (10) years until midnight, June 30, 2021.

## 4.03 EXTENSION OF TERM

The term of the Agreement shall automatically be extended by one (1) year effective July 1, 2021 and on each July 1st thereafter unless either party serves a Notice of Nonrenewal on the other at least one hundred twenty (120) days but not more than one hundred eighty (180) days prior to the effective date of the extension. Should a Notice of Nonrenewal be served, the Agreement shall continue in full force and effect until the remainder of the term or any extension thereof has expired. If terminated, the extension provision may be subsequently reinstated by the mutual agreement of the parties.

## 4.04 OTHER CHANGES TO TERM

The parties may, by mutual consent, further extend the term of this Agreement or modify the extension provision.

# ARTICLE 5. CONTRACTOR'S SERVICES

## 5.01 COLLECTION SERVICES

The work to be performed by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services described in Attachment B, Scope of Collection Services. Contractor shall perform this work in a thorough and professional manner so that the residents and businesses within the City are provided reliable, courteous, and high-quality service at all times.

**5.01.1 Conditions of Service.** The parties have determined that the following conditions shall remain in effect during the term of this Agreement.

**5.01.1.1 Service Mandatory.** Except as otherwise provided herein, all premises shall be required to arrange and pay for solid waste services of Contractor.

**5.01.1.2 Unauthorized Collection and Transportation Prohibited.** Except as otherwise provided herein, it shall be unlawful for an unauthorized party to collect or transport solid waste generated in the City.

**5.01.1.3 Accumulations of Solid Waste.** It shall be unlawful for waste generators to allow solid waste to accumulate at any premises.

**5.01.1.4 Theft of Recyclables Unlawful.** It shall be unlawful for any person to remove recyclable materials from Contractor's containers.

**5.01.1.5 Placement of Carts for Collection.** Carts at residential premises shall be permitted at the curb the night before collection day and shall be at the curb no later than 6:00 a.m. collection day.

**5.01.1.6 Extra Cart Requirement.** Extra carts ordered by customers shall be provided for a minimum six (6) month continuous subscription period.

## **5.02 COLLECTION STANDARDS**

**5.02.1 Servicing of Containers.** Contractor shall collect the contents and return each container to the location where customer properly placed the container for collection. Following collection, Contractor shall place the containers upright. Contractor shall use due care when handling containers.

**5.02.2 Missed Pickups.** When notified of a missed pickup, Contractor shall collect the solid waste, recyclable materials, or greenwaste on the day the notice is received, if possible, and in all cases shall collect the missed pickup by 6:00 p.m. of the next scheduled collection day following receipt of the missed pickup notification.

**5.02.3 New Customers.** Contractor shall deliver containers and initiate collection services for a new customer within five (5) business days of the customer's request for service.

**5.02.4 Change in Service.** If an existing customer requests a change in the number or size of their solid waste, recyclable materials, or greenwaste containers and/or frequency of collection, Contractor shall deliver and/or remove containers and initiate changes in the collection services within five (5) business days of the customer's request for a change in service.

**5.02.5 Separate Collection.** Contractor shall collect solid waste, recyclable materials and greenwaste separately from each other and shall not commingle these materials at any time during the transportation or delivery of those materials to the disposal facility or processing facility. Solid waste, recyclable materials and greenwaste collected in the City may be combined with similar materials collected from other jurisdictions and shall be allocated by Contractor to the City's collection program based upon tonnage or volume.

**5.02.6 Noncollection Notices.** Contractor may choose to not collect materials for the following reasons: (i) recyclable materials or greenwaste contain excessive contamination; (ii) materials contain hazardous waste; (iii) the loaded weight of a container exceeds the maximum load limit specified on the cart by the manufacturer; (iv) materials are not fully contained within containers; and (v) container is not accessible due to vehicles or other obstacles. In such case of noncollection, Contractor shall issue noncollection notices stating the reason(s) the materials were not collected. The noncollection notice shall be affixed prominently on the container to ensure that it is not inadvertently removed due to weather conditions. Contractor shall maintain a master record of noncollection notices issued for inspection by the City.

**5.02.7 Excess Materials.** Materials not contained within customer's container shall be considered as excess materials and Contractor shall not be required to collect

the excess amounts unless customer has arranged and paid for such collection, with the exception of greenwaste.

**5.02.8 Bins Required for Apartment Complexes.** Multifamily apartment complexes with more than four (4) individual dwelling units shall use bins for refuse collections.

**5.02.9 Care of Private Property.** Contractor shall not damage private property and shall ensure that its employees: (i) close all gates opened in making Collections, (ii) not cross landscaped areas, and (iii) do not climb or jump over hedges and fences. The City shall refer complaints about damage to private property to Contractor who shall repair, to its previous condition, all damage to private or public property caused by its employees or operations. Contractor shall repair damage and/or resolve claims regarding damage to property within thirty (30) days of receipt of the complaint.

**5.02.10 Spills and Cleanup.** Contractor shall instruct employees to clean up any spills or scattered materials resulting from its collection operation. Contractor shall not be required to cleanup spilled or scattered materials resulting from the actions of others including materials falling from overfilled containers or uncontained materials. The City, at its discretion, may require the temporary or permanent use of larger containers in specified applications when spillover and/or illegal dumping at a commercial, industrial, institutional, or construction sites is a consistent problem.

**5.02.11 Days and Hours of Collection.** Contractor shall perform collections according to the following:

**5.02.11.1 Residential Collections.** Contractor shall perform collections at residential premises (including residential premises with bin service), Monday through Friday between the hours of 6:00 a.m. and 6:00 p.m.

**5.02.11.2 Commercial, Institutional and Industrial Premises.** Contractor shall perform collections at commercial, institutional, and industrial premises, Monday through Saturday between the hours of 5:00 a.m. and 6:00 p.m.

**5.02.12 Holidays.** If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate collection shall be performed on the following day, unless the alternated day falls on Sunday, in which case alternate collection shall then be performed on the following Monday. All other collection days falling on a legal holiday shall remain as scheduled. Collections for the remainder of the week following a holiday shall be delayed for one (1) day.

**5.02.13 City Approval of Residential Routes Required.** Contractor acknowledges that the City schedules street sweeping services for the day following Contractor's performance of collections at residential premises. Contractor shall not change collection schedules for residential premises receiving individual collection without the prior approval of the City which shall not be unreasonably withheld.

### 5.03 ACCEPTABLE MATERIALS

Materials accepted for collection as recyclable materials and greenwaste are specified in Attachments D and E, respectively.

### 5.04 CONVERSION OF GREENWASTE COLLECTION

Within three (3) months of the effective date of this Agreement, contractor shall convert collection of greenwaste from a manual collection method to an automated collection method including the distribution of 95-gallon greenwaste carts to each residential premises receiving individual collection. Unless otherwise changed by Resolution, the fee for each additional cart is \$3.50 monthly.

### 5.05 VEHICLES

**5.05.1 General.** Contractor shall provide a fleet of collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Contractor shall have available sufficient back-up vehicles to respond to mechanical breakdowns, complaints and emergencies.

**5.05.2 Alternative Fuel.** Within twenty-four (24) months of the effective date of this Agreement, all of Contractor's regular route vehicles used for the collections from residential, commercial, institutional, and industrial premises shall be alternative fuel vehicles. Contractor shall be permitted to operate nonalternative fuel vehicles for periods up to thirty (30) days as back-ups for regular route vehicles when such vehicles are out of service for repair or maintenance or to supplement the regular collection vehicles for special programs or emergency situations.

**5.05.3 Specifications.** All vehicles operated in the City by Contractor shall: (i) be registered with the California Department of Motor Vehicles; (ii) have leak proof bodies designed to prevent leakage, spillage, and/or overflow; and (iii) comply with California Environmental Protection Agency noise emission and California Air Resources Board and Southern California Air Quality Management District rules and regulations.

**5.05.4 Identification.** Contractor's name, local telephone number and vehicle identification number designated by Contractor shall be prominently displayed on the sides and rear of each collection vehicle. The City shall be permitted, at its costs, banner advertising (for nonprofit purposes) on the sides of vehicles. The City may also require vehicles be stenciled with, or carry decals depicting, the City logo.

**5.05.5 Condition and Maintenance.** Contractor shall maintain all of its vehicles and equipment used in providing service under this agreement in a good, safe, neat, clean, and operable condition at all times.

**5.05.6 Operation.** Vehicles shall be operated in compliance with federal, state, and local laws and regulations.

## 5.06 CONTAINERS

**5.06.1 General.** Contractor shall provide all carts, bins, and debris boxes, as appropriate, to all customers as part of its obligations under the terms of this Agreement. All containers shall be industry-standard and shall be maintained in a safe, serviceable, and functional condition. Any container impacted by graffiti shall be replaced or painted over by Contractor within forty-eight (48) hours of being notified by the City. All containers used in the performance of this Agreement shall remain the property of the Contractor. Residential carts shall be cleaned or replaced, at the City's discretion.

## 5.07 PERSONNEL

**5.07.1 General.** Contractor shall furnish such qualified drivers, mechanical, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner. All personnel furnished by Contractor shall be subject to the "relationship of parties" provisions of Section 11.01.

**5.07.2 No Gratuities.** Contractor shall not permit its employees to demand, solicit or accept any additional compensation or gratuity in exchange for additional collection services.

**5.07.3 Conduct and Courtesy.** Contractor shall employ only competent and qualified personnel who serve the public in a courteous, helpful, and impartial manner. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take appropriate measures. The City may require Contractor to reassign an employee, if the employee has conducted himself or herself inconsistently with the terms of this Agreement.

**5.07.4 Uniforms.** While performing services under this Agreement, all of Contractor's field service employees shall be dressed in clean uniforms.

## 5.08 HAZARDOUS WASTE

To the extent practical, Contractor shall inspect containers for the presence of hazardous waste and take reasonable precautions to prevent the collection of hazardous waste.

If the presence of hazardous waste is detected in any container, Contractor's personnel shall not collect the contents of the container and shall leave a Notice of Noncollection.

If hazardous waste is later detected in a load, Contractor shall attempt to contact the offending customer who shall be responsible for its removal and cost of removal.

## 5.09 CUSTOMER SERVICE

Contractor shall provide customer service support from its local office for purposes of fielding inquiries regarding services and billings, assisting commercial customers with service arrangements, and receiving payments.

**5.09.1 Customer Service by City.** The City shall provide customer service support to residential customers.

**5.09.2 Office Hours.** Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, on all collection days. A representative of contractor shall be available during office hours for communication with customers at Contractor's principle office. In the event that normal business problems cannot be rectified over the telephone, a representative of Contractor shall agree to meet with customer at a location agreeable to Contractor and customer. Normal office hour telephone numbers shall either be a local or toll free call. Contractor shall also maintain a local or toll free after-hours telephone number or answering service available at said after-hours telephone number during all hours other than normal office hours.

**5.09.3 Service Complaints.** All customer complaints shall be directed to Contractor. Contractor shall record all complaints received by mail, by email, by telephone, or in person (including date, name, address of complainant, and nature of complaint). Contractor agrees to use its best efforts to resolve all complaints by close of business (waste collection) day following the date on which such complaint is received. Service complaints may be investigated by the City Manager or Manager's designee. Unless a settlement satisfactory to complainant, contractor, and Manager's designee is reached, the complainant may refer the matter to the City Manager for review. Contractor shall maintain records listing the date of consumer complaints, the customer, description of the nature of the complaint or request, and when and what action was taken by Contractor to resolve the complaint. All such records shall be maintained and shall be available for inspection by the City, as described in Article 8.

### 5.09.4 Billing for Service.

**5.09.4.1 City Billing and Payment to Contractor.** The City shall bill residential premises for regular individual collection services performed by Contractor. The City shall pay Contractor monthly, not later than the tenth (10th) day following the end of each month for services to residential premises. The City's payment to Contractor for service to residential premises shall be equal to the total number of residential premises in the City, including all Multifamily Dwellings, multiplied by the total rate specified in Attachment F, Rate Schedule, as it may be amended from time-to-time. The number of residential premises shall exclude those premises contracting directly with Contractor for bin service, such as premises in mobile home parks. The City's payment to Contractor shall be adjusted upon the effective date of adjustments in service rates, disposal tip fees or other components of the rate when said adjustments are in accordance with the terms of this Agreement and approved by the City Council.

**5.09.4.2 Contractor Billing.** Contractor shall bill owners of residential premises for bin service and commercial, institutional, and industrial customers for bin, debris box, or stationary compactor services performed by Contractor, in accordance with the

service contract. Billings for regular services shall be monthly in advance; for temporary services, Contractor may require cash/credit card payment in advance of service.

**5.09.4.3 Delinquent Commercial, Industrial and Institutional Accounts.** Accounts unpaid more than ten (10) days shall be considered delinquent. Contractor may stop service to delinquent accounts without notice and service shall thereafter be resumed only upon payment of the accumulated fees and reinstatement and/or redelivery fees. In the event any person shall fail to pay any charge herein provided, when the same becomes due, the City Manager or his/her designee shall pursue all remedies available for collection on behalf of the Contractor including, but not limited to, inclusion of such debts on the property tax billing.

## **5.10 GOVERNMENT LIAISON**

Contractor shall designate a responsible representative to serve as its "government liaison" to work with the City Manager or City Manager's designated representative to resolve customer complaints.

## **5.11 RESOLUTION OF CUSTOMER DISPUTES**

Contractor shall notify customers of this complaint resolution procedure at the time customers apply for or are provided service.

**5.11.1** A Customer dissatisfied with Contractor's decision regarding a complaint may ask the City to review the complaint. To obtain this review, customer must request City review within thirty (30) days of receipt of Contractor's response to the complaint, or within forty-five (45) days of submitting complaint to Contractor, if Contractor has failed to respond to the complaint. The City may extend the time to request its review for good cause.

**5.11.2** Before reviewing the complaint, the City Manager shall refer it to Contractor. If Contractor fails to cure the complaint within ten (10) days, the City Manager shall review customer's complaint and determine if further action is warranted. The City Manager may request written statements from Contractor and customer, and/or oral presentations.

**5.11.3** The City Manager shall determine if customer's complaint is unresolved; and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to rebate of customer charges related to the period of complaint.

**5.11.4** The City Manager may delegate these duties to a designee. The decision of the City Manager or Manager's designee shall be final on any matter under Five Thousand Dollars (\$5,000). In the event of a decision on a matter awarding Five Thousand Dollars (\$5,000) or more, Contractor may seek review pursuant to Section 11.05.

## ARTICLE 6. CITY FEES

### 6.01 GENERAL

The fees described in this Article 6 shall be treated as pass-through costs for the purposes of determining Contractor's compensation and shall be recoverable through the Rates that the City/Contractor charges to Customers. Contractor shall separately identify any of the fees established under this Section on customer bills if directed to do so by the City.

### 6.02 FRANCHISE FEE

In consideration of the exclusive franchise granted to Contractor by this Agreement, and to reimburse the City for costs incurred in administering this Agreement, Contractor shall pay to the City a franchise fee equal to ten percent (10%) of Contractor's gross revenue from services to commercial, institutional, and industrial premises provided in the City's service area under this Agreement, exclusive of all revenue from the sale of recyclable materials and disposal/processing tip fees.

### 6.03 PAVEMENT IMPACT FEE

Beginning July 1, 2011, Contractor shall pay to the City a pavement impact fee equal to three-and-one-half percent (3.5%) of Contractor's gross revenue from services to Commercial, Institutional and Industrial Premises provided in the City's service area under this Agreement, exclusive of all revenue from the sale of recyclable materials and disposal/processing tip fees.

### 6.04 TIME AND METHOD OF PAYMENT

**6.04.01 Quarterly Payments.** On or before the last day of the month following the end of each calendar quarter, Contractor shall pay to the City the amounts due for the franchise fee.

**6.04.02 Remittance Form.** Concurrent with the payment of the fees, Contractor shall provide a remittance form following the form, to be approved by the City, (i) identifying the gross revenues received for each service sector for the calendar quarter; (ii) calculation of the City fees due the City; and (iii) a declaration signed by an officer of the company: "I declare under penalty of perjury that the information provided herein is true, complete, and accurate to the best of my knowledge." Fees due the City shall be considered paid when full payment and a complete the City fee remittance form are received by the City.

**6.04.03 Late Payment Fees.** Late payments shall incur a late payment charge equal to one-and-one-half percent (1.5%) per month of the unpaid fees due for the quarter. Late payment charges are not included in Contractor's compensation and may not be recovered through customer Rates.

## **6.05 ADJUSTMENT TO CITY FEES; ADDITIONAL CITY FEES**

The City may from time to time, by Resolution of the City Council, increase the amount of the fees described in this Section and establish additional fees. All fee adjustments and or additional fees shall be subject to the provisions of Proposition 218. Changes in the total amount of fees to be collected by Contractor and remitted to the City shall be reflected in an adjustment to Contractor's compensation and rates coinciding with the effective date of the fee adjustment or establishment of an additional fee.

## **6.06 ONE-TIME ADMINISTRATIVE FEE**

Contractor shall pay to the City a one-time administrative fee up to Two Thousand Five Hundred Dollars (\$2,500) for the City's administrative costs entering into this Agreement, plus legal fees. The Administrative and legal fees shall be due and payable within ten (10) days following approval of this Agreement by the City Council and shall be precedent to this Agreement becoming effective.

## **ARTICLE 7. CONTRACTOR COMPENSATION AND RATES**

### **7.01 GENERAL**

Contractor's compensation provided for in this Article 7 shall be the full, entire, and complete compensation due Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, fees charged at the disposal facilities and processing facilities used by Contractor, fees due the City, taxes, insurance, bonds, overhead, profit, and all other items necessary to perform all of the services in the manner required by the Agreement.

### **7.02 INITIAL RATES**

The maximum initial rates (i) that Contractor shall be permitted to charge for Contractor's services; and (ii) that the City shall pay Contractor for service to residential premises, are those rates specified in Attachment F, Rate Schedule.

The initial Attachment, F Rate Schedule, and each subsequent revised Attachment F, shall list: (i) each collection service, additional service and all miscellaneous fees and charges (e.g., single-family residential premises with individual collection, three CY bins, one pickup per week, three CY bins, two pickups per week, (ii) the total monthly rate or per incident rate for each item in (i); and (iii) each of the components of the rate that when totaled equal the total rate (e.g., Contractor service fee, disposal facility tip fee, City franchise fee, etc.).

### **7.03 ANNUAL FORMULA-BASED COMPENSATION ADJUSTMENT**

The maximum rates set forth in Attachment F, Rate Schedule, may be adjusted annually, upon request 90 days in advance, effective each July 1 by an amount equal to the average increase in the Consumer Price Index for *All Cities Consumer Price Index*

(CPI) for the *Los Angeles-Riverside-Orange Co. Area, A-Items Indexes, All Urban Consumers*, as published by the United States Department of Labor, Bureau of Labor Statistics for the previous 12 months ending in December. The first such adjustment may become effective July 1, 2011, and shall apply to all rate components except the disposal/processing facility tip fee component. For example, an adjustment for July 2011 would be based upon the average CPI change reported in the CPI published for January 2010 through December 2010. It is understood by both parties that the maximum annual CPI increase shall be no greater than five percent (5%).

**Formula Adjustment Request Procedure.** Contractor shall submit its request for a CPI-based formula rate adjustment not later than April 1 of the year in which the adjustment shall be made, accompanied by a complete revised Attachment F, Rate Schedule, reflecting the CPI-based formula rate adjustment.

**7.03.1 Approval; Formula Adjustments.** Contractor's request for increase shall be reviewed and considered by the City Council. The City Council's decision shall be based upon verification of the increase in CPI, verification of Contractor's computations of the increases in the Attachment F, Rate Schedule, and the reasonableness of the proposed Rates. The City Council's approval may be rendered not later than June 30th and may not be unreasonably withheld.

#### **7.04 DISPOSAL / PROCESSING FACILITY TIP FEE ADJUSTMENT**

The disposal/processing tip fee component of the rate is a pass-through expense and shall be adjusted annually to reflect any change in fees charged by the disposal/processing facility.

**7.04.1 Tip Fee Adjustment Request Procedure.** Contractor shall submit its request for a tip fee rate adjustment not later than April 1st of the year in which the adjustment shall be made. The tip fee adjustment shall be made in conjunction with the annual rate compensation adjustment.

**7.04.2 Approval.** Contractor's request for increase shall be reviewed and considered for approval by the City Council. The City Council's decision shall be based upon verification of the increase in disposal/processing tip fees, verification of Contractor's computations of the increases in the Attachment F, Rate Schedule, and the reasonableness of the proposed rates. The City Council's approval may be rendered not later than June 30th and may not be unreasonably withheld.

#### **7.05 EXTRAORDINARY RATE ADJUSTMENTS**

Contractor may request an adjustment to its rates at reasonable times other than that allowed in Sections 7.03 and 7.04 in the event of extraordinary changes in the cost of providing service under this Agreement.

**7.05.1 Included Changes.** Changes in the cost of providing service considered extraordinary shall include but not be limited to:

1. *Changes in Scope.* Changes in the scope of services of this Agreement.

2. *Changes in Law.* Changes in law or regulations enacted after the effective date of this Agreement by federal, state, or local regulatory agencies including amendments to the City's Municipal Code.
3. *Extraordinary Costs.* Changes in operating costs brought about by unforeseen circumstances beyond the control of the Contractor.
4. *Change in Disposal Facility.* Temporary or permanent changes in the location of the disposal facility.
5. *Value of Recyclables.* Change in the value of recyclable materials.
6. *Clean Fuel Requirement.* Compliance with SCAQMD Rule 1193.
7. *Fuel Surcharge.* Temporary or permanent fees to offset the increased cost of operating fuels.

**7.05.2 Excluded Changes.** Changes in the cost of providing service specifically excluded shall be limited to:

1. *Inaccurate Estimates.* Inaccurate estimates assumed by Contractor in the number of service units or the cost of rendering service pursuant to this Agreement.
2. *Employee Wage Rates and Benefits.* Changes in the cost of providing service due to changes in wage rates or employee benefits granted by Contractor.

**7.05.3 Request and Review.** For each request for an extraordinary rate adjustment to rates that Contractor may charge customers brought pursuant to this Article 7, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to the City with support for assumptions made by Contractor in preparing the estimate. The City shall review the Contractor's request and, in the City's sole judgment and absolute unfettered discretion, make the final determination as to whether an adjustment to the rates will be made and, if an adjustment is to be permitted, the appropriate amount of the adjustment.

## ARTICLE 8. RECORDS AND REPORTS

### 8.01 RECORDS

**8.01.3 General.** Contractor shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City.

**8.01.4 Inspection.** Contractor's records shall be available for inspection by the City at Contractor's corporate office during regular business hours and upon reasonable notice.

**8.01.5 Records Retention.** Contractor shall maintain all records required in the performance of this Agreement for a period of five (5) years after its expiration or early termination.

**8.01.6 Customer Records.** Contractor shall maintain customer and billing information by Service Sector including: (i) name, address, and phone numbers of customer; (ii) service level; and (iii) amount billed.

**8.01.7 Service Records.** Contractor shall maintain record of customer complaints and inquiries for three (3) years.

**8.01.8 Materials Records.** Contractor shall maintain a monthly record by service sector of the weight of solid waste, recyclable materials, and greenwaste collected from all premises in the City.

**8.01.9 Disposal Records.** Contractor shall maintain a monthly record of all solid waste disposed by disposal facility.

**8.01.10 Route Information.** Contractor shall maintain a record of its routes and collection days by service sector for review by the City. Such record may be in the form of maps and route books.

## **8.02 REPORTS**

**8.02.3 General.** Contractor shall submit reports according to the following schedule: (i) monthly reports within forty-five (45) days after the end of the reporting month; (ii) quarterly reports within forty-five (45) days after the end of each calendar quarter; (iii) annual reports within forty-five (45) days after the end of the calendar year; and (iv) event-specific reports shall be submitted within thirty (30) days following the occurrence.

**8.02.4 Monthly Report.** Monthly, Contractor shall prepare and submit a report of the following: (i) total solid waste disposed by service sector and recyclable materials, greenwaste, and construction debris tonnage diverted by service sector; (ii) recycling program participation determined from data gathered on a daily basis; (iii) record of recyclable materials sold reflecting the quantity of tonnage sold of each category; (iv) Information compiled concerning customer complaints, along with a brief narrative describing any operational changes made to respond to complaints received and to prevent their reoccurrence in the future; and (v) list of notices issued detailing recyclable materials contamination problems and Contractor's follow-up actions, including copies of contamination notices and warning letters issued during the month.

**8.02.5 Quarterly Report.** Quarterly, Contractor shall prepare and submit a report of its gross revenue by service sector.

**8.02.6 Annual Report.** Annually, Contractor shall prepare and submit a report containing: (i) a summary of activities including, but not limited to, services begun or discontinued during the reporting year; (ii) number of customers for each service sector; (iii) a report summarizing the City's progress in meeting and maintaining

diversion goals under AB 939, including any recommended changes; (iv) a revenue statement setting forth all fees paid to the City during the reporting year including the basis for calculation thereof; (v) a report on the amount by weight of recyclable materials, greenwaste, and construction and demolition waste diverted from landfill disposal; and (vi) list of Contractor's officers and members of its board of directors; and (vii) list of stockholders or other equity investors holding five percent (5%) or more of voting interest in Contractor and any subsidiaries unless Contractor is a public corporation whose annual reports are publicly available.

Contractor's annual report shall also include: (i) a review of emerging technologies, demonstrations and tests applicable to the City; and (ii) specific plans for recommendations for new services for the City.

**8.02.7 Event-Specific Reporting.** Contractor shall submit event-specific reports following the occurrence of any of the following events: (i) accumulated solid waste at premises in the City; (ii) unauthorized dumping; (iii) hazardous waste identified in containers; (iv) unauthorized collectors observed including theft of recyclable materials; (v) summary of special event activities conducted in the City by Contractor; and (vi) any reports or material submitted by Contractor to any federal or state agency containing information adverse to the City or this Agreement.

## **8.03 AUDIT**

**8.03.3 Auditable Records.** Contractor shall maintain in auditable form all records relating to the services provided hereunder, namely: (i) customer lists, (ii) billing records, (iii) accounts receivable records, (iv) maps, (v) AB 939 compliance records, and (vi) customer complaints, for the most current five (5) year period of time, or any longer period required by law or by the City. The City shall have the right, upon five (5) days advance notice, to inspect maps, AB 939 compliance records, customer complaints, and other like materials of Contractor which reasonably relate to Contractor's compliance with the provisions of the Agreement. Such records shall be made available to the City at Contractor's regular place of business.

**8.03.4 Underpayment of City Fees.** Should any examination or audit of Contractor's records reveal an underpayment of any City fee or payment to the City required by this Agreement, the amount of such underpayment of any fee required shall become due and payable to the City with interest at the legal rate of seven percent (7%) not later than fifteen (15) days after written notice of such underpayment is sent to Contractor by the City. Should any underpayment of more than three percent (3%) be discovered, Contractor shall bear the entire cost of the audit.

## **ARTICLE 9. INDEMNITY**

### **9.01 INDEMNIFICATION OF CITY**

Contractor shall indemnify, defend and hold harmless the City, its officers, employees, and agents (collectively, the "indemnitees"), from and against: (i) any and all liability,

penalty, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature, (ii) any and all loss including, but not limited to, injury to and death of any person and damage to property, and (iii) contribution or indemnity demanded by third parties (collectively, the "claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Agreement. The foregoing indemnity shall not apply to the extent that a claim is caused solely by active negligence or intentional misconduct of the indemnitees, but shall apply if the claim is caused by the joint negligence of any claim; Contractor shall defend (with attorneys reasonably acceptable to the City) the indemnitees. Contractor's duty to defend and indemnify shall survive the expiration or earlier termination of this Agreement.

## **9.02 INDEMNIFICATION OF CONTRACTOR**

The City shall indemnify, defend and hold harmless Contractor, its officers, directors, shareholders, employees, and agents (collectively, the "indemnitees"), from and against: (i) any and all liability, penalty, claim, demand, action, proceeding, or suit of any and every kind and description, whether judicial, quasi-judicial or administrative in nature; (ii) any and all loss including, but not limited to, injury to and death of any person and damage to property; and (iii) contribution or indemnity demanded by third parties (collectively, the "claims"), arising out of or occasioned in any way by, directly or indirectly, the City's performance of, or its failure to perform, its obligations under this Agreement. The foregoing indemnity shall not apply to the extent that a claim is caused solely by active negligence or intentional misconduct of the indemnitees, but shall apply if the claim is caused by the joint negligence of any claim; the City shall defend (with attorneys reasonably acceptable to Contractor) the indemnitees. The City's duty to defend and indemnify shall survive the expiration or earlier termination of this Agreement.

## **9.03 AB939 INDEMNIFICATION**

Contractor agrees to indemnify and hold harmless the indemnitees against all fines and/or penalties imposed by the California Department of Resources, Recycling and Recovery (Cal Recycle) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by Cal Recycle or caused or contributed to by Contractor's failure to perform its obligations under this Agreement. This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section. This indemnity shall survive the termination or earlier expiration of this Agreement.

## **9.04 HAZARDOUS SUBSTANCES AND COMPREHENSIVE ENVIRONMENTAL RESPONSE, AND LIABILITY ACT (CERCLA) INDEMNIFICATION**

Except with respect to Disposal Facilities used by Contractor, Contractor shall indemnify, defend with counsel approved by the City, protect and hold harmless the City, its officers, employees, agents, assigns, volunteers, and any successor or successors to the City's interest (collectively, "indemnitees") from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of

action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid (collectively, "claims"), incurred or suffered by, or asserted against, the City or its officers, employees, agents, or Contractor arising from or attributable to any pickup, repair, cleanup, or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan (regardless of whether or not undertaken due to governmental action) concerning any hazardous substances or hazardous wastes including the release of such substances or wastes at any place where Contractor stores or disposes of municipal solid waste pursuant to the Agreement, provided that this indemnity does not extend to claims to the extent that they are caused solely by the negligence or willful misconduct or breach of this Agreement by an indemnitee. The indemnity provided in this Section shall apply to Claims arising from acts or omissions of Contractor which occur during the term of this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify the City from all liability. The indemnity provided in this Section 10.02 is separate from and supplementary to that provided in Section 10.01.

## **ARTICLE 10. INSURANCE AND PERFORMANCE BOND**

### **10.01 INSURANCE**

**10.01.01 Types and Amounts of Coverage.** Contractor shall procure from an insurance company or companies authorized to do business in the State of California, and shall maintain in force at all times during the term, the following types and amounts of insurance:

1. *Workers' Compensation and Employer's Liability.* Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain employer's liability insurance in an amount not less than One Hundred Thousand Dollars (\$100,000) per accident or disease and an excess umbrella liability policy with a minimum of not less than Five Million Dollars (\$5,000,000) per occurrence. Contractor shall not be obligated to carry workers compensation insurance if: (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (ii) furnishes a Certificate of Permission to Self-Insure issued by the Department of Industrial Relations; and (iii) furnishes updated Certificates of Permission to Self-Insure periodically to evidence continuous self-insurance.
2. *Commercial General Liability.* Contractor shall maintain commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars

(\$2,000,000) aggregate, covering personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of services under this Agreement.

The insurance required by this subsection shall include:

- (a) Premises Operations (including use of owned and nonowned equipment)
- (b) Personal Injury Liability

The commercial general liability insurance shall be written on an "occurrence" basis (rather than a "claims made" basis) in a form at least as broad as the most current version of the Insurance Service Office Commercial General Liability Occurrence Policy Form (CG0001). If occurrence coverage is not obtainable, Contractor must arrange for "tail coverage" on a claim's made policy to protect the City from claims filed within four years after the expiration or earlier termination of this Agreement relating to incidents that occurred prior to such expiration or termination.

- 3. *Vehicle Liability.* Contractor shall maintain automobile liability insurance covering all owned, nonowned, and hired vehicles used in performing service under this Agreement with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage.

**10.01.02 Acceptability of Insureds.** The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of *Best's Insurance Reports* of size category VIII or larger and a rating classification of "A" or better.

**10.01.03 Required Endorsements.** Without limiting the generality of Sections 13.02.A and B, the policies shall contain endorsements in substantially the following form:

1. *Workers' Compensation and Employers' Liability Policy*

- (a) "Thirty (30) days prior written notice shall be given to the City in the event of cancellation of this policy, except ten (10) days written notice for cancellation of this policy for nonpayment of premium." Such notice shall be sent to:

City Manager  
City of Montclair  
P.O. Box 2308  
Montclair, CA 91763

- (b) "Insurer waives all right of subrogation against the City and its officers and employees for injuries or illnesses arising from work performed for the City."

2. *Commercial General Liability Policy; Automobile Liability Policy; Pollution Liability Policy; and Hazardous Materials Policy*

- (a) "Thirty (30) days prior written notice shall be given to the City in the event of cancellation of this policy, except ten (10) days written notice for cancellation of this policy for nonpayment of premium." Such notice shall be sent to:

City Manager  
City of Montclair  
P.O. Box 2308  
Montclair, CA 91763

- (b) "The City, its officers, employees, and agents are additional insureds on this policy."
- (c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- (d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit, or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

**10.01.04 Self-Insured Retention.** The liability policies described in Sections 14.02 may contain self-insured retentions. The self-insured retentions may not exceed Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence.

**10.01.05 Delivery of Proof of Coverage.** Prior to the effective date of this Agreement, Contractor shall furnish the City one or more certificates of insurance on a standard ACORD form substantiating that each of the coverages required hereunder is in force, in form and substance satisfactory to the City. Such certificates shall show the type and amount of coverage, effective dates, and dates of expiration of policies and shall be accompanied by all required endorsements. If the City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to the City. Contractor shall furnish renewal certificates to the City to demonstrate maintenance of the required coverages throughout the term.

#### **10.01.06 Other Insurance Requirements**

- 1.) In the event performance of any services is delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 14.02.a.(2) and the automobile liability policy required by Subsection 14.02.a.(3) shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section.
- 2.) Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim is made by any third person against Contractor or any subcontractor on account of any occurrence related to this Agreement, other than claims by employees for work-related incidents, Contractor shall promptly report the facts in writing to the insurance carrier and to the City.
- 3.) If Contractor fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain such insurance as it may deem proper and may require Contractor to reimburse it for the cost incurred within thirty (30) days and/or deduct the cost from any moneys due Contractor. The City may also treat the failure as a Contractor default.
- 4.) The City is not responsible for payment of premiums for or deductibles under any required insurance coverages.
- 5.) Any excess or umbrella policies shall be written on a "following form" basis.

#### **10.02 FAITHFUL PERFORMANCE BOND**

Prior to the effective date of this Agreement, Contractor shall file with the City a bond securing the Contractor's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be Two Hundred Thousand Dollars (\$200,000). The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, regulated by the California Insurance Commissioner, and with a financial condition and record of service satisfactory to the City.

The term of the bond shall be not less than twelve (12) months. The bond shall be extended, or replaced by a new bond in the same principal sum, for the same term (*i.e.*, twelve (12) months) and in the same form, annually thereafter. Not less than thirty (30) days before the expiration of the initial, or any subsequent, bond, Contractor shall furnish either a replacement bond or a continuation certificate, executed by the surety.

It is the intention of this Section that there be in full force and effect at all times a bond securing the Contractor's faithful performance of the Agreement, throughout its term.

## ARTICLE 11. ADDITIONAL AGREEMENTS OF PARTIES

### 11.01 RELATIONSHIP OF PARTIES; INDEPENDENT CONTRACTOR

The parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by the City and not as an officer or employee of the City nor as a partner of or joint venturer with the City. No employee of Contractor shall be deemed to be an employee or agent of the City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the services performed under this Agreement and over all persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefit, workers' compensation benefits, or any other benefits that accrue to City employees by virtue of their employment with the City.

### 11.02 COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the state, and the City, with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies and by the City now in force and as they may be enacted, issued, or amended during the term and with all permits affecting the services to be provided.

### 11.03 ASSIGNMENT; TRANSFER; CHANGE IN CONTROL

**11.03.01 City Consent Required.** It is the expressed intent of the parties to this Agreement that the rights and privileges granted by this Agreement shall not be transferred, sold, hypothecated, leased, or assigned; nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or transferred, either in whole or in part; nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person, except Contractor, either by act of Contractor or by operation of law; nor shall any change in control occur without the prior written consent of the City expressed by Resolution adopted by the City Council.

It is further understood and agreed that the City's consent to any of the above actions or transactions may be withheld for any reason, with or without cause; and that upon the occurrence of any of the above events, without consent of the City, the City shall have the absolute right to terminate the Agreement without notice.

**11.03.02 Assignment to Family Member.** Notwithstanding the fact it would otherwise fall within the provisions of this Section 11.03, any transfer of interests to an immediate family member of any existing shareholder may occur with the written approval of the City Manager if Contractor certifies and the City Manager verifies that the transfer is in fact to an immediate family member or members and the City Manager finds both of the following: (i) that the transfer of interest would have no adverse impact on Contractor's operations in the City; and (ii) that the transfer of interest would not result in any interest in Contractor being vested in any person who

is not an immediate family member of an existing shareholder of Contractor. In the event the City Manager is unable to make these findings, or has any concern regarding his ability to do so, he may refer the matter in whole or part to the City Council for its consideration, approval, or other action, and the City Council shall have the discretion to consider the matter as if it is a transfer as described in this Section 11.03.

#### **11.04 SUBCONTRACTING**

Contractor shall not engage any subcontractors to perform any of the services required of it by Article 5 of this Agreement without the prior written consent of the City. Contractor shall notify the City no later than thirty (30) days prior to the date on which it proposes to enter into a subcontract. The City may approve or deny any such request in its sole discretion and its approval shall not be unreasonably withheld.

**11.04.01 Affiliated Entity.** Contractor retains the right to enter into an arrangement with an affiliated entity to perform any of the services, activities or administration of services or activities which Contractor is required or allowed to perform under this Agreement. Any arrangement by Contractor with an affiliated entity shall neither be considered as **subcontracting nor as an assignment.**

#### **11.05 DISPUTES BETWEEN PARTIES**

Should either party be dissatisfied with any action, inaction, report, finding, decision, or matter of discretion of the other, except for a material breach of the Agreement by Contractor, the aggrieved party shall notify the other in writing, within ten (10) days of the aggrieved event, setting forth their understanding of the facts, rights or claims and reasons for objecting. Within 15 days following such notification, the Parties shall meet in good faith in an Administrative Review conducted by the City Manager to resolve the matter to the reasonable satisfaction of both parties. Should the parties fail to reach an agreement on the disputed matter within ten (10) days, the aggrieved party: (i) if the Contractor, may request a Review Hearing before the City Council to be conducted within twenty (20) days of the request for a Review Hearing; or (ii) if the City, shall schedule a Review Hearing before the City Council to be conducted within twenty (20) days of the Administrative Review. The decision of the City Council at the Review Hearing shall be binding.

#### **11.06 FORCE MAJEURE**

Except as otherwise provided herein, Contractor shall not be in default under this Agreement in the event that the services to be provided by Contractor are temporarily interrupted or discontinued for any of the following reasons: (i) riots, wars, sabotage, civil disturbances, insurrections, and explosion; (ii) natural disasters such as floods, earthquakes, landslides, and fires; (iii) strikes, lockouts, and other labor disturbances lasting less than ten (10) calendar days; or (iv) other catastrophic events which are beyond the reasonable control of Contractor. Other catastrophic events do not include the financial inability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Contractor except as otherwise provided.

## **11.07 OWNERSHIP OF SOLID WASTE**

**11.07.01 Contractor Ownership and Rights.** Once solid waste, recyclable materials, greenwaste, and construction debris are placed in containers for collection, or containers at curbside, ownership shall transfer to Contractor, subject to the terms of this Agreement, by operation of law. Subject to Contractor's duty to meet the AB 939 goals that apply to the City, Contractor is hereby granted the right to retain, recycle, compost, dispose of, and otherwise use such solid waste, recyclable materials, greenwaste, and construction debris, or any part thereof, in any lawful fashion or for any lawful purpose desired by Contractor. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of, or use the solid waste, recyclable materials, greenwaste, and construction debris, or any part thereof.

**11.07.02 Transfer of Ownership.** When disposed of at a disposal site or sites (whether landfill, transformation facility, transfer station, or material recovery facility) solid waste, recyclable materials, greenwaste, and construction debris shall become the property of the owner or operator of the disposal facility once deposited there by Contractor. At no time does the City obtain any right of ownership or possession of solid waste placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that the City has such rights.

## **11.08 EVENTS OF DEFAULT**

Each of the following shall constitute an event of default ("Contractor default"): (i) Contractor fails to perform its obligations under Article 5 of this Agreement and its failure to perform is not cured within ten (10) business days after written notice from the City; (ii) Contractor fails to perform its obligations under any Section of this Agreement and its failure to perform is not cured within ten (10) business days after written notice from the City, provided that if the nature of the breach is such that it will reasonably require more than ten (10) business days to cure, Contractor shall not be in default so long as it promptly commences the cure and diligently proceeds to completion of the cure, and provided further that neither notice nor opportunity to cure applies to events described in subsections (iii) through (viii); (iii) Contractor ceases to provide collection and transportation services for a period of two (2) business days for any reason within Contractor's control, except for events described in Section 11.06; (iv) Contractor files a voluntary petition for relief under any bankruptcy, insolvency or similar law; (v) an involuntary petition brought against Contractor under any bankruptcy, insolvency, or similar law which remains undismissed or unstayed for ninety (90) days; (vi) Contractor fails to furnish a replacement bond or a continuation certificate of the existing bond not less than ten (10) days before expiration of the bond, as required by Article 10 or fails to maintain all required insurance coverages in force; and (vii) a representation or warranty contained in Section 2 proves to be false or misleading in a material respect as of the date such representation or warranty was made.

## **11.09 ADMINISTRATIVE HEARING**

**11.09.01 Hearing Required.** An Administrative Hearing shall be held: (i) if either party alleges a breach of this Agreement by the other; and (ii) preceding a default

hearing before the City Council. Should either party contend a breach of this Agreement by the other party, the offended party shall file a written request with the other for an Administrative Hearing within fourteen (14) days of the alleged breach.

**11.09.02 Hearing Officer Selection.** Within ten (10) days of receipt of Contractor's written notice or within ten (10) days of delivering written notice to Contractor, the City Manager and Contractor shall meet to mutually agree on the selection of a hearing officer. If agreement is not reached within twenty (20) days of the filing of the notice of breach, then Contractor shall select the hearing officer from a list of three potential hearing officers who are retired California Superior Court or Appellate Court justices, none of whom are related to the parties, prepared by the City Manager and approved by the City Council.

**11.09.03 Hearing Procedure and Venue.** The hearing shall be conducted according to California Code of Civil Procedure Section 1280, *et seq.* The exclusive venue shall be in San Bernardino County, California. A hearing officer to whom a matter is referred shall have the authority to: (i) order the City or Contractor to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; (ii) assess damages and/or levy a penalty upon the City or the Contractor consistent with the terms of this Agreement; or (iii) find there has been no breach. If the hearing officer finds there has been no breach, such a decision precludes the City from conducting a default hearing. For any occurrence or series of related

**11.09.04 Payment of Fees.** The party losing the hearing shall be liable for the hearing officer's fees.

**11.09.05 Failure to Comply.** Any failure of Contractor to comply with the hearing officer's order shall be deemed a material breach of the Agreement and may be grounds for termination of the Agreement.

**11.09.06 Hearing Commencement; Discovery.** The hearing officer shall commence the hearing within thirty (30) days of selection unless the parties and the hearing officer otherwise agree. Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties, or if agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of privilege of the parties, and the hearing officer shall adopt procedures to protect such rights. Except as may be otherwise specifically agreed by the parties, no other form of pretrial discovery shall be available to the parties; provided that if either party notifies the hearing officer that a material violation of the franchise or rights in connection therewith is claimed by either party, the provisions of Code of Civil Procedures Section 1283.05 shall apply.

**11.09.07 Communications.** Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the

other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.

**11.09.08 Effective Date; Findings.** Until a final decision is entered from the hearing officer proceeding under the foregoing provisions and the time for appeal or other post judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in the Agreement and related to the subject matter of the hearing shall be stayed. The hearing officer may modify or cancel any proposed penalties or sanctions upon finding that the party subject thereto acted with substantial justification or if the interest of justice so require.

**11.09.09 Appeal.** Any party to a hearing may petition the Superior Court in San Bernardino County, California, to confirm, correct, or vacate the award on the grounds stated in the General Arbitration Act. Any proceedings on appeal shall be in accordance with Code of Civil Procedures 1294 and 1294.2.

## **11.10 LIQUIDATED DAMAGES**

**11.10.09 Material Breach.** The City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a material breach by Contractor of its obligations under this Agreement. The factors relating to the impracticality of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable services; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

**11.10.10 Amount.** After providing Contractor notice and an opportunity to cure set forth herein, the City Council may, in its discretion, assess liquidated damages in an amount not to exceed One Hundred Dollars (\$100.00) per day, per incident for each calendar day that service is not provided by Contractor in accordance with this Agreement. The Parties acknowledge that the phrase "ceases to provide collection and transportation services" [Section 11.08(iii)] refers to a comprehensive failure to perform and does not mean an occasional missed pickup or other similar mistake. The amount of the liquidated damages shall be adjusted annually each July 1 by the amount of change in the Consumer Price Index according to the procedure specified in Article 7 for Contractor compensation. In addition, the City Council may order the assessment against the bond required by Section 11.03, the termination of the Agreement, or both.

**11.10.11 Payment.** The City finds, and Contractor acknowledges and agrees, that the above described liquidated damage provisions represent a reasonable sum in light

of all the circumstances. Said liquidated damages sums shall be applicable to each business day of delay during which Contractor has been found by the City Council to be in material default pursuant to this Section. The Contractor shall pay any liquidated damages assessed by the City Council within ten (10) days after they are assessed.

## **11.11 CITY'S ADDITIONAL REMEDIES**

In addition to the remedies set forth in this Section, the City shall have the following rights and remedies:

**11.11.09 Rental of Equipment and Facilities.** To rent or lease equipment from Contractor at its fair and reasonable rental value for the purpose of performing the services which Contractor is obligated to perform pursuant to this Agreement, for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to the City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to possess the equipment. If the City exercises its rights under this Section, the City shall pay Contractor the reasonable rental value of the equipment so taken for the period of the City's possession thereof.

**11.11.10 Performance by Others.** The right to license others to perform the services otherwise to be performed by Contractor hereunder or to perform such services itself.

**11.11.11 Damages.** The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach under the terms of this Agreement by Contractor, the City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of this Agreement and to enjoin the breach thereof.

## **11.12 RIGHTS OF CITY TO PERFORM DURING EMERGENCY**

**11.12.09 Temporary Possession.** Should Contractor, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 11.06, "force majeure", refuse or be unable to collect, transport, recycle, compost, and dispose, and provide temporary bin/roll-off services for any or all of the refuse, compostables, and recyclables which it is obligated under this agreement for a period of more than seventy-two (72) hours, and if as a result thereof, debris, refuse, compostables, recyclables, and construction debris should accumulate in the City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety, or welfare, then in such event the City shall have the right, upon twenty-four (24) hours prior written notice to Contractor, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Contractor previously used in the collection, transportation, recycling, composting, and disposal of solid waste and construction debris and provide temporary bin/roll-off services under this Agreement, and to use such equipment and facilities to collect, recycle, compost, and transport any or all debris, refuse, compostables, recyclables, and construction debris and provide temporary bin/roll-off services which Contractor would otherwise be obligated to collect, recycle, compost, transport, and dispose of solid waste and construction debris

and provide temporary bin/roll-off services pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with city to affect such a transfer of possession for the City's use and pay and/or reimburse the City for such reasonable costs related to the temporary possession and operation, of such equipment and facilities, and/or provision of such services as defined herein.

**11.12.10 No Payment; Relinquishment.** Contractor agrees that, in such event, the City may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charge, provided that the City agrees that, in such event, it assumes complete responsibility for the proper and normal use of such equipment and facilities. The City agrees that it shall immediately relinquish possession of all of the above mentioned property to Contractor upon receipt of written notice from Contractor to the effect that it is able to resume its normal responsibilities under this Agreement.

**11.12.11 Emergency Response Plan.** Contractor shall provide services as specified in Attachment "G."

## **ARTICLE 12. MISCELLANEOUS PROVISIONS**

### **12.01 GOVERNING LAW**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

### **12.02 JURISDICTION**

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be performed in Riverside County.

### **12.03 BINDING ON SUCESSORS**

The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the parties.

### **12.04 PARTIES IN INTEREST**

Nothing in this Agreement is intended to confer any rights on any persons other than the parties to it and their permitted successors and assigns.

### **12.05 WAIVER**

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

## **12.06 ATTACHEMNTS**

Each of the attachments, identified as Attachments "A" through "F," is attached hereto and incorporated herein and made a part hereof by this reference.

## **12.07 ENTIRE AGREEMENT**

This Agreement, including the attachments, represents the full and entire agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

## **12.08 SECTION HEADINGS**

The article headings and section headings and table of contents in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

## **12.09 INTERPRETATION**

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

## **12.10 AMENDMENT**

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

## **12.11 SEVERABILITY**

If a court of competent jurisdiction holds any nonmaterial provision of this Agreement to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement; which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

## **12.12 COSTS AND ATTORNEY'S FEES**

The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs expended in connection with such an action from the other party. However, each party shall bear its own attorneys' fees.

## **12.13 REFERENCE TO LAWS**

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

**IN WITNESS WHEREOF**, the City and Contractor have executed this Agreement as of the day and year first above written:

**CITY:**

**CITY OF MONTCLAIR**

**CONTRACTOR:**

**BURRTEC WASTE INDUSTRIES, INC.**

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

\_\_\_\_\_  
Cole Burr  
President

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

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Diane E. Robbins  
City Attorney

ATTACHMENT "A"  
AGREEMENT NO. 11-57  
BETWEEN THE CITY OF MONTCLAIR  
AND  
BURRTEC WASTE INDUSTRIES, INC.  
DEFINITION OF TERMS

1. "Act" shall mean the California Integrated Waste Management Act.
2. "Applicable Law" shall mean all law, statutes, rules, regulations, guidelines, permits, actions, determinations, orders or requirements of the United States, State of California, County of San Bernardino, City, regional, or local government authorities, agencies, boards, commissions, courts, or other bodies having applicable jurisdiction that from time to time apply to or govern Contractor's services or the performance of the parties' respective obligations hereunder including any of the foregoing that concern health, safety, fire, environmental protection, labor relations, mitigation, monitoring plans, building codes, zoning, nondiscrimination, and the payment of minimum wages. All references herein to Applicable Law include subsequent amendment or modifications thereof, unless otherwise specified.
3. "Bin" shall mean a covered or fully enclosed moveable container in which putrescible and nonputrescible solid wastes or Recyclables are stored until removed from the premises including, but not limited to, privately owned or proprietary bins, enclosed roll-off type Debris Boxes, or enclosed roll-off-type stationary compactors.
4. "Bulky Item" or "Bulky Waste" shall mean Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses,); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances, and other similar items, commonly known as "white goods"); electronic equipment (including stereos, televisions, computers and monitors, including laptops, VCRs, microwaves, and other similar items commonly known as "brown goods" and "e-waste"); universal waste (vacuum cleaners, phones, cell phones, etc.), and clothing. Bulky Items do not include car bodies or Construction and Demolition Waste. Other items not specifically included or excluded above will be collected provided they are not more than eight feet in length, four feet in width, or more than 150 pounds. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties. Excluded from Bulky Items are materials (including plumbing fixtures

ATTACHMENT "A"  
AGREEMENT NO. 11-57

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and carpet) from renovation/additions to homes that are considered Construction and Demolition materials.

5. "Business Day" shall mean any day of the regular Monday through Friday workweek, except Holidays.
6. "City" means the City of Montclair or any governmental entity that may hereinafter assume waste management obligations of the City including any joint exercise of powers authority or other similar public entity with which the City participates or contracts with, established to provide solid waste management services or meet solid waste diversion requirements under Applicable Law.
7. "City Facility" shall mean any building, park or other site owned, leased, controlled or used regularly and significantly by the City for public purposes. Any site owned or leased by City and used for private purposes such as a business establishment that charges the public or its customers a fee for its goods or services shall be deemed to not be a City Facility.
8. "City Fees" shall mean the Franchise Fee, Diversion Fee or other fee levied by City and included in Contractor's rate charged to Customer.
9. "Collection" shall mean collection of Solid Waste and its transportation to a Disposal Site.
10. "Commercial Premises" shall mean any premises occupied by stores, offices, and other commercial facilities providing goods or services.
11. "Construction and Demolition Waste" ("C&D Waste," "C&D Material") shall mean building materials and solid waste resulting from construction, remodeling, repair, cleanup, or demolition operations that are not hazardous as defined in California Code of Regulations, Title 22, Section 66261.3 *et seq.* This term includes, but is not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard and other associated packaging, roofing material, ceramic tile, carpeting, plastic pipe, steel, and other metals. The material may be commingled along with rock, soil, tree stumps, and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.
12. "Consumer Price Index" and "CPI" shall mean the Consumer Price Index published by the US department of Labor, Bureau of Labor Statistics, All Items, for All Urban Consumers, All Items, Los Angeles-Riverside-Orange County, California Area, Base Period, 1982-84 = 100, for the most recent year-to-year period, March to March. For example, the adjustment for July 2011 would be

ATTACHMENT "A"  
AGREEMENT NO. 11-57

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based upon the CPI change published for March 2010 and March 2011, except that if the change is a decrease, rates shall not be decreased.

13. "Container" shall mean any Cart, Bin, or Debris Box provided by Contractor; any receptacle provided by Residential Customers not provided a Cart by Contractor; or any Stationary Compactor provided by Customer for the purpose of storage and collection of Refuse, Recyclables, Green Waste, Food Waste, or Construction and Demolition Waste.
14. "County" shall mean the County of San Bernardino.
15. "Curbside" or "Curb" shall mean a location for the Collection of Refuse, Recyclables, Green Waste and Bulky Items within three (3) feet from a roadway or in an alleyway.
16. "Customer" means the generator (including owners, tenants, occupants, and/or persons having the care or control of any premises within the City) of Refuse to which Contractor is required to provide Services.
17. "Debris Box" shall mean an industry-standard Container of 10-, 20-, 30-, or 40-cubic yard capacity designed and constructed for the storage and Disposal of Refuse and Construction and Demolition Waste.
18. "Disposal Charge" shall mean the portion of the rates in Attachment "A" included to cover payment of landfill or transfer station tipping fees.
19. "Disposal Tip Fee" "Tip Fee" or "Tipping Fee" shall mean the cost imposed at a Disposal Facility, Processing Facility, and/or Transfer Facility for the receiving and handling of materials Collected by Contractor.
20. "Disposal Facility" means the Facility or Facilities for disposing of Refuse and/or residue from a Processing Facility, as designated by Contractor and approved by the City, or as designated by the City.
21. "Diversion" shall mean the removal of materials found in the waste stream from landfill disposal for reuse, recycling or processing for later recycling.
22. "Dwelling" shall mean any Premises intended for occupation as a living quarters.
23. "Effective Date" shall mean the date upon which the franchise and this Agreement are deemed to commence and when all of the conditions precedent have been satisfied.
24. "Electronic Waste" or "E-Waste" means consumer electronic equipment that is no longer wanted and can include, but is not limited to, computers, printers,

ATTACHMENT "A"  
AGREEMENT NO. 11-57

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televisions, video recording equipment, cell phones, fax machines, stereos, and electronic games.

25. "Garbage" shall mean all kitchen and table food waste and animal or vegetable waste that attends or results from the storage, preparation, cooking, or handling of foodstuffs.
26. "Generator" or "Waste Generator" shall mean the owner or occupant of any Premises located in City that generates or accumulates Solid Waste.
27. "Green Waste" shall mean organic waste generated from any landscape, including grass clippings, leaves, prunings, tree trimmings, weeds, branches, brush, and similar organic material generated from landscapes or gardens and segregated from other waste material.
28. "Gross Receipts" shall mean any and all revenues, receipts, or compensation in any form received or collected by or on behalf of Contractor or its subsidiaries, parent, companies, or other Affiliates of Contractor for the Collection, transportation, and Disposal of Municipal Solid Waste by Contractor pursuant to the Agreement including, but not limited to, Customer fees for the Collection, transportation, and Disposal of Municipal Solid Waste, payments for regular and special services, pass-through costs collected on behalf of the City, and collections received on delinquent accounts without subtracting Franchise Fees, any recycling fees, Disposal Charge, or any other cost of doing business and the sales revenue from the sale of Recyclable Material. Gross Receipts do not include uncollectible accounts and pass-through costs collected on behalf of the State of California or other governmental agencies.
29. "Hazardous Waste" means a waste, or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may do either of the following: (a) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (b) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of or otherwise managed. "Hazardous Waste" includes all substances defined as hazardous waste, extremely hazardous waste, or acutely hazardous waste in California Health and Safety Code Sections 25110.02, 25115, and 25117 or in future amendments to or modifications of such statutes or identified and listed as hazardous waste by the U.S. Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*).

ATTACHMENT "A"  
AGREEMENT NO. 11-57

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30. "Holiday" shall mean the following City-designated Holidays: New Year's Day, Memorial Day, Labor Day, Thanksgiving Day, Independence Day, and Christmas Day.
31. "Household Hazardous Waste" and "HHW" shall mean Hazardous waste generated at Residential Premises.
32. "Individual Collection" shall mean the Collection services provided to Residential Premises from Containers not shared with other premises.
33. "Industrial Premises" shall mean premises occupied by manufacturing operations and other industrial facilities.
34. "Institutional Premises" shall mean premises occupied by educational, health care, correctional, research, and other similar facilities.
35. "Multifamily Dwelling" shall mean a Residential Dwelling that is part of an apartment building or other attached Residential Premises.
36. "Owner" shall mean the Person holding legal title to the real property constituting the Premises to which MSW collection service is to be provided under this Agreement.
37. "Pass-Through Cost" shall mean an expense to Contractor, such as the Disposal Tip Fee or City Franchise Fee, which is offset by a like amount of revenue so as to have no adverse financial impact on Contractor.
38. "Party" or "Parties" shall mean the City and the Contractor, individually and together.
39. "Person" shall mean an individual, limited-liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
40. "Premises" shall mean any land or building within the City where Solid Waste is generated or accumulated.
41. "Processing Facility" shall mean the facility or facilities for sorting and/or processing commingled or source-separated Recyclables, Construction, and Demolition Waste; mixed Refuse; or the processing or composting of Green Waste and/or Food Waste selected by Contractor and approved by the City.
42. "Property Tax Bill" shall mean the annual billing by the County of San Bernardino for ad valorem taxes and special assessments on real estate or interests in real estate.

ATTACHMENT "A"  
AGREEMENT NO. 11-57

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43. "Reasonable Compensation" shall mean the payment that a reasonably prudent business Person would expect under the same or similar circumstances. The compensation shall be determined by the sum total of (a) the direct operating cost of providing the service; and (b) an allowance for overhead expense and profit equal to the three (3) year average combined overhead and profit expressed as a percent of total revenue reported by the two (2) largest publicly traded solid waste collection firms, determined by total revenue, as reported in their year-end financial statements published in their most recent annual reports applied to the total operating cost of the service.
44. "Recyclable Materials" shall mean materials that are capable of being Recycled and that are Segregated from Other Waste Material for collection and Recycling, rather than collection and disposal.
45. "Recycle" and "Recycling" shall mean the process of collecting, sorting, cleaning, treating and reconstituting materials that would otherwise become MSW and returning these materials to the economic mainstream in the form of raw materials for new, reused, or reconstituted products that meet the quality standards to be used in the marketplace.
46. "Refuse" shall mean Garbage and Rubbish.
47. "Residential" shall mean any building or structure, or portion thereof, that is used for residential housing purposes.
48. "Residential Premises" shall mean single family homes, townhouses, multiunit buildings such as apartments and condominiums, and mobile home parks.
49. "Rubbish" shall mean nonputrescible Solid Waste, such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, plastics, and rubber by-products.
50. "Service Contract" shall mean a written agreement between Contractor and the owner or occupant of a Residential Premises for Contractor's temporary services of between Contractor and the owner or occupant of Commercial, Industrial or Institutional Premises for Contractor's services.
51. "Service Sector" shall mean the classification of Contractor's Customers by the groupings of Cart service, Bin service, or Debris Box and Stationary Compactor service.
52. "Single-Family Dwelling" shall mean a detached Residential Premises intended to be occupied by a single family unit.

ATTACHMENT "A"  
AGREEMENT NO. 11-57

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53. "Solid Waste" shall mean all putrescible and nonputrescible Residential Refuse, Recyclable Material, and Greenwaste and as otherwise defined in Public Resources Code Section 40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.
54. "Solid Waste Handling Services" shall mean the collection and disposal of Refuse, Recyclable Materials, Green Waste, Food Waste, and Construction and Demolition Waste from Residential, Commercial, Industrial, and Institutional Premises within City.
55. "Service Contract" shall mean a written agreement between Customer and Contractor specifying the terms and conditions of the services provided to Customer by Contractor.
56. "State" shall mean the State of California.
57. "Stationary Compactor" shall mean a container used to deposit and store Refuse for Collection by Contractor in which the contents are compacted by mechanical means..
58. "Street Sweepings" shall mean the particles and debris collected from roadways either manually or mechanically either as part of routine roadway maintenance or from the cleanup of roadways dirtied by construction activities.
59. "Term" of this Agreement shall have the meaning specified in Article 3. 11.
60. "Ton" shall mean a short ton of 2,000 pounds.
61. "Transfer Facility" shall mean that facility selected and used by Contractor to receive Solid Waste, temporarily store, and to transfer the Solid Waste directly from smaller to larger vehicles for transport to a Disposal Facility.
62. "Uncontained Waste" shall mean Solid Waste, Recyclable Materials, and Green Waste not fully contained within Containers with lids fully closed.
63. "Used Motor Oil" or "Used Oil" shall mean any oil that has been refined from crude oil or that has been synthetically produced and: (a) is no longer useful to the Customer because of extended storage, spillage, or contamination with non-20 hazardous impurities, such as dirt or water; or (b) has been used and as a result of such use has been contaminated with physical or chemical impurities.
64. "Vehicle" shall mean a truck or other vehicle designed for the Collection and disposal of Solid Waste.

ATTACHMENT "A"  
AGREEMENT NO. 11-57

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65. "Waste Generator" shall mean any owner or occupant of any Premises in City that generates or accumulates Refuse.
66. "White Goods" shall mean kitchen and other large appliances.

ATTACHMENT "B"  
AGREEMENT NO. 11-57  
BETWEEN THE CITY OF MONTCLAIR  
AND  
BURRTEC WASTE INDUSTRIES, INC.  
SCOPE OF COLLECTION SERVICES

Work to be performed by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required.

Contractor shall perform all work in a thorough and professional manner so that the residents and businesses within City are provided reliable, courteous, and high-quality service at all times.

1. Residential Collection Services

- (a) Regular Collection Services. Contractor shall Collect Refuse, Recyclables, and Green Waste from Contractor-provided Carts for all Residential Premises subscribing to individual Collection, except Premises subscribing to Bin service.
- (b) Collection Frequency. Collections shall be performed once weekly.
- (c) Collection Location. Collections shall be performed at Curbside. Contractor shall not be required to Collect from any Cart that:
  - (1) Is not placed Curbside, except for Premises receiving walk-in service
  - (2) Is less than three (3) feet from any obstruction including a vehicle, fence, lamppost, power pole, or mailbox
  - (3) Is less than one (1) foot from another automated Cart
- (d) Containers. Contractor shall provide each Residential Premises with three (3) industry-standard Carts, one (1) each for Refuse, Recyclables, and Green Waste. Each Cart shall be affixed with wheels and hinged lids and shall be uniform in color for the purpose designated.
- (e) Refuse Cart. The Cart designated for Refuse shall be black in color and of 95-gallon capacity except that for customers qualified by City as a "senior" shall be provided a 65-gallon black Cart.
- (f) Recycling Cart. The Cart designated for commingled Recyclables shall be blue in color and of 60-gallon capacity.

ATTACHMENT "B"  
AGREEMENT NO. 11-57

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- (g) Greens Cart. The Cart designated for Green Waste shall be green in color and of 95-gallon capacity.
- (h) Extra Carts. Upon request of resident and direction of City, Contractor shall provide extra Carts for an additional monthly fee for periods of not less than six (6) months.
- (i) Damaged Carts. Contractor shall replace damaged carts within forty-eight (48) hours of notice by City.

2. Special Collection Services

- (a) Walk-In Service. Contractor shall provide, at no additional charge, walk-in backyard or side-yard Collection to any Residential Premise in which the only adult occupant(s) is a disabled person meeting the requirements of the State Department of Motor Vehicles for the issuance of an N1-Permanent disabled person parking placard.
- (b) Bulky Item Collection. Contractor shall provide each Residential Premises two (2) annual Curbside Collections of up to five (5) Bulky Items per collection at no cost to Customer. Contractor shall Collect extra Bulky Items beyond five (5) or perform extra Collections of Bulky Items beyond the two (2) annual complimentary Collections at Residential Premises for an additional fee.
- (c) Christmas Tree Collection. Contractor shall provide Curbside Collection of natural Christmas trees for two (2) weeks following December 26 of each year. Christmas trees need not be contained in customer's Green Waste Cart and shall be cut into sections not longer than four (4) feet in length with all ornaments and decorations removed. This service is in addition to the two annual collections of Bulky Items.

3. Commercial, Institutional and Industrial Collection Services.

- (a) Regular Collection Services. Contractor shall Collect Refuse and Recyclables from Contractor-provided Bins, Debris Boxes or Stationary Compactors for all Commercial, Institutional and Industrial Premises and Residential Premises subscribing to Bin service in accordance with the Service Contract.
- (b) Collection Frequency.
  - (1) Collections from Bins at Commercial, Institutional, and Industrial Premises and from Bins at Residential Premises including townhouses and condominiums shall be performed at least once weekly.
  - (2) Collections from Bins at Apartments and Planned Unit Developments shall be performed at least twice weekly.

ATTACHMENT "B"  
AGREEMENT NO. 11-57

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- (3) Collections from Debris Boxes and Compactors containing Refuse at Commercial, Institutional, and Industrial Premises shall be performed at least once weekly.
  - (4) Collections from Debris Boxes or Stationary Compactors used exclusively for Recyclable materials shall be collected on an as-needed basis.
  - (c) Collection Location. Collections from Bins, Debris Boxes or Stationary Compactors shall be performed on the Premises of the customer or in an alleyway readily accessible to Contractor's Collection vehicle at the time of Collection. Containers shall be placed in enclosures or otherwise placed in compliance with City's standards and requirements.
  - (d) Containers.
    - (1) Contractor-Provided Bins and Debris Boxes. Contractor shall offer each Commercial, Institutional and Industrial Premises or Residential Premises subscribing to Bin service a choice of an industry-standard Bin service (of 2-, 3-, or 4-cubic yard capacities) or offer each Commercial, Institutional and Industrial Premises an industry-standard Debris Box service (of 10-, 20-, 30-, or 40-cubic-yard capacities) and will provide the Container(s) selected by the Customer. Bins shall be provided with attached lids. The number of Bins and frequency of Collection shall be mutually agreed by customer and Contractor and shall be adequate to contain all Refuse within the Container (in the case of Bins with the lids closed) between Collections. Disputes about the adequacy of service subscription shall be referred to the City Manager or his designee whose decision shall be final.
    - (2) Customer-Provided Stationary Compactors. Contractor shall service Stationary Compactors used exclusively for either Refuse or Recyclable materials (of 10-, 20-, 30-, or 40-cubic yard capacities) provided by Customer that conform to Contractor's equipment specifications.
  - (e) Recyclable Materials. Commercial, Institutional and Industrial Premises or Residential Premises subscribing to Bin service may arrange one (1) or more Containers for commingled Recyclables for an additional fee.
4. Temporary Bin Services. Upon request of Customer and for the fees approved by City, Contractor shall provide Bins for temporary use by Residential, Commercial, Institutional and Industrial Premises for storage and disposal of Refuse in accordance with the Service Contract.
- (a) Collection Frequency. Temporary Bin rentals shall be for periods in increments of seven (7) days.

ATTACHMENT "B"  
AGREEMENT NO. 11-57

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- (b) Collection Location. Temporary Bins shall be placed according to the subscriber's request provided the Bin shall not obstruct traffic or endanger public safety.
  - (c) Containers. Temporary Bins shall be industry-standard three (3) cubic yard capacity.
5. Temporary Debris Box Services. Upon request of Customer and for the fees approved by City, Contractor shall provide Debris Boxes for temporary use by Residential, Commercial, Institutional or Industrial Premises for Refuse, Green Waste or Construction and Demolition Waste in accordance with the Service Contract.
- (a) Collection Frequency. Temporary Debris Box rentals shall be for periods in increments of seven (7) days.
  - (b) Collection Location. Temporary Debris Boxes shall be placed according to the subscriber's request provided the Debris Box shall not obstruct traffic or endanger public safety.
  - (c) Containers. Contractor shall offer Customers industry-standard Debris Boxes (of 10-, 20-, 30-, and 40-cubic-yard capacities).
6. Construction and Demolition Debris. Contractor shall collect mixed and source-separated Construction and Demolition Waste using Contractor-provided industry-standard Debris Boxes at a frequency specified by Customer in accordance with the Service Contract and transport said Construction and Demolition Waste to a processing facility in a manner that maximizes Diversion of the material from landfill disposal.
7. City Facility Collection Service. Contractor shall provide, at no charge to City, Containers for, and Collection and Disposal of, all Solid waste generated at Premises owned and/or operated by the City for public purposes as designated in Attachment C. City Facilities not operated for a public purpose or operated as a city enterprise shall pay for service at the rates and charges in effect at the time service is rendered and under the same terms and conditions as any other Commercial, Institutional or Industrial Customer.
- (a) Solid Waste. Contractor shall provide separate Containers appropriate for the amount of materials on a facility-by-facility basis for Solid Waste disposal.
  - (b) Recyclable Materials. Contractor shall provide separate Containers appropriate for the amount of materials on a facility-by-facility basis for Diversion of source-separated commingled Recyclables.
  - (c) Green Waste. Contractor shall provide separate Containers appropriate for the amount of materials at City's Public Works Maintenance Facility for Diversion of Green Waste.

ATTACHMENT "B"  
AGREEMENT NO. 11-57

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- (d) Construction and Demolition Waste. Contractor shall provide separate Containers appropriate for the amount of materials at City's Public Works Maintenance Facility for Diversion of incidental Construction and Demolition Waste.

ATTACHMENT "C"  
AGREEMENT NO. 11-57  
BETWEEN THE CITY OF MONTCLAR  
AND  
BURRTEC WASTE INDUSTRIES, INC.  
CITY FACILITIES COLLECTION SERVICES

- I. Contractor shall provide Collection services at no charge to the following City Facilities:
- (a) Civic Center, 5111 Benito Street
  - (b) Fire Station No. 1, 8901 Monte Vista Avenue
  - (c) Fire Station No. 2, 10825 Monte Vista Avenue
  - (d) Montclair Branch Library, 9955 Fremont Avenue
  - (e) Parks:
    - Essex Park, 4295 Howard Street
    - Golden Girls, Vernon Park, 9762 Benson Avenue
    - Kingsley Park, 5575 Kingsley Street
    - MacArthur Park, 5450 Deodar Street
    - Moreno Vista Park, 4675 Moreno Street
    - Saratoga Park, 5397 Kingsley Street
    - Sunrise Park, 5616 Princeton Street
    - Sunset Park, 4351 Orchard Street
    - Wilderness Park, 4592 San Bernardino Street
  - (f) Police Department, 4870 Arrow Highway
  - (g) Public Works Maintenance Facility, 10835 Monte Vista Avenue
  - (h) And all other nonresidential properties now owned or to be owned at an undetermined date by the City of Montclair and/or Montclair Redevelopment Agency

ATTACHMENT "D"  
AGREEMENT NO. 11-57  
BETWEEN THE CITY OF MONTCALIR  
AND  
BURRTEC WASTE INDUSTRIES, INC.  
ACCEPTABLE RECYCLABLE MATERIALS

1. The following materials are acceptable for placement in Recycling carts:

- Aluminum cans
- Aerosol cans
- Brochures
- Cardboard
- Catalogs
- Cereal boxes
- Clothes hangers
- Computer paper
- Coupons
- Envelopes
- Junk mail
- Laundry bottles
- Magazines/catalogs
- Newspapers
- Paper
- Paper tubes
- Phone books
- Pizza boxes
- Plastic containers #1 through #7
- Plastic milk jugs
- Tin cans
- Tissue boxes
- Wrapping paper

2. The following items are NOT accepted for recycling:

- Batteries
- Ceramic cups and plates
- Clothing/shoes
- Diapers
- Drinking glasses
- Furniture, carpet, and other products containing fabric
- Garden hoses

ATTACHMENT "D"  
AGREEMENT NO. 11-57

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- Light bulbs
- Mirrors and window glass
- Styrofoam cups/plates/packaging

**ATTACHMENT "E"**

**AGREEMENT NO. 11-57**

**BETWEEN THE CITY OF MONTCLAIR  
AND  
BURRTEC WAST INDUSTRIES, INC.**

**ACCEPTABLE GREEN WASTE MATERIALS**

I. The following materials are acceptable for deposit in the Green Waste Cart:

- Grass clippings
- Leaves
- Tree trimmings
- Brush
- Shrub trimmings
- Weeds
- Palm fronds

II. The following materials are NOT accepted in Green Waste Carts:

- Dirt
- Concrete
- Rock
- Cactus
- Animal waste
- Food waste

ATTACHMENT "F"  
AGREEMENT NO. 11-57  
BETWEEN THE CITY OF MONTCLAIR  
AND  
BURRTEC WASTE INDUSTRIES, INC.  
RESOLUTION NO. 11-2908

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MONTCLAIR AMENDING THE  
FEE SCHEDULE FOR THE COLLECTION AND  
DISPOSAL OF RESIDENTIAL REFUSE

**WHEREAS**, at the June 6, 2011 meeting of the City Council, Agreement No. 11-57 was adopted, approving a new ten-year exclusive franchise agreement with Burrtec Waste Industries, Inc. (Burrtec) for solid waste management services; and

**WHEREAS**, Section 6.16.050 of the Montclair Municipal Code and Agreement No. 11-57 between the City of Montclair and Burrtec provide for annual adjustments of rates related to collection and disposal of residential refuse, not to exceed the *All Cities Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange Co. Area, All-Items Indexes, All Urban Consumers, for the year ending in January*; and

**WHEREAS**, the Montclair City Council last approved, and Burrtec last requested and received a 5 percent residential refuse service rate adjustment with an effective date of June 1, 2009; and

**WHEREAS**, pursuant to terms of Agreement No. 11-57, Burrtec is technically eligible for an increase of 3.6 percent—the cumulative CPI for the years ending January 2010 (1.8 percent) and January 2011 (1.8 percent)—for the refuse service rate component of the *Total Monthly Household Refuse Rate*; and

**WHEREAS**, for Fiscal Year 2011-12, Burrtec, as part of negotiations for approval of Agreement No. 11-57, has declined to request an increase in the refuse service rate, recycling service rate, refuse landfill/transfer rate, MRF fee, and greenwaste disposal fee components of the *Total Monthly Household Refuse Rate*; and

**WHEREAS**, the City Council is required to consider adjustments to other components of the *Total Monthly Household Refuse Rate*; and

**WHEREAS**, the County of San Bernardino has requested an increase to the household hazardous waste component of the *Total Monthly Household Refuse Rate*; and

**WHEREAS**, the City Council has directed inclusion of a general sanitation fee component to the *Total Monthly Household Refuse Rate*, such fee to be calculated in

part on the cost of providing services related to general community maintenance issues including graffiti abatement, alleyway maintenance, illegal dumping, property cleanup, sanitation services, and removal of abandoned bulky items in neighborhoods and alleyways; and

**WHEREAS**, at the November 21, 2005 meeting of the City Council, authorization was provided to continue a program for senior households that would provide a 20 percent discount off the *Total Monthly Household Refuse Rate*; and

**WHEREAS**, the proposed *Total Monthly Household Refuse Rate*, inclusive of each of the rate components identified herein, is \$25.36 and the *Total Monthly Senior Household Rate* is \$20.29, both rates proposed to be effective August 1, 2011; and

**WHEREAS**, on April 16, 2007, the Montclair City Council, pursuant to requirements of Proposition 218, conducted a public hearing on proposed refuse rate increases and adopted a maximum schedule of monthly household rates as indicated in **Table 1**:

**Table 1**  
**Proposition 218**  
**Annual Residential Refuse Rate Caps**  
**June 2007 through January 2016**

Proposed Nonsenior/Senior Monthly Household Rates Effective 6-1-2007	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2008	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2009	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2010	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2011
\$20.87/\$16.70	\$21.91/\$17.53	\$23.01/\$18.41	\$24.16/\$19.33	\$25.36/\$20.29
Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2012	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2013	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2014	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2015	Proposed Nonsenior/Senior Monthly Household Rates Effective 1-1-2016
\$26.63/\$21.30	\$27.96/\$22.37	\$29.36/\$23.49	\$30.83/\$24.66	\$32.34/\$25.87

**WHEREAS**, pursuant to the maximum schedule of rates as indicated in **Table 1**, the maximum *Total Monthly Household Refuse Rate* in effect as of January 1, 2011, cannot exceed \$25.36, and the proposed *Total Monthly Household Rate* of \$25.36, scheduled to be effective August 1, 2011, is in compliance with the maximum schedule of rates adopted pursuant to a Proposition 218 public hearing and notice process; and

**WHEREAS**, the Montclair City Council examined the proposed rate schedule and determined residential refuse service rates hereinafter enumerated are fair, reasonable, and necessary and bear a reasonable relationship between actual cost to provide such services and the benefit received by residents; and

WHEREAS, Montclair households subject to the proposed refuse rate adjustment have been notified or will be notified through the public notice process and through utility billing statements regarding the proposed increase to the *Total Monthly Household Refuse Rate*.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Montclair hereby sets forth a schedule of service rates for the collection and disposal of residential refuse, effective August 1, 2011, and as set forth in **Table 2**, herein.

**Table 2  
Total Monthly Household Refuse Rate Components  
Current and Proposed Residential Refuse Rates**

<i>Fee Components</i>	<i>Current</i>	<i>Proposed</i>
Refuse Service Rate	\$ 10.32	\$ 10.32
Recycling Service Rate	\$ 3.19	\$ 3.19
Refuse Landfill/Transfer Rate	\$ 3.69	\$ 3.69
MRF Fees	\$ 0.09	\$ 0.09
Greenwaste Disposal Rate	\$ 0.81	\$ 0.81
<b>Total Cost of Services—Paid to Burrtec</b>	<b>\$ 18.10</b>	<b>\$ 18.10</b>
General Sanitation Fee	\$ N/A	\$ 2.82
Administrative Fee	\$ 3.99	\$ 3.99
Household Hazardous Waste Fee	\$ 0.42	\$ 0.45
<b>Total Monthly Cost to Provide Refuse Collection</b>	<b>\$ 22.51</b>	<b>\$ 25.36</b>
<b>TOTAL MONTHLY HOUSEHOLD RATE</b>	<b>\$ 22.51</b>	<b>\$ 25.36</b>
<b>TOTAL MONTHLY SENIOR HOUSEHOLD RATE</b>	<b>\$ 18.01</b>	<b>\$ 20.29</b>
Monthly City Subsidy per Senior Household	\$ 4.17	\$ 5.07
<b>Miscellaneous:</b>		
Multifamily Bin	\$ 3.11	\$ 3.11
Extra Cart: Refuse/Recycling/ Green Waste	\$5.50/\$1.25/ Not Applicable	\$5.50/\$1.25/ \$3.50
Large Item Collection: Monthly Burrtec charge—all City households; cost incorporated in Administrative Fee.	\$2,400.00	\$2,400.00

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. 11-2908 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

**ATTACHMENT "G"**  
**TO**  
**AGREEMENT NO. 11-57**  
**BETWEEN THE CITY OF MONTCLAIR**  
**AND**  
**BURRTEC WASTE INDUSTRIES, INC.**  
**EMERGENCY RESPONSE PLAN**

**EMERGENCY RESPONSE PLAN.** Burrtec Waste Industries is completely versed and prepared to respond in emergency and or disaster situations with regard to debris management. The following debris management plan will be put into action with the City's approval in the event of an emergency or disaster.

1. Debris Management Plan Overview: Burrtec will facilitate and coordinate the removal, collection, and disposal of debris following a disaster to mitigate against any potential threat to the health, safety, and welfare of impacted citizens, and expedite recovery efforts in the impacted area.

Natural and man-made disasters precipitate a variety of debris including, but not limited to trees, sand, gravel, building/construction materials, vehicles, and personal property. The debris management program implemented by Burrtec to handle debris will be based on the company's approach to solid waste reduction, reuse, reclamation, resources recovery, incineration, and land-filling, respectively.

2. Site Selection: Debris storage and reduction sites will be identified and evaluated by a site selection team comprised of Burrtec and City Staff familiar with the area. Initially, debris will be placed in temporary predetermined holding areas before the onset of a disaster, until such time as the detailed plan for debris collection and disposal is put into action. Temporary debris collection sites should be readily accessible by recovery equipment and should not require extensive preparation or coordination for use. Collection sites will be on public property when feasible to facilitate the implementation of the mission and mitigate against any potential liability requirements. Activation of sites will be under the control of the City, and will be coordinated with Burrtec through an emergency operations center.

Site selection criteria will be developed into a checklist format for use by the City and Burrtec to facilitate identification and assessment of potential sites. Criteria will include such factors as ownership of property, size of parcel, surrounding land uses and environmental conditions, and transportation facilities serving the site.

## ATTACHMENT "G"

### EMERGENCY RESPONSE PLAN

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3. Debris Removal Priorities The debris removal process must be initiated promptly and conducted in an orderly, effective manner in order to protect public health and safety following a major disaster or catastrophic event. To achieve this objective, the first priority will be to clear debris from key roads in order to provide access for emergency vehicles and resources into the impacted area.

The need and demand for critical services will be increased significantly following a disaster. Accordingly, the second priority is to provide access to critical facilities pre-identified by State and or local governments. The third priority related to the assignment of debris removal resources is elimination of debris related threats to public health and safety—including the repair, demolition, or barricading of heavily damaged and structurally unstable buildings, infrastructure, systems, or facilities that pose a danger to the public. Any actions taken to mitigate or eliminate the threat to the public health and safety must be closely coordinated with the City, its agents, property owners, and other responsible parties. If access to an area can be controlled, the City may determine it advantageous, in certain circumstances, to defer debris removal and containment activities.

Assigned City Staff and General Contractors will be responsible for all repairs, demolition, barricades, and debris placement into containers provided and removed by Burrtec.

4. Debris Classification. To facilitate the debris management process, debris will be segregated by type—categories of debris established for recovery operations should be standardized. Debris removed will primarily consist of two broad categories: clean wood debris; and construction and demolition debris.

Ineligible debris such as chemicals, petroleum products, paint products, asbestos, and power transformers are to remain in place for special handling. Any material that is found to be classified as hazardous or toxic waste shall be reported immediately to the designated coordinating agency representative. At the coordinating agency representative's direction, this material shall be segregated from the remaining debris in such a way as to allow the remaining debris to be loaded and transported. Standing broken utility poles, damaged and downed utility poles and accessories, transformers, and other electrical material will be reported to the coordinating agency representative. Emergency workers shall exercise due caution with existing overhead and underground utilities and above ground accessories, and advise the appropriate authorities of any situation that poses a health or safety risk to workers on site or to the general population.

5. Debris Disposal and Reduction. Once debris is removed from damaged sites, it will be taken to appropriate disposal and or processing locations. The four basic methods of disposal will be recycling, grinding/chipping, burning and landfilling. Burrtec will incorporate one or more of these methods of disposal into its debris disposal plan to achieve the greatest level of diversion while at the same time removing the disaster debris as quickly and efficiently as possible.

## AGENDA REPORT

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 11-58 WITH CARL WARREN & COMPANY  
FOR LIABILITY CLAIMS ADMINISTRATION

**DATE:** June 6, 2011

**SECTION:** AGREEMENTS

**ITEM NO.:** 2

**FILE I.D.:** INS320

**DEPT.:** ADMIN. SVCS.

**REASON FOR CONSIDERATION:** Agreement No. 09-57 with Carl Warren & Company for liability claims administration services expired on March 16, 2011. The City Council is requested to consider approval of proposed Agreement No. 11-58 with Carl Warren & Company to continue liability claims administration.

A copy of proposed Agreement No. 11-58 is attached for the City Council's review and consideration.

**BACKGROUND:** Agreement No. 11-58 proposes that liability claims administration services provided by Carl Warren & Company be continued for a two-year term beginning March 16, 2011, through March 15, 2013. There are no fee increases being requested for any of the current billing rates. The Council last approved fee adjustments in 2009.

**FISCAL IMPACT:** Table 1 identifies the proposed schedule of service fees for the administration of liability claims to be performed by Carl Warren & Company effective March 16, 2011. The current fees are discussed in Agreement No. 11-58.

**Table 1  
Current/Proposed Schedule of Service Fees**

	<i>Current Rates</i>	<i>Proposed Rates Effective March 16, 2011</i>
Service fee	\$56 per hour	No change
Telephone services	10% of services	No change
Photographs	\$2.50 each	No change
Mileage	\$.55 per mile	No change
File setup fee	\$28.00	No change
Administrative fee	\$300 quarterly	No change

Prepared by: Gary E. Chandler Reviewed and Approved by: \_\_\_\_\_

Proofed by: Kathy Dalton Presented by: \_\_\_\_\_

Services are utilized on a claim-by-claim basis; therefore, the exact fiscal impact is currently unknown. A funding allocation is included in the budget to cover the anticipated costs for these liability claims administration services. Actual expenditures for Carl Warren & Company's services through May 26, 2011, for Fiscal Year 2010-11 are \$13,792.49.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-58 with Carl Warren & Company for liability claims administration.

### THIRD PARTY CLAIMS ADMINISTRATION CONTRACT

THIS AGREEMENT, entered into on May 23, 2011, by and between the City of Montclair hereinafter called "PRINCIPAL," and CARL WARREN & COMPANY, hereinafter called "CONTRACTOR," is for certain services as outlined in connection with the duties and responsibilities of administering a program of self-insurance.

#### WITNESSETH

WHEREAS, PRINCIPAL has undertaken to self-insure and is in need of a qualified third party to whom to delegate the responsibilities and duties of administering said partially or totally self-insured insurance program; and

WHEREAS, CONTRACTOR is engaged in the supervision and administration of programs for self-insurance.

NOW, THEREFORE, PRINCIPAL and CONTRACTOR mutually understand and agree as follows:

#### 1. GENERAL

CONTRACTOR shall: (a) supervise and administer the Self-Insurance program for PRINCIPAL; (b) represent the PRINCIPAL in all matters related to the investigation, adjustment, processing, supervision and resolution of liability claims for money damages asserted by third parties against the PRINCIPAL (and other participants in the program as specified); and (c) provide to PRINCIPAL during the term of this Agreement all the services more particularly set forth hereinafter.

#### 2. INVESTIGATIVE SERVICES

CONTRACTOR shall provide complete investigative and analytical services including, but not limited to: (a) receipt and examination of all reports of accidents, incidents, claims or cases which are or may be the subject of such claims reported by PRINCIPAL to CONTRACTOR; and (b) the investigation of such accidents, incidents, claims or cases where examination warrants such investigation or when requested by PRINCIPAL, such investigation to include on-site investigation, photographs, interviewing of witnesses, determination of losses and other such investigative services necessary to determine liability and loss but not to include Allocated Expenses and extraordinary professional services set forth below.

Regarding Allocated Expenses, PRINCIPAL agrees to pay for the cost of all reasonable and supportable extraordinary services and costs, including but not limited to, professional photography, police reports, independent medical examinations, professional engineering services, laboratory services, bulk copy jobs, private investigators, legal costs and fees and work performed by accountants. CONTRACTOR shall charge PRINCIPAL for non-staff investigators or adjusters when, in the opinion of CONTRACTOR, such assistance is necessary and reasonably related to the monetary exposure.

### **3. SETTLEMENT AUTHORITY**

CONTRACTOR shall have discretionary settlement authority up to \$ Zero.

### **4. CLAIMS ADJUSTMENT SERVICES**

CONTRACTOR shall provide complete claims adjustment services on each accident or incident that may be the subject of a claim against the PRINCIPAL that is reported to CONTRACTOR by the PRINCIPAL. Such services shall include, but not be limited to, the following: (a) maintenance of a claim file on each potential or actual claim reported to CONTRACTOR; (b) whenever its investigation results in a determination that PRINCIPAL has sustained a liability to a third party, CONTRACTOR shall process any such claim or potential claim for settlement in accordance with the PRINCIPAL'S instructions for settlement of such claims; and (c) obtaining all release agreements or proofs of loss on settlement of any claim or potential claim. Specific service instructions will be added to this contract as an exhibit. If subrogation is pursued, the rates in Section 8 will apply unless a separate contingency fee agreement is agreed to by PRINCIPAL and CONTRACTOR.

### **5. ADMINISTRATIVE SERVICES**

CONTRACTOR shall provide at least the following administrative services: (a) assignment of a Principal Account Adjuster to the PRINCIPAL; (b) providing PRINCIPAL with electronic access to all reported claims during the term of this Agreement, indicating the status of each reported open claim assigned to CONTRACTOR, the details of each such claim, the outstanding reserves for each claim and details of all claim payments; and (c) periodic review and adjusting of reserves on all open claims. Account specific reports and attendance at meetings (including round trip travel) shall be provided by CONTRACTOR at the same rates provided in Section 8 as services.

### **6. LEGAL SUPPORT SERVICES**

CONTRACTOR shall provide at least the following legal support services on each claim wherein the claimant has commenced litigation: (a) Upon notification by PRINCIPAL that litigation has been filed on an open claim, CONTRACTOR shall notify PRINCIPAL and, in accordance with PRINCIPAL'S instructions, the PRINCIPAL'S excess insurance carrier and/or excess reporting authority, pool or group (the "excess entity") and/or trial attorney assigned by PRINCIPAL to handle the case and provide such excess entity and/or trial attorney with all information and files concerning claim; (b) maintain liaison with PRINCIPAL'S excess entity and/or trial attorney and provide such investigation services as are required by such attorney during pre-trial and trial stages; and (c) assist PRINCIPAL'S excess entity and/or trial attorney with discovery and other legal processes.

### **7. PERIOD OF AGREEMENT**

This Agreement is for a period of twenty-four (24) months commencing 3.16.11 and ending 3.15.13, after which date this Agreement shall renew for one (1) year periods of time and rates will be reviewed annually.

## 8. CONSIDERATION

PRINCIPAL agrees to pay effective 3.16.11 the following claim handling fees for CONTRACTOR'S services:

Fee Category:

Services	\$56.00 per hour
Mileage	\$0.55 per mile/or IRS rate (the greater of)
Telephone	10 percent of Services
Photocopies	\$0.30 per page
Pages/stenographic	\$5.00
Photographs	\$2.50 each
Duplicated photographs	\$1.50 each
Office expense	20 percent of Services
Setup fee	1/2 hour Services Rate above
Data processing	Included in monthly service fee
1099 preparation	Included
Cassettes	Included
Index * (per submission)	\$18.00 each
Miscellaneous **	At cost
Compass2/mycarlwarren	\$300.00 per quarter administrative/Loss Run/MCW (billed quarterly)

\*Index includes ISO and OFAC.

\*\*Miscellaneous includes but is not limited to actual costs for hotels, airfare, meals while on overnight travel, copying court documents etc.

Incident reports not requiring any claimant contact or investigation will be reviewed and entered into an incident report log for \$50 per incident if PRINCIPAL so requests.

Unless a multiyear contract term is in effect, this fee schedule shall be subject to negotiations between PRINCIPAL and CONTRACTOR at no less than one (1) year intervals following the effective date of the Agreement. Charges for nonfile-related professional services performed at the specific request of PRINCIPAL will be billed on an as quoted basis.

PRINCIPAL agrees to pay charges for outside adjusters other than CONTRACTOR'S adjusters and file related expenses such as medical reports, police reports, etc. on a pass through basis with no additional fees added.

## 9. DATA PROCESSING

- (a) The following standard services are included in this cost and in the annual administrative fee - claims data electronically for up to three recipients and access to [www.mycarlwarren.com](http://www.mycarlwarren.com) for up to three users. For security purposes, access to [www.mycarlwarren.com](http://www.mycarlwarren.com) and any subscriptions will automatically terminate at the end of twelve (12) months. PRINCIPAL shall be responsible

for notifying CONTRACTOR to renew user subscriptions and access or to substitute users.

- (b) Additional users or recipients shall be charged on a per person basis at an annual fee of \$250.
- (c) Special reports, new reports, and data feeds can also be requested and are subject to a cost per quote at a rate per project or per hour once the scope has been agreed upon. CONTRACTOR does not possess any interest, title, lien, or right to any client data or records. Upon termination of the contract, therefore, CONTRACTOR is relieved of all obligations to provide data processing services to PRINCIPAL and will deliver to PRINCIPAL all data and records in a readily available excel or PDF format. If a different format is desired by PRINCIPAL, CONTRACTOR will provide it to PRINCIPAL at an agreed upon and reasonable cost and timeline.

## **10. PRINCIPAL'S RESPONSIBILITIES**

PRINCIPAL shall provide CONTRACTOR with copies of all relevant documents upon request and without charge and shall make available any PRINCIPAL employee for interviews by CONTRACTOR at reasonable times concerning any investigation of a claim or incident pursuant to this Agreement.

CONTRACTOR shall bill PRINCIPAL and furnish PRINCIPAL with invoices for services rendered in accordance with the fee schedule set forth in the Agreement. Each invoice will include the claim or other matters for which a fee is being charged and the amount of the associated fee for that claim or matter. Payment shall be due and payable within thirty (30) days of receipt. PRINCIPAL shall report all billing discrepancies in writing to CONTRACTOR within thirty (30) days and adjustments will be promptly considered. PRINCIPAL will become delinquent when any undisputed invoice has been outstanding for over ninety (90) days. CONTRACTOR may elect to limit access to data and/or suspend and/or terminate this Agreement in the event PRINCIPAL fails to pay CONTRACTOR. Good faith disputed amount(s) will not be considered in establishing delinquency. CONTRACTOR will notify PRINCIPAL of such failure to pay and if PRINCIPAL does not cure such failure, excluding any good faith disputed amount, within ten (10) banking days after the date of such notice ("the cure period"), CONTRACTOR may immediately limit access to data and/or suspend and/or terminate this Agreement as of the first business day following expiration of the cure period and/or send the outstanding invoices to a collection agency to pursue recovery of outstanding amounts plus fees and interest.

## **11. CONFLICT OF INTEREST**

In the event a claim or incident is reported to CONTRACTOR by PRINCIPAL and it is determined that the actual or potential claimants therein are also clients of CONTRACTOR, CONTRACTOR shall immediately notify PRINCIPAL of such potential

conflict of interest so PRINCIPAL may have the option to choose an independent investigator and adjuster.

## **12. CANCELLATION OF AGREEMENT**

This Agreement may be terminated by either party with or without cause upon giving other party written notice at least ninety (90) days prior to the date of termination.

## **13. DISPOSITION OF FILES ON TERMINATION OF AGREEMENT**

- (a) All files on each claim shall be property of the PRINCIPAL.
- (b) In the event of expiration of the Agreement, nonrenewal thereof, or cancellation, CONTRACTOR shall bill the PRINCIPAL subject to the rates quoted in Section 8 herein above, for work completed by CONTRACTOR on each claim. Upon receipt of payment of outstanding invoices (including those in 13(c) below), CONTRACTOR shall promptly forward all completed and pending claim files to the PRINCIPAL unless PRINCIPAL requests CONTRACTOR to continue to process any files on a time and expense basis as provided for in the CONTRACTOR'S Rate Manual at the time such services are rendered.
- (c) PRINCIPAL agrees to pay CONTRACTOR for the internal and/or external cost of retaining, storing, retrieving, logging, packing, and shipping files that are stored on or off premises by CONTRACTOR.

## **14. HOLD HARMLESS**

PRINCIPAL agrees to defend any legal action commenced against CONTRACTOR caused directly or indirectly by the alleged wrongful or negligent acts, errors or omissions of PRINCIPAL; and indemnify CONTRACTOR against any liability, loss, cost or damage including attorneys' fees resulting therefrom.

CONTRACTOR agrees to defend any legal action commenced against PRINCIPAL caused directly or indirectly solely by the wrongful or negligent acts, errors or omissions of the CONTRACTOR, employees, agents or others engaged by CONTRACTOR and to indemnify PRINCIPAL against any liability, loss, cost, or damage including attorneys' fees resulting therefrom.

## **15. AUDITS**

The CONTRACTOR'S files shall be made available for audits at any time upon reasonable notice. Reasonable notice shall be defined as thirty (30) days or as otherwise agreed by the parties. If special retrieval or shipment of the requested files is necessary, PRINCIPAL shall reimburse CONTRACTOR at cost. The CONTRACTOR reserves the right to reject an auditor proposed by PRINCIPAL if the proposed auditor may gain an unfair competitive advantage over CONTRACTOR by conducting such an audit.

IN WITNESS WHEREOF, the parties hereto have caused these present to be signed by the duly authorized Officers as of the day and year first written above.

**CONTRACTOR**

**PRINCIPAL**

CARL WARREN & COMPANY

CITY OF MONTCLAIR

By \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

Paul M. Eaton  
Mayor

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 11-59 AUTHORIZING THE CITY MANAGER TO SIGN ENGAGEMENT LETTER WITH BURHENN & GEST LLP FOR FILING TEST CLAIM WITH THE COMMISSION ON STATE MANDATES CONCERNING THE 2010 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM MS4 PERMIT (REGIONAL BOARD ORDER NO. R8-2010- 0036/NPDES PERMIT NO. CAS618036)	<b>DATE:</b> June 6, 2011 <b>SECTION:</b> AGREEMENTS <b>ITEM NO.:</b> 3 <b>FILE I.D.:</b> STD200 <b>DEPT.:</b> PUBLIC WORKS
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**REASON FOR CONSIDERATION:** The City of Montclair is one of 17 Co-Permittees in San Bernardino County covered under the California Regional Water Quality Control Board, Santa Ana Region's NPDES Permit No. CAS618036 (Permit). The San Bernardino County Flood Control District is considered to be the Principal Permittee and the storm-water program administrator of the Permit. The basis of the Permit is the federal Clean Water Act, but most agencies believe the Permit requirements go beyond the requirements of the Clean Water Act and thus constitute a state unfunded mandate. The County and the District have retained legal counsel Burhenn & Gest LLP to submit a claim to the Commission on State Mandates and have extended an offer to all Co-Permittees to join as additional claimants. The City Council is requested to consider authorizing City Manager Edward C. Starr to sign the engagement letter with Burhenn & Gest LLP.

**BACKGROUND:** The federal Clean Water Act (CWA) established the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded in 1972. The "Clean Water Act" became the Act's common name, with amendments added in 1977. Under the CWA, the Environmental Protection Agency (EPA) has implemented pollution control programs, setting wastewater and stormwater discharge standards.

The CWA made it unlawful to discharge any pollutant from a point source and nonpoint source into navigable waters unless a permit was obtained. The EPA's National Pollutant Discharge Elimination System (NPDES) Permit Program controls such discharges. Point sources are discrete conveyances, such as pipes or man-made ditches. A nonpoint source is a surface discharge not discernable, such as sheet flow runoff from an industrial or commercial site. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters.

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Prepared by: <u><i>m. scd</i></u>	Reviewed and Approved by:	M. STARRS
Proofed by: <u><i>Cherry</i></u>	Presented by:	<u><i>[Signature]</i></u>

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The CWA allowed the EPA to authorize the NPDES Permit Program to state governments, enabling states to perform many of the permitting, administrative, and enforcement aspects of the NPDES Program. In California, the State Water Resources Control Board is responsible for administering the program. There are nine regional boards throughout the state. Montclair falls under the jurisdiction of Region 8, the Santa Ana Regional Water Quality Control Board.

On January 29, 2010, the Santa Ana Regional Water Quality Control Board adopted Regional Board Order No. R8-2010-0036/NPDES Permit No. CAS618036. The District, the County, and other Co-Permittees feel the Permit requirements go beyond federal requirements in protecting water resources; and with no state funding to assist with Permit requirements, the Permit requirements constitute an unfunded state mandate.

The District and the County have retained the law firm of Burhenn & Gest LLP to advise and assist in the preparation and filing of a test claim on behalf of the District and the County with the Commission on State Mandates (Commission) concerning the 2010 National Pollutant Discharge Elimination System Permit (Regional Board Order No. R8-2010-0036/NPDES Permit No. CAS618036). Mr. David W. Burhenn with Burhenn & Gest will be acting as the lead counsel on the test claim.

The law firm has some experience in dealing with unfunded state mandates, particularly those involving NPDES Permits. Mr. Howard Gest was lead attorney for the plaintiff in *County of Los Angeles v. Commission on State Mandates* (2007), which found unconstitutional a state statute that had prevented local governments from seeking reimbursement for unfunded state mandates imposed by orders of the State Water Resources Control Board and the regional boards. He represented a number of cities before the Commission on State Mandates and, on their behalf, obtained approval of the first test claim awarding a subvention of state funds for requirements contained in a Regional Water Board order. Mr. David Burhenn was co-counsel for plaintiffs in *County of Los Angeles v. Commission on State Mandates* (2007). He also has represented municipal clients before the Commission on State Mandates and recently assisted them in obtaining the first Parameters & Guidelines to set forth the requirements for state funding for a MS4 (Municipal Separate Storm Sewer System) permit. Mr. Gest recently filed a test claim before the Commission on State Mandates on behalf of various Riverside County municipalities seeking a subvention of state funds for certain requirements in Santa Ana Regional Board Permit No. 08-2010-0033, the MS4 permit for those entities.

The County and the District will each be filing their respective test claims with the Commission on or before June 30, 2011. A narrative statement and a declaration signed by each claimant must be filed along with the Test Claim form. If a city wishes to become a claimant and desires to utilize the firm of Burhenn & Gest, it will need to execute an engagement letter with Burhenn & Gest, attached as proposed Agreement No. 11-59.

Participating as a claimant is potentially advantageous to the City and other Co-Permittees by showing strength in numbers. With or without the City's participation, if the test claim is successful, the City would likely reap the same benefits as the District, County, and Co-Permittees who do participate. The only exception would be any Permit requirements that are unique to Montclair and are not included in the test claim. However, there are no unique Permit requirements affecting Montclair.

The only potential downside to participation is cost, and the likelihood of any City cost is remote. As explained in the Fiscal Impact section of this report, there are no anticipated direct costs to the City. If that were to change, the City has the right to withdraw as a claimant. In the event the City wishes to terminate its engagement with Burhenn & Gest LLP it has the unilateral right to do so. The engagement letter includes under Section 2, "Term of Engagement," the clause: "Either the City or the Firm may terminate this engagement at any time for any reason by written notice." There are no penalties for doing so.

**FISCAL IMPACT:** There are no direct costs to the City under this engagement letter with Burhenn & Gest LLP. The engagement letter clearly states in Section 3: "Again, it is our understanding that all payments to the Firm with respect to services provided in this matter will be made by the District. Thus, the Firm [Burhenn & Gest LLP] will not request payment of any invoices with respect to this matter from the City." There are, however, indirect costs.

Burhenn & Gest LLP has estimated the cost for preparing and submitting the test claim to the Commission on State Mandates to be between \$27,000 and \$51,000, probably closer to the lower figure. The law firm also estimates that as much as an additional \$100,000 would be required to respond to issues raised by the state and Regional Board in response to the test claim. The initial \$27,000 to \$51,000 submittal cost would be spent prior to the end of the current fiscal year, and about half of the \$100,000 response cost could be spent before the end of the calendar year. The remaining half of the \$100,000 response cost would likely be spent over the following two years.

The County has included \$75,000 for the test claim submittal in its Fiscal Year 2011/2012 budget. This amount, along with other Permit-related expenses, is spread over all Co-Permittees including the City of Montclair. The City of Montclair's portion is included in the Fiscal Year 2011-12 City Budget, which the City Council will consider later this month. However, the test claim must be submitted prior to June 30, 2011; so the legal costs will be incurred this fiscal year. The District's Management Committee will consider, and likely approve, funding the submittal this fiscal year.

There would be no additional cost to the City this fiscal year should the City opt to join as a claimant. There would also be no additional cost to the City next fiscal year, based on the City's Co-Permittee fee already being included in the preliminary City budget. Beyond next fiscal year, it seems likely that any remaining costs would have to be included in the District's budget and, therefore, passed on to the Co-Permittees including the City of Montclair.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-59 authorizing the City Manager to sign engagement letter with Burhenn & Gest LLP for filing test claim with the Commission on State Mandates concerning the 2010 National Pollutant Discharge Elimination System MS4 Permit (Regional Board Order No. R8-2010-0036/ NPDES Permit No. CAS618036).

**BURHENN & GEST LLP**  
624 SOUTH GRAND AVENUE  
SUITE 2200  
LOS ANGELES, CALIFORNIA 90017-3321  
TELEPHONE (213) 688-7715  
FACSIMILE (213) 688-7716

WRITER'S DIRECT NUMBER  
MAIL ADDRESS  
(213) 629-8788

WRITER'S E-  
DBURHENN@burhennigest.com

May 27, 2011

Mr. Edward C. Starr  
City Manager  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

Re: Representation by Burhenn & Gest LLP

Dear Mr. Starr:

Thank you very much for deciding to retain Burhenn & Gest LLP ("Firm"). This letter will formalize the City of Montclair engagement of Firm and set forth the terms of that engagement. If the terms set forth below are acceptable, please have an authorized city representative sign the original of this letter and return it to my attention.

1. Client; Scope of Representation. The client in this matter will be the City of Montclair (the "City"). Firm will represent the City in connection with, and the scope of the Firm's engagement and duties will relate solely to, the filing of a test claim with the Commission on State Mandates regarding those provisions of Santa Ana Regional Water Quality Control Board Order No. R8-2010-0036 ("2010 Santa Ana MS4 Permit") that constitute an unfunded state mandate.

2. Term of Engagement. The City's engagement of Firm shall commence upon the City's execution and return of this letter. Either the City or the Firm may terminate this engagement at any time for any reason by written notice, subject on the Firm's part to the applicable rules of professional responsibility. In the event that Firm terminates the engagement, Firm will take such steps as are reasonably practicable to protect the City's interests in the above matter.

Unless previously terminated, Firm's representation of the City will terminate upon Firm sending its final statement for services rendered to the

Mr. Edward C. Starr

May 27, 2011

Page 2

County of San Bernardino and the San Bernardino County Flood Control ("County and District") which, we understand, will be solely responsible for payment of the Firm's invoices in this matter. Following such termination, any otherwise non-public information that the City may have supplied to Firm, which is retained by it, will be kept confidential in accordance with applicable rules of professional responsibility. We understand that the City wishes to have any documents that may have been supplied to the Firm returned to it at that time. I can advise you that we do not expect at this point to be in the receipt of such documents, but if any are delivered to the Firm, they will be returned.

The City is engaging the Firm to provide legal services in connection with the above referenced matter. After the completion of this matter, changes may occur in the applicable laws or regulations that could have an impact upon the City's future rights and liabilities. Unless the City actually engages the Firm after the completion of the matter to provide additional advice on issues arising from it, the Firm has no continuing obligation to advise the City with respect to future legal developments.

3. Fees and Expenses. The Firm's fees will be based on the billing rate for each attorney and legal assistant devoting time to this matter. The Firm's billing rate for this matter is \$350 per hour. David Burhenn and Howard Gest, partners in the firm, will be chiefly responsible for representing the City in this matter, although other attorneys may assist from time to time.

The Firm will include on its statements charges for performing services such as photocopying, messenger and delivery service, travel, and search and filing fees. Fees and expenses of others (such as consultants, appraisers, and local counsel, if applicable) generally will not be paid by the Firm, but will be billed directly. Again, it is our understanding that all payments to the Firm with respect to services provided in this matter will be made by the District. Thus, the Firm will not request payment of any invoices with respect to this matter from the City.

4. Conflicts. The Firm has multiple clients. Although the Firm hopes it never happens, it is possible that an adverse relationship (including litigation) could develop in the future between the City and one of the Firm's other clients. If the Firm is not representing the City in that future matter and that future matter is not substantially related to the Firm's representation of the City in the above referenced matter, the City agrees that the Firm may represent the other client. (In its engagement letters with its other clients, the Firm has asked for similar agreements to preserve the Firm's ability to represent you.)

BURHENN & GEST LLP

Mr. Edward C. Starr

May 27, 2011

Page 3

**In particular, the Firm will be representing the County and District, as well other cities, with respect to the filing of the test claim.**

\* \* \*

Once again, Burhenn & Gest is pleased to have this opportunity to work with you. If you have any questions or comments during the course of this representation, please call me at (213) 629-8788.

Very truly yours,

David W. Burhenn

AGREED TO AND ACCEPTED ON BEHALF  
OF THE CITY OF MONTCLAIR

\_\_\_\_\_  
Name: Edward C. Starr

Title: City Manager

## AGENDA REPORT

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**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION  
NO. 11-2909 AUTHORIZING PLACEMENT  
OF LIENS ON CERTAIN PROPERTIES FOR  
DELINQUENT SEWER AND TRASH CHARGES

**DATE:** June 6, 2011  
**SECTION:** RESOLUTIONS  
**ITEM NO.:** 1  
**FILE I.D.:** STB300-17  
**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** Staff has identified 208 sewer and trash accounts in the even-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien. The City Council is requested to consider adoption of Resolution No. 11-2909 authorizing placement of liens on these properties for these delinquencies.

A copy of Resolution No 11-2909 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 208 liens presented for approval are for accounts which are at least 90 days delinquent.

**FISCAL IMPACT:** Recoverable amount is \$46,220.69 plus \$10,400.00 in lien fees, for a total of \$56,620.69.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 11-2909 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:

*Jane Kullbeck*  
*[Signature]*

Reviewed and  
Approved by:

*[Signature]*  
*[Signature]*

Proofed by:

Presented by:

**RESOLUTION NO. 11-2909**

**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 208 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 May 16, 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 May 26, 2011, and that such liens would be considered for approval by the Montclair City Council on Monday, June 6, 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 - June 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.

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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. 11-2909 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. 11-2909  
Report of Delinquent Civil Debts - June 2011

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
11171	Ada Avenue	Residential	\$ 224.54	\$ 50.00	\$ 274.54
10495	Adobe Court	Residential	154.33	50.00	204.33
10186	Amherst Avenue	Residential	191.72	50.00	241.72
10207	Amherst Avenue	Residential	228.79	50.00	278.79
10360	Amherst Avenue	Multifamily	601.36	50.00	651.36
10421	Amherst Avenue	Multifamily	400.91	50.00	450.91
10431	Amherst Avenue	Multifamily	400.91	50.00	450.91
11142	Amherst Avenue	Residential	228.94	50.00	278.94
11151	Amherst Avenue	Residential	200.46	50.00	250.46
4224	Appaloosa Way	Residential	257.23	50.00	307.23
4337	Appaloosa Way	Residential	200.46	50.00	250.46
10569	Arabian Place	Residential	261.32	50.00	311.32
4432-34	Bandera Street	Multifamily	154.96	50.00	204.96
4624	Bandera Street	Multifamily	309.92	50.00	359.92
4990	Bandera Street	Residential	200.46	50.00	250.46
5609	Bandera Street	Residential	156.46	50.00	206.46
10109	Bel Air Avenue	Residential	183.71	50.00	233.71
10145	Bel Air Avenue	Residential	200.46	50.00	250.46
10186	Bel Air Avenue	Residential	200.46	50.00	250.46
10263	Bel Air Avenue	Residential	180.21	50.00	230.21
5225	Belvedere Way	Residential	210.82	50.00	260.82
5196	Benito Street	Commercial	112.56	50.00	162.56
5206	Benito Street	Commercial	112.56	50.00	162.56
10148	Benson Avenue	Residential	256.46	50.00	306.46
10208	Benson Avenue	Residential	200.46	50.00	250.46
4523	Bodega Court	Residential	147.64	50.00	197.64
11452	Brunswick Lane	Residential	154.11	50.00	204.11
10964	Buckingham Way	Residential	252.85	50.00	302.85
10468	Calico Court	Residential	200.46	50.00	250.46
8963	Camulos Avenue	Residential	162.71	50.00	212.71
10234	Camulos Avenue	Residential	125.65	50.00	175.65
10241	Camulos Avenue	Residential	200.41	50.00	250.41
10252	Camulos Avenue	Residential	200.46	50.00	250.46
10259	Camulos Avenue	Residential	240.67	50.00	290.67
10271	Camulos Avenue	Residential	226.21	50.00	276.21
10171	Canary Court	Residential	200.46	50.00	250.46
11409	Cannery Row	Residential	149.92	50.00	199.92
4612	Canoga Street	Multifamily	484.97	50.00	534.97
4732	Canoga Street	Multifamily	309.92	50.00	359.92
4912	Canoga Street	Residential	221.49	50.00	271.49
4924	Canoga Street	Residential	200.46	50.00	250.46
4949	Canoga Street	Residential	127.48	50.00	177.48

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
4987	Canoga Street	Residential	\$ 130.35	\$ 50.00	\$ 180.35
4912	Carlton Street	Residential	128.75	50.00	178.75
11158	Carriage Avenue	Residential	200.46	50.00	250.46
11168	Carriage Avenue	Residential	162.71	50.00	212.71
11239	Carriage Avenue	Residential	142.13	50.00	192.13
11178	Carrillo Avenue	Residential	190.70	50.00	240.70
9802	Central Avenue	Residential	3,475.60	50.00	3,525.60
11348	Chandler Lane	Residential	149.92	50.00	199.92
11363	Chandler Lane	Residential	149.04	50.00	199.04
4337	Clair Street	Residential	204.39	50.00	254.39
5176	Clair Street	Residential	104.02	50.00	154.02
5229	Clair Street	Residential	136.17	50.00	186.17
4315	Clydesdale Way	Residential	200.46	50.00	250.46
4329	Clydesdale Way	Residential	153.28	50.00	203.28
4337	Clydesdale Way	Residential	256.46	50.00	306.46
10194	Coalinga Avenue	Senior	181.24	50.00	231.24
10231	Coalinga Avenue	Residential	200.46	50.00	250.46
11148	Coalinga Avenue	Residential	162.71	50.00	212.71
10201	Columbine Avenue	Residential	200.46	50.00	250.46
10213	Columbine Avenue	Residential	256.46	50.00	306.46
11459	Cumberland Lane	Residential	125.15	50.00	175.15
10212	Del Mar Avenue	Residential	122.37	50.00	172.37
10236	Del Mar Avenue	Residential	200.46	50.00	250.46
10248	Del Mar Avenue	Residential	185.81	50.00	235.81
4501	Donner Court	Residential	200.46	50.00	250.46
4502	Donner Court	Residential	200.46	50.00	250.46
4522	Donner Court	Residential	162.71	50.00	212.71
11159	Essex Avenue	Residential	200.46	50.00	250.46
4628	Evert Street	Residential	205.15	50.00	255.15
4705	Evert Street	Residential	200.46	50.00	250.46
11341	Fairfax Lane	Residential	175.24	50.00	225.24
11365	Fairfax Lane	Residential	141.02	50.00	191.02
4219	Fauna Street	Residential	200.46	50.00	250.46
4234	Fauna Street	Residential	200.46	50.00	250.46
4244	Fauna Street	Residential	199.19	50.00	249.19
4703	Fauna Street	Residential	200.46	50.00	250.46
4852	Fauna Street	Residential	200.46	50.00	250.46
5171	Fauna Street	Residential	200.46	50.00	250.46
8919-21	Felipe Avenue	Multifamily	400.91	50.00	450.91
8912	Felipe Avenue	Residential	200.46	50.00	250.46
4747	Flora Street	Residential	185.81	50.00	235.81
4932	Flora Street	Residential	112.04	50.00	162.04
5051	Flora Street	Residential	210.82	50.00	260.82
5185	Flora Street	Residential	216.15	50.00	266.15
10136	Fremont Avenue	Senior	168.48	50.00	218.48

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
10287	Fremont Avenue	Residential	\$ 177.06	\$ 50.00	\$ 227.06
10780	Fremont Avenue	Residential	118.48	50.00	168.48
10782	Fremont Avenue	Residential	347.34	50.00	397.34
10945	Fremont Avenue	Multifamily	160.16	50.00	210.16
11049	Fremont Avenue	Residential	200.46	50.00	250.46
10129	Galena Avenue	Residential	200.46	50.00	250.46
10140	Geneva Avenue	Residential	216.15	50.00	266.15
10198	Greenwood Avenue	Residential	275.80	50.00	325.80
10282	Greenwood Avenue	Residential	200.46	50.00	250.46
5232	Hanover Way	Residential	285.73	50.00	335.73
10150	Helena Avenue	Residential	194.73	50.00	244.73
10436	Helena Avenue	Residential	104.02	50.00	154.02
4400	Holt Boulevard	Multifamily	1,201.02	50.00	1,251.02
4103	Howard Street	Residential	200.46	50.00	250.46
4581	Howard Street	Residential	256.46	50.00	306.46
4597	Howard Street	Residential	171.23	50.00	221.23
4780	Howard Street	Residential	200.46	50.00	250.46
4910	Howard Street	Residential	185.81	50.00	235.81
5013	Howard Street	Residential	171.15	50.00	221.15
5100	Howard Street	Multifamily	243.27	50.00	293.27
5202	Howard Street	Residential	195.89	50.00	245.89
5223	Howard Street	Residential	200.46	50.00	250.46
4552	Humboldt Court	Residential	196.75	50.00	246.75
10236	Kimberly Avenue	Residential	200.46	50.00	250.46
10386	Kimberly Avenue	Multifamily	754.14	50.00	804.14
11076	Kimberly Avenue	Residential	100.46	50.00	150.46
4651	Kingsley Street	Multifamily	390.27	50.00	440.27
4671	Kingsley Street	Multifamily	170.46	50.00	220.46
4752	Kingsley Street	Residential	215.99	50.00	265.99
4831-33	Kingsley Street	Multifamily	154.96	50.00	204.96
4909	Kingsley Street	Residential	200.46	50.00	250.46
4921	Kingsley Street	Residential	116.46	50.00	166.46
5003	Kingsley Street	Residential	200.46	50.00	250.46
5019	Kingsley Street	Residential	200.46	50.00	250.46
5198	Kingsley Street	Multifamily	325.42	50.00	375.42
5242	Kingsley Street	Residential	200.46	50.00	250.46
4385	Kingsley Street #2	Residential	196.61	50.00	246.61
11325	Kingston Lane	Residential	142.56	50.00	192.56
10225	Lehigh Avenue	Residential	256.46	50.00	306.46
10310-12	Lehigh Avenue	Multifamily	400.91	50.00	450.91
4521	Mane Street	Residential	166.15	50.00	216.15
4535	Mane Street	Residential	205.53	50.00	255.53
4555	Mane Street	Residential	200.46	50.00	250.46
4596	Mane Street	Residential	365.75	50.00	415.75
4846	Mane Street	Residential	162.71	50.00	212.71

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
4855	Mane Street	Residential	\$ 200.21	\$ 50.00	\$ 250.21
4908	Manzanita Street	Residential	162.71	50.00	212.71
10231	Mills Avenue	Residential	200.41	50.00	250.41
5239	Monte Verde Street	Residential	200.42	50.00	250.42
5242	Monte Verde Street	Residential	202.59	50.00	252.59
10208	Monte Vista Avenue	Residential	200.46	50.00	250.46
10235	Monte Vista Avenue	Residential	216.15	50.00	266.15
10238	Monte Vista Avenue	Residential	200.46	50.00	250.46
10290	Monte Vista Avenue	Senior	215.99	50.00	265.99
11073	Monte Vista Avenue	Residential	128.75	50.00	178.75
10557	Morgan Circle	Residential	200.46	50.00	250.46
10217	Oak Glen Avenue	Residential	148.94	50.00	198.94
10226	Oak Glen Avenue	Residential	256.62	50.00	306.62
10244	Oak Glen Avenue	Residential	226.17	50.00	276.17
10594	Oak Glen Avenue	Residential	128.75	50.00	178.75
4595	Oakdale Street	Residential	196.75	50.00	246.75
5035	Orchard Street	Residential	127.48	50.00	177.48
5171	Orchard Street	Residential	150.46	50.00	200.46
5195	Orchard Street	Residential	133.36	50.00	183.36
5241	Orchard Street	Residential	117.99	50.00	167.99
5358	Orchard Street	Residential	202.54	50.00	252.54
5392	Orchard Street	Residential	204.94	50.00	254.94
5415	Orchard Street	Residential	158.85	50.00	208.85
5422	Orchard Street	Residential	200.46	50.00	250.46
5471	Orchard Street	Residential	156.36	50.00	206.36
3921	Peachwood Drive	Residential	107.45	50.00	157.45
10845	Pipeline Avenue	Residential	138.41	50.00	188.41
10855	Pipeline Avenue	Residential	149.01	50.00	199.01
10875	Pipeline Avenue	Senior	101.60	50.00	151.60
10885	Pipeline Avenue	Residential	138.41	50.00	188.41
10865	Pipeline Avenue #A	Residential	125.83	50.00	175.83
10865	Pipeline Avenue #B	Residential	138.41	50.00	188.41
10124	Poulsen Avenue	Residential	200.46	50.00	250.46
10154	Poulsen Avenue	Residential	368.81	50.00	418.81
11206	Poulsen Avenue	Residential	257.42	50.00	307.42
11238	Poulsen Avenue	Residential	200.46	50.00	250.46
11254	Poulsen Avenue	Residential	268.97	50.00	318.97
10206	Pradera Avenue	Residential	162.71	50.00	212.71
4745	Rodeo Street	Residential	189.96	50.00	239.96
5079	Saddleback Street	Residential	228.79	50.00	278.79
5272	Saddleback Street	Residential	220.73	50.00	270.73
5177	San Antonio Way	Residential	200.46	50.00	250.46
11022	San Juan Way	Residential	200.46	50.00	250.46
11032	San Juan Way	Residential	210.82	50.00	260.82
11052	San Juan Way	Residential	200.28	50.00	250.28

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
11014	San Miguel Way	Residential	\$ 200.46	\$ 50.00	\$ 250.46
11020	San Pasqual Avenue	Residential	200.46	50.00	250.46
11073	San Pasqual Avenue	Residential	148.85	50.00	198.85
11094	San Pasqual Avenue	Residential	162.71	50.00	212.71
11143	San Pasqual Avenue	Residential	162.71	50.00	212.71
10112	Santa Anita Avenue	Residential	198.71	50.00	248.71
10151	Santa Anita Avenue	Residential	156.09	50.00	206.09
10166	Santa Anita Avenue	Residential	206.91	50.00	256.91
10178	Santa Anita Avenue	Residential	196.00	50.00	246.00
10221	Santa Anita Avenue	Residential	200.46	50.00	250.46
10191	Saratoga Avenue	Residential	211.16	50.00	261.16
10192	Tudor Avenue	Senior	174.00	50.00	224.00
10243	Tudor Avenue	Residential	256.46	50.00	306.46
10289	Tudor Avenue	Residential	200.46	50.00	250.46
10115	Vernon Avenue	Residential	186.04	50.00	236.04
10236	Vernon Avenue	Residential	216.15	50.00	266.15
5554	Vernon Court	Residential	200.46	50.00	250.46
10380	Via Palma	Residential	162.71	50.00	212.71
11073	Wesley Avenue	Residential	162.71	50.00	212.71
11178	Whitewater Avenue	Residential	257.22	50.00	307.22
11251	Whitewater Avenue	Residential	160.31	50.00	210.31
11263	Whitewater Avenue	Residential	170.65	50.00	220.65
4515	Yosemite Drive	Residential	200.46	50.00	250.46
4525	Yosemite Drive	Residential	141.27	50.00	191.27
4536	Yosemite Drive	Residential	130.74	50.00	180.74
4538	Yosemite Drive	Residential	144.55	50.00	194.55
4542	Yosemite Drive	Residential	194.15	50.00	244.15
4548	Yosemite Drive	Residential	200.21	50.00	250.21
10462	Yosemite Drive	Residential	200.46	50.00	250.46
10463	Yosemite Drive	Residential	199.54	50.00	249.54
10472	Yosemite Drive	Residential	200.46	50.00	250.46
<b>TOTALS</b>			<b>\$46,220.69</b>	<b>\$10,400.00</b>	<b>\$56,620.69</b>

**MINUTES OF THE REGULAR MEETING OF  
THE MONTCLAIR PUBLIC WORKS COMMITTEE  
HELD ON THURSDAY, APRIL 21, 2011, AT  
2:00 P.M. IN THE CITY HALL CONFERENCE  
ROOM, 5111 BENITO STREET, MONTCLAIR,  
CALIFORNIA**

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**CALL TO ORDER**

Chairman Paulitz called the meeting to order at 2:00 p.m.

**I. ROLL CALL**

Present: Chairman Paulitz; Committee Member Eaton; Director of Redevelopment/Public Works Staats; Community Development Director Lustro; City Engineer Hudson; Facilities and Grounds Superintendent McGehee; Police Chief Jones; Public Works Superintendent Mendez

**II. APPROVAL OF MINUTES**

**A. Minutes of Regular Public Works Committee Meeting of February 17, 2011**

It was the consensus of the Public Works Committee to approve the minutes of the Public Works Committee meeting of February 17, 2011

**III. PUBLIC COMMENT - None**

**IV. TRAFFIC SAFETY/CIRCULATION ISSUES**

A. Traffic Safety - None

**V. POLICE DEPARTMENT UPDATES**

The impound lot is currently under construction, and staff is determining how much revenue it will bring to the City. There is a City Council workshop scheduled for Monday, May 2, 2011, to discuss the project. The impound lot will begin operating July 1, 2011. Currently, the contracts with the two tow companies state that the City could change the contract at any time with 30 days written notice. Changing the contracts should not be a problem, but the two tow companies are not happy about the change and will attend the City Council workshop and meeting on May 2, 2011.

**VI. COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS**

Community Development Director Lustro reported the following:

There are a few applicants that are interested in establishing new businesses in the City. One of the applicants, International House of Pancakes (IHOP), is interested in taking over the old Tony Roma's building and exploring the possibility of operating 24 hours per day. The other applicant is Family Dollar which will sell clothes, dry goods, and limited groceries. Family Dollar is looking at the vacant lot at Holt Boulevard just east of Jack in the Box. They would like to build a building on the lot. Nothing has been finalized with either of the applicants.

Last Thursday a letter was received from the State Department of Housing and Community Development to let the City know that they are supportive of the revisions made to the draft Housing Element. Now that it has been approved by the State Department of Housing and Community Development it can be released for public review then can be submitted to the Planning Commission and City Council for approval and adoption.

**VII. PUBLIC WORKS DEPT.-MAINTENANCE ACTIVITIES UPDATES/ITEMS**

No items to report.

**VIII. PUBLIC WORKS DEPT. ENGINEERING DIVISION UPDATES/ITEMS**

- A. Discussion of Speed Survey Results 2010-2011. Process for enacting new speed limits

Cities are required to conduct speed surveys every five years pursuant to the California Vehicle Code. Under certain conditions, the surveys can go longer than five years. The City's last survey was done in 2003 and the ordinance was adopted in January 2004. A speed survey was performed in 2008, but no Ordinance was adopted. The speed survey was redone in 2010 and 2011. Staff has reviewed the survey and analyzed the data. City Engineer Hudson discussed a spreadsheet with the Committee on the streets where the speed limits are recommended to be changed. The agenda item to set the public hearing will be presented to the City Council at the May 2, 2011 regular joint meeting; and the Ordinance would be effective the first part of July 2011.

- B. Path of travel from parking lot to City Hall south entrance

A few weeks ago, someone reported the handicap path of travel from the south parking lot into City Hall is not ADA compliant. The ramps are too steep, the cross slope is excessive, and the uplifted areas are tripping hazards. Three trees need to be removed: one tree is dead, the second tree is a pine that has caused some uplifting

of the sidewalk, and the third is a ficus located adjacent to the building. The ficus tree roots are also uplifting the sidewalk. There is also a drainage issue at the employee entrance. Staff has met with City Manager Starr regarding this concern. The scope of work has not been fully defined, but the handicap accessibility and drainage issues will be addressed. Staff is considering expanding the privacy wall further south to create a small patio area outside the break room for employees. These are all concepts, and nothing has been finalized.

C. Sunrise Park (Added Item)

A complaint came in from a resident who lives east of Sunrise Park regarding balls being kicked over the fence into her and her neighbor's yards. The resident left City Engineer Hudson an irate message wanting to know why the City did not install screens to keep the balls from flying into residents' backyards when the property was made into a park. City Engineer Hudson, Director of Redevelopment/Public Works Staats, and Facilities and Grounds Superintendent McGehee took a look at the property. There is no ball field at the park, but soccer games are being held there. The wall most likely belongs to the City, but it has not been formally surveyed. A suggestion was made to vertically extend the wall, but an extension cannot be placed on the wall without the wall being reconstructed to ensure the footings will support the extension of the wall.

**IX. CAPITAL PROJECT UPDATES**

City Engineer Hudson reported the status of the following capital improvement projects:

**A. MISSION BOULEVARD IMPROVEMENT PROJECT**

Mission Boulevard Phase 10 (from 3rd Street down to Mission Boulevard behind the old Agitator Shop) bid opening was today. The low bid came in at \$145,000 and the engineers estimate was \$260,000. The award to Gentry Brothers, Inc., will go to the next City Council meeting.

**B. MONTE VISTA GRADE SEPARATION PROJECT**

All of the right-of-way acquisition has been completed and the environmental process will begin in about a month to comply with the National Environmental Policy Act (NEPA).

**C. YOUTH/SENIOR/COMMUNITY CENTER FACILITIES**

For the Senior Center there are a few items left on the punch list. A notice of completion will not be presented to the City Council for approval for about another month.

In the Community Center the current restrooms are not ADA compliant and are inadequate for the size of the building. An agreement was entered into with Wheeler & Wheeler Architects to convert Meeting Room A into restrooms and the existing restrooms would be converted to storage. The kickoff meeting took place earlier in the week. Further modifications were made, and the architect is preparing a revised scope of work. Depending on the price of the revised scope of work, the City Manager may be able to execute the agreement.

**D. FREMONT AVENUE IMPROVEMENT PROJECT - PHASE II**

This phase of Fremont Avenue improvements is just south of Howard Street. This project involves the construction of curb, gutter, and sidewalk. The project has been awarded but the contractor has to wait on a gas meter to be relocated in order to begin the project. The project will begin on June 1, 2011.

**E. INTERSECTION IMPROVEMENT PROJECT - PHASE II**

This project is the follow up to last year's intersection repair project at various locations. The three current locations that will be worked on are Holt Boulevard and Ramona Avenue; Palo Verde Street and Central Avenue; and Monte Vista Avenue and Arrow Highway. The design is going to be done in house in the next month.

**F. POLICE IMPOUND YARD**

This project is currently under construction. This item was discussed under Section V above.

**G. ALMA HOFMAN PARK IMPROVEMENTS**

The landscape project that was recently completed is currently in the maintenance period. The establishment maintenance period should extend until the end of June 2011 but because of the Family Fun Festival the first weekend of June and the Splash Pad opening Memorial Day weekend the maintenance period will be cut short.

The gazebo, parking lot expansion, and lighting at the tennis courts project was advertised and the bid opening will take place on May 5, 2011. As long as the low bidder checks out, the bids will be

presented to the City Council at the May 6, 2011 regular joint meeting for award.

#### H. MILLS AVENUE REHABILITATION

The Mills Avenue Rehabilitation Project will construct new paving from the Union Pacific railroad tracks north to Moreno Street. Currently, Mills Avenue is a divided four-lane roadway. As part of the rehabilitation project, the roadway would be reduced to a single lane each way, and a bicycle lane will be added to each side of the street. Parking would still be permitted on the street. There would be an eight-foot parking lane, a five-foot bike lane, and a 14-foot-wide travel lane on each side. Bids were opened on April 14, 2011. The engineer's estimate was \$951,000, and the low bid came in at \$892,000.

Adjustments will need to be made to the Measure I Expenditure Plan. One of the projects in the Measure I Expenditure Plan was for improvements at San Jose Street and Vernon Avenue. The City was going to work with the property owner who planned to do a subdivision of his property. He was going to take care of all of the improvements on his side of the property line and the City was going to handle the improvements within the public right-of-way. The property owner has run into some financing issues and cannot proceed with the project. The money intended for the San Jose Street and Vernon Avenue Improvement project was coming from the Measure I Expenditure Plan. During the recommendation for award for the Mills Avenue project it will be recommended to amend the Measure I Expenditure Plan and move the funds from San Jose Street and Vernon Avenue Improvements to the Mills Avenue Rehabilitation Project. Half of the funding for Mills Avenue is Measure I and the other half of the funding is Community Development Block Grant funds.

#### X. ADJOURNMENT

At 2:48 p.m., Chairman Paulitz adjourned the Public Works Committee.

Submitted for Public Works Committee approval,

  
Alicia Johnson  
Transcribing Secretary

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
MAY 16, 2011, AT 8:10 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 8:10 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  
May 2, 2011.**

Moved by City Manager Starr, seconded by Council Member Ruh,  
and carried unanimously to approve the minutes of the Personnel  
Committee meeting of May 2, 2011.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

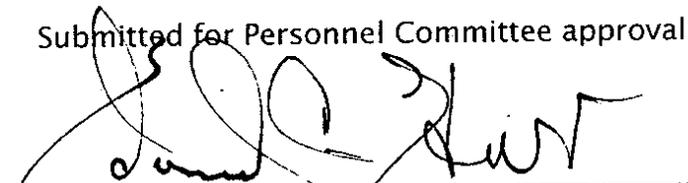
At 8:11 p.m., the Personnel Committee went into Closed Session  
regarding personnel matters related to appointments, resignations/  
terminations, and evaluations of employee performance.

At 8:32 p.m., the Personnel Committee returned from Closed Session.  
Mayor Eaton stated that no announcements would be made at this time.

**VI. ADJOURNMENT**

At 8:32 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr  
City Manager