

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

November 7, 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 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

A. Introduction of New Employee

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 – None

VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Minutes of the Adjourned Joint Council/Agency Board Meeting of October 17, 2011 [CC/RDA]
2. Minutes of the Regular Joint Council/Agency Board/MHC Board Meeting of October 17, 2011 [CC/RDA/MHC]

B. Administrative Reports

1. Consider Approval of Warrant Register and Payroll Documentation [CC] 4

C. Agreements

1. Consider Termination of Agreement No. 11-123, a Fiscal Operations Services Agreement With Donald L. Parker, CPA [CC] 5

2. Consider Approval of Agreement No. 11-130 With Construction Testing and Engineering, Inc., for \$30,000 for On-Call Testing and Inspection Services for Miscellaneous City Projects [CC] 6

D. Resolutions

1. Consider Adoption of Resolution No. 11-2928 Establishing the Procedures for Industrial Disability Retirement Determinations of Local Safety Members of the California Public Employees' Retirement System [CC] 21

2. Consider Adoption of Resolution No. 11-2930 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges [CC] 39

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE – None

XI. COMMUNICATIONS

- A. City Attorney/Agency Counsel
- B. City Manager/Executive Director
- C. Mayor/Chairman
- D. Council/Agency Board

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

1. Minutes of the Personnel Committee Meeting of October 17, 2011 47

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

The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, November 21, 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 November 3, 2011.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION	DATE: November 7, 2011
	SECTION: ADMIN. REPORTS
	ITEM NO.: 1
	FILE I.D.: FIN540
	DEPT.: ADMIN. SVCS.

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

BACKGROUND: Mayor Pro Tem Raft has examined the Warrant Register dated November 7, 2011, and Payroll Documentation dated September 25, 2011; finds them to be in order; and recommends their approval.

FISCAL IMPACT: The Warrant Register dated November 7, 2011, totals \$1,611,988.75. The Payroll Documentation dated September 25, 2011, totals \$621,583.59, with \$442,861.88 being the total cash disbursement.

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

Prepared by: <u><i>Gyonna L Smith</i></u>	Reviewed and Approved by: <u><i>[Signature]</i></u>
Proofed by: <u><i>Andrea Phillips</i></u>	Presented by: <u><i>[Signature]</i></u>

AGENDA REPORT

SUBJECT: CONSIDER TERMINATION OF AGREEMENT NO. 11-123, A FISCAL OPERATIONS SERVICES AGREEMENT WITH DONALD L. PARKER, CPA	DATE: November 7, 2011
	SECTION: AGREEMENTS
	ITEM NO.: 1
	FILE I.D.: PER187
	DEPT.: CITY MGR.

REASON FOR CONSIDERATION: Staff is requesting the City Council consider the termination of Agreement No. 11-123 with Donald L. Parker, CPA. The reason for the termination involves a potential conflict of interest issue that would prevent the City's current audit firm, Lance, Soll & Lunghard, LLP, from completing the audit of the Redevelopment Agency. This audit report must be submitted to the State by December 31, 2011.

BACKGROUND: The City Council approved Agreement No. 11-123 with Donald L. Parker, CPA, on October 3, 2011, after the retirement of Assistant Finance Director Richard Beltran. Mr. Parker has been providing fiscal management services to the Finance Division, and staff has been particularly pleased with his work.

Less than one year ago, Mr. Parker served as a Principal with Lance, Soll & Lunghard, LLP, the City's principle auditing firm for the past two decades. With Mr. Parker's relatively recent service as a Principal with Lance, Soll & Lunghard, LLP, the audit firm fears that its objectivity regarding the upcoming Redevelopment Agency audit could be subject to compromise by the City's employment of Mr. Parker. Therefore, in order to see that the Redevelopment Agency audit is completed by December 31, 2011, as required by law, staff has provided Mr. Parker with a notice terminating his relationship with the City and Agency beginning on November 2, 2011.

FISCAL IMPACT: The termination of Agreement No. 11-123 will result in a slight salary savings as no replacement for Mr. Parker would be made prior to the audit.

RECOMMENDATION: Staff recommends that the City Council terminate Agreement No. 11-123, a Fiscal Operations Services Agreement with Donald L. Parker, CPA.

Prepared by: M. STAATS
Proofed by: G. L. Smith

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

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 11-130 WITH CONSTRUCTION TESTING AND ENGINEERING, INC., FOR \$30,000 FOR ON-CALL TESTING AND INSPECTION SERVICES FOR MISCELLANEOUS CITY PROJECTS

DATE: November 7, 2011
SECTION: AGREEMENTS
ITEM NO.: 2
FILE I.D.: STA670
DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: Most City projects require some type of testing of materials or special inspection services City staff is not able to provide. The City Council is requested to consider approval of Agreement No. 11-130 with Construction Testing and Engineering, Inc., to provide these testing and inspection services on an "on-call" basis. Awards of contracts and agreements with the City require City Council approval.

BACKGROUND: For the past two years, the City has been using Construction Testing and Engineering, Inc., to provide soils compaction and concrete testing. Certain special inspection services, which City staff cannot provide, are sometimes required as well. The City previously entered into Agreement No. 09-66 with Construction Testing and Engineering, Inc., for these services. This Agreement expired in August. A new agreement is required.

FISCAL IMPACT: Proposed Agreement No. 11-130 is written for an amount not to exceed \$30,000 and would cover a two-year period terminating June 30, 2013. Purchase orders would be written based on quotations received for individual City projects and would be charged to those City projects. The sum total of these purchase orders would not exceed \$30,000, except as provided for in the agreement. The agreement authorizes the City Manager to increase the contract amount by no more than 15 percent.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 11-130 with Construction Testing and Engineering, Inc., for on-call testing and inspection services for miscellaneous City projects.

Prepared by: *M. S. [Signature]*
Proofed by: *[Signature]*

Reviewed and Approved by: *M. S. [Signature]*
Presented by: *[Signature]*

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

**On-Call Special Inspection and Material Testing Services
for
Public Works Projects**

THIS AGREEMENT is made and effective as of November 7, 2011, between the City of Montclair, a municipal corporation ("City") and Construction Testing and Engineering, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on November 7, 2011, and shall remain and continue in effect until June 30, 2013, or until tasks described herein are completed, whichever is later, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform inspections, special inspections, and materials as requested by City. The performance of testing and inspection shall also include the preparation of all necessary maps, plans, reports, and documents as determined necessary by City. Consultant shall complete the tasks according to the schedule of performance established for each individual project.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently, and to the best of his/her ability, experience, and talent perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the tasks to be performed or change Consultant's compensation subject to Section 5 hereof.

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$30,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed fifteen percent (15%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall specify each project for which services were provided, and detail all costs, rates, and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous calendar month. Payment shall be made within thirty (30) days of receipt of each invoice as to all undisputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5(c).

7. DEFAULT OF CONSULTANT

(a) Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating

Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to

the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant. Said indemnification shall include any claim that Consultant, or Consultant's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law.

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

10. INSURANCE

(a) Consultant shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to City nor shall Consultant allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI:

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	1,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim and aggregate)	1,000,000
Worker's compensation	Statutory

(b) All insurance required by this Section shall apply on a primary basis. Consultant agrees that it will not cancel or reduce said insurance coverage. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(c) Auto liability insurance shall cover owned, nonowned and hired autos. If Consultant owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

(d) At all times during the term of this Agreement, Consultant shall maintain on file with City a certificate of insurance, in a form acceptable to City showing that the aforesaid policies are in effect in the required amounts. The general liability policy shall contain or be endorsed to contain a provision including the Indemnitees as additional insureds. Consultant shall promptly file with City such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

(e) No policy required by this Section shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnitees.

(f) All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

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

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

(h) General Insurance Requirements: All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured and all subcontractors waive the right of subrogation against City and City's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by City; and (3) they cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City by certified mail. Consultant shall furnish City with copies of all such policies. Consultant may effect for its own account insurance not required under this Agreement.

11. INDEPENDENT CONTRACTOR

(a) Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control and shall not be construed to be employees of City for any purpose, including eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City or bind City in any manner.

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

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of state and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Montclair in connection with the award, terms, or implementation of this Agreement including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Montclair will receive compensation, directly or indirectly, from Consultant, or from any officer, employee, or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter shall have any interest, direct or indirect,

in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent, or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service; (ii) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, which provides a receipt showing date and time of delivery; or

(iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: Michael C. Hudson
City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant: Tiffany Hilborn
Business Development
Construction Testing and Materials, Inc.
12155 Magnolia Avenue, Suite C
Riverside, CA 92503

17. ASSIGNMENT

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

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses required of it by law for the performance of the services described in this Agreement including a City of Montclair business license.

19. GOVERNING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Montclair.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. NOT USED

22. CONFIDENTIALITY

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

23. DISCRIMINATION

The Consultant agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Consultant agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY:

CITY OF MONTCLAIR

Paul M. Eaton
Mayor

CONSULTANT:

**CONSTRUCTION TESTING AND
ENGINEERING, INC.**

By _____
(Title)

ATTEST:

Yvonne L. Smith
Deputy City Clerk

By _____
(Title)

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney

EXHIBIT A



Construction Testing and Engineering, Inc.
 14536 Mendocino Parkway, Suite A Tel: (951) 571-4361
 Riverside, CA 92516 Fax: (951) 571-4166
 e-mail: luffany@cte-inc.net

Page 1 of 5

Prevailing Wage

1/1/2011

Schedule of Fees and Services			
PROFESSIONAL SERVICES	Rate per Hour		
<u>PROFESSIONAL ENGINEERING STAFF</u>			
Principal Engineer / Geologist	\$140		
Senior Engineer / Geologist / Architect	\$125		
Project Engineer / Geologist / Architect	\$100		
Environmental Consultant / Registered Environmental Assessor	\$100		
Staff Engineer / Geologist / Architect	\$85		
Environmental Specialist	\$80		
Environmental Technician	\$65		
Roofing / Waterproofing Inspector	\$65		
Roofing / Waterproofing Consultant	QUOTE		
<u>INSPECTION SERVICES & QUALITY CONTROL</u>			
Pile Driving Inspector / Deep Foundation Inspector	\$75		
Senior Soil Technician (includes nuclear gauge or mobile laboratory)	\$70		
Soil Technician II (includes nuclear gauge or mobile laboratory)	\$70		
Mechanical / Electrical Inspector	\$70		
Registered Special Inspector (Concrete, Masonry, Welding, Pre-Stress, Fireproofing)	\$70		
Shop Fabrication Inspection (Within California)	QUOTE		
Shop Fabrication Inspection (Outside California)	QUOTE		
Field Technician I (ACI / Soil)	\$70		
Concrete Technician (ACI)	\$70		
Inspector of Record / OSA / OSHPD Inspector	QUOTE		
Quality Control Representative	QUOTE		
Submittal Reviewer	QUOTE		
Prevailing Wage Site Work	QUOTE		
QC Plan Preparation	QUOTE		
<u>NON-DESTRUCTIVE TESTING SERVICES</u>			
Non-Destructive Testing Inspector (ultrasonic, magnetic particle, dye penetrant)	\$85		
Metallic Surface Coatings (Paint or Fluorescent Fireproofing)	QUOTE		
Radiographic (low power portable and laboratory available)	QUOTE		
<u>SPECIAL SERVICES:</u>			
Coring / Sawing Operator & Equipment (1-man crew)	\$110		
Coring / Sawing Operator & Equipment (2-man crew)	\$200		
Floor Flatness (includes report and Registered Engineer Certification)	\$95		
Mobilization / Demobilization - flat rate	\$100		
Reinforcing Steel Location	\$70		
Anchor Pull Tests - up to 30 tons	\$70		
Glue Lamination inspection	QUOTE		
Batch Plant Inspector	\$70		
Procedure Qualification per AWS, ACME or Military Standards	QUOTE		
<u>SUPPORT SERVICES:</u>			
Certificate of Completion	\$350		
Draftsman	\$60		
Express Mail (FEDEX/UPS) (minimum)	\$30		
Facsimile (each page)	\$1		
File Search, re-issue of report copies (minimum)	\$50		
Review of Files for processing Affidavits and Certifications	\$45		
Word Processing/Secretarial (per hour)	\$45		
Sample Pickup (50 mile radius of CTE office - NIC Shotcrete Panels)	\$0		
<u>COURT APPEARANCE AND DEPOSITIONS:</u>			
Senior Professional Preparation, Deposition or Testimony	\$250		
Travel & Expenses	Actual + 15%		
Evidence Storage (per month)	\$50		



Schedule of Fees and Services

MATERIALS TESTING	Price per specimen	ASTM Designation	Other Method Used
SOILS:			
California Bearing Ratio (CBR), Includes Maximum Density Curve	\$360	D 1883	---
Cement Treated Base, Laboratory Design - Soil Cement, Each Set	\$500	D-558	---
Cement Treated Base, Sample Fabrication (Set of Three)	\$120	D-558	CTM 312
Cement Treated Base, Compression Test	\$40	---	---
Chloride Content of Soil	\$70	---	---
Conductivity	\$35	---	CAL-TM-424
Consolidations - Per Point	200.00 or \$65.00 per point	D 2435	---
Direct Shear Test	\$105 to \$245	D 3080	---
Expansion Index	\$150	D 4929	UBC 18-2
Hydrometer Analysis (Fine Grade)	\$200	D-422	---
Hydrometer Analysis with coarse & fine grade	\$250	---	---
Laboratory Compaction Test (Moisture Density-Each Curve)	\$200	D 1557	CTM 218
Laboratory Compaction Test Requiring Rock Correction	\$200	D 1557 / D 4718	---
Moisture Content	\$35	D 2216	---
Plasticity Index / Liquid Limit/Atterburg Limits	\$100	D 4318	---
Permeability Test - Constant Head			
Fine Grained Soil	\$210	D-5094	---
Granular Soil	\$350	D 2434	---
Other	QUOTE	D 4318	---
R - Value (Minimum 3 pts.)	\$250	D-2844	CTM 301
Resistivity and pH of Soil	\$150	D-4972	CTM 843
Sand Equivalent	\$100	D 2419	CTM 217
Shrinkage Limit	\$90	D 427	---
Sodium Sulfate Soundness (Per Size Fraction)	\$70	C 88	---
Soil Classification w/ Atterburg & Gradation	\$245	D 2487	---
Sulphate Content of Soil	\$80	---	---
AGGREGATES:			
Absorption Test, Coarse Aggregate	\$25	C 127	---
Absorption Test, Fine Aggregate	\$25	C 128	---
Aggregate Conformance Testing for State of California Projects <small>(Includes: Sieve Analysis, Specific Gravity, No. 200 Wash, Organic Impurities, Unit Weight)</small>	\$210	---	---
Clay Lumps and Friable Particles	\$85	C 142	---
Cleanliness Value	\$70	---	CTM 227
Crushed Particles, Percent	\$110	---	CTM 205
Durability Index, Coarse Aggregate	\$95	D 3744	CTM 229
Durability Index, Fine Aggregate	\$70	D 3744	CTM 222
LA Rattler	\$150	C 131 or C 635	CTM 211
Mortar making properties of fine aggregates	\$225	C 87	---
Organic Impurities in Sand	\$85	C 80	---
Sieve Analysis (Gradation), Coarse Aggregate	\$75	C 136	---
Sieve Analysis (Gradation), Fine Aggregate (Including Wash)	\$100	C 136	---
Soundness of Aggregates by Sulfates	\$45	---	---
Specific Gravity, Fine Aggregate	\$50	C 128	---
Specific Gravity, Coarse Aggregate	\$40	C 127	---
Unit Weight per Cubic Foot, Voids in Aggregate	\$50	C 29	---



Schedule of Fees and Services			
MATERIALS TESTING	Price per specimen	ASTM Designation	Other Method Used
ASPHALT CONCRETE:			
Asphalt Mix Design	Quote	Marshall & Hveem	—
Asphalt Mix Design Review	\$135	—	—
Bitumen Content	\$75	D 2172	—
Compacted Max Density - HVEEM		D 1561	—
Compacted Max Density - Marshall		D 1561	—
Extraction, % Asphalt (Including gradation)	\$130	D-6307 / C-136	CTM 310/CTM 362
Field Mix-HVEEM-Stability per Point	\$110	D 1560	—
Field Mix-MARSHALL-Stability per Point	\$110	D 1560	—
Film Stripping	\$65	—	CTM 392
Hveem Stability & Unit Weight	\$150	D 1560 / D 1561	CTM 304, 308 & 366
Marshall Stability, Flow & Unit Weight (Three Specimens)	\$150	D 1559 / D 2728	—
Maximum Theoretical Unit Weight (Rice Specific Gravity)	\$150	D 2041	—
Percent Swell	\$80	—	CTM 395
Preparation of Bituminous Mixture	\$30	CAL-TM304	—
Stabilometer Value of Bituminous Mixture	\$50	CAL-TM368	—
Unit Weight Compacted Sample or Core (Bulk Specific Gravity)	\$50	D 2726	CTM 309
Unit Weight Sample Requiring Compaction	\$115	D 2726	CTM 304 & 308
CONCRETE:			
Cement Testing Compression (Cubes)	QUOTE	C-109 / C-109M	—
Compression Tests, 6x12 Cylinder	\$20 (each)	C 39	—
Compression Tests, Gunite/Shotcrete Panels, 3 Cut Cores per Panel (Set)	\$135	C 39	—
Compression Tests, Cores (Includes Sample Preparation)	\$45	C 42	—
Compression Tests, Lightweight Concrete Fill	\$30	C 485	—
Concrete Flexural Test, 6x6x20	\$55	C 293, C 78	—
Concrete Mix Design (Includes Aggregate Testing)	\$350	—	—
Concrete Mix Design (Revision or Review)	\$150	—	—
Drying Shrinkage (3 Specimens-28 Days)	\$120	C 157 (Mod)	—
Gunite/Shotcrete Panel Coring	\$95/hour	C-42	—
Modulus of Elasticity, Static	\$78	C 469	—
Splitting Strength Test	\$60	C 466	—
Trial Batch, Includes Mix Design, Aggregate Testing & Six Compression Tests	\$525	—	—
Unit Weight, Lightweight Concrete Fill	\$30	C 485	—
MASONRY:			
Absorption Test, Brick, 7-Day (Per Block, 3 block minimum)	\$45	C 67	—
Absorption Test, Brick, 24-Hour Submersion	\$25	C 67	—
Absorption Test, Brick, 5-Hour Boiling	\$40	C 67	—
Composite Prism (under 400,000 lbs.), Half Size 8 x 8 x 16	\$140	E 447	UBC 21-17
Composite Prism (under 400,000 lbs.), Full Size 8 x 16 x 16	\$150	E 447	UBC 21-17
Composite Prism (over 400,000 lbs) Full Size 12 x 16 x 16	\$250	—	—
Compression Test, Brick	\$30	C 67	—
Compression Test, Blocks Larger Than 8x8x16	\$40	C 140	—
Compression Test, Blocks Less Than or Equal to 8x8x16	\$35	C 140	—
Compression Tests, Grout	\$18	C 1019	UBC 21-16
Compression Tests, Mortar, 2x4 cylinder UBC	\$18	C 780	UBC 21-16
Conformance Package	\$525	C 90	—
Efflorescence, Block with Mortar	\$40	C-90	—
Efflorescence, Block/Brick Only	\$30	C-90 / C-67	—
In-Place Shear Test (per test)	\$80	—	UBC 21-6
Linear Shrinkage	\$100	C 426	—
Modulus of Rupture, Brick	\$30	C 67	—
Moisture as Received, Brick	\$25	C 67	—
Saturation Co-Efficient (Includes Absorption) Brick	\$40	C 67	—
Shear Test, cores (excludes sample preparation)	\$150	—	Title 24
Compression Test Cores (includes sample preparation)	\$50	C 42	Title 24
Unit Weight & Absorption, Block	\$40	C 140	—



Schedule of Fees and Services			
MATERIALS TESTING	Price per Specimen	ASTM Designation	Other Method Used
STEEL:			
High Strength Bolt, Nut & Washer Conformance (Wedge Tensile, Proof Load, Hardness)	\$100	A-325	---
Mechanical Tests, Hardness Test, Rockwell	\$50	---	---
Prestressed Steel, Tensile Test, Strand (7 wire)	\$90	---	---
Reinforcing Steel, Tensile Test - No. 11 Bars & Smaller	\$30	A 615	---
Reinforcing Steel, Tensile Test - No. 14 Bars & Larger (To Min. Require. Only)	\$50	A 615	---
Reinforcing Steel, Bend Test - No. 11 Bars & Smaller	---	---	---
Mechanically Spliced Reinforcing Steel	\$80	---	---
Fireproofing Density Tests	\$70	E 805	UBC 7-6
Fireproofing Adhesion / Cohesion Tests	---	---	---
Structural Steel, Tensile Test - Up to 200,000 lbs.	\$30	A 370	---
Structural Steel, Bend Test	\$40	---	---
Structural Steel, Pipe Flattening Test	\$30	---	---
Welded Specimens, Tensile Test - No. 11 Bars & Smaller	\$32	---	---
Welded Specimens, Tensile Test - No. 14 Bars (To Min. Require. Only)	\$60	---	---
Welded Specimens, Tensile Test - No. 18 Bars (To Min. Require. Only)	\$80	---	---
Welded Specimens, Tensile Testing - Mechanically Spliced Bar	\$80	---	---
ROOFING:			
Asbestos Evaluation (per ply)	\$40	---	---
Asphalt Softening Point	\$150	---	---
Roofing Material Analysis, With Surfacing	\$450	D 2829	---
Roofing Material Analysis Without Surfacing	\$225	D 3617	---
Roofing Tile, Absorption (set of 5)	\$150	---	---
Roofing Tile, Strength Test (set of 5)	\$150	---	---
WELDING CERTIFICATION			
American Welding Society (AWS D1.1)	---	---	---
Limited Thickness Plate (per position)	\$200	---	---
Unlimited Thickness Plate (per position)	\$230	---	---
Pipe (per position)	\$230	---	---
American Welding Society (AWS D1.4)	---	---	---
Bar Sizes #3 through #9 (each)	\$290	---	---
Bar Sizes #10 through #11 (each)	\$230	---	---
Bar Sizes #14 through #18 (each)	\$250	---	---
American Society of Mechanical Engineers (ASME)	---	---	---
Plate or Pipe Procedure Qualification (each)	\$550	---	---
Plate or Pipe Welder Qualification (each)	\$550	---	---
American Welding Society (AWS D1.3)	---	---	---
Light Gauge Metal (includes butt and plug weld)	\$150	---	---
Procedure Qualification per AWS, ASME or Military Standards	QUOTE	---	---
Fillet Weld Test (Break and Etch Test)	\$150	---	---
Fillet Weld Test Plates	\$30	---	---
Ultrasonic Testing of Weld Coupons	\$90	---	---
Witness Time, If Required	\$55	---	---

**Schedule of Fees and Services**

Testing Samples: A preparation charge will be added to all samples submitted to the laboratory that are not ready for testing. This preparation charge will be based on the actual time required and at the laboratory technician's rate of \$50.00 per hour. There will be a 50% premium charge for "RUSH/PRIORITY" testing. This testing laboratory agrees to exercise reasonable care in obtaining, preserving, and caring for the samples to be tested, but assumes no responsibility for damages, either direct or consequential, which arise or are alleged to arise from loss, damage or destruction of samples due to circumstances beyond this testing laboratory's control. Samples are discarded after testing unless requested otherwise in writing by the client. A per month fee is charged for retained samples.

On-Site Mobile Laboratory: QUOTE

Prevailing Wage: Please note that all inspector and technician rates will increase every July 1, to commensurate with Local 12 document annual increase.

Per Diem and Travel Expenses: Minimum \$ 50.00 per day or Actual cost + 15%

Scheduling: A minimum of 24 hours notice is required to schedule personnel.

Minimum Charges:

Show-up time:	2-Hour Minimum Billing
Site Time + 1 Hour	
Swing/Graveyard Shift:	10% Premium
Trip Charge:	\$0/hr (Minimum)
Reimbursables:	Cost plus 15%

Overtime Rates: Rates are based on an 8-hour work day between the hours of 7:00 A.M. and 3:00 P.M., M-F. A premium of 1.5 times the quoted rates for the first 8 hours and 2.0 times thereafter will be charged for work outside of normal hours. Saturdays will be invoiced at 1.5 times the quoted rate for the first 8 hours and 2.0 times thereafter. Work on Sundays and holidays will be invoiced at 2.0 times the quoted rate.

The following are CTE Inc. holidays:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

Should a Holiday fall on a Saturday or Sunday the closest previous or following regular work day shall be considered the holiday.

Payment Terms: Payment for services is due upon presentation. If not paid within 30 days of the invoice date, it will be considered past-due and a finance charge of 1 1/2% per month will be added to the unpaid balance. Additionally, any attorney's fees or other costs incurred in collecting any delinquent accounts will be added to the amounts due and shall be paid by the party invoiced.

The Fee Schedule contains only the basic services performed by this office and is not a complete listing. Please do not hesitate to call for a quotation or proposal if your service needs are not listed herein.

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 11-2928 ESTABLISHING THE PROCEDURES FOR INDUSTRIAL DISABILITY RETIREMENT DETERMINATIONS OF LOCAL SAFETY MEMBERS OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

DATE: November 7, 2011
SECTION: RESOLUTIONS
ITEM NO.: 1
FILE I.D.: PER600
DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution No. 11-2928 establishing the procedures for industrial disability retirement determinations of local safety members of the California Public Employees' Retirement System (CalPERS). This resolution complies with the requirements of California Government Code Sections 21156 and 11500 *et seq.* concerning disability retirement procedures for safety members.

Copies of Resolution No. 11-2928, the October 2011 Disability Retirement Procedures for local safety members, and the Notice of Defense (Disability Retirement) form are attached for Council's review and consideration.

BACKGROUND: Pursuant to California Public Employees' Retirement Law (PERL), as set forth in the Government Code of the State of California, it is the City's responsibility to make determinations related to applications for disability retirement of its safety employees. Specifically, Government Code Section 21156 requires local agencies to conduct a hearing in accordance with the Administrative Procedures Act (APA), as set forth below:

21156. (b) (2) The local safety member may appeal the determination of the governing body. Appeal hearings shall be conducted by an administrative law judge of the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of this title.

In conformance with the requirement that appeal hearings be conducted by an administrative law judge of the California Office of Administrative Hearings (Government Code Sections 11502 and 11512), the City Council, at its regular meeting on September 8, 1998, approved entering into Agreement No. 98-57 authorizing the City to contract with the State of California for the rendering of hearing services. This Agreement remains in effect to this day.

Prepared by:

C.B. HATES

Proofed by:

SC Stant

Reviewed and Approved by:

Presented by:

[Handwritten signatures]

The California Public Employees' Retirement System (CalPERS) recommends that public agencies adopt a formal resolution describing the disability determination procedures that incorporate the APA requirements. Since disability retirement procedures for safety employees are extremely complex and intricate, staff prepared detailed written documents to assist the City Council, staff, and safety employees with the processing of disability retirements and comply with the CalPERS' recommendation. Proposed Resolution No. 11-2928 incorporates this information with attachments of the October 2011 Disability Retirement Procedures for local safety members and the Notice of Defense (Disability Retirement) form.

FISCAL IMPACT: Pursuant to legal counsel (Liebert Cassidy Whitmore), an employee who is availing himself/herself of a due process appeal related to a right of employment cannot be required to pay for the cost of the hearing officer or any other costs that would be different than if the employee were to go to court. This ruling does not require the City to pay for any transcript or other record of the proceedings as that is borne by each party in court. The cost of having a court reporter present to record proceedings is also normally paid by the employer. Fees charged by the California Office of Administrative Hearings to provide hearing services are established each fiscal year. Court reporter firms contract with the Office of Administrative Hearings in a competitive bid process, and the fees charged vary by geographical region. Below are the fees for Fiscal Years 2011-12 and 2012-13.

<i>Services</i>	<i>2011-12 Fees</i>	<i>2012-13 Proposed Fees</i>
Administrative law judge	\$184 per hour	\$188 per hour
Staff counsel	\$180 per hour	\$183 per hour
Hearing reporter	\$80 to \$194 per appearance	Unknown
Transcript rates	\$5 to \$14 per page	Unknown
Filing fee	\$80 per case	\$80 per case
Electronic recording fees	\$30 per hearing per calendar day	\$30 per hearing per calendar day

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 11-2928 establishing the procedures for industrial disability retirement determinations of local safety members of the California Public Employees' Retirement System.

RESOLUTION NO. 11-2928

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ESTABLISHING THE PROCEDURES FOR INDUSTRIAL DISABILITY RETIREMENT DETERMINATIONS OF LOCAL SAFETY MEMBERS OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

WHEREAS, the City of Montclair is a contracting agency of the California Public Employees' Retirement System (CalPERS); and

WHEREAS, the California Public Employees' Retirement Law (PERL) requires that a contracting agency determine whether an employee of such agency in employment in which he/she is classified as a local safety member is disabled for purposes of the PERL and whether such disability is "industrial" within the meaning of such Law;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair shall employ the following procedures upon the filing of an application for industrial disability retirement by a local safety member or other person on behalf of the local safety member under the CalPERS:

Section 1. An initial determination will be made by the City Council upon recommendation from the City Manager or designee, which shall be based upon competent medical and other available evidence offered by the City and/or the member to determine whether the member is substantially incapacitated physically or mentally from performing the usual duties of his/her current position and whether the incapacity will exist for a permanent or extended and uncertain duration of six months or longer. The determination by the City Council shall be made within six months of the date of receipt by the City of notice from CalPERS that the application has been filed (the member may waive this time requirement in writing) or, in accordance with California Government Code Section 21156, at such time the City is in possession of competent medical opinions and medical and vocational information provided by the member, City, and workers' compensation third-party administrator (TPA) as is necessary to make a determination, whichever comes later.

Section 2. If the City does not have competent medical evidence upon which to make a determination on an application for disability retirement, the City shall take such steps as are necessary to obtain competent medical evidence, including referring the member for a medical or psychological examination to determine eligibility. The member shall cooperate fully in the process.

Section 3. If it is determined by the City that the member is incapacitated, and the incapacity is industrial, the City Council will so certify to CalPERS and the member will be notified. The City Council shall make any other necessary certifications to CalPERS, as required by law or regulation.

Section 4. If it is determined by the City that the member is incapacitated, but the cause of incapacity is nonindustrial, the City Council will so certify to CalPERS

and the member will be notified. The City Council shall make any other necessary certifications to CalPERS as required by law or regulation.

Section 5. If it is determined that the member is incapacitated but the member contends that the cause of disability is industrial, the member and/or the City may petition the Workers' Compensation Appeals Board (WCAB) for a determination of causation. If the WCAB determines the cause of incapacity to be industrial or nonindustrial, the City Council will so certify to CalPERS.

Section 6. The effective date of the member's retirement shall be determined in accordance with Government Code Sections 21163 and 21164 and without the member's consent cannot be effective until the occurrence of the following: (1) the expiration of accrued sick leave benefits with compensation unless the City's rules or regulations provide otherwise; and (2) the expiration of accrued compensating time off (for overtime) with compensation; and (3) the termination of Labor Code Section 4850 leave or the earlier date during the leave as of which the member's disability is found to be permanent and stationary by the Workers' Compensation Appeals Board; or (4) an earlier date upon the member's consent.

Section 7. If the City Council determines the member is not incapacitated from the performance of duty, the City shall notify the member and CalPERS of this determination.

Section 8. The City shall notify the member of determinations either by certified mail (return receipt requested) or by personal service. The notice shall also inform the member of his/her right to appeal the City Council's decision and request a hearing within 30 calendar days after the City Council determination is personally served on or mailed to the member.

Section 9. If the member requests a hearing, the hearing shall be held in conformity with the Administrative Procedure Act (APA). When a member requests a hearing, the City will notify CalPERS and the State Office of Administrative Hearings. The City will consult with the Office of Administrative Hearings and, subject to the availability of its staff, shall determine the time and place of a hearing and any prehearing conference with an administrative law judge (ALJ). The member will be informed that the hearing will be held at the time and place so designated by the City and/or the Office of Administrative Hearings. Notice of the hearing shall be given by certified mail in conformance with Government Code Section 11509.

Section 10. The hearing shall be conducted before the ALJ who shall render advisory findings and recommended decision subject to final action by the City Council pursuant to Government Code Section 11517.

BE IT FURTHER RESOLVED that the City Council of the City of Montclair authorize the City Manager and/or his/her designee to promulgate other such rules and procedures as are appropriate to carry out California Government Code Section 21156.

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. 11-2928 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

DISABILITY RETIREMENT PROCEDURES

LOCAL SAFETY MEMBERS

OCTOBER 2011

I. INTRODUCTION

Pursuant to state law, as set forth in the Government Code of the State of California, it is the responsibility of the City to make determinations relating to applications for disability retirement of its employees who are safety members. At any time, the City may investigate retired safety members relating to possible reinstatement of such retirees as members of the California Public Employees Retirement System (CalPERS).

II. DELEGATION OF AUTHORITY

Pursuant to the authority set forth in California Government Code Section 21173, the City Council adopted Resolution No. 81-1387 delegating part of its responsibilities for making determinations relating to disability retirement matters to the City Manager and/or his/her designee. In conformance therewith, the City Manager and/or his/her designee shall make the initial recommendation to the City Council regarding a determination on any application for disability retirement or cancellation of disability retirement and reinstatement. The City Manager and/or his/her designee shall prepare a resolution and agenda report formally submitting the safety member's disability retirement determination to the City Council for approval and certification to the CalPERS.

In any case in which a safety member appeals the determination certified by the City Council regarding an application for disability retirement or cancellation of disability retirement and reinstatement, as provided in California Government Code Section 21156 and by City Council Resolution No. 11-2928, the City Manager and/or his/her designee shall process and represent the City during any local safety member's appeal of the disability retirement decisions certified by the City Council. Appeal hearings shall be conducted by an administrative law judge (ALJ) on the staff of the State Office of Administrative Hearings pursuant to the Administrative Procedure Act (APA) in Government Code Section 11500 *et seq.*

The ALJ shall make advisory findings and recommended decision for final action by the City Council.

III. FILING OF AN APPLICATION FOR DISABILITY RETIREMENT

Pursuant to California Government Code Section 21152, an application for disability retirement may be made by the following:

- A. The governing body, or an official designated by the governing body, of the contracting agency, if the member is an employee of a contracting agency.
- B. The member or any person in his or her behalf.

Upon receipt by the City of notification of an application for disability retirement by a member, or upon filing of an application on behalf of the member, the City shall provide the member with a copy of the City's current rules and procedures regarding applications for disability retirement.

IV. PROCESSING OF APPLICATIONS FOR DISABILITY RETIREMENT, REINSTATEMENT, OR CANCELLATION

The City Manager and/or his/her designee shall make a preliminary determination regarding applications for disability retirement, reinstatement, or cancellation. All determinations will be based on a thorough review of the competent medical reports and other relevant information. Additional medical examinations and information may be required, as the City deems necessary. Members are required to cooperate fully with any request for the member to submit to a medical or psychological evaluation that is necessary to determine eligibility. The member may be required to execute documents for release of medical, employment, and other relevant information, as requested.

The member will be given written notice of the preliminary recommended determination of the City Manager and/or his/her designee. This notice shall indicate the proposed recommendation and that the City Manager and/or his/her designee will submit the recommended determination to the City Council unless an objection is filed by the member within seven calendar days of the date of personal delivery or date notice is mailed. If the member timely objects to the preliminary recommendation, he/she will be given an opportunity to respond to the City Manager and/or his/her designee, who shall conduct a predecision meeting. In this informal meeting the member will be given an opportunity to respond to the preliminary determination, as discussed in *Skelly v. State Personnel Board*.

If no objection is received, or if an objection is received and the informal predecision meeting has been completed, the City Manager and/or his/her designee will make and process the final determination

concerning the application for disability retirement, reinstatement, or cancellation. The City Manager and/or his/her designee will prepare the appropriate paperwork (*e.g.*, City Council disability retirement resolution and agenda report; request for reemployment form; etc.), and notify the member of the status of his/her application (*e.g.*, the date and time of the City Council meeting when the resolution determining whether the member is disabled and whether the disability is for industrial or nonindustrial reasons will be certified).

The effective date of the member's retirement shall be determined in accordance with Government Code Sections 21163 and 21164, and without the member's consent cannot be effective until the occurrence of the following: (1) the expiration of accrued sick leave benefits with compensation, unless the City's rules or regulations provide otherwise; and (2) the expiration of accrued compensating time off (for overtime) with compensation; and (3) the termination of Labor Code Section 4850 leave, or the earlier date during the leave as of which the member's disability is found to be permanent and stationary by the Workers' Compensation Appeals Board; or (4) an earlier date upon the member's consent. Nothing in these procedures will in any way limit the City's authority or ability to make available to the member permanent modified duty. The City Manager and/or his/her designee will notify the member of available permanent modified duty. The availability of appropriate permanent modified duty is grounds for denial of an application for disability retirement.

NOTE: Any member who files an application for retirement, or has had an application filed on his/her behalf, must submit in writing to Montclair's Personnel Officer his/her current address and telephone number for service of papers relating to the retirement application or any further proceedings, including proposed reinstatement and cancellation of retirement. It is the member's responsibility to maintain an accurate address and telephone number on file with the Personnel Officer, and member understands that the City may use said address and telephone number for service of any papers required under these procedures or the APA in Government Code Section 11500 *et seq.*

Upon final action on the retirement application by the City Council, the City Manager and/or his/her designee will give the member written notice of the City Council's action by personal service or by registered mail (return receipt requested) at the address on record for the member. The written notice shall include the following: (1) a copy of the City Council Resolution No. 11-2928; (2) a statement of issues, if applicable; (3) a notification substantially in the language required by the APA in Government Code Section 11505 (this statement is provided in full below); (4) a "Notice of Defense" form (a sample Notice of Defense form

is attached to these procedures), which, when signed by or on behalf of the member and returned to the City, will acknowledge service of the disability retirement application determination and constitute a notice of defense under the APA in Government Code Section 11506; (5) a statement that the member may request a hearing by filing a notice of defense, as provided by the APA in Government Code Section 11506, within 30 calendar days after service upon the member of the determination, and that failure to do so will constitute a waiver of the member's right to a hearing; (6) copies of the APA in Government Code Sections 11507.5, 11507.6, and 11507.7; and (7) any other materials that may be required by the APA.

In compliance with the APA in Government Code Section 11505(b), the statement to member shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as member in the accompanying determination is delivered or mailed to the City within 30 calendar days after the determination was personally served on you or mailed to you, the City of Montclair may proceed upon the determination without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form, entitled "Notice of Defense," or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to the Personnel Officer, City of Montclair, 5111 Benito Street, Montclair, CA 91763. You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Government Code Section 11507.6 in the possession, custody, or control of the City, you may contact the Personnel Officer, City of Montclair, 5111 Benito Street, Montclair, CA 91763.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the City and, if an administrative law judge (ALJ) has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to give notice within 10 working days will deprive you of a postponement.

V. APPEAL OF CITY COUNCIL DETERMINATION

The member has 30 calendar days from date of service of the determination and any statement of issues and the Notice of Defense form (referenced in Item IV of these procedures) in which to file the Notice of

Defense form with the City's Personnel Officer. A notice of defense, if timely filed, constitutes an appeal of the City Council's disability retirement determination. Failure of the member to file a notice of defense within the 30-calendar-day appeal period constitutes a waiver of the member's right to a hearing. The City will thereupon notify CalPERS of the final disposition of the matter, as may be deemed appropriate.

If the member files a notice of defense within the 30-calendar-day appeal period and requests a hearing, the City will contact the State Office of Administrative Hearings to request a hearing date and a prehearing conference with an ALJ. All hearings will be held in conformance with the APA in Government Code Section 11508, as follows:

- A. The City shall consult the Office of Administrative Hearings and, subject to the availability of its staff, shall determine the time and place of the hearing. The hearing shall be held at a hearing facility maintained by the Office in Los Angeles that is closest to the location where the determination occurred or the member resides; or the hearing may be held at either (1) a place selected by the City that is closer to the location where the determination occurred or the member resides, or (2) a place within the state selected by agreement of the parties.
- B. The member may request, and the ALJ has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within ten days after service of the notice of hearing on the member. Unless good cause is identified in writing by the ALJ, hearings shall be held in a facility maintained by the Office.

The City Manager and/or his/her designee will confirm, in writing, the time and place of the appeal hearing and any prehearing conference date with the member, Office of Administrative Hearings, and CalPERS in conformance with the APA in Government Code Section 11509, as follows:

The City will deliver or send by registered mail a notice of hearing to all parties at least ten days prior to the hearing. The notice to the member will be substantially in the following form but may include other information as well.

You are hereby notified that a hearing will be held before the City of Montclair at (insert place of hearing here) on the _____ day of _____, 201_, at the hour of _____,

upon the charges made in your Notice of Defense. If you object to the place of hearing, you must notify the presiding administrative law judge (ALJ) and the Montclair Personnel Officer within ten calendar days after this notice is served on you. Failure to notify the presiding ALJ within ten calendar days will deprive you of a change in the place of the hearing. You may be present at the hearing.

You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, or other things by applying to the Office of Administrative Hearings. Alternatively, an attorney representing a party may issue a subpoena pursuant to California Code of Civil Procedure Sections 1985 through 1985.4.

At any time before the appeal is submitted for decision, the City may file or permit the filing of an amended or supplemental notice of defense. All concerned parties will be notified thereof by the City. If the amended or supplemental notice of defense presents new charges, the City will afford the member a reasonable opportunity to prepare his/her defense thereto, but he/she will not be entitled to file a further pleading unless the City, in its discretion, so orders. Any new charges will be deemed controverted, and any objections to the amended or supplemental notice of defense may be made orally and noted in the record.

If the only issue in dispute is whether incapacity is industrial or non-industrial, the issue shall be submitted to the Workers' Compensation Appeals Board by the City or member for determination pursuant to Government Code Section 21166.

VI. APPEAL HEARING

The appeal hearing shall be conducted before an ALJ on the staff of the State Office of Administrative Hearings. The ALJ shall issue advisory findings and recommended decision to the City in accordance with Government Code Section 11517. A copy of the proposed ALJ decision shall be served by the City on each party and his/her attorney. This service is not an adoption by the City of the ALJ's recommended decision.

A final decision will be rendered by the City Council in accordance with Government Code Section 11517 within 100 calendar days of receipt by the City of the ALJ's advisory decision, unless otherwise stipulated between the parties. The City Council may take any of the actions prescribed in Government Code Section 11517 (c)(2), subparagraphs (A) to (E) inclusive including, but not limited to, adoption of or rejection of the proposed ALJ decision in its entirety. The final decision of the City Council is subject to judicial review pursuant to Government Code Section 11523 (the safety member must file a petition for a writ of mandate with the superior court in accordance with the provisions of Code of Civil Procedure Section 1094.5).

Unless otherwise specified by the APA, the following rules shall apply to the appeal hearing:

- A. Continuances, discovery, rules of evidence, and other hearing matters will be controlled by the APA, unless otherwise specified in these procedures and permitted under the APA in Government Code Sections 11507.5, 11507.6, 11507.7, 11511, 11512, 11513, and 11514. A continuance will be granted the City if it is shown the member has committed one or more of the following failures: (1) failed to disclose fully to the City the nature, type, or character of the alleged disability upon which his/her application is based; (2) failed to disclose the name and address of the physician or other practitioner or facilities by whom or at which the member was examined, treated, or evaluated for any condition upon which a claim for disability retirement is or may be based; or (3) failed to participate in or complete any examination or examinations by a health practitioner selected by the City for purposes of evaluating the application for disability retirement and/or the medical results have not yet been made available for the City's review.
- B. Notice of hearing will be given in accordance with Government Code Sections 11508 and 11509.
- C. The ALJ may hold the record of the appeal hearing open, at his/her sole discretion, for the submission of briefs or points and authorities, and/or the ordering of further medical examinations and reports. The sanction for failure to comply with the order of the ALJ will include, if permitted under the APA, a negative inference against the party who fails to comply with the order, and/or the suspension of the hearing until there is compliance or until the order is withdrawn.

- D. Transcripts of said hearings shall be furnished to any person upon payment of the costs of preparing such transcripts.
- E. The member shall have the right to representation, at his/her own expense during any stage of these proceedings.
- F. The scope of the issues shall be limited to the basis and facts raised in the determination and any separate statement of issues and on the Notice of Defense form, unless an amendment or supplementation is permitted as set out in Government Code Section 11507.
- G. The ALJ may hold a prehearing conference on motion of a party or by his/her own order as set out in Government Code Section 11511.5.
- H. The ALJ may order the parties to attend and participate in a settlement conference as set out in Government Code Section 11511.7.
- I. The parties may use declarations or affidavits as set out in Government Code Section 11514 as proof at the hearing.

If any of the procedures set out herein are impermissible under the APA, the APA procedures will take precedence.

VII. CANCELLATION OF DISABILITY RETIREMENT/REINSTATEMENT

Pursuant to California Government Code Sections 21192, 21193, and 21196, a member previously retired from City employment for disability may be reinstated to employment including, but not limited to, an appropriate permanent modified-duty assignment; and said disability retirement may be canceled on the basis that such member is no longer incapacitated from the performance of his/her assigned duties.

Application for reinstatement and cancellation of disability retirement may be made by the following:

- A. The governing body, or an official designated by the governing body, of the contracting agency, if the member is an employee of a contracting agency.
- B. The member or any person in his or her behalf.

VIII. THE CITY MAY NOT SEPARATE FOR DISABILITY A MEMBER OTHERWISE QUALIFIED TO DISABILITY RETIRE

CITY OF MONTCLAIR

ADMINISTRATIVE PROCEDURE ACT

NOTICE OF DEFENSE (DISABILITY RETIREMENT)

A member of the California Public Employees Retirement System (CalPERS) may request a hearing pursuant to the Administrative Procedure Act (APA) in California Government Code Section 11500 *et seq.* by filing this Notice of Defense form with the City, as provided in California Government Code Section 11506, within 30 calendar days after service upon the member of a City Council disability retirement determination. Failure to file a notice of defense within 30 calendar days will constitute a waiver of the member's right to a hearing. Within 30 calendar days of service of the determination on a disability retirement application, a member may take one or more of the following actions (check all that apply).

___ 1. I disagree with the determination and hereby request a hearing on all issues.

___ 2. I agree with the determination in part and disagree in part. I disagree with the determination and request a hearing on the following issues:

___ 3. I disagree with the determination only as to whether the disability is industrial or nonindustrial and request that issue be presented to the Workers' Compensation Appeals Board.

Within the above specified time, a member may file one or more notices of defense upon any or all of the above grounds, but all of the notices shall be filed within said time period unless the City, in its discretion, authorizes the filing of a later notice.

A member will be entitled to a hearing on the merits if he/she files a notice of defense, and the notice shall be deemed a specific denial of all parts of the determination not expressly admitted. Failure to file a notice of defense shall constitute a waiver of the member's right to a hearing, but the City in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in item 2 above, all objections to the form of the determination (deemed an accusation under the APA) shall be deemed waived.

A notice of defense shall be in writing and signed by or on behalf of the member. It shall also include the member's mailing address.

I hereby request a hearing in said proceeding to permit me to present my defense to the Montclair City Council's disability retirement determination. I acknowledge that failure to file a notice of defense with Montclair's Personnel Officer within 30 calendar days shall constitute a waiver of a hearing. I acknowledge receipt of the disability retirement determination; this Notice of Defense form (statement to respondent); and Government Code Sections 11507.5, 11507.6, and 11507.7.

Member's Name: _____
(Please Print)

Member's Mailing Address: _____

Member's Telephone Number(s): (Home) _____
(Cell) _____ (Work) _____

Member's Signature: _____

Date: _____

A member may request a hearing by completing, signing, and delivering or mailing this Notice of Defense form, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to the following:

Personnel Officer
City of Montclair
5111 Benito Street
Montclair, CA 91763

I plan to be represented by the following counsel during this appeal process:

Name: _____

Address: _____

Telephone Number: _____

Attachments (Government Code Sections 11507.5, 11507.6, and 11507.7)

waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.

(d) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state the respondent's mailing address. It need not be verified or follow any particular form.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

11507. At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

11507.3. (a) When proceedings that involve a common question of law or fact are pending, the administrative law judge on the judge's own motion or on motion of a party may order a joint hearing of any or all the matters at issue in the proceedings. The administrative law judge may order all the proceedings consolidated and may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

11507.5. The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

11507.6. After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading; or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding

made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

11507.7. (a) Any party claiming the party's request for discovery pursuant to Section **11507.6** has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section **11507.6**. The motion shall state facts showing the respondent party failed or refused to comply with Section **11507.6**, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section **11507.6** or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section **11507.6**, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence

Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

11508. (a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of the hearing. The hearing shall be held at a hearing facility maintained by the office in Sacramento, Oakland, Los Angeles, or San Diego and shall be held at the facility that is closest to the location where the transaction occurred or the respondent resides.

(b) Notwithstanding subdivision (a), the hearing may be held at either of the following places:

(1) A place selected by the agency that is closer to the location where the transaction occurred or the respondent resides.

(2) A place within the state selected by agreement of the parties.

(c) The respondent may move for, and the administrative law judge has discretion to grant or deny, a change in the place of the hearing. A motion for a change in the place of the hearing shall be made within 10 days after service of the notice of hearing on the respondent.

Unless good cause is identified in writing by the administrative law judge, hearings shall be held in a facility maintained by the office.

11509. The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense.

The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before [there insert name of agency] at [there insert place of hearing] on the ___ day of ___, 19___, at the hour of ___, upon the charges made in the accusation served upon you. If you object to the place of hearing, you must notify the presiding officer within 10 days after this notice is served on you. Failure to notify the presiding officer within 10 days will deprive you of a change in the place of the hearing. You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION
NO. 11-2930 AUTHORIZING PLACEMENT
OF LIENS ON CERTAIN PROPERTIES FOR
DELINQUENT SEWER AND TRASH CHARGES

DATE: November 7, 2011
SECTION: RESOLUTIONS
ITEM NO.: 2
FILE I.D.: STB300-17
DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: Staff has identified 248 sewer and trash accounts in the odd-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien. The City Council is requested to consider adoption of Resolution No. 11-2930 authorizing placement of liens on the subject properties for the delinquencies. A copy of proposed Resolution No. 11-2930 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 248 liens presented for approval are for accounts which are at least 90 days delinquent.

FISCAL IMPACT: Recoverable amount is \$51,687.10 plus \$12,350.00 in lien fees, for a total of \$64,037.10.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 11-2930 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of the Resolution.

Prepared by: Janet Kulbeck Reviewed and Approved by: [Signature]
Proofed by: [Signature] Presented by: [Signature]

RESOLUTION NO. 11-2930

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MONTCLAIR AUTHORIZING
PLACEMENT OF LIENS ON CERTAIN
PROPERTIES FOR DELINQUENT SEWER
AND TRASH ACCOUNTS**

WHEREAS, Chapter 1.12 of the Montclair Municipal Code authorizes the City to place liens on properties on which delinquent civil debts have accrued; and

WHEREAS, all owners of property in the City of Montclair were notified about the adoption of Ordinance No. 02-815 authorizing placement of liens on properties on which delinquent civil debts have accrued; and

WHEREAS, it has been determined that there are 248 sewer and/or trash accounts on which there are delinquencies in excess of 90 days; and

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

WHEREAS, the owners of these properties were notified on October 17, 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 October 27, 2011, and that such liens would be considered for approval by the Montclair City Council on Monday, November 7, 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 - November 2011*, attached hereto.

BE IT FURTHER RESOLVED that the Deputy City Clerk is authorized to provide the San Bernardino County Auditor/Controller-Recorder with the documents required to cause such liens to be placed.

APPROVED AND ADOPTED this XX day of XX, 2011.

Mayor

ATTEST:

Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 11-2930 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

Exhibit A to Resolution No. 11-2930
Report of Delinquent Civil Debts - November 2011

Street No.	Street	Type	Delinquency	Lien Fee	Total Lien Amount
4334	Alamitos Street	Residential	\$ 210.71	\$ 50.00	\$ 260.71
4356	Alamitos Street	Residential	231.03	50.00	281.03
4362	Alamitos Street	Residential	170.40	50.00	220.40
5356	Alamitos Street	Residential	182.83	50.00	232.83
5366	Alamitos Street	Residential	187.45	50.00	237.45
5371	Alamitos Street	Residential	102.50	50.00	152.50
5374	Alamitos Street	Residential	256.46	50.00	306.46
5634	Alamitos Street	Residential	276.15	50.00	326.15
4575	Allesandro Street	Residential	183.98	50.00	233.98
4667	Allesandro Street	Residential	182.83	50.00	232.83
10080	Amherst Avenue	Residential	124.70	50.00	174.70
9910	Amherst Avenue	Residential	183.84	50.00	233.84
5577	Armsley Street	Residential	182.92	50.00	232.92
5103	Aspen Drive	Residential	182.79	50.00	232.79
9250	Bel Air Avenue	Residential	118.00	50.00	168.00
9982	Bel Air Avenue	Residential	182.83	50.00	232.83
4460	Benito Street	Residential	182.83	50.00	232.83
4475	Benito Street	Residential	230.23	50.00	280.23
4712	Benito Street	Residential	182.83	50.00	232.83
4921	Benito Street	Residential	103.09	50.00	153.09
5273	Benito Street	Residential	183.47	50.00	233.47
5369	Benito Street	Residential	256.46	50.00	306.46
5389	Benito Street	Senior	151.70	50.00	201.70
5428	Benito Street	Residential	162.71	50.00	212.71
10032	Benson Avenue	Residential	182.85	50.00	232.85
9590	Benson Avenue	Residential	163.60	50.00	213.60
9656	Benson Avenue	Residential	182.83	50.00	232.83
4711	Berkeley Street	Residential	256.46	50.00	306.46
5381	Berkeley Street	Residential	256.46	50.00	306.46
5382	Berkeley Street	Residential	180.61	50.00	230.61
9598	Bolton Avenue	Residential	184.60	50.00	234.60
9768	Bolton Avenue	Residential	266.63	50.00	316.63
4522	Bonnie Brae Street	Residential	188.73	50.00	238.73
4531	Bonnie Brae Street	Residential	183.70	50.00	233.70
4541	Bonnie Brae Street	Residential	256.46	50.00	306.46
5475	Bonnie Brae Street	Senior	152.21	50.00	202.21
5597	Bonnie Brae Street	Residential	256.46	50.00	306.46
4610	Brooks Street	Commercial	188.46	50.00	238.46
9763	Camarena Avenue	Residential	182.78	50.00	232.78
9851	Camarena Avenue	Residential	182.89	50.00	232.89
4473	Cambridge Street	Residential	115.41	50.00	165.41
4853	Cambridge Street	Residential	182.83	50.00	232.83
5428	Cambridge Street	Residential	111.01	50.00	161.01
5438	Cambridge Street	Residential	182.53	50.00	232.53
5448	Cambridge Street	Residential	182.83	50.00	232.83
5471	Cambridge Street	Residential	182.84	50.00	232.84
5490	Cambridge Street	Residential	182.82	50.00	232.82
5570	Cambridge Street	Residential	138.40	50.00	188.40

Street No.	Street	Type	Delinquency	Lien Fee	Total Lien Amount
5606	Cambridge Street	Residential	\$ 190.92	\$ 50.00	\$ 240.92
10133	Camulos Avenue	Residential	180.61	50.00	230.61
10153	Camulos Avenue	Residential	183.34	50.00	233.34
9112	Camulos Avenue	Residential	182.86	50.00	232.86
9151	Camulos Avenue	Residential	182.84	50.00	232.84
9243	Camulos Avenue	Residential	182.83	50.00	232.83
9512	Camulos Avenue	Residential	182.83	50.00	232.83
9539	Camulos Avenue	Senior	432.61	50.00	482.61
9547	Camulos Avenue	Residential	186.19	50.00	236.19
9606	Camulos Avenue	Residential	132.88	50.00	182.88
9737	Camulos Avenue	Residential	182.83	50.00	232.83
9757	Camulos Avenue	Residential	182.83	50.00	232.83
9859	Camulos Avenue	Residential	182.82	50.00	232.82
9877	Camulos Avenue	Residential	208.79	50.00	258.79
5544	Caroline Street	Senior	153.44	50.00	203.44
5666	Caroline Street	Residential	182.83	50.00	232.83
9464	Carrillo Avenue	Residential	183.46	50.00	233.46
9510	Carrillo Avenue	Senior	234.95	50.00	284.95
9569	Carrillo Avenue	Residential	292.87	50.00	342.87
9601	Carrillo Avenue	Residential	186.28	50.00	236.28
10025	Central Avenue	Residential	143.15	50.00	193.15
9795	Central Avenue	Residential	156.46	50.00	206.46
9855	Central Avenue	Residential	182.83	50.00	232.83
9986	Central Avenue	Residential	208.79	50.00	258.79
9795	Coalinga Avenue	Residential	182.83	50.00	232.83
9827	Coalinga Avenue	Senior	236.76	50.00	286.76
9884	Coalinga Avenue	Residential	182.83	50.00	232.83
9380	Columbine Avenue	Residential	100.26	50.00	150.26
9440	Columbine Avenue	Residential	256.46	50.00	306.46
9824	Columbine Avenue	Residential	141.49	50.00	191.49
9995	Columbine Avenue	Residential	183.52	50.00	233.52
9341	Del Mar Avenue	Residential	256.46	50.00	306.46
9361	Del Mar Avenue	Residential	256.46	50.00	306.46
9477	Del Mar Avenue	Residential	272.21	50.00	322.21
4253	Denver Street	Residential	292.87	50.00	342.87
4304	Denver Street	Residential	208.79	50.00	258.79
4324	Denver Street	Residential	221.46	50.00	271.46
4416	Denver Street	Residential	142.46	50.00	192.46
5593	Denver Street	Residential	185.81	50.00	235.81
5616	Denver Street	Residential	182.79	50.00	232.79
5626	Denver Street	Residential	107.92	50.00	157.92
4390	El Morado Street	Residential	329.58	50.00	379.58
5416	El Morado Street	Residential	183.84	50.00	233.84
5429	El Morado Street	Senior	159.63	50.00	209.63
9463	Exeter Avenue	Residential	162.71	50.00	212.71
9163	Felipe Avenue	Residential	162.71	50.00	212.71
9387	Felipe Avenue	Residential	192.21	50.00	242.21
9567	Fremont Avenue	Residential	208.79	50.00	258.79
9823	Fremont Avenue	Residential	182.83	50.00	232.83
9878	Galena Avenue	Residential	182.84	50.00	232.84

Street No.	Street	Type	Delinquency	Lien Fee	Total Lien Amount
9043	Geneva Avenue	Residential	\$ 182.81	\$ 50.00	\$ 232.81
9757	Geneva Avenue	Residential	269.70	50.00	319.70
9985	Geneva Avenue	Residential	182.83	50.00	232.83
4277	Granada Street	Residential	182.83	50.00	232.83
4328	Granada Street	Residential	182.83	50.00	232.83
4426	Granada Street	Residential	120.67	50.00	170.67
4436	Granada Street	Residential	190.96	50.00	240.96
5422	Granada Street	Residential	183.70	50.00	233.70
5470	Granada Street	Residential	182.83	50.00	232.83
5606	Granada Street	Residential	219.36	50.00	269.36
5628	Granada Street	Residential	182.83	50.00	232.83
10053	Greenwood Avenue	Residential	118.93	50.00	168.93
4386	Harvard Street	Residential	180.61	50.00	230.61
4418	Harvard Street	Residential	186.28	50.00	236.28
4430	Harvard Street	Residential	182.83	50.00	232.83
4775	Harvard Street	Residential	153.38	50.00	203.38
4785	Harvard Street	Residential	199.76	50.00	249.76
5141-43	Harvard Street	Multifamily	165.65	50.00	215.65
5544	Hawthorne Street	Residential	182.83	50.00	232.83
5596	Hawthorne Street	Residential	182.83	50.00	232.83
9025	Helena Avenue	Residential	182.83	50.00	232.83
9606	Helena Avenue	Residential	162.71	50.00	212.71
9607	Helena Avenue	Residential	162.71	50.00	212.71
9610	Helena Avenue	Residential	249.59	50.00	299.59
9634	Helena Avenue	Residential	162.71	50.00	212.71
9638	Helena Avenue	Residential	256.46	50.00	306.46
9761	Helena Avenue	Residential	256.46	50.00	306.46
9802	Helena Avenue	Residential	148.40	50.00	198.40
4581	Highland Street	Residential	279.13	50.00	329.13
4592	Highland Street	Residential	163.54	50.00	213.54
4864	Highland Street	Residential	208.79	50.00	258.79
5190	Howard Street A and B	Multifamily	421.81	50.00	471.81
4585	James Street	Residential	182.83	50.00	232.83
9725	Kimberly Avenue	Residential	182.82	50.00	232.82
5400	La Deney Street	Residential	150.24	50.00	200.24
5515	La Deney Street	Residential	182.83	50.00	232.83
5564	La Deney Street	Residential	190.92	50.00	240.92
9773	Lehigh Avenue	Residential	256.46	50.00	306.46
10041	Lindero Avenue	Residential	179.65	50.00	229.65
10042	Lindero Avenue	Residential	286.12	50.00	336.12
9025	Lindero Avenue	Residential	146.46	50.00	196.46
9803	Lindero Avenue	Residential	182.83	50.00	232.83
9957	Lindero Avenue	Residential	181.19	50.00	231.19
10049	Marion Avenue	Residential	176.48	50.00	226.48
9527	Marion Avenue	Residential	262.85	50.00	312.85
9537	Marion Avenue	Residential	182.83	50.00	232.83
5121	Merle Street	Multifamily	365.65	50.00	415.65
9995	Mills Avenue	Multifamily	232.44	50.00	282.44
9066	Monte Vista Avenue	Residential	185.81	50.00	235.81
9685	Monte Vista Avenue	Multifamily	4,284.72	50.00	4,334.72

Street No.	Street	Type	Delinquency	Lien Fee	Total Lien Amount
9775	Monte Vista Avenue	Residential	\$ 162.71	\$ 50.00	\$ 212.71
9795	Monte Vista Avenue	Residential	182.83	50.00	232.83
5082	Moreno Street	Residential	143.32	50.00	193.32
4613	Olive Street	Residential	171.11	50.00	221.11
4873	Olive Street	Residential	256.46	50.00	306.46
4322	Orchard Street	Residential	218.82	50.00	268.82
5032	Orchard Street	Residential	182.84	50.00	232.84
5690	Orchard Street	Residential	190.52	50.00	240.52
5257	Palo Verde Street	Senior	188.91	50.00	238.91
5415	Palo Verde Street	Residential	256.46	50.00	306.46
5481	Palo Verde Street	Residential	182.83	50.00	232.83
5557	Palo Verde Street	Residential	164.57	50.00	214.57
5588	Palo Verde Street	Residential	183.84	50.00	233.84
5607	Palo Verde Street	Residential	180.61	50.00	230.61
11112	Pipeline Avenue	Residential	330.89	50.00	380.89
10043	Poulsen Avenue	Residential	182.83	50.00	232.83
9585	Poulsen Avenue	Residential	182.83	50.00	232.83
9935	Poulsen Avenue	Residential	190.81	50.00	240.81
10063	Pradera Avenue	Residential	169.70	50.00	219.70
9375	Pradera Avenue	Multifamily	645.33	50.00	695.33
9542	Pradera Avenue	Residential	231.03	50.00	281.03
9425	Pradera Avenue #1	Residential	144.55	50.00	194.55
9425	Pradera Avenue #2	Residential	182.77	50.00	232.77
4426	Princeton Street	Residential	182.83	50.00	232.83
4869	Princeton Street	Residential	162.71	50.00	212.71
5417	Princeton Street	Residential	147.57	50.00	197.57
5572	Princeton Street	Residential	182.83	50.00	232.83
10031	Ramona Avenue	Residential	133.24	50.00	183.24
9060	Ramona Avenue	Residential	256.46	50.00	306.46
9081	Ramona Avenue	Residential	182.79	50.00	232.79
9136	Ramona Avenue	Residential	182.83	50.00	232.83
9198	Ramona Avenue	Residential	168.92	50.00	218.92
9254	Ramona Avenue	Residential	182.83	50.00	232.83
9263	Ramona Avenue	Residential	162.71	50.00	212.71
9587	Ramona Avenue	Residential	182.68	50.00	232.68
10410	Ramona Avenue #C	Commercial	112.66	50.00	162.66
10068	Rose Avenue	Residential	182.81	50.00	232.81
9352	Rose Avenue	Residential	182.83	50.00	232.83
9413	Rose Avenue	Residential	182.83	50.00	232.83
9414	Rose Avenue	Residential	182.83	50.00	232.83
9434	Rose Avenue	Residential	182.83	50.00	232.83
9441	Rose Avenue	Residential	162.71	50.00	212.71
9472	Rose Avenue	Residential	182.83	50.00	232.83
9720	Rose Avenue	Residential	209.50	50.00	259.50
9734	Rose Avenue	Residential	271.59	50.00	321.59
9812	Rose Avenue	Residential	291.56	50.00	341.56
9836	Rose Avenue	Residential	156.46	50.00	206.46
9866	Rose Avenue	Senior	161.61	50.00	211.61
9966	Rose Avenue	Residential	190.92	50.00	240.92
4560	Rosewood Street	Residential	183.70	50.00	233.70

Street No.	Street	Type	Delinquency	Lien Fee	Total Lien Amount
4683	Rosewood Street	Residential	\$ 184.02	\$ 50.00	\$ 234.02
4903	Rosewood Street	Residential	269.70	50.00	319.70
4942	Rosewood Street	Residential	122.71	50.00	172.71
5078	Rosewood Street	Residential	141.75	50.00	191.75
5382	Rosewood Street	Residential	104.02	50.00	154.02
11076	Roswell Avenue	Residential	140.68	50.00	190.68
4164	Rudisill Street	Residential	183.70	50.00	233.70
4186	Rudisill Street	Residential	168.46	50.00	218.46
5360	Rudisill Street	Residential	208.79	50.00	258.79
5409	Rudisill Street	Residential	208.12	50.00	258.12
5421	Rudisill Street	Residential	208.79	50.00	258.79
4372	San Bernardino Court	Residential	182.83	50.00	232.83
4375	San Bernardino Court	Residential	213.60	50.00	263.60
4274	San Bernardino Street	Residential	192.26	50.00	242.26
4711	San Bernardino Street	Residential	182.83	50.00	232.83
4833	San Bernardino Street	Residential	181.07	50.00	231.07
5133	San Bernardino Street	Residential	182.84	50.00	232.84
5474	San Bernardino Street	Residential	133.71	50.00	183.71
5489	San Bernardino Street	Residential	214.39	50.00	264.39
5562	San Bernardino Street	Residential	182.01	50.00	232.01
4485	San Jose Street	Residential	208.52	50.00	258.52
5446	San Jose Street	Residential	217.85	50.00	267.85
5540	San Jose Street	Residential	117.71	50.00	167.71
5593	San Jose Street	Residential	131.96	50.00	181.96
4424	San Jose Street #10	Residential	256.46	50.00	306.46
4424	San Jose Street #12	Residential	184.98	50.00	234.98
4424	San Jose Street #18	Residential	169.80	50.00	219.80
4424	San Jose Street #27	Residential	182.83	50.00	232.83
4424	San Jose Street #30	Residential	173.71	50.00	223.71
4622	San Jose Street G	Residential	150.66	50.00	200.66
4630	San Jose Street S	Residential	104.22	50.00	154.22
10016	Santa Anita Avenue	Residential	173.29	50.00	223.29
10056	Santa Anita Avenue	Residential	190.92	50.00	240.92
9932	Santa Anita Avenue	Residential	182.83	50.00	232.83
9843	Saratoga Avenue	Residential	256.46	50.00	306.46
10817	Silicon Avenue	Residential	118.22	50.00	168.22
10833	Silicon Avenue	Residential	148.96	50.00	198.96
4787	State Street	Residential	111.86	50.00	161.86
5195	Steamboat Drive	Residential	162.71	50.00	212.71
9844	Steamboat Drive	Residential	146.46	50.00	196.46
9514	Surrey Avenue	Residential	225.01	50.00	275.01
9584	Surrey Avenue	Residential	183.84	50.00	233.84
9617	Surrey Avenue	Residential	182.83	50.00	232.83
9641	Surrey Avenue	Residential	182.83	50.00	232.83
9824	Tudor Avenue	Residential	182.92	50.00	232.92
9222	Vernon Avenue	Residential	183.22	50.00	233.22
9350	Vernon Avenue	Residential	256.46	50.00	306.46
9912	Vernon Avenue	Residential	170.40	50.00	220.40
5580	Yale Street	Residential	273.64	50.00	323.64
TOTALS			\$51,687.10	\$12,350.00	\$64,037.10