

**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

October 3, 2011

7:00 p.m.

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

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

Page No.

- I. **CALL TO ORDER** – City Council and Redevelopment Agency and Montclair Housing Corporation Boards of Directors

II. **INVOCATION**

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

III. **PLEDGE OF ALLEGIANCE**

IV. **ROLL CALL**

V. **PRESENTATIONS** – None

VI. **PUBLIC COMMENT**

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

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

VII. **PUBLIC HEARINGS**

- A. Consider Adoption of Resolution No. 11-2927 Amending the Master User Fee Schedule Related to Human Services Division Facility Rentals [CC]

**VIII. CONSENT CALENDAR**

**A. Approval of Minutes**

1. Minutes of the Regular Joint Council/Agency Board/MHC Board Meeting of September 19, 2011 [CC/RDA/MHC]

**B. Administrative Reports**

1. Consider Approval of Warrant Register and Payroll Documentation [CC] 11

**C. Agreements**

1. Consider Authorizing City Manager to Sign Agreement Amendments Modifying Previous Agreements With the County of San Bernardino for "One-Time" County Support for Special Projects at Sunset Park and Alma Hofman Park [CC] 12

2. Consider Approval of Agreement No. 11-120 With the California Army National Guard for Use of Montclair Police Department Firearms Shooting Range [CC] 14

3. Consider Approval of Agreement No. 11-123, a Fiscal Operations Services Agreement With Donald L. Parker, CPA [CC] 21

4. Consider Approval of Agreement No. 11-124 With Bilingual Family Counseling Services to Provide Case Management Services [CC] 35

5. Consider Approval of Agreement No. 11-125 With L.D. King, Inc., for \$16,800 for Engineering and Design Services for the Carlton Street Improvement Project [CC]

Authorization of City Manager to Amend Agreement Scope of Services as May Be Necessary for a Total Increase Not to Exceed \$5,000 [CC] 31

6. Consider Approval of Agreement No. 11-126 Amending Agreement Nos. 11-45 and 11-52 With Wheeler & Wheeler Architects, Inc., for Design Services for the Community Center Restroom Conversion and ADA Upgrade Project [CC] 57

**D. Resolutions**

1. Consider Adoption of Resolution No. 11-2929 Authorizing Placement of Liens on Certain Properties for Delinquent Trash and Sewer Charges [CC] 63

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. RESPONSE**

- A. Consider Response to City Council Inquiry Regarding Pomona Valley Transfer Station [CC] 71

**XI. COMMUNICATIONS**

A. City Attorney/Agency Counsel

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

Agency: City of Montclair

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

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 September 19, 2011

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

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

**XIII. CLOSED SESSION ANNOUNCEMENTS**

**XIV. ADJOURNMENT OF CITY COUNCIL**

*The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, October 17, 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 September 29, 2011*

## AGENDA REPORT

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**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION  
NO. 11-2927 AMENDING THE MASTER  
USER FEE SCHEDULE RELATED TO HUMAN  
SERVICES DIVISION FACILITY RENTALS

**DATE:** October 3, 2011  
**SECTION:** PUBLIC HEARINGS  
**ITEM NO.:** A  
**FILE I.D.:** HSV065/HSV151  
**DEPT.:** COMMUNITY DEV.

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**REASON FOR CONSIDERATION:** The City Council is requested to adopt Resolution No. 11-2927 adopting the Master User Fee Schedule regarding fees for use of the Montclair Community Center and establishing fees for use of the Montclair Senior and Youth Centers. A copy of proposed Resolution No. 11-2927 is attached for the City Council's review and consideration.

**BACKGROUND:** The Human Services Division conducted a rental fee analysis of area city facilities available for public rental. The Human Services Division has revised the fees for use of the Community Center and established fees for use of the Senior and Youth Centers. The Senior Center fees are based on an average of fees charged by area cities for their facility rentals as well as additional Senior Center amenities offered including outside patios, fountains, and fireplace. Exhibit A containing rental fee averages and Exhibit B containing revised Community Center fees and establishing fees for use of the Senior and Youth Centers are attached for the City Council's review.

**FISCAL IMPACT:** Revenues generated from the proposed facility rental fee amendments and establishment of Senior and Youth Center fees would offset expenditures including staff, utility, and general facility maintenance costs.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 11-2927 amending the Master User Fee Schedule related to Human Services Division facility rentals.

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Prepared by:

*M. Richter*  
*Christine Smedley*

Reviewed and  
Approved by:

Presented by:

*Steve Luzzo*  
*James J. Swart*

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**RESOLUTION NO. 11-2927**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF MONTCLAIR AMENDING THE MASTER  
USER FEE SCHEDULE RELATED TO HUMAN  
SERVICES DIVISION FACILITY RENTALS**

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

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

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

**WHEREAS**, the City Manager or his designee may adjust or waive user fees as appropriate; and

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

**WHEREAS**, it has been directed that all user fees, to the extent possible, are to be reviewed annually consistent with the User Fee Cost-Recovery Policy.

**WHEREAS**, the City Council has duly noticed and conducted a public hearing on October 3, 2011, at which time the public was invited to give oral and/or written testimony as part of the regular joint City Clerk/Redevelopment Agency/Montclair Housing Corporation meeting prior to the City Council's consideration of adoption of this Resolution.

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

**Section 1. Fee Schedule Adoption.** Human Services Division's amendments to the Master User Fee Schedule, attached hereto as Exhibit A and containing revised fees for use of the Montclair Community Center and establishing fees for use of the Montclair Senior and Youth Centers, are hereby adopted and shall be used as authorization for collecting said fees and charges as set forth herein.

**Section 2. Effective Date.** This Resolution shall be in full force and effect thirty (30) days after passage.

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

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 11-2927 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

DESCRIPTION	CURRENT FEES
<b>A. Rental Fees</b>	
<b>1. Community Center Auditorium/Kitchen</b>	
a. Attendance: Up to 200	\$125 per hour
b. Attendance: 201-300	\$125 per hour
c. Montclair Community Group/Fundraising Activity (Non-profit)	\$50 per hour
d. Non-Resident or Non-Montclair Community Benefit Group	\$150 per hour
<b>2. Conference Rooms A &amp; B (Capacity 50)</b>	
a. Montclair Community Group/Fundraising Activity (Non-profit)	\$15 per hour
b. Non-Resident or Non-Montclair Community Benefit Group	\$40 per hour
<b>3. Senior Center (Capacity 150)</b>	
a. Montclair Community Group/Fundraising Activity (Non-profit)	\$75 per hour
b. Non-Resident or Non-Montclair Community Benefit Group	\$175 per hour
<b>4. Youth Center (Capacity 60)</b>	
a. Montclair Community Group/Fundraising Activity (Non-profit)	\$25 per hour
b. Non-Resident or Non-Montclair Community Benefit Group	\$50 per hour
<b>B. Alcoholic Beverage Fees</b>	
<b>1. Community Center Auditorium/Kitchen</b>	
a. Beverages Sold	\$100 flat fee
b. Hosted Bar	\$100 flat fee
<b>2. Senior Center</b>	
a. Beverages Sold	\$100 flat fee
b. Hosted Bar	\$100 flat fee
<b>3. Youth Center</b>	
a. Beverages Sold	\$100 flat fee
b. Hosted Bar	\$100 flat fee

<b>C. Service Fees</b>	
<b>1. Community Center Auditorium/Kitchen</b>	
a. Set-Up/Takedown (Montclair Community Group/Fund Raising Activity)	Included in Rental Fees
b. Community Building Supervisor or Recreation Leader (1 staff every 100 guests)	\$15 per hour
	Hourly rate of Police Officer at Step C (\$32.38)
c. Reserve Officers	Add 15% to Police Officer hourly rate
d. Administrative Fees for Reserve Officers	
	Current cost between \$100 - \$160 per event up to 500 guests
e. Special Event Liability Insurance Fees (Set by/forwarded to HUB International Ins.)	
f. Maintenance/Cleaning Fee (Collected for events with 100 guests or more)	\$100 flat fee
g. Kitchen (Caterer) Fee	\$50 flat fee
h. Trash Fee	\$15 flat fee
<b>2. Conference Rooms A &amp; B</b>	
a. Set-Up/Takedown	Included in Rental Fees
b. Community Building Supervisor or Recreation Leader	\$15 per hour
	Current cost between \$100 - \$160 per event up to 500 guests
c. Special Event Liability Insurance Fees (Set by/forwarded to HUB International Ins.)	\$75 after 5pm & weekend hours
d. Reservation Fee	\$25 business hours
<b>3. Senior Center</b>	
a. Set-Up/Takedown	Included in Rental Fees
b. Community Building Supervisor or Recreation Leader (1 staff every 100 guests)	\$15 per hour
	Hourly rate of Police Officer at Step C (\$32.38)
c. Reserve Officers	

d. Administrative Fees for Reserve Officers	Add 15% to Police Officer hourly rate
e. Special Event Liability Insurance Fees (Set by/forwarded to HUB International Ins.)	Current cost between \$100 - \$160 per event up to 500 guests
f. Maintenance/Cleaning Fee (Collected for events with 100 guests or more)	\$100 flat fee
g. Kitchen (Caterer) Fee	\$50 flat fee
h. Trash Fee	\$15 flat fee
i. Reservation Fee	\$75 after 5pm & weekend hours \$25 business hours
<b>4. Youth Center</b>	
a. Set-Up/Takedown	Included in Rental Fees
b. Recreation Staff (1 staff every 100 guests)	\$15 per hour
c. Reserve Officers	Hourly rate of Police Officer at Step C (\$32.38)
d. Administrative Fees for Reserve Officers	Add 15% to Police Officer hourly rate
e. Special Event Liability Insurance Fees (Set by/forwarded to HUB International Ins.)	Current cost between \$100 - \$160 per event up to 500 guests
f. Maintenance/Cleaning Fee (Collected for events with 100 guests or more)	\$100 flat fee
g. Kitchen (Caterer) Fee	\$50 flat fee
h. Trash Fee	\$15 flat fee
i. Reservation Fee	\$75 after 5pm & weekend hours \$25 business hours
<b>D. Refundable Deposits</b>	
1. Community Center Auditorium/Kitchen	\$300 without alcohol \$500 with alcohol

<b>2. Senior Center</b>	<b>\$300 without alcohol \$500 with alcohol</b>
<b>3. Youth Center</b>	<b>\$300 without alcohol \$500 with alcohol</b>
<b>E. Equipment Use Fees</b>	
1. Easel	<b>\$5 each</b>
2. Coffee Urn	<b>\$10 each</b>
3. Microphone	<b>\$20 each</b>
4. Portable Projection Screen	<b>\$20 flat fee</b>
5. Laptop	<b>\$25 flat fee</b>
6. Projector/VCR	<b>\$25 flat fee</b>
7. Piano	<b>\$50 flat fee</b>
<b>F. IT Staff Fees</b>	<b>\$50 per hour</b>

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## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION      **DATE:** October 3, 2011  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 1  
**FILE I.D.:** FIN540  
**DEPT.:** ADMIN. SVCS.

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

**BACKGROUND:** Mayor Pro Tem Raft has examined the Warrant Register dated October 3, 2011, and Payroll Documentation dated August 14, 2011; finds them to be in order; and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated October 3, 2011, totals \$724,570.10. The Payroll Documentation dated August 14, 2011, totals \$592,453.62, with \$428,225.05 being the total cash disbursement.

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

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Prepared by: <u><i>Yvonne Smith</i></u>	Reviewed and Approved by: <u><i>[Signature]</i></u>
Proofed by: <u><i>Kathy Dalton</i></u>	Presented by: <u><i>[Signature]</i></u>

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# AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER AUTHORIZING CITY MANAGER TO SIGN AGREEMENT AMENDMENTS MODIFYING PREVIOUS AGREEMENTS WITH THE COUNTY OF SAN BERNARDINO FOR "ONE-TIME" COUNTY SUPPORT FOR SPECIAL PROJECTS AT SUNSET PARK AND ALMA HOFMAN PARK	<b>DATE:</b> October 3, 2011
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b> 1
	<b>FILE I.D.:</b> GRT050
	<b>DEPT.:</b> PUBLIC WORKS

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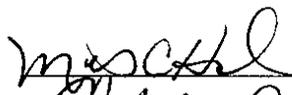
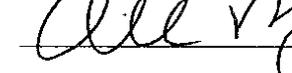
**REASON FOR CONSIDERATION:** The City has previously entered into multiple Agreements with San Bernardino County to fund construction work at several City parks. The City Council is requested to authorize the City Manager to approve amendments to one or more of these existing Agreements for work at Sunset and Alma Hofman Parks. The amendments have not yet been prepared by the County, but time is of the essence in getting the amendments approved. Authorizing the City Manager to sign the Agreement amendments will ensure the City will not lose County grant funding to complete the improvements at Sunset and Alma Hofman Parks.

**BACKGROUND:** In 2005, the City of Montclair entered into multiple Agreements with San Bernardino County for "One-Time" funding for park maintenance/infrastructure projects. The Agreements refer to "Funding Allocation and Project List," which specify the allocated funds and specific park improvements. The Agreements provided funding for the following projects:

- Sunrise Park - \$60,000 (Playground equipment) - *Completed*
- Saratoga Park - \$60,000 (Playground equipment) - *Amended, funds transferred to Alma Hofman Park*
- Alma Hofman Park - \$167,500 (Shade structure, tot lot playground, and barbecues) - *Under construction*
- Sunset Park - \$175,000 (Restroom building and playground surface) - *No work to date*

Work at Sunrise Park has been completed, and the City has received payment from the County for this work. Work at Saratoga Park has been deferred indefinitely, and the County funds intended for that work have been transferred to Alma Hofman Park. Some work at Alma Hofman Park has been completed, and further improvements are currently under construction. These improvements include a parking lot expansion, new park lighting, tennis court lighting, and a shade structure/gazebo. No work has been performed to date at Sunset Park.

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Prepared by:   
Proofed by: 

Reviewed and Approved by:   
Presented by: 

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Staff has been informed by the County that it is anxious to get the remaining funds spent for the park improvements. It is unlikely that the work at Sunset Park could be started before the County would suspend the funds identified for that work. Therefore, staff has requested the County transfer funding intended for Sunset Park to Alma Hofman Park. The additional \$175,000 would help cover costs associated with previously completed work and work currently under construction.

**FISCAL IMPACT:** Failure to approve an amendment to existing Agreements regarding funding for improvements to Sunset and Alma Hofman Parks would likely result in the loss of the \$175,000 grant from the County.

**RECOMMENDATION:** Staff recommends the City Council authorize the City Manager to sign Agreement amendments modifying previous Agreements with the County of San Bernardino for "One-Time" County support for special projects at Sunset Park and Alma Hofman Park.

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 11-120 WITH THE CALIFORNIA  
ARMY NATIONAL GUARD FOR USE OF  
MONTCLAIR POLICE DEPARTMENT  
FIREARMS SHOOTING RANGE

**DATE:** October 3, 2011

**SECTION:** AGREEMENTS

**ITEM NO.:** 2

**FILE I.D.:** PDT725

**DEPT.:** POLICE

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 11-120 with the California Army National Guard for use of the Montclair Police Department firearms shooting range. Proposed Agreement No. 11-120 has been reviewed and approved by the City Attorney; a copy is attached for the City Council's review and consideration.

**BACKGROUND:** The Montclair Police headquarters at 4870 Arrow Highway houses an indoor shooting range. Police Department safety personnel train at the range at least two days each month. The range is rented to other law enforcement agencies when not in use by Department staff to offset costs associated with its construction and maintenance.

The California Army National Guard has requested to rent the shooting range two days per year. Staff conducted a survey of other indoor shooting range facilities and found that \$300 per day is a fair and competitive rental rate for such use.

Proposed Agreement No. 11-120 details the terms of the California Army National Guard's use of the range. The agency would be responsible for providing its own supplies and equipment.

Proposed Agreement No. 11-120 would become effective October 4, 2011, and would remain in effect until terminated by either party as specified in the Agreement. The Agreement could be terminated at any time, with or without cause, by either party upon written notice to the other party at least thirty (30) days prior to the date specified for such termination.

**FISCAL IMPACT:** The City would net \$600 in annual revenue should the City Council approve proposed Agreement No. 11-120.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-120 with the California Army National Guard for use of the Montclair Police Department firearms shooting range.

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Prepared by:

*M. DeMoet*

Reviewed and  
Approved by:

*K.B. Jones*

Proofed by:

*Sharon Aguiar*

Presented by:

*Samuel Spurr*

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**CITY OF MONTCLAIR**

**AGREEMENT FOR USE OF  
WEAPONS FIRING RANGE**

THIS AGREEMENT is made and effective as of October 4, 2011, between the CITY OF MONTCLAIR (hereinafter "City") and the CALIFORNIA ARMY NATIONAL GUARD (hereinafter "Agency"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, the City owns and operates a Weapons Firing Range (hereinafter "Range") located at the Montclair Police Facility, 4870 Arrow Highway, Montclair, California; and

WHEREAS, Agency desires to enter into an agreement for the use of the Range for the purpose of firearms training;

NOW, THEREFORE, the parties agree as follows:

1. Use of Range

City shall make the Range available to Agency's National Guard Personnel at such times as are mutually agreeable to both parties. Agency shall only allow its National Guard Personnel (hereinafter "personnel") to use the Range. Agency's personnel shall have exclusive use of the Range at Agency's scheduled time. Agency's personnel shall not share use of the Range with personnel from any other public agency. Agency's personnel shall comply with the Range Use Rules and Range Safety Rules set forth in Exhibits A and B, respectively, attached hereto. Violations of the Range Use Rules and Range Safety Rules may result in immediate termination of Agency's Range privileges.

2. Range Master Required

Agency shall have a trained range master present to supervise all firearms use and training at all times during use of the Range by Agency's personnel. Each range master shall first attend a training course provided by the Montclair Police Department on the use of range equipment. The range master shall personally supervise and control the course of training of Agency's personnel and shall insure that all personnel comply with the Range Use Rules and Range Safety Rules set forth in Exhibits A and B, respectively.

3. Supplies and Equipment

Agency shall supply and bear the cost of all supplies and equipment necessary for all firearms use and training, including but not limited to ammunition, weapons, cardboard backing paper targets, earphones, shooting glasses, and cleaning equipment.

4. Fees

Agency shall pay City the sum of Three Hundred Dollars (\$300.00) for use of the Range for a twenty-four (24) hour period. Agency shall submit payment to the Montclair Police Department within thirty (30) days of each use of the Range. City shall have the right to renegotiate the rate for Range usage under this agreement at the end of each fiscal year for the ensuing fiscal year. Any rate change shall be agreed upon in writing by both parties in the form of an amendment to this agreement.

5. Damage to Range

Agency shall promptly pay for any damage or necessary repairs to Range resulting from the use of the Range by Agency's personnel.

6. Indemnification

To the full extent permitted by law, Agency 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 or use of the Range by Agency or by any individual or entity for which Agency is legally liable, including but not limited to officers, agents, employees or subcontractors of Agency.

7. Insurance Requirements

Agency is self-insured

8. Term

The term of this agreement shall be for a period of time commencing upon the effective date of this agreement and terminating only as hereinafter provided. This agreement may be terminated at any time, with or without cause, by either party, upon written notice given to the other party at least thirty (30) days prior to the date specified for such termination. In the event of termination, each party shall fully pay and discharge all obligations in favor of the other accruing prior to the date of such termination, and each party shall be released from all obligations or performance which would otherwise accrue subsequent to the date of termination.

9. 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: Montclair Police Department  
4870 Arrow Highway  
Montclair, CA 91763

To Agency: California Army National Guard  
330th Military Police Company  
ATTN: SFC Bobby Whitaker  
950 N Cucamonga Avenue  
Ontario, CA 91764-2999

10. Governing Law

The City and Agency 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.

11. 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.

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

CITY OF MONTCLAIR

BY: \_\_\_\_\_  
Mayor

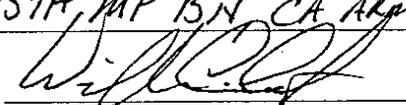
ATTEST: \_\_\_\_\_  
City Clerk

DATED: \_\_\_\_\_, 20

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

AGENCY: 185TH MP BN CA ARMY NAT GUARD

BY:   
(signature)

WILLIAM C. CARTER (LTC)  
(typed name)  
BN COMMANDER  
(title)

DATED: SEPT. 9, 20 11

## RANGE USE RULES

1. Food, beverages, and use of tobacco products are prohibited within the range facility.
2. Commands issued by range masters and range personnel must be obeyed immediately and without question.
3. To prevent lead buildup in the range backstop and the air filtration system, personnel shall only use "clean fire" ammunition. Personnel required to shoot duty ammunition that is not "clean fire" shall notify and obtain the approval of the Montclair Police Department Support Services Lieutenant in advance of the scheduled shoot.
4. Never use tracer ammunition in the range.
5. Personnel may not shoot rifle ammunition over .223 caliber.
6. Personnel using shotguns at the range shall not use the target carrier to hold the target. When firing shotguns, the target carriers shall remain at the "home" position.
7. Personnel shall clean the range facility at the end of the shooting period, including the removal of all expended casings, and debris. ***Brooms shall not be used in the Shooting Range Room.*** Instructions on proper cleaning techniques will be provided to range staff.
8. Steel targets shall not be used in the range facility.
9. No vehicles shall be allowed inside the range facility without the advanced approval of the Montclair Police Department Support Services Lieutenant.
10. Personnel shall report all injuries or property damage to the Montclair Police Department Watch Commander, who will forward the information to Montclair Police Department Support Services Lieutenant.
11. All shooters must utilize proper personal safety equipment as required by their agency's policy and/or range staff.
12. Unsafe conditions, defective equipment, and facility repair requests should be reported immediately to a range staff member. Conditions requiring repair or alteration shall be reported to the Montclair Police Department Support Services Lieutenant.
13. In order to prevent damage to the range equipment, cross-firing at targets is not allowed unless authorized by a range master

EXHIBIT A

## RANGE SAFETY RULES

THE FOLLOWING SAFETY PROCEDURES WILL BE STRICTLY ENFORCED:

1. Federal, state, and local firearm laws must be obeyed. Violation of any Range Safety Rule may result in the removal of the violator from the facility.
2. All rules posted within the facility shall be obeyed. Read and understand all rules prior to utilizing the facility.
3. The **Montclair Police Department Range Facility** consists of several separate areas. All areas are distinctively marked:
  - **Range Foyer:** This is the reception area for the range. Only authorized personnel may use the north entry door. All other persons shall utilize the south (public parking lot) entry door. This area is not to be used for the preparation, cleaning, loading, or servicing of firearms.
  - **Range Ready Room:** This area is to be utilized for range preparation. Any loaded weapons brought into the range facility are to be unloaded using the projectile containment system mounted on the wall. This area may be used for preparing equipment, loading magazines, or dressing in range safety equipment, ballistic vests, duty-belts, and/or holsters. *Due to limited space, a maximum of five persons may prepare to shoot at any given time.*
  - **Shooting Range Room:** This area includes the firing line. It may only be accessed via the Range Ready Room. *Shooters shall not enter or leave the Shooting Range Room with loaded firearms.* Range staff members are exempt from this restriction.
  - **Range Control Room:** This room is to be used by range staff only and shall not be entered without the authorization of a range staff member.
  - **Weapon Cleaning Room:** This area is to be used for the cleaning and servicing of firearms and equipment. A range storage room can be accessed from this room. Peace officers, or those authorized to carry loaded firearms, may reload firearms in the Weapon Cleaning Room prior to departure. The projectile containment system mounted on the wall shall be utilized when loading weapons. *Due to limited space, a maximum of five participants may utilize this room at any given time.*
  - **Range Office:** This area is to be used by range staff only and shall not be entered without authorization from a range staff member. A range storage room can be accessed from this office.
  - **Range Restroom:** May be used by those utilizing the range facility.
4. Persons lawfully possessing loaded firearms may enter the range facility with loaded firearms. Except on the firing line at the direction of a range master, firearms shall be loaded and unloaded utilizing the projectile containment systems located in the Range Ready Room and the Weapon Cleaning Room.
5. When entering and the leaving the Shooting Range Room (firing line room), handguns must be unloaded, with actions open, magazines removed and holstered (or unloaded and encased). Rifles must be unloaded with actions open and magazines removed (or unloaded

and encased). Rifles will be carried safely with the muzzle pointed upward. **Persons utilizing the range shall not enter or leave the "Shooting Range" with a loaded firearm.**

6. Shooters shall not enter the Shooting Range Room until directed to do so by a member of the range staff. The Shooting Range Room doors shall remain closed during an active course of fire.
7. While in the Shooting Range Room (firing line), firearms will only be loaded and unloaded at the direction of a range master with the muzzle pointed down-range, unless otherwise directed.
8. In order to prevent damage to the range equipment, cross-firing at targets is not allowed unless authorized by a range master.
9. Eye and ear protection shall be utilized in the Shooting Range Room. Ear protection shall be utilized in the Range Ready Room. This includes observers.
10. Commands issued by range masters and range personnel must be obeyed immediately and without question.

## EXHIBIT B

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 11-123, A FISCAL OPERATIONS  
SERVICES AGREEMENT WITH DONALD L.  
PARKER, CPA

**DATE:** October 3, 2011

**SECTION:** AGREEMENTS

**ITEM NO.:** 3

**FILE I.D.:** PER187

**DEPT.:** CITY MGR.

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**REASON FOR CONSIDERATION:** Staff is requesting the City Council consider approval of Agreement No. 11-123 with Donald L. Parker, CPA. Pursuant to the proposed Fiscal Operations Services Agreement, Mr. Parker would be working to assist in meeting state-mandated requirements related to continuation of the City of Montclair Redevelopment Agency and to provide general oversight and work development in the City's Finance Division. Agreement No. 11-123 is attached for consideration by the City Council.

**BACKGROUND:** Assistant Finance Director Richard Beltran announced his retirement effective September 30, 2011, after approximately 22 years of service to the City. Mr. Beltran's notice of intent to retire was provided in mid September. This notification provided staff with inadequate time to reevaluate the position, conduct a recruitment, and hire a successor prior to his departure.

Recent actions by state government have placed both redevelopment agency and finance operations at a critical juncture. The state's effort to abolish community redevelopment agencies or secure annual diversion of tax increment dollars to the State Treasury impose a number of comprehensive reporting requirements on local fiscal operations. In addition, the Legislature continues to pass bills demanding detailed reporting related to general accounting processes. Therefore, it is critical for the organization to maintain consistency within the Finance Division and secure the talents of a professional Certified Public Accountant (CPA) to assist with managing fiscal operations.

Staff is recommending the retention of Mr. Donald L. Parker, CPA, to provide the financial acumen necessary to manage fiscal operations for the organization while the City engages in reevaluation and recruitment processes for a financial officer. Mr. Parker has a long history with the City, serving as a Principal with Lance, Soll, Lunghard, LLP—the City's principle auditing firm for the past two decades. Mr. Parker enjoys an established and well-regarded reputation as a financial officer and recently left Lance, Soll, Lunghard, LLP, to establish his own firm.

Proposed Agreement No. 11-123 establishes the terms and conditions of Mr. Parker's assistance to the City and Redevelopment Agency. The more salient terms of the proposed Agreement involve the following points:

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

Reviewed and  
Approved by: M. STAATS  
Presented by: Donald L. Parker

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- The consultant would act in an advisory capacity to the City Manager for the purposes of financial policy and procedures. The services would include, but not be limited to, the following:
  1. Evaluating the design of the financial accounting structure (accounting funds and flow of financial information to achieve understanding of resources available and project status).
  2. Ensuring financial compliance with regulations and reporting requirements.
  3. Reconciling procedures and timing.
  4. Analyzing workflow.
- The City would pay the consultant monthly at a rate of \$75 per hour. It is anticipated that the consultant would work between 20 to 40 hours per week.
- The term of the Agreement would commence on October 4, 2011. While the proposed Agreement has no defined concluding term, the City may terminate the Agreement without cause on ten days' written notice. Furthermore, the total amount of compensation would not exceed \$50,000. During the consultant's tenure, the City would be running a recruitment for a full-time finance officer.
- The consultant would be required to supply the appropriate insurance certificates and indemnification.

**FISCAL IMPACT:** As indicated above, the consultant would receive compensation of \$75 per hour. Compensation would not exceed \$50,000 pursuant to the Agreement. Funding for the Agreement would be provided by salary savings from the vacant Assistant Finance Director position.

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

## AGREEMENT NO. 11-123

### CITY OF MONTCLAIR

#### AGREEMENT FOR FISCAL OPERATIONS SERVICES

THIS AGREEMENT is made and effective as of October 3, 2011, between the City of Montclair, a municipal corporation ("City") and Donald L. Parker, CPA ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on October 3, 2011, and shall remain and continue in effect for a period of six months unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform the tasks described and set forth in Exhibit A attached hereto and incorporated herein as though set forth in full.

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 and the 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 that 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 B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement that 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 ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed \$50,000. 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 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 month. Payment shall be made within thirty (30) days of receipt of each invoice as to all nondisputed 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) The 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. Notwithstanding the above, all computer financial models including, without limitation, compilations of formulas and spreadsheet models used or developed by the Consultant in performing its work are proprietary and shall remain property owned solely by the Consultant.

(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.

City agrees, at its sole expense, to indemnify and defend Consultant from and against any damages, claims or suits by third parties against Consultant arising from the performance of Consultant's Services hereunder unless caused by Consultant's negligent or wrongful act, error or omission. City's indemnification includes reimbursement to Consultant for any legal fees assessed against Consultant, as part of Consultant's deductible or otherwise, required by Consultant's insurance to protect their interest in such litigation(s).

## 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 policies of insurance with minimum limits as indicated in Exhibit C

(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.

(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.

(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.

## 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 subagreement, 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 office 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: Edward C. Starr  
City Manager  
City of Montclair  
P.O. Box 2308  
Montclair, CA 91763

To Consultant: Donald L. Parker, CPA  
622 Lennox Court  
Brea, CA 92821-7302

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Because of the personal nature of the services to be rendered pursuant to this Agreement, only Donald L. Parker, CPA (responsible employee) shall perform the services described in this Agreement.

Consultant's responsible employee may use assistants, under his direct supervision, to perform some of the services under this Agreement. Consultant shall provide City fourteen (14) days' notice prior to the departure of the responsible employee from Consultant's employ. Should he leave Consultant's employ, the City shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

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. 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.

22. 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.

23. 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.

**CONSULTANT:**

**CITY:**

**DONALD L. PARKER, CPA**

**CITY OF MONTCLAIR**

By \_\_\_\_\_  
Donald L. Parker  
CPA

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

Date \_\_\_\_\_

Date \_\_\_\_\_

**ATTEST:**

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

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

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

## EXHIBIT A

### SCOPE OF WORK

Consultant shall act in an advisory role to the City Manager for purposes of financial policy and procedures. Consultant will provide services as requested by the City Manager, or his designee, including but not limited to, the following:

- Design of financial accounting structure (accounting funds and flow of financial information to achieve understanding of resources available and project status).
- Financial compliance with regulations and reporting requirements.
- Reconciliation procedures and timing.
- Perception of work flow and abilities of financial accounting personnel.

Consultant shall provide oversight on the operation of the accounting records and shall provide recommendations on how the City can comply with budgetary and reporting requirements.

EXHIBIT B  
FEE SCHEDULE

SCHEDULE OF COMPENSATION  
(TIME AND MATERIALS BASIS)

1. **METHOD OF PAYMENT.** Payment for all work performed by Consultant pursuant to the terms of this Agreement, including Consultant's meeting with City staff and/or governing board, shall be made on the basis of the hourly rate of Seventy-Five Dollars (\$75) per hour. Any cost associated with travel, other than normal commuting, shall be reimbursed to Consultant in accordance with the established reimbursement policy of the City of Montclair.
  
2. **BILLING.** At the end of each calendar month in which services are performed or expenses are incurred under this Agreement and prior to the 10th day of the following month, Consultant shall submit an invoice to the City, by electronic means or by mail, to the following address:

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

The invoice submitted pursuant to this paragraph shall show the hours worked during the billing period, the hourly rate of pay for each person who performed services, the dates on which the services were performed, a description of the services performed, actual out-of-pocket expenses incurred in the performance of the services, and such other information as the City may reasonably require.

3. **TIME OF PAYMENT.** Payment to Consultant shall be made within thirty (30) days after submittal of Consultant's invoice and approval by City, in accordance with City's normal demand procedure.

## EXHIBIT C

### INSURANCE SCHEDULE

1. Policy Requirements.

Consultant shall submit duly executed certificates of insurance for the following:

- (a) Automobile Liability in the minimum amount of \$300,000/\$300,000.
- (b) Professional/Negligent Acts, Errors and Omissions Insurance in the minimum amount of Five Hundred Thousand Dollars (\$500,000) per claim, and One Million Dollars (\$1,000,000) annual aggregate.

2. Waiver by Agency.

City may waive one or more of the coverages listed in Section 1, above. This waiver must be express and in writing and will only be made upon a showing by the Consultant that its operations in and with respect to City are not such as to impose liability within the scope of that particular coverage.

3. Additional Insurance Requirements.

- (a) Consultant shall provide City with at least thirty (30) days prior written notice of any modification, reduction or cancellation of any of the Policies required in Section A, or a minimum of ten (10) days notice for cancellation due to nonpayment.
- (b) City may increase the scope or dollar amount of coverage required under any of the policies described above, or may require different or additional coverages, upon prior written notice to Consultant. Consultant may acquire the different or additional coverage or cancel further services under this agreement, at his sole discretion.

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 11-124 WITH BILINGUAL FAMILY  
COUNSELING SERVICES TO PROVIDE  
CASE MANAGEMENT SERVICES

**DATE:** October 3, 2011

**SECTION:** AGREEMENTS

**ITEM NO.:** 4

**FILE I.D.:** HSV044

**DEPT.:** COMMUNITY DEV.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 11-124 with Bilingual Family Counseling Services (BFCS) to provide case management services. A copy of proposed Agreement No. 11-124 is attached for the City Council's review and consideration.

**BACKGROUND:** The Montclair Community Collaborative (MCC) was organized in 1996 as a partnership of the City of Montclair, OMSD, nonprofit agencies, colleges, businesses, and residents to strengthen the community. The Collaborative works to provide "a quality community for all, by working together as diverse, committed individuals and organizations." It engages in ongoing strategic planning in order to identify resources and develop services for children, youth, and adults in the community.

The Montclair Community Collaborative's efforts resulted in the City of Montclair successfully obtaining a one-year competitive grant from the Inland Empire United Way (IEUW) to fund case management services for the community. The City Council approved Agreement No. 11-91 with IEUW on July 5, 2011. This contract requires the delivery of services through subcontracts to partner agencies.

Proposed Agreement No. 11-124 would provide funding to BFCS, a partner agency, for the following case management services in the Montclair community:

- Recruit a minimum of three case management interns.
- Conduct trainings of case management interns on standards of case management referral and range of linkages/referrals for children and their families in the community.
- Provide ongoing supervision and support of case management interns.

The term of proposed Agreement No. 11-124 is September 1, 2011, through June 30, 2012.

**FISCAL IMPACT:** BFCS would be awarded \$8,200 from the IEUW grant.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-124 with Bilingual Family Counseling Services to provide case management services.

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Prepared by:

*M. Richter*  
*Christine Snidely*

Reviewed and  
Approved by:

Presented by:

*Steve Luster*  
*James A. Spurr*

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

**AGREEMENT FOR CONTRACTED SERVICES**

**THIS AGREEMENT** is made and entered into this 3rd day of October 2011, by and between the City of Montclair, hereinafter referred to as the "CITY," and Bilingual Family Counseling Services, hereinafter referred to as the "BFCS."

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

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

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

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

**2. Compensation.**

(a) Except as otherwise provided in this Agreement, **CITY** agrees to compensate **BFCS** for services rendered under this Agreement for a maximum of \$8,200.00 based on the Scope of Work, Attachment A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **7. General Provisions.**

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

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

- (1) Increase dollar amount
- (2) Administrative changes
- (3) Suspend funding in whole or in part if there is a reduction in availability of funds from the Inland Empire United Way
- (4) Changes as required by law or the Inland Empire United Way

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

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

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

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

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

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

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

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

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

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

**ATTEST:**

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

## ATTACHMENT A

### Scope of Work

#### Services to be provided:

- Recruit a minimum of three case management interns.
- Conduct trainings of case management interns on standards of case management referral and range of linkages/referrals for children and their families in the community.
- Ongoing supervision and training support of case management interns.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 11-125 WITH L.D. KING, INC., FOR \$16,800 FOR ENGINEERING AND DESIGN SERVICES FOR THE CARLTON STREET IMPROVEMENT PROJECT	DATE: October 3, 2011
	SECTION: AGREEMENTS
	ITEM NO.: 5
CONSIDER AUTHORIZING CITY MANAGER TO AMEND AGREEMENT SCOPE OF SERVICES AS MAY BE NECESSARY FOR A TOTAL INCREASE NOT TO EXCEED \$5,000	FILE I.D.: STA670
	DEPT.: PUBLIC WORKS

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 11-125 with L.D. King, Inc., for engineering and design services for the Carlton Street Improvement Project. Awards of contracts and agreements with the City require City Council approval.

**BACKGROUND:** In 2006, the City Council annexed a portion of San Bernardino County within its Sphere of Influence under Annexation No. 26. Included in this annexation was Carlton Street, an east-west street located south of Mission Boulevard and east of Monte Vista Avenue. Currently, the street has no street lighting, sewer, curb, gutter, or sidewalk. The street is in extremely poor condition with pavement well beyond its useful life; no curbs, gutters, or sidewalks; considerable ponding even from nuisance flows; and no sanitary sewers. Staff proposes completely removing what pavement remains and constructing new full street improvements including an 8-inch sanitary sewer.

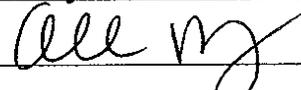
Staff requested and received proposals from three engineering firms qualified to perform survey and design services required for this project. Of the three, staff believes the proposal submitted by L.D. King, Inc., demonstrated the best understanding of the City and project needs.

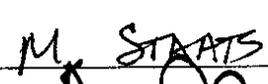
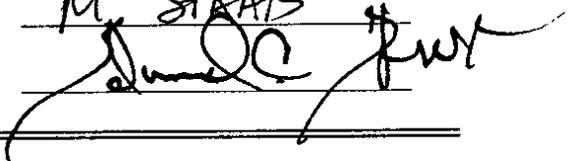
**FISCAL IMPACT:** Engineering and design fees for the design of the Carlton Street project were negotiated as a time and materials contract not to exceed a total of \$16,800. Funding for the project is provided through a combination of Community Development Block Grant and Measure I funds.

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

1. Approve Agreement No. 11-125 with L.D. King, Inc., for \$16,800 for engineering and design services for the Carlton Street Improvement Project.
2. Authorize the City Manager to amend the Agreement Scope of Services as may be necessary for a total increase not to exceed \$5,000.

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Prepared by:   
Proofed by: 

Reviewed and Approved by:   
Presented by: 

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**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**DESIGN SERVICES FOR THE INTERSECTION PAVEMENT RESTORATION AND REHABILITATION PROJECT**

THIS AGREEMENT is made and effective as of October 4, 2011, between the CITY OF MONTCLAIR, a municipal corporation ("City"), and L.D. KING, INC., a 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 the 4th day of October, 2011, and shall remain and continue in effect for a period of 12 months until tasks described herein are completed, but in no event later than October 3, 2012, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

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 Engineer shall represent City in all matters pertaining to the administration of this Agreement, and 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 \$16,800.00 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 ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Fifteen Thousand Dollars (\$15,000.00). 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 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 month. Payment shall be made within thirty (30) days of receipt of each invoice as to all nondisputed 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.

(d) Consultant agrees that, in no event shall City be required to pay to Consultant any sum in excess of ninety-five percent (95%) of the maximum payable hereunder prior to receipt by City of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to City. Final payments shall be made no later than sixty (60) days after presentation of final documents and acceptance thereof by City.

## 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) The 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
(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 subagreement, 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:** Mr. Michael C. Hudson  
City Engineer  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

**To Consultant:** Dale Wintergerst, P.E.  
L.D. King, Inc.  
2151 Convention Center Way, Suite 100  
Ontario, CA 91764

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. Because of the personal nature of the services to be rendered pursuant to this Agreement, only L.D. King, Inc. (responsible employee) shall perform the services described in this Agreement.

Consultant's responsible employee may use assistants, under his direct supervision, to perform some of the services under this Agreement. Consultant shall provide City fourteen (14) days' notice prior to the departure of the responsible employee from Consultant's employ. Should he leave Consultant's employ, the City shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

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. CONTENTS OF REQUEST FOR PROPOSALS AND PROPOSAL

Consultant is bound by the contents of City's Request for Proposals and the contents of the proposal submitted by the Consultant, Exhibit "A" hereto. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Consultant's proposal.

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**

**CONSULTANT:**

**L.D. KING, INC.**

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Edward C. Starr  
City Manager

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Name/Title

**ATTEST:**

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Yvonne L. Smith  
Deputy City Clerk

---

Name/Title



Engineers/Planners/Surveyors

September 20, 2011

Mr. Steve Stanton  
City of Montclair  
Public Works Department, Engineering Division  
5111 Benito Street  
Montclair, CA 91763

Subject: *Proposal to Provide Engineering Services for Design of Improvements to  
Carlton Street East of Monte Vista Avenue*

Dear Mr. Stanton:

L.D. King, Inc. is pleased to submit the following proposal to provide Professional Engineering Services for the design of improvements to Carlton Street from Monte Vista Avenue to approximately 300 feet east.

L.D. King, Inc. will provide field surveys and design services for pavement reconstruction, curb and gutter, sidewalk and sewer. The proposal does not include geotechnical services.

If you have any questions or require additional information, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dale E. Wintergerst'.

Dale E. Wintergerst, P.E.  
President

DEW/sdp  
Enclosures

**PROPOSAL TO PROVIDE ENGINEERING SERVICES FOR THE DESIGN OF  
IMPROVEMENTS TO CARLTON STREET FROM  
MONTE VISTA AVENUE TO APPROXIMATELY 300 FEET EAST**

**TASK 1 DESIGN SURVEYS AND MAPPING**

Field surveys and mapping will be performed to provide the following:

- Recovery of sufficient centerline monuments to establish control for Carlton Street and Monte Vista Avenue.
- Ties to accepted City of Montclair or County of San Bernardino benchmarks.
- Cross-sections along Carlton Street at 50 foot intervals for the length of the project, approximately 300 feet. Cross sections will be from south right of way to north right of way of Carlton. Additional survey points outside the proposed right of way will be obtained, as necessary, to tie into existing driveways.

**TASK 2 DESIGN SERVICES**

**Street Improvements**

A plan/profile sheet will be prepared, at a scale of 1 inch = 20 feet, for reconstruction of Carlton Street, from Monte Vista Avenue to the east end of the street right of way, approximately 300 feet (at APN 1011-321-13). The design will provide for:

- Removal and reconstruction of the existing pavement and base, including establishing a new centerline profile.
- Curb and gutter
- Sidewalk
- Drive approaches
- Curb ramps at the Monte Vista Avenue intersection

Cross sections will be plotted at 50-foot intervals for designing a match to the existing grades on adjacent property.

Profiles will be prepared for each of the driveways to match the existing surface. Drive approaches will be provided for each of the parcels – there are 8 parcels fronting on this street and one of these has a circular driveway (with two drive approaches). Additionally, some of the existing driveways are poorly defined. The street design will provide for 9 drive approaches. If sidewalk is to be curb-adjacent, handicapped access will be provided around the backs of the drive approaches. (Sidewalk in the adjacent development, on the west side of Monte Vista Avenue, is curb-adjacent.)

The treatment at the east end of the street will have to be determined – currently, access is provided to the adjacent parcel (APN 1011-321-13) through a locked gate; it may be necessary to provide a drive approach for this parcel. There is no additional right of way at the end of the street for a cul-de-sac unless a non-standard design is used and sidewalk is eliminated at the end of the street.

The completed plans will consist of a title sheet and one plan/profile sheet; a typical section, standard notes and notices and construction notes will be included.

### **Sewer Improvements**

A plan/profile sheet will be prepared, at a scale of 1 inch = 20 feet, for an 8-inch sewer from Monte Vista Avenue to approximately 300 feet east. The sewer will connect to an existing manhole at Monte Vista Avenue; a new manhole will be constructed at the east end of Carlton Street. Sewer general notes will be included on the title sheet for the street improvements.

### **Utility Coordination**

Existing utilities will be researched and notices will be sent to the appropriate utility companies advising them of the construction.

### **Construction Documents**

Construction quantities and an engineer's estimate will be prepared. Special provisions are not included since there appear to be no items of work requiring additional specifications.

### **Schedule**

Design of the project will begin upon receipt of the Notice to Proceed. It is anticipated the design will be completed in four weeks.

**Cost**

Services will be performed on a time and materials basis for an estimated fee as indicated in the following table, not to be exceeded without prior Client approval.

<b>Task</b>	<b>Description</b>	<b>Estimated Fee</b>
Task 1	Design Surveys and Mapping	\$ 3,700
Task 2	Design Services	\$13,100
<b>Total Not-To-Exceed Amount:</b>		<b>\$ 16,800</b>

Additional services, if needed, will be billed on a time and materials basis in accordance with our current Rate Schedule attached.

# Rate Schedule

## L.D. King, Inc.

October 1, 2010– September 30, 2011

Principal .....	\$220.00
Sr. Project Manager/Sr. Engineer Designer .....	\$170.00
Director of Planning .....	\$170.00
Project Manager .....	\$151.00
Project Engineer .....	\$132.00
Engineer/Designer/Planner III .....	\$121.00
Engineer/Designer/Planner II .....	\$105.00
Engineer/Designer/Planner I .....	\$ 95.00
CAD Drafter .....	\$ 88.00
Project Coordinator .....	\$ 75.00
Graphic Artist/Technician .....	\$ 71.00
Project/Administrative Assistant .....	\$ 63.00
<b><u>Surveying Services</u></b> .....	\$165.00
Director of Surveys .....	\$138.00
Project Surveyor, Office .....	\$121.00
Senior Survey Calculator .....	\$105.00
Survey Calculator .....	\$295.00
3-Man Survey Crew .....	\$234.00
2-Man Survey Crew .....	\$150.00
1-Man Survey Crew .....	\$158.00
<b><u>Travel Time</u></b> .....	\$107.00
3-Man Survey Crew .....	\$354.00
2-Man Survey Crew .....	\$274.00
1-Man Survey Crew .....	\$187.00
<b><u>Subsistence</u></b> .....	\$303.00
3-Man Survey Crew .....	\$205.00
2-Man Survey Crew .....	\$131.00
<b><u>Construction Services</u></b> .....	\$126.00
Sr. Resident Engineer .....	\$116.00
Resident Engineer.....	\$100.00
Senior Inspector.....	\$ 65.00/Day
Inspector.....	\$ 65.00/Day
Car/Truck for Construction Services Personnel .....	\$ 65.00/Day
<b><u>Reimbursable Costs</u></b> .....	Cost
In-House Reproduction.....	Cost + 15%
Printing and Materials .....	Cost + 15%
Express Mail, Courier, Next Day Service .....	Cost + 15%
Special Subconsultant Services.....	Cost + 10%

NOTE: L.D. KING, INC. reserves the right to change hourly rates on October 1, due to labor agreements, salary adjustments, and changes in operating expenses. All billings will be at the current billing rates.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 11-126 AMENDING AGREEMENT NOS. 11-45 AND 11-52 WITH WHEELER & WHEELER ARCHITECTS, INC., FOR DESIGN SERVICES FOR THE COMMUNITY CENTER RESTROOM CONVERSION AND ADA UPGRADE PROJECT	<b>DATE:</b> October 3, 2011 <b>SECTION:</b> AGREEMENTS <b>ITEM NO.:</b> 6 <b>FILE I.D.:</b> CVC060 <b>DEPT.:</b> PUBLIC WORKS
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**REASON FOR CONSIDERATION:** Architectural design services are required for the development of plans to convert existing Meeting Room A in the Community Center to fully accessible restrooms. The City Council previously awarded a design contract to Wheeler & Wheeler Architects, Inc., for these services and later approved Amendment No. 1 to that contract. Based on a review of the design to date, staff believes additional work is necessary. Modifications to the design contract require City Council approval.

**BACKGROUND:** On March 16, 2011, the City Council awarded an architectural services design contract to Wheeler & Wheeler Architects, Inc., to prepare plans for constructing Americans With Disability Act (ADA) compliant restrooms and other ADA upgrades in the Community Center. The current restrooms in the Community Center are not fully ADA compliant, and modifying them to meet ADA requirements would require reducing the total number of facilities, which are already below the number required for the size of the building.

A kickoff meeting was held with the architect and various staff members on April 19, 2011. As a result of this meeting, the design contract was modified to include additional work in the Lounge and Meeting Room B, if construction funding permits. The change in the Wheeler & Wheeler Architects contract was approved by the City Council as Agreement No. 11-52 on May 16, 2011.

After developing a floor plan for the proposed restrooms that complies with accessibility requirements and has the minimum number of toilets, urinals, and sinks, it was determined that the custodian storage area that was to be part of the restroom project was inadequate in size. The existing restrooms can be converted to custodian storage, but additional storage would be required to meet the needs of the Human Services Division of the Community Development Department. In order to obtain this storage, further building modifications would be required in an area previously used for storing City Clerk records. These records have already been moved to the Youth Center to a storage area developed as part of that project.

**FISCAL IMPACT:** Funding for this conversion project is provided through the Community Development Block Grant Program. The total project budget is \$370,000. The design contract with Wheeler & Wheeler Architects was originally for \$21,400. Amendment No. 1

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Prepared by: *M. S. T. H.*  
Proofed by: *Alle M.*

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

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increased the contract by \$3,800. Amendment No. 2 will further increase the contract by \$2,850, bringing the new contract total to \$28,050.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 11-126 amending Agreement Nos. 11-45 and 11-52 with Wheeler & Wheeler Architects, Inc., for design services for the Community Center Restroom Conversion and ADA Upgrade Project.

**CITY OF MONTCLAIR**  
**AMENDMENT TO AGREEMENT NOS. 11-45 AND 11-52**  
**WITH WHEELER & WHEELER ARCHITECTS, INC.**  
**FOR**  
**COMMUNITY CENTER RESTROOM PROJECT**

**THIS AGREEMENT** is made and entered into this 3rd day of October, 2011, by and between the CITY OF MONTCLAIR, a municipal corporation ("City"), and WHEELER & WHEELER ARCHITECTS, INC., a California Corporation ("Consultant"), and collectively "Parties."

**RECITALS**

**WHEREAS**, Parties have previously entered into Agreement No. 11-45 effective April 22, 2011, and Agreement No. 11-52 effective May 24, 2011, for design consultant services in conjunction with the conversion of a meeting room into restrooms and existing restrooms into storage rooms in the Community Center; and

**WHEREAS**, Paragraph 5. PAYMENT of Agreement No. 11-45 specified that compensation for work was to be paid on a time and materials basis with the maximum compensation to be paid under Agreement No. 11-45 not to exceed Twenty-One Thousand Four Hundred Dollars and No Cents (\$21,400.00); and

**WHEREAS**, Section 1 of Agreement No. 11-52 specified that compensation for additional work requested was to be increased by Three Thousand Eight Hundred Dollars and No Cents (\$3,800.00) for a total not to exceed Twenty-Five Thousand Two Hundred Dollars and No Cents (\$25,200.00); and

**WHEREAS**, Parties mutually agree that there is additional design work to be performed and a need to expand Consultant's services.

**NOW, THEREFORE, IT IS AGREED** by and between City and Consultant as follows:

**AGREEMENT**

1. Paragraph 5. PAYMENT is hereby modified to provide that CITY shall pay to CONSULTANT an additional sum of Two Thousand Eight Hundred Fifty Dollars and No Cents (\$2,850.00) for doing additional prescribed work set forth by CITY for a total amount not to exceed Twenty-Eight Thousand Fifty Dollars and No Cents (\$28,050.00).
2. Paragraph 2. SERVICES is hereby modified to include, in addition to the original Exhibit A and Exhibit A-1 Scope of Services, Exhibit A-2 Scope of Services attached hereto.
3. All other terms of Agreement No. 11-52 shall remain the same and be incorporated herein as though fully set forth.

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

**CONSULTANT:**

**CITY:**

**WHEELER & WHEELER ARCHITECTS, INC.**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
Paul S. Wheeler

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

Date \_\_\_\_\_

Date \_\_\_\_\_

**ATTEST:**

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

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

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

**EXHIBIT A-2**

**WHEELER & WHEELER**

**A R C H I T E C T S**  
ARCHITECTURE INTERIORS PLANNING  
133 Spring St., Claremont, CA 91711-4030  
(909) 624-5085 (909) 621-7757

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September 26, 2011

**RE: Additional Services  
Restroom and Conference Room Conversion/Remodel  
City of Montclair Community Center  
Montclair, CA**

**Mr. Hudson,**

**We understand the scope of work was to include two additional rooms which were not identified to us in the original scope of work. We need to field measure and write specifications for this, prepare framing plans, and follow-up during the course of construction.**

**Attached is a proposal for these additional services. Please feel free to contact me with any questions or concerns. We look forward to the opportunity of doing business with you. Thank you for your consideration.**

**Respectfully Submitted,**

**Paul S. Wheeler  
Architect**

# WHEELER & WHEELER

A R C H I T E C T S  
ARCHITECTURE INTERIORS PLANNING  
133 Spring St., Claremont, CA 91711-4830  
(909) 624-5085 (909) 621-7757

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## Additional Scope for Community Center (City of Montclair): Proposed Costs for Architectural Services

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<b>Additional Scope</b>	<b>\$ 2,850.00</b>
Storage/Office field measure	
Remove (e) demising wall between rooms	
Add new wood floor framing w/plywood sub-floor	
In-fill (e) exterior door	
New floor finish and paint	

<b>Total Cost for Architectural Services</b>	<b>\$ 2,850.00</b>
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# AGENDA REPORT

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION  
NO. 11-2929 AUTHORIZING PLACEMENT  
OF LIENS ON CERTAIN PROPERTIES FOR  
DELINQUENT SEWER AND TRASH CHARGES

**DATE:** October 3, 2011

**SECTION:** RESOLUTIONS

**ITEM NO.:** 1

**FILE I.D.:** STB300-17

**DEPT.:** ADMIN. SVCS.

**REASON FOR CONSIDERATION:** Staff has identified 219 sewer and trash accounts in the even-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

**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 219 liens presented for approval are for accounts that are at least 90 days delinquent.

**FISCAL IMPACT:** Recoverable amount is \$42,908.90 plus \$10,950.00 in lien fees, for a total of \$53,858.90.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 11-2929 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

Prepared by:

*Carol Kulbeck*  
*Kathy Dalton*

Reviewed and  
Approved by:

Presented by:

*[Signature]*  
*[Signature]*

**RESOLUTION NO. 11-2929**

**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 219 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 September 12, 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 September 22, 2011, and that such liens would be considered for approval by the Montclair City Council on Monday, October 3, 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 - October 2011*, attached hereto.

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

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

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Mayor

**ATTEST:**

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Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 11-2929 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2011, and that it was adopted by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

Exhibit A to Resolution No. 11-2929  
Report of Delinquent Civil Debts - October 2011

Street No.	Street	Type	Delinquency	Lien Fee	Total Lien Amount
10360	Amherst Avenue	Multifamily	\$ 690.76	\$ 50.00	\$ 740.76
10421	Amherst Avenue	Multifamily	460.51	50.00	510.51
10431	Amherst Avenue	Multifamily	460.51	50.00	510.51
4224	Appaloosa Way	Residential	191.00	50.00	241.00
4337	Appaloosa Way	Residential	184.76	50.00	234.76
10548	Arabian Place	Residential	162.71	50.00	212.71
9440	Autoplex Drive	Commercial	359.82	50.00	409.82
4432-34	Bandera Street	Multifamily	342.47	50.00	392.47
4990	Bandera Street	Residential	184.76	50.00	234.76
5079	Bandera Street	Residential	122.20	50.00	172.20
5089	Bandera Street	Residential	105.71	50.00	155.71
5598	Bandera Street	Residential	265.83	50.00	315.83
5687	Bandera Street	Residential	196.76	50.00	246.76
10109	Bel Air Avenue	Residential	182.92	50.00	232.92
10145	Bel Air Avenue	Residential	184.76	50.00	234.76
10186	Bel Air Avenue	Residential	184.76	50.00	234.76
10263	Bel Air Avenue	Residential	182.53	50.00	232.53
5225	Belvedere Way	Residential	194.30	50.00	244.30
10168	Benson Avenue	Residential	213.91	50.00	263.91
10208	Benson Avenue	Residential	184.76	50.00	234.76
10422	Benson Avenue	Residential	200.27	50.00	250.27
5226	Berkshire Way	Residential	168.63	50.00	218.63
4523	Bodega Court	Residential	117.36	50.00	167.36
11339	Brunswick Lane	Residential	177.45	50.00	227.45
10964	Buckingham Way	Residential	190.53	50.00	240.53
10978	Buckingham Way	Residential	162.71	50.00	212.71
10468	Calico Court	Residential	184.76	50.00	234.76
10183	Camarena Avenue	Residential	298.40	50.00	348.40
10407	Camarena Avenue	Residential	162.71	50.00	212.71
10234	Camulos Avenue	Residential	118.24	50.00	168.24
10241	Camulos Avenue	Residential	184.75	50.00	234.75
10252	Camulos Avenue	Residential	184.76	50.00	234.76
10259	Camulos Avenue	Residential	189.19	50.00	239.19
10271	Camulos Avenue	Residential	137.59	50.00	187.59
10171	Canary Court	Residential	184.76	50.00	234.76
4612	Canoga Street	Multifamily	673.19	50.00	723.19
4771	Canoga Street	Multifamily	1,373.25	50.00	1,423.25
4912	Canoga Street	Residential	187.07	50.00	237.07
4924	Canoga Street	Residential	184.76	50.00	234.76
4949	Canoga Street	Residential	176.73	50.00	226.73
5015	Canoga Street	Residential	147.34	50.00	197.34
5162	Canoga Street	Multifamily	259.68	50.00	309.68

Street No.	Street	Type	Delinquency	Lien Fee	Total Lien Amount
4912	Carlton Street	Residential	\$ 118.58	\$ 50.00	\$ 168.58
11158	Carriage Avenue	Residential	184.76	50.00	234.76
11239	Carriage Avenue	Residential	120.47	50.00	170.47
11253	Carriage Avenue	Residential	185.81	50.00	235.81
11380	Carriage Avenue	Residential	166.46	50.00	216.46
9863	Central Avenue	Commercial	224.91	50.00	274.91
4327	Clair Street	Residential	292.87	50.00	342.87
4269	Clydesdale Way	Residential	117.01	50.00	167.01
4329	Clydesdale Way	Residential	179.57	50.00	229.57
4337	Clydesdale Way	Residential	190.92	50.00	240.92
10231	Coalinga Avenue	Residential	184.76	50.00	234.76
10201	Columbine Avenue	Residential	184.76	50.00	234.76
10213	Columbine Avenue	Residential	190.92	50.00	240.92
11352	Cumberland Lane	Residential	177.45	50.00	227.45
11370	Cumberland Lane	Residential	111.95	50.00	161.95
11469	Cumberland Lane	Residential	177.45	50.00	227.45
11476	Cumberland Lane	Residential	125.41	50.00	175.41
11322	Dartmouth Lane	Residential	177.45	50.00	227.45
11336	Dartmouth Lane	Residential	107.45	50.00	157.45
11373	Dartmouth Lane	Residential	177.45	50.00	227.45
11461	Dartmouth Lane	Residential	107.45	50.00	157.45
10178	Del Mar Avenue	Residential	102.64	50.00	152.64
10212	Del Mar Avenue	Residential	181.78	50.00	231.78
10236	Del Mar Avenue	Residential	184.76	50.00	234.76
4501	Donner Court	Residential	184.76	50.00	234.76
4502	Donner Court	Residential	184.76	50.00	234.76
11159	Essex Avenue	Residential	184.76	50.00	234.76
4533	Evert Street	Senior	220.95	50.00	270.95
4628	Evert Street	Residential	185.28	50.00	235.28
4674	Evert Street	Residential	223.77	50.00	273.77
4696	Evert Street	Residential	114.21	50.00	164.21
4705	Evert Street	Residential	184.76	50.00	234.76
4114	Faircove Court	Residential	150.66	50.00	200.66
4125	Faircove Court	Residential	106.80	50.00	156.80
11334	Fairfax Lane	Residential	177.45	50.00	227.45
4219	Fauna Street	Residential	184.76	50.00	234.76
4234	Fauna Street	Residential	184.76	50.00	234.76
4244	Fauna Street	Residential	183.81	50.00	233.81
4852	Fauna Street	Residential	184.76	50.00	234.76
4909	Fauna Street	Senior	239.91	50.00	289.91
8919-21	Felipe Avenue	Multifamily	369.52	50.00	419.52
8912	Felipe Avenue	Residential	184.76	50.00	234.76
4250	Flora Street	Residential	228.79	50.00	278.79
5051	Flora Street	Residential	242.16	50.00	292.16
5185	Flora Street	Residential	186.49	50.00	236.49

Street No.	Street	Type	Delinquency	Lien Fee	Total Lien Amount
10782	Fremont Avenue	Residential	\$ 132.75	\$ 50.00	\$ 182.75
11049	Fremont Avenue	Residential	109.61	50.00	159.61
10129	Galena Avenue	Residential	184.76	50.00	234.76
10149	Galena Avenue	Residential	256.46	50.00	306.46
10140	Geneva Avenue	Residential	186.49	50.00	236.49
10282	Greenwood Avenue	Residential	184.76	50.00	234.76
3792	Hampton Drive	Residential	104.22	50.00	154.22
3866	Hampton Drive	Residential	107.45	50.00	157.45
11335	Hartford Lane	Residential	185.72	50.00	235.72
11343	Hartford Lane	Residential	177.45	50.00	227.45
11418	Hartford Lane	Residential	177.45	50.00	227.45
10150	Helena Avenue	Residential	184.13	50.00	234.13
10436	Helena Avenue	Residential	174.15	50.00	224.15
11339	Hickory Lane	Residential	107.45	50.00	157.45
11424	Hickory Lane	Residential	120.10	50.00	170.10
5007	Holt Boulevard	Residential	214.93	50.00	264.93
4103	Howard Street	Residential	184.76	50.00	234.76
4113	Howard Street	Residential	256.88	50.00	306.88
4780	Howard Street	Residential	184.76	50.00	234.76
4910	Howard Street	Residential	206.25	50.00	256.25
5100	Howard Street	Multifamily	235.59	50.00	285.59
5202	Howard Street	Residential	121.95	50.00	171.95
5223	Howard Street	Residential	134.76	50.00	184.76
5230	Howard Street	Residential	251.31	50.00	301.31
10236	Kimberly Avenue	Residential	184.76	50.00	234.76
10331	Kimberly Avenue	Multifamily	154.96	50.00	204.96
10341	Kimberly Avenue	Multifamily	154.96	50.00	204.96
10386	Kimberly Avenue	Multifamily	266.33	50.00	316.33
4831-33	Kingsley Street	Multifamily	342.47	50.00	392.47
4909	Kingsley Street	Residential	184.76	50.00	234.76
5019	Kingsley Street	Residential	184.76	50.00	234.76
5130	Kingsley Street	Residential	256.46	50.00	306.46
5198	Kingsley Street	Multifamily	361.21	50.00	411.21
5242	Kingsley Street	Residential	184.76	50.00	234.76
5476	Kingsley Street	Residential	185.27	50.00	235.27
10370-72	Lehigh Avenue	Multifamily	154.96	50.00	204.96
10310-12	Lehigh Avenue	Multifamily	369.52	50.00	419.52
4428	Mane Street	Residential	239.95	50.00	289.95
4535	Mane Street	Residential	157.11	50.00	207.11
4555	Mane Street	Residential	184.76	50.00	234.76
4596	Mane Street	Residential	202.95	50.00	252.95
4846	Mane Street	Residential	180.61	50.00	230.61
4855	Mane Street	Residential	184.73	50.00	234.73
4736	Manzanita Street	Residential	151.46	50.00	201.46
4908	Manzanita Street	Residential	180.61	50.00	230.61

Street No.	Street	Type	Delinquency	Lien Fee	Total Lien Amount
11349	Marquette Lane	Residential	\$ 114.51	\$ 50.00	\$ 164.51
11442	Marquette Lane	Residential	177.45	50.00	227.45
10231	Mills Avenue	Residential	184.75	50.00	234.75
11362	Millstone Lane	Residential	150.66	50.00	200.66
5035	Mission Boulevard	Residential	167.67	50.00	217.67
5239	Monte Verde Street	Residential	184.75	50.00	234.75
10238	Monte Vista Avenue	Residential	184.76	50.00	234.76
10290	Monte Vista Avenue	Senior	199.07	50.00	249.07
11073	Monte Vista Avenue	Residential	247.33	50.00	297.33
10557	Morgan Circle	Residential	184.76	50.00	234.76
10217	Oak Glen Avenue	Residential	202.19	50.00	252.19
10226	Oak Glen Avenue	Residential	183.20	50.00	233.20
10594	Oak Glen Avenue	Residential	118.58	50.00	168.58
4595	Oakdale Street	Residential	184.36	50.00	234.36
4843	Orchard Street	Residential	225.47	50.00	275.47
5195	Orchard Street	Residential	170.74	50.00	220.74
5358	Orchard Street	Residential	184.98	50.00	234.98
5392	Orchard Street	Residential	185.25	50.00	235.25
5422	Orchard Street	Residential	184.76	50.00	234.76
10562	Palomino Circle	Residential	146.68	50.00	196.68
10845	Pipeline Avenue	Residential	109.77	50.00	159.77
10855	Pipeline Avenue	Residential	110.93	50.00	160.93
10885	Pipeline Avenue	Residential	109.77	50.00	159.77
10865	Pipeline Avenue #B	Residential	109.77	50.00	159.77
10124	Poulsen Avenue	Residential	184.76	50.00	234.76
10154	Poulsen Avenue	Residential	203.28	50.00	253.28
11206	Poulsen Avenue	Residential	237.22	50.00	287.22
11254	Poulsen Avenue	Residential	142.30	50.00	192.30
10206	Pradera Avenue	Residential	180.61	50.00	230.61
11442	Rockford Lane	Residential	177.45	50.00	227.45
4745	Rodeo Street	Residential	183.61	50.00	233.61
5258	Saddleback Street	Residential	162.71	50.00	212.71
5272	Saddleback Street	Residential	186.99	50.00	236.99
5177	San Antonio Way	Residential	184.76	50.00	234.76
11022	San Juan Way	Residential	184.76	50.00	234.76
11052	San Juan Way	Residential	184.74	50.00	234.74
11014	San Miguel Way	Residential	184.76	50.00	234.76
11020	San Pasqual Avenue	Residential	184.76	50.00	234.76
11073	San Pasqual Avenue	Residential	177.94	50.00	227.94
11093	San Pasqual Avenue	Residential	170.93	50.00	220.93
10112	Santa Anita Avenue	Residential	144.93	50.00	194.93
10133	Santa Anita Avenue	Residential	162.71	50.00	212.71
10151	Santa Anita Avenue	Residential	179.88	50.00	229.88
10221	Santa Anita Avenue	Residential	184.76	50.00	234.76
10298	Santa Anita Avenue	Residential	256.46	50.00	306.46

Street No.	Street	Type	Delinquency	Lien Fee	Total Lien Amount
10191	Saratoga Avenue	Residential	\$ 185.10	\$ 50.00	\$ 235.10
10290	Saratoga Avenue	Residential	105.13	50.00	155.13
11011	Stallion Avenue	Residential	156.11	50.00	206.11
10243	Tudor Avenue	Residential	190.92	50.00	240.92
10289	Tudor Avenue	Residential	184.76	50.00	234.76
10115	Vernon Avenue	Residential	183.17	50.00	233.17
5554	Vernon Court	Residential	184.76	50.00	234.76
4214	Via Aida	Residential	199.16	50.00	249.16
10422	Via Palma	Residential	162.71	50.00	212.71
11053	Wesley Avenue	Residential	255.48	50.00	305.48
11178	Whitewater Avenue	Residential	191.00	50.00	241.00
4515	Yosemite Drive	Residential	184.76	50.00	234.76
4538	Yosemite Drive	Residential	178.61	50.00	228.61
4542	Yosemite Drive	Residential	184.07	50.00	234.07
4548	Yosemite Drive	Residential	184.73	50.00	234.73
10462	Yosemite Drive	Residential	184.76	50.00	234.76
4752	Kingsley Street	Residential	186.46	50.00	236.46
4738	Fauna Street	Residential	297.00	50.00	347.00
10148	Felipe Avenue	Residential	113.61	50.00	163.61
10165	Poulsen Avenue	Residential	162.71	50.00	212.71
10186	Amherst Avenue	Residential	183.80	50.00	233.80
4385	Kingsley Street #2	Residential	180.94	50.00	230.94
5555	Vernon Court	Residential	162.71	50.00	212.71
11073	Wesley Avenue	Residential	127.78	50.00	177.78
4671	Kingsley Street	Multifamily	154.96	50.00	204.96
5103	Bandera Street	Residential	162.71	50.00	212.71
10945	Fremont Avenue	Multifamily	176.18	50.00	226.18
5541	Shirley Lane	Residential	162.71	50.00	212.71
5241	Orchard Street	Residential	173.68	50.00	223.68
4780	Bandera Street	Multifamily	129.84	50.00	179.84
4997	Holt Boulevard	Residential	163.56	50.00	213.56
4747	Flora Street	Residential	192.06	50.00	242.06
5027	Howard Street	Residential	110.59	50.00	160.59
10561	Oak Glen Avenue	Residential	162.71	50.00	212.71
10244	Oak Glen Avenue	Residential	187.59	50.00	237.59
4783	Rawhide Street	Residential	265.83	50.00	315.83
4525	Yosemite Drive	Residential	169.52	50.00	219.52
9515	Central Avenue	Commercial	252.57	50.00	302.57
5049	Saddleback Street	Residential	144.03	50.00	194.03
10158	Benson Avenue	Residential	278.11	50.00	328.11
3765	Peachwood Drive	Residential	172.48	50.00	222.48
4703	Fauna Street	Residential	184.76	50.00	234.76
<b>TOTALS</b>			<b>\$42,908.90</b>	<b>\$10,950.00</b>	<b>\$53,858.90</b>

## AGENDA REPORT

**SUBJECT:** RESPONSE TO CITY COUNCIL INQUIRY  
REGARDING POMONA VALLEY TRANSFER  
STATION

**DATE:** October 3, 2011

**SECTION:** RESPONSE

**ITEM NO.:** A

**FILE I.D.:** REF425-75

**DEPT.:** COMMUNITY DEV.

**REASON FOR CONSIDERATION:** During the "Communications" portion of the City Council meetings on September 6 and September 19, 2011, Council Member Dutrey inquired about the status of the proposed Pomona Valley Transfer Station and the City of Montclair's comments on the Draft Environmental Impact Report (DEIR).

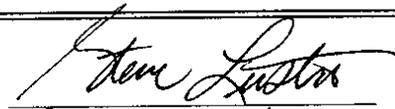
**BACKGROUND:** The Pomona Valley Transfer Station is proposed to be constructed on a 10.5-acre site in the City of Pomona at 1371 East 9th Street. The project site extends from 9th Street north to Mission Boulevard and is located generally between Reservoir Street and East End Avenue. The project involves the construction and operation of a Municipal Solid Waste (MSW) transfer station and associated supporting facilities, together with necessary site, access, and utility/service improvements. The primary function of the proposed transfer station is to accept and consolidate MSW received from individual haulers for subsequent transport by larger semitrailer transfer trucks to area landfills for disposal. An excerpt from the Executive Summary of the Draft EIR (Exhibit "A") that describes the proposed facility and the scope of its operations in detail, along with a site plan and elevations (Exhibit "B") are attached to this agenda report for reference.

The DEIR was circulated for public comment from January 28 through March 14, 2011. On February 1, 2011, subsequent to review of the DEIR, Community Development Director Steve Lustro responded in writing that the City of Montclair had no comment on the DEIR (Exhibit "C"). The reasons for the "No Comment" response are described below.

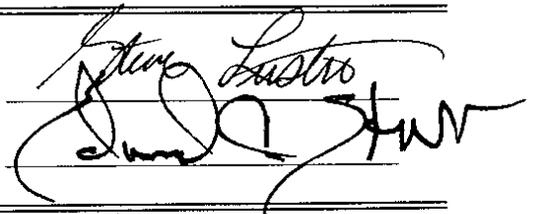
### Potential Impacts

Areas of the DEIR that were specifically reviewed were "Traffic and Circulation" and "Air Quality." In the "Traffic and Circulation" section of the DEIR (Exhibit "D"), delineated routes to and from the proposed transfer station are entirely within the City of Pomona. Commercial waste haulers traveling to and from the transfer station would access Interstate 10 via Indian Hill Boulevard and State Route 60 (Pomona Freeway) via Reservoir Street. These roadways are the two most direct designated truck routes to the two closest freeways. While it is possible that waste haulers would occasionally travel along Mission Boulevard in Montclair traveling to or from the facility, it is not likely as the nearest north-south truck route access to the freeways is Central Avenue, two miles east of the proposed transfer

Prepared by:



Reviewed and  
Approved by:



Proofed by:



Presented by:

station. Since the identified primary routes to and from the transfer station do not include any roadways within Montclair or its Sphere of Influence, staff believes that any impacts from truck traffic related to the transfer station will be less than significant.

In the "Air Quality" section of the DEIR, staff specifically reviewed the operational impacts of the facility once it is open. Table 4.3-15 of the DEIR (Exhibit "E") analyzes levels of carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), particulate matter of 10 micrometers or less (PM<sub>10</sub>), and particulate matter of 2.5 micrometers or less (PM<sub>2.5</sub>). To estimate localized pollutant concentrations resulting from the facility operations, the Southern California Air Quality Management District (SCAQMD)-approved Industrial Source Complex - Short Term (ISCST3) dispersion model was utilized. For operational activity, the total site area of 10.5 acres was utilized as the emission source. In order to model worst-case conditions, the highest daily peak emissions resulting from operational activity was utilized. Using this model, it was determined that the long-term operational emissions would not exceed localized emissions thresholds established by the SCAQMD.

The DEIR also analyzed the cancer risk to potential sensitive receptors within a one-mile radius of the proposed facility. "Sensitive receptors" are defined as people or institutions with people that are particularly susceptible to illness from environmental pollution, such as the elderly, very young children, people already weakened by illness (*e.g.*, asthmatics), and persons engaged in strenuous exercise. The DEIR identifies Ramona Elementary School at 4225 Howard Street as the single sensitive receptor in Montclair within the one-mile radius (Exhibit "F"). Staff notes that the San Marino Senior Apartments at 10355 Mills Avenue are also just inside the one-mile ring. However, the unmitigated cancer risk at each of these sites based on the particulate emissions from the proposed facility is estimated to be less than one in one million. These values are far below the SCAQMD significance threshold of 10 in one million. Based on this analysis, staff finds that impacts to the City of Montclair in the issue area of Air Quality will be less than significant.

At the Council meeting on September 6, 2011, two residents of the Hacienda Mobile Home Park, 4361 Mission Boulevard, addressed Council during "Public Comment" regarding potential odors from the proposed transfer station. While staff agrees with the residents' statement that the prevailing winds are from the west and the transfer station site is approximately one mile due west of the mobile home park, staff notes that all waste transfer activity on the site is proposed to occur indoors, thereby minimizing noxious odors conveyed from the facility to downwind neighborhoods.

To characterize odors and determine their effect on the adjoining community, the potential for the emitted compounds to elicit an olfactory response was examined. A reasonable approximation of potential odor impacts that would be generated by the project was formulated based on empirical (air sample) data and predictive modeling techniques. In order to identify discrete compounds associated with odorous sources within the municipal waste stream, air sampling was performed at the existing Grand Central Recycling and Transfer Station facility in the City of Industry. The air samples were collected within the facility that housed waste material for approximately 37 hours following the close of business on Saturday and prior to resuming operations on Monday morning. The samples were subsequently analyzed and the following classes of compounds were identified:

### *Carboxylic Acids*

Five (5) carboxylic acids (also known as volatile fatty acids or organic acids) were identified in the waste stream and result from the anaerobic decomposition of vegetable materials. These compounds typically elicit a sour, rancid odor.

### *Reduced Sulfur*

Five (5) reduced sulfur compounds were identified. When produced biogenically, these compounds are associated with anaerobic decomposition and are typically characterized by a putrid, disagreeable odor.

### *Amines*

These nitrogenous compounds are produced by high temperature processes and by microbial decomposition of amino acids. Trimethylamine is the principal compound identified and produces a fishy, pungent odor.

### *Ammonia*

Biogenic emissions from greenwaste are considered the principal source of ammonia emissions. Ammonia is generated from the natural decay of organic materials such as grass clippings, prunings, and wood chips. Ammonia is characterized by a pungent, irritating odor.

Based on the samples collected, sources of carboxylic acids, reduced sulfur compounds, ammonia, and trimethylamine did not produce downwind concentration estimates exceeding their odor thresholds. Based on the air sampling and analysis conducted at a similar facility, odors generated by the proposed facility are not anticipated to exceed applicable odor thresholds. Thus, the project will not create a significant impact with respect to odors.

Additionally, the transfer station includes the development and implementation of a comprehensive Odor Impact Minimization Plan (OIMP) pursuant to SCAQMD Rule 410 and the Alternative Odor Management Plan (AOMP) program established by the California Integrated Waste Management Board (CIWMB). In 2006, the SCAQMD adopted Rule 410, which is applicable to solid waste facilities located within the SCAQMD region. The purpose of Rule 410 is to establish odor management practices and requirements so that odors from municipal solid waste facilities are minimized and reduced to less than significant levels. To this end, Appendix A to Rule 410 sets forth various required elements of an OIMP. As an alternative to submitting an OIMP to the SCAQMD, facility operators can also submit an OIMP to the Local Enforcement Agency (LEA). OIMPs submitted to the LEA must also comply with the requirements of Rule 410; the only difference between the two programs is the agency that ultimately approves the OIMP.

The required elements of an OIMP consist of the following: (1) facility information; (2) permitted and estimated throughput by category; (3) information on greenwaste storage and handling; (4) a protocol for handling community complaints; (5) a contact person that is available 24 hours a day, 365 days a year in case a complaint arises; (6) a protocol by which facility operators log all complaints and follow up on all complaints received; (7) a protocol for handling odiferous loads; (8) housekeeping and odor maintenance requirements; and (9) a requirement that trucks carrying loads be covered when they exit the facility. In addition, Appendix A of Rule 410 also includes a table of recommended control strategies that have been tested and have demonstrated a proven ability

to control odors that may arise from transfer facility activities. For transfer facilities of the size that is proposed, some of the recommended and proven odor-control strategies include the requirement that the tipping floor be covered and have walls and that an overhead misting system be installed to administer odor-masking applicators.

As set forth in the project description for the proposed transfer station, it is fully enclosed and contains an overhead misting system. The misting system will consist of a network of water pipes and nozzles, suspended from the ceiling covering more than two thirds of the transfer station/tipping floor area, with additional nozzles at the transfer station building's entrance/exit doors. In its basic application, the misting system will emit a fine mist that will entrap airborne dust and settle it to the transfer station floor where it can be mechanically removed by sweeping/vacuuming. As an enhancement, an odor-destroying chemical will be injected into the misting system to eliminate odor-producing bacteria. The odor-destroying compound proposed to be used in the project's misting system is AIR8-Aqua Oil, which is an oil-based formulation of organic materials extracted from plants (e.g., flowers). AIR8-Aqua Oil is recognized as safe for its intended roof-disbursed odor elimination application by Cal-EPA; Cal-OSHA, and the United States EPA. Roof-mounted fans will further reduce and control dust and odor by drawing in clean air from building openings while filtering and discharging air from the tipping floor.

Based on the air sampling and analysis conducted at a similar facility, odors generated by the transfer station are not anticipated to exceed applicable odor thresholds. In addition to the actual field testing, compliance with SCAQMD Rule 410 and the approval and implementation of the mandated OIMP will ensure that impacts related to odors are less than significant. Mitigation Measures 4.3.18 through 4.3.21 contained in the DEIR and outlined below will ensure implementation of the odor-minimizing measures discussed above.

*4.3.18 The Project shall comply with SCAQMD Rule 410. To this end, the main transfer station building shall incorporate an overhead water misting system designed for dust suppression and odor mitigation over the entire tipping floor area and transfer tunnel area. The misting system shall inject and mix an odor-destroying compound (AIR8-Aqua Oil or similar compound) to eliminate odors emanating from materials on the tipping floor. Nozzles shall also be positioned around the access doors above the loading pits.*

*4.3.19 Roof-mounted exhaust fans to be located in the main transfer station building shall be designed to draw fresh air in through the building doors and openings, over the transfer floor, and discharge it through the roof.*

*4.3.20 The primary method of odor control employed by the proposed Project will be to restrict waste dumping, sorting, and processing to inside the building. Cleaning the inside of the transfer building and equipment at the end of each day with a mechanical sweeper, hand-brooming, and wipe down will also mitigate odors. Per state regulations, waste shall not be stored on the site for more than 48 hours.*

*4.3.21 The Project shall obtain approval of the proposed draft OIMP as set forth in the EIR technical Appendices (EIR Appendix G, Operational Programs), and as also submitted to the Local enforcement Agency (LEA) and the City of*

*Pomona. As approved, the OIMP shall include design features that comply with Appendix A of SCAQMD Rule 410.*

Based on the analysis above and the mitigation measures incorporated into the project, staff believes that any odor impacts will be less than significant.

#### Public Hearings on the Project

The City of Pomona Planning Commission conducted a public hearing on the Tentative Parcel Map, Conditional Use Permit, and Final Environmental Impact Report associated with the Pomona Valley Transfer Station at its regular meeting on September 28, 2011. At the time of the preparation of this agenda report, the Pomona Planning Commission was tentatively reserving its October 12 and October 26 agendas for continued consideration of the requested entitlements and review of the Final EIR.

**FISCAL IMPACT:** The City Council's acceptance of this agenda report would create no fiscal impact on the City's General Fund.

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

#### Attachments:

- Exhibit "A" - Excerpt from Executive Summary, Pomona Valley Transfer Station Draft EIR
- Exhibit "B" - Pomona Valley Transfer Station site plan and elevations
- Exhibit "C" - Letter from Community Development Director Steve Lustro to City of Pomona Planning Manager Brad Johnson
- Exhibit "D" - Traffic and Circulation section, Pomona Valley Transfer Station Draft EIR
- Exhibit "E" - Table 4.3-15, Pomona Valley Transfer Station Draft EIR
- Exhibit "F" - Figure 4.3-2, Pomona Valley Transfer Station Draft EIR (map of cancer risks at area schools within a one-mile radius of project site)

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
SEPTEMBER 19, 2011, AT 8:19 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Mayor Eaton called the meeting to order at 8:19 p.m.

**II. ROLL CALL**

Present: Mayor Eaton; Council Member Ruh; and City Manager Starr

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of  
September 6, 2011.**

Moved by City Manager Starr, seconded by Council Member Ruh,  
and carried unanimously to approve the minutes of the Personnel  
Committee meeting of September 6, 2011.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

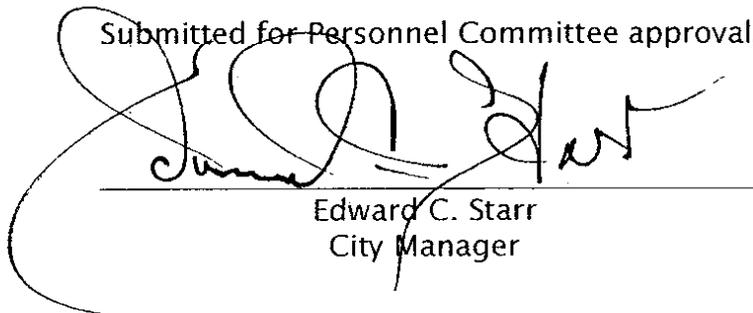
At 8:20 p.m., the Personnel Committee went into Closed Session  
regarding personnel matters related to appointments, resignations/  
terminations, and evaluations of employee performance.

At 8:31 p.m., the Personnel Committee returned from Closed Session.  
Mayor Eaton stated that no announcements would be made at this time.

**VI. ADJOURNMENT**

At 8:31 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr  
City Manager