

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

January 3, 2012

7:00 p.m.

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

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

Page No.

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

In keeping with our long-standing tradition of opening our Council meetings with an invocation, this City Council Meeting may include a nonsectarian invocation. Such invocations are not intended to proselytize or advance any faith or belief or to disparage any faith or belief. Neither the City nor the City Council endorse any particular religious belief or form of invocation.
- III. **PLEDGE OF ALLEGIANCE**
- IV. **ROLL CALL**
- V. **PRESENTATIONS** - 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 - None

VIII. CONSENT CALENDAR

A. Approval of Minutes

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

B. Administrative Reports

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

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C. Agreements

1. Consider Approval of Agreement No. 12-01, a Fiscal Operations Services Agreement With Donald L. Parker, CPA [CC]

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2. Consider Approval of Agreement No. 12-02 With Cost Recovery Systems, Inc., for State Mandate Reimbursement Claiming Services [CC]

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D. Resolutions - None

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

A. City Attorney/Agency Counsel

1. Closed Session Pursuant to Government Code Section 54957.6 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 December 19, 2011

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XII. COUNCIL/AGENCY WORKSHOP

- E. Community Redevelopment Agency Update

(Council may consider continuing this item to an adjourned joint meeting on Tuesday, January 17, 2012, at 5:45 p.m. in the City Council Chambers.)

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

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

XIV. CLOSED SESSION ANNOUNCEMENTS

XV. ADJOURNMENT OF CITY COUNCIL

The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Tuesday, January 17, 2012, 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 December 22, 2011.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION	DATE: January 3, 2012
	SECTION: ADMIN. REPORTS
	ITEM NO.: 1
	FILE I.D.: FIN540
	DEPT.: ADMIN. SVCS.

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

BACKGROUND: Mayor Pro Tem Raft has examined the Warrant Register dated January 3, 2012, and Payroll Documentation dated November 20, 2011; finds them to be in order; and recommends their approval.

FISCAL IMPACT: The Warrant Register dated January 3, 2012, totals \$199,497.18. The Payroll Documentation dated November 20, 2011, totals \$586,811.02, with \$425,715.88 being the total cash disbursement.

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

Prepared by: <u><i>Gwene L 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>

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 12-01, A FISCAL OPERATIONS SERVICES AGREEMENT WITH DONALD L. PARKER, CPA	DATE: January 3, 2012
	SECTION: AGREEMENTS
	ITEM NO.: 1
	FILE I.D.: PER187
	DEPT.: CITY MGR.

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 12-01 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 redevelopment and to provide general oversight and work development in the City's Finance Division. A copy of proposed Agreement No. 12-01 is attached for consideration by the City Council.

BACKGROUND: As the City Council will recall, the City of Montclair retained the services of Donald L. Parker, CPA, on October 3, 2011, after the former Assistant Finance Director announced his retirement. Mr. Parker had been providing fiscal management services to the Finance Division prior to the retirement of the Assistant Finance Director, and staff was particularly pleased with his work.

Mr. Parker had served as a Principal with Lance, Soll, Lunghard, LLP—the City's principle auditing firm for the past two decades. Although Mr. Parker had left Lance, Soll, Lunghard, LLP as of December 31, 2010, the audit firm feared their December audit of the Redevelopment Agency could be subject to compromise by the City's employment of Mr. Parker during the year. Therefore, in order to have the Redevelopment Agency audit completed by December 31, 2011, the City terminated its relationship with Mr. Parker on November 2, 2011.

The Redevelopment Agency audit is now complete. In addition, Mr. Parker has not been associated with Lance, Soll Lunghard, LLP, for over one year. Therefore, staff is recommending the City Council approve a Fiscal Operations Services Agreement with Mr. Parker similar to the Agreement previously approved on October 3, 2011.

Proposed Agreement No. 12-01 reestablishes 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:

- 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:

Prepared by: M. STATS
Proofed by: Yvonne L Smith

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

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 January 1, 2012. While the proposed Agreement would conclude in one year, the City may terminate the Agreement without cause on ten days' written notice. Furthermore, the total amount of compensation would not exceed \$100,000.
 - 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 \$100,000 per year pursuant to the Agreement. Funding for the Agreement would be provided by salary savings from the vacant Assistant Finance Director position.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 12-01, a Fiscal Operation Services Agreement with Donald L. Parker, CPA.

AGREEMENT NO. 12-01

CITY OF MONTCLAIR

AGREEMENT FOR FISCAL OPERATIONS SERVICES

THIS AGREEMENT is made and effective as of January 1, 2012, 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 January 1, 2012, and shall remain and continue in effect for a period of twelve 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 \$100,000. 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
5111 Benito Street
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:

DONALD L. PARKER, CPA

CITY:

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

SUBJECT: CONSIDER APPROVAL OF AGREEMENT
NO. 12-02 WITH COST RECOVERY
SYSTEMS, INC., FOR STATE MANDATE
REIMBURSEMENT CLAIMING SERVICES

DATE: January 3, 2012

SECTION: AGREEMENTS

ITEM NO.: 2

FILE I.D.: STG100

DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 12-01 with Cost Recovery Systems, Inc., for state mandate reimbursement claiming services.

BACKGROUND: Local agencies are eligible to file claims for reimbursement of state-mandated local costs pursuant to Government Code Section 17561. Examples of reimbursable state mandate costs include, but are not limited to, absentee ballots, domestic violence arrest policies, false reports of peace officer misconduct, threats against peace officers, and stolen vehicle notifications.

Contracting with a firm experienced in claim-preparation services provides the City with expertise in the claims process, ensuring the highest reimbursements possible. Consultant fees and in-house staff time required to collect the data and prepare the claims can be included in the "mandate reimbursement" claim. No single department is expected to commit more than two hours per year to complete the annual claims process.

The City entered into Agreement No. 99-24 with Cost Recovery Services, Inc., for claim-reimbursement services in April 1999. From April 1999 through September 2008, the City of Montclair has received \$714,677 in state mandate cost reimbursements. Total claims submitted during this period for incurred costs, including pending claims, total \$1,256,194. The fees paid to Cost Recovery Systems, Inc., for the ten-year period totaled \$67,250.

Cost Recovery Systems, Inc., continues to be the only vendor submitting a proposal to perform state mandate reimbursement claiming services. Cost Recovery Systems' fees for preparing state mandate reimbursement claims for Fiscal Year 2011-12 are anticipated to be \$8,250. Proposed Agreement No. 12-02 has been structured so that Cost Recovery Systems, Inc., does not receive payment until claims are prepared and submitted to the State Controller's Office for reimbursement. This is a continuation of the practice initiated during Fiscal Year 2002-03 because of the state's deferral of state mandate reimbursement claim payments.

Prepared by:

Yvonne L Smith

Reviewed and
Approved by:

[Signature]

Proofed by:

Andrea D'Amico

Presented by:

State mandate reimbursements are a constitutional obligation. Prior to the passage of Proposition 1A, the state was able to defer payments for the state mandate reimbursement program; but it was obligated to eventually pay for all eligible costs with interest. The passage of Proposition 1A amended the State Constitution, requiring the suspension of certain laws creating mandates in any year that the state does not fully reimburse local governments for their costs to comply with the mandates. Beginning July 1, 2005, Proposition 1A required the state to either fully fund the mandates affecting cities or suspend the mandates' requirements for the fiscal year. Furthermore, the measure expanded the circumstances under which the state would be responsible for reimbursing cities for carrying out new state requirements. Specifically, the measure defines as a mandate state actions that transfer to local governments financial responsibility for a required program for which the state previously had complete or partial financial responsibility.

With the passage of Proposition 1A, the state was required to begin paying mandate programs in Fiscal Year 2006-07, with full repayment by Fiscal Year 2011-12. With the adoption of the Fiscal Year 2005-06 state budget, the Legislature decided to begin mandate repayments during Fiscal Year 2005-06, based on estimated claims filed in January 2005, but extended the repayment period from 5 years to 15 years (through Fiscal Year 2020-21), with interest. In the Fiscal Year 2006-07 legislative session, \$237 million was allocated to pay most of the actual costs for Fiscal Year 2005-06 and Fiscal Year 2006-07 estimated claims. In addition, several claims filed before July 2004 were also paid including Animal Adoption and Peace Officer Bill of Rights claims.

The California Constitution requires the state to reimburse cities, counties, and special districts for mandate costs incurred prior to Fiscal Year 2004-05. Chapter 72 of the Statutes of 2005 requires payment of mandate costs incurred prior to Fiscal Year 2004-05 to begin in Fiscal Year 2006-07 and to be paid over a term of 15 years. The Fiscal Year 2008-09 state budget delays the third payment of these claims one year and results in a one-time savings to the state of \$75 million.

FISCAL IMPACT: The City Council's approval of proposed Agreement No. 12-02 would authorize Cost Recovery Systems, Inc., to perform state mandate reimbursement claiming services as outlined in Attachment A-12 (Scope of Work). The contract service fee is \$8,250, which has been appropriated in the Fiscal Year 2011-12 budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 12-02 with Cost Recovery Systems, Inc., for state mandate reimbursement claiming services.

<u>Expected New Claims Due in FY 2011-12:</u>			
		Expected due date prior to 6/30/12	Included in Fee Above
- Childs Abuse Investigation Reports (ICAN)	1999-00 2000-01 2001-02 2002-03 2003-04 2004-05 2005-06 2006-07 2007-08 2008-09 2009-10		
-Identity Theft	2000-01 2001-02 2002-03 2003-04 2004-05 2005-06 2006-07 2007-08 2008-09 2009-10		
- Domestic Violence Background Checks	2001-02 2002-03 2003-04 2004-05 2005-06 2006-07 2007-08 2008-09 2009-10		
- California Public Records Act	2001-02 2002-03 2003-04 2004-05 2005-06 2006-07 2007-08 2008-09 2009-10		

METHOD OF PAYMENT:

Payment in the amount of \$8,250 (eight thousand two hundred fifty dollars) shall be billed after the claims are submitted to the State for reimbursement. Payment shall be due upon receipt of an invoice from the CONSULTANT.

AND

If the total number of claims prepared and submitted during this fiscal year exceeds 20 individual claims, the City shall be billed \$400 for each claim in excess of this amount.

Accepted by:

CITY OF MONTCLAIR

COST RECOVERY SYSTEMS, INC.

Paul M. Eaton
Mayor

Annette S. Chinn
President

Date: _____

Date: _____

ATTEST:

Yvonne L. Smith
Deputy City Clerk

MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
DECEMBER 19, 2011, AT 7:10 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor Eaton called the meeting to order at 7:10 p.m.

II. ROLL CALL

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

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of December 5, 2011.

Moved by City Manager Starr, seconded by Council Member Ruh, and carried unanimously to approve the minutes of the Personnel Committee meeting of December 5, 2011.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

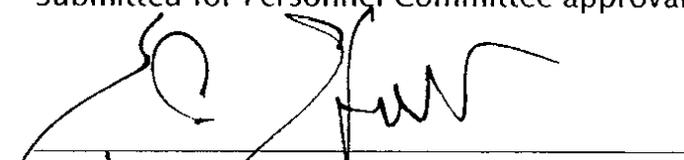
At 7:11 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 8:00 p.m., the Personnel Committee returned from Closed Session. Mayor Eaton stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 8:00 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager