

CITY OF MONTCLAIR

AGENDA FOR CITY COUNCIL, SUCCESSOR AGENCY,  
MONTCLAIR HOUSING CORPORATION, AND  
MONTCLAIR HOUSING AUTHORITY MEETINGS

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

July 2, 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/SA/MHC/MHA 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 Successor Agency, Montclair Housing Corporation, and Montclair Housing Authority 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, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, and Montclair Housing Authority Board of Directors. (Government Code Section 54954.3)*

*Under the provisions of the Brown Act, the Council/Successor Agency Board/MHC Board/MHA 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/Successor Agency Board/  
MHC/MHA Board Meeting of June 18, 2012 [CC/SA/MHC/MHA]

## B. Administrative Reports

1. Consider Review of Declaration of Covenants, Conditions, and  
Restrictions (CC&Rs) to Establish Common Responsibilities and  
Easements for Individual Properties Located Within Castlerock  
Villas Neighborhood Property Owners Association [CC] 4
2. Consider Approval of Warrant Register and Payroll Documentation  
[CC] 7

## C. Agreements

- 1 Consider Approval of Agreement No. 12-46 With California  
Landscape and Design, Inc., for Maintenance Services at the  
Montclair Skate Park and Alma Hofman Park Restroom Facilities  
[CC] 8
  2. Consider Approval of Agreement No. 12-47 With Mariposa  
Horticultural Enterprises, Inc., for Landscape and Maintenance  
of Median Islands, Parks, and Parkways [CC] 18
  3. Consider Approval of Agreement No. 12-48 With West Coast  
Arborists for Tree-Maintenance Services [CC] 32
  4. Consider Approval of Agreement No. 12-62 With Ontario-  
Montclair School District to Provide After-School Programs [CC] 44
  - 5 Consider Approval of Agreement No. 12-63 With First 5, The  
Children and Families Commission for San Bernardino County,  
in Support of Integrated Health Systems Planning and  
Implementation [CC] 52
  - 6 Consider Approval of Agreement No. 12-64 With First 5, The  
Children and Families Commission for San Bernardino County,  
to Provide a Childhood Obesity Prevention Program [CC] 76
  7. Consider Approval of Agreement No. 12-65 With TMAD Taylor  
& Gaines for Preparation of a Highway Bridge Program Grant  
Application for Replacement of the Central Avenue Bridge  
Over the Union Pacific Railroad Tracks, Subject to any Minor  
Revisions Found Necessary By the City Attorney [CC]
- Consider Authorization of a \$30,000 Appropriation From the  
Gas Tax Fund to Fund an Application to the State for Highway  
Bridge Program Grant Assistance [CC] 112

D. Resolutions

- 1 Consider Adoption of Resolution No. 12-2960 Authorizing Submittal of Used Oil Payment Program Applications and Related Authorizations to the Department of Resources Recycling and Recovery [CC]
  - Consider Designation of City Manager Edward C. Starr or His Designee as the Person Authorized to Execute All Necessary Documents for the Purpose of Securing Payment Funds [CC] 128
- 2 Consider Adoption of Resolution No. 12-2961 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges [CC] 132

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

- A. City Attorney
- B. City Manager/Executive Director
- C. Mayor/Chairman
  - 1. Announcement of Appointments to the Community Action Committee
- D. Council/MHC Board
- E. Committee Meeting Minutes *(for informational purposes only)*
  - 1 Minutes of the Personnel Committee Meeting of June 18, 2012 140

XIII. ADJOURNMENT OF CITY COUNCIL AND SUCCESSOR AGENCY, MONTCLAIR HOUSING CORPORATION, AND MONTCLAIR HOUSING AUTHORITY BOARDS OF DIRECTORS

*The next regularly scheduled City Council, Successor Agency, Montclair Housing Corporation, and Montclair Housing Authority meetings will be held on Monday, July 16, 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, Successor Agency Board, Montclair Housing Corporation Board, or Montclair Housing Authority 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 Deputy City Clerk at (909) 625-9416. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)*

*I, Yvonne L. Smith, Deputy City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the bulletin board adjacent to the south door of Montclair City Hall on June 28, 2012.*

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER REVIEW OF DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (CC&Rs) TO ESTABLISH COMMON RESPONSIBILITIES AND EASEMENTS FOR INDIVIDUAL PROPERTIES LOCATED WITHIN CASTLEROCK VILLAS NEIGHBORHOOD PROPERTY OWNERS ASSOCIATION	<b>DATE:</b> July 2, 2012 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO:</b> 1 <b>FILE I.D.:</b> FAR050 <b>DEPT.:</b> REDEVELOPMENT
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**REASON FOR CONSIDERATION:** The City Council is requested to review the Declaration of Covenants, Conditions, and Restrictions (CC&Rs) to Establish Common Responsibilities and Easements for Individual Properties Located Within Castlerock Villas Neighborhood Property Owners Association. The City Council's review will allow for recordation of the CC&Rs and the subsequent formation of the Castlerock Villas Owners Association. The Castlerock Villas neighborhood is identified as the apartment buildings located north of the I-10 Freeway, south of San Jose Street, and between Mills and Pradera Avenues. There are a total of 30 properties in the revised Castlerock Villas Project Area. All participating owners have executed the required formation documents. A map depicting the area is attached labeled Exhibit A.

An executed copy of the CC&Rs is included in the agenda packets for review and consideration by the City Council.

**BACKGROUND:** Staff has been working for several years with apartment owners in the Castlerock Villas neighborhood to form an owners association. Prior to the owners' selection of the name "Castlerock Villas," the area was referred to as the Foundation Area 11 neighborhood.

Two separate construction projects have occurred in the Castlerock Villas neighborhood that were funded with Community Development Block Grant (CDBG) funds. The first phase, beginning in May 2001, included new trash enclosure and alley construction, paving enhancements at the alley entrances, and parking improvements. The last phase was completed in December 2007 and included extensive hardscape and landscape improvements, transforming the area into the neighborhood it is today. Included in the last phase was the construction of vehicular access gates that have not yet been electronically activated. Formation of the owners association would allow for the alley to be closed off to the public, making access into the alley only possible with assigned remote controls. Police and fire vehicles would have access to the alley as well. A public hearing for the alley vacation has been set for July 16, 2012.

The CC&Rs define the purpose of the owners association and establish a series of common responsibilities, rights, and performance standards to govern and control maintenance and

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Prepared by: <u>Christine P. Waldwell</u>	Reviewed and Approved by: <u>[Signature]</u>
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Proofed by: <u>[Signature]</u>	Presented by: <u>[Signature]</u>
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operation of the properties in the neighborhood. The CC&Rs further provide owners the essential tools to implement and enforce regulations and policies of the owners association.

Pursuant to the CC&Rs, the owners will grant the City the right and power to enforce the covenants, conditions, restrictions, and reservations. In the event the City determines that Castlerock Villas Owners Association is not maintaining any portion of the Project or is not in compliance with the requirements of the CC&Rs, the City has the right to pursue civil, criminal, or administrative enforcement remedies.

The CC&Rs also address the collection of assessments, property maintenance standards, membership and voting rights, insurance requirements, property rights, and use restrictions. The owners association would maintain full responsibility for landscaping upkeep, pay water bills for common area landscaping, maintain the alley and vehicular gates, and ensure graffiti is removed from buildings and alley in a timely manner.

It should be noted that one owner who received the benefit of landscape and hardscape improvements has opted out of membership in the proposed Castlerock Villas Owners Association. Pursuant to City Council direction, effort will be made to recover all costs related to landscape and hardscape improvements.

**FISCAL IMPACT:** The City expended CDBG funds for the improvements discussed in the CC&Rs documents at the time of construction; and, therefore, there is no fiscal impact to the City associated with the formation of the Castlerock Villas Owners Association. In fact, there may be a small savings to the City in that once the alley is vacated, the Castlerock Villas Owners Association would be responsible for alley maintenance and repairs. Graffiti abatement in the alley would also become the responsibility of the owners association, so there may be a small savings to the City because Public Works personnel would no longer be abating graffiti in the alley and surrounding environs.

**RECOMMENDATION:** Staff recommends the City Council review the Declaration of Covenants, Conditions, and Restrictions (CC&Rs) to Establish Common Responsibilities and Easements for Individual Properties Located Within Castlerock Villas Neighborhood Property Owners Association.

# EXHIBIT "A"

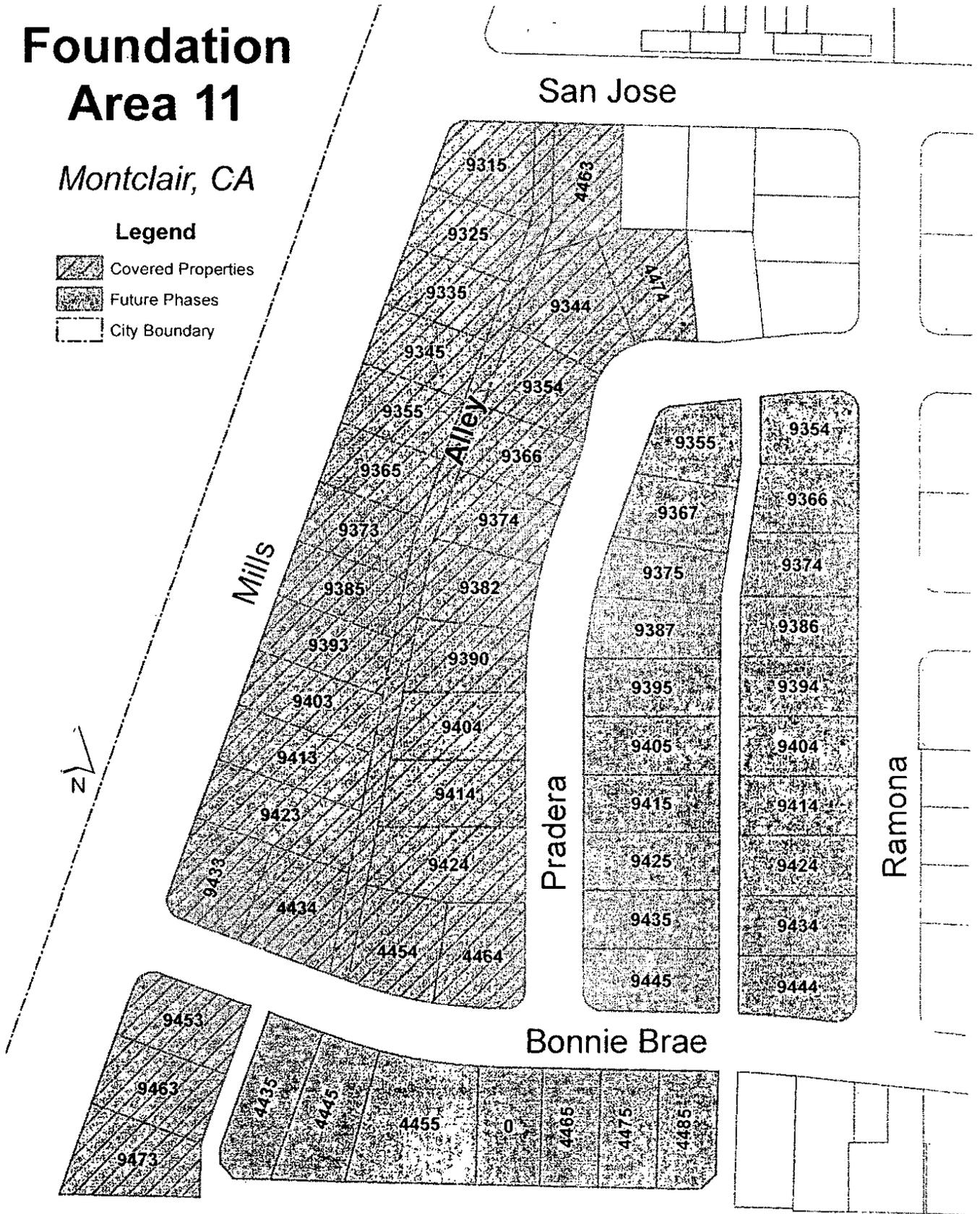
## CASTLEROCK VILLAS NEIGHBORHOOD MAP

### Foundation Area 11

Montclair, CA

#### Legend

-  Covered Properties
-  Future Phases
-  City Boundary



Source: City of Montclair, 2011

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## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION	<b>DATE:</b> July 2, 2012
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 2
	<b>FILE I.D.:</b> FIN540
	<b>DEPT.:</b> ADMIN. SVCS.

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

**BACKGROUND:** Mayor Pro Tem Raft has examined the Warrant Register dated July 2, 2012, and Payroll Documentation dated May 20, 2012; finds them to be in order; and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated July 2, 2012, totals \$1,491,057.90. The Payroll Documentation dated May 20, 2012, totals \$570,036.34, with \$402,665.51 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:

*Yvonne R Smith*

Reviewed and  
Approved by:

Proofed by:

*Andrew Hillis*

Presented by:

*[Signature]*

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 12-46 WITH CALIFORNIA LANDSCAPE AND DESIGN, INC., FOR MAINTENANCE SERVICES AT THE MONTCLAIR SKATE PARK AND ALMA HOFMAN PARK RESTROOM FACILITIES	<b>DATE:</b> July 2, 2012
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b> 1
	<b>FILE I.D.:</b> PRK370
	<b>DEPT.:</b> PUBLIC WORKS

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**REASON FOR CONSIDERATION:** Agreement No. 11-81 with California Landscape and Design, Inc., for the Montclair Skate Park and the Alma Hofman Park restroom facilities maintenance expires on June 30, 2012. The City Council is requested to consider approval of Agreement No. 12-46 with California Landscape and Design, Inc., to continue maintenance services at these City facilities. A copy of proposed Agreement No. 12-46 is attached for the City Council's review and consideration.

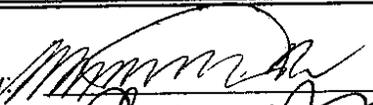
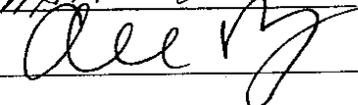
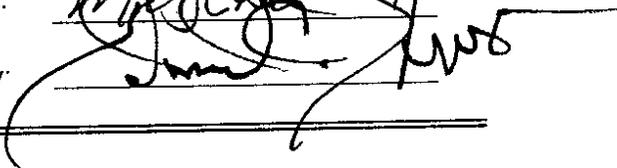
**BACKGROUND:** The Montclair Skate Park, constructed by California Landscape and Design, Inc., opened in November 2004. Under Agreement No. 05-158, the City contracted with the builder, California Landscape and Design, Inc., for maintenance and for opening and closing the facility on a daily basis. Under Agreement No. 10-126, the newly constructed Alma Hofman Park restroom facilities were added to this maintenance contract. At its meeting on July 5, 2011, the City Council approved Agreement No. 11-81 with California Landscape and Design, Inc., for maintenance of the Montclair Skate Park and Alma Hofman Park restroom facilities. Agreement No. 11-81 was the fifth year of a five-year agreement with California Landscape and Design, Inc.

California Landscape and Design, Inc., was the original builder of the Montclair Skate Park and has maintained it since that time. As the original builder of the Skate Park, California Landscape and Design, Inc., has intimate knowledge of the Skate Park's design, construction, safety regulations, and repair requirements. During the past few years, the rates charged by California Landscape and Design, Inc., have not increased except for the addition of the Alma Hofman Park restroom facilities.

Proposed Agreement No. 12-46 would extend the term of Agreement No. 11-81 by five years beginning July 1, 2012, expiring on June 30, 2017. The Agreement provides that either party may terminate the Agreement with a 30-day written notice.

**FISCAL IMPACT:** Under proposed Agreement No. 12-46, the cost to provide maintenance services during Fiscal Year 2012-13 is \$47,000. The fee is the same as it is for the Fiscal Year 2011-12. Funds for this purpose are included in the Fiscal Year 2012-13 City Budget under Public Works/Parks Maintenance.

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

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**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 12-46 with California Landscape and Design, Inc., for maintenance services at the Montclair Skate Park and Alma Hofman Park restroom facilities.

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

**THIS AGREEMENT** made and entered into this 1st day of July, 2012, by and between the **City of Montclair**, a Municipal Corporation, County of San Bernardino, State of California, hereinafter referred to as "**CITY**," and **California Landscape and Design, Inc.**, hereinafter referred to as "**CONTRACTOR**."

**WITNESSETH:**

**SECTION I**

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

**SECTION II**

This Agreement is for a period of five (5) years, from the date herein above set forth expiring on June 30, 2017. This agreement may be cancelled by either party without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

**SECTION III**

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

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

#### SECTION IV

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

#### SECTION V

Not used.

#### SECTION VI

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

#### SECTION VII

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

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

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

#### SECTION VIII

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

(\$3,000,000) for any one accident or occurrence and at least One Million Dollars (\$1,000,000) for property damage.

#### **SECTION IX**

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

#### **SECTION X**

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

#### **SECTION XI**

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

It is further agreed that in the event the CONTRACTOR fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality, or fails to prosecute the work or any part thereof, the Public Works Superintendent or his designated representative shall so certify to the City Manager of the CITY, and if thereafter the CONTRACTOR, for a period of ten (10) days after receipt of a written demand from the Public Works Superintendent or his designated representative, fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality and to prosecute said work and all parts thereof in a diligent and workmanlike manner or after commencing to do so within said ten (10) days fails to continue to do so, then the CITY may exclude the CONTRACTOR from the premises or any portion thereof, together with all materials and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work either by furnishing the tools, equipment, materials, labor or transportation necessary therefor, or by letting the unfinished portion of said work or the portion taken over by the CITY be a charge against the CONTRACTOR and may be deducted from any money due or becoming due to the CONTRACTOR for the CITY, or the CONTRACTOR may be compelled to pay the CITY the amount of said charge or the portion thereof unsatisfied. As used herein, the term "premises" shall include the area as set forth in SECTION XII hereof.

## SECTION XII

### SPECIFIC

#### MONTCLAIR SKATE PARK

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

#### A. Opening and Closing

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

#### B. Daily Safety Inspection

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

#### C. Site Cleanup

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

#### D. Graffiti Removal

1. Before opening the skate park each day, the CONTRACTOR shall remove any graffiti (including self-adhesive stickers) from the concrete surfaces, signs, light

poles, trash receptacles, park benches, wrought-iron fence, and block wall. In removing graffiti, the CONTRACTOR shall use chemicals and methods that will not cause damage to any of the surfaces from which the graffiti is being removed.

**E. Block Wall**

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

**F. Wrought-Iron Fence**

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

**G. Spine**

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

**H. Concrete Repair**

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

**I. Metal**

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

**J. Management and Supervision**

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

**ALMA HOFMAN PARK RESTROOMS**

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

**A. Opening and Closing**

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

**B. Daily Safety Inspection**

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

**C. Daily Cleaning**

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

**D. Graffiti Removal**

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

**E. Stocking Supplies**

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

**F. Management and Supervision**

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

**SECTION XIII**

## MISCELLANEOUS PROVISIONS

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

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

**Contractor:**

**CALIFORNIA LANDSCAPE AND DESIGN, INC.**

\_\_\_\_\_  
(Name, Title)

\_\_\_\_\_  
Date

**City:**

**CITY OF MONTCLAIR**

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

\_\_\_\_\_  
Date

**ATTEST:**

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

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Date

## AGENDA REPORT

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 12-47 WITH MARIPOSA HORTICULTURAL ENTERPRISES, INC., FOR LANDSCAPE AND MAINTENANCE OF MEDIAN ISLANDS, PARKS, AND PARKWAYS

**DATE:** July 2, 2012  
**SECTION:** AGREEMENTS  
**ITEM NO.:** 2  
**FILE I.D.:** STA500  
**DEPT.:** PUBLIC WORKS

**REASON FOR CONSIDERATION:** Agreement No. 11-87 with Mariposa Horticultural Enterprises, Inc., for landscape maintenance of median islands, parks, and parkways expires on June 30, 2012. The City Council is requested to consider approval of Agreement No. 12-47 with Mariposa Horticultural Enterprises, Inc., to continue landscape maintenance services. A copy of proposed Agreement No. 12-47 is attached for the City Council's review and consideration.

**BACKGROUND:** At its meeting of July 5, 2011, the City Council approved Agreement No. 11-87 with Mariposa Horticultural Enterprises, Inc., for landscape maintenance of median islands, parks, and parkways. This Agreement was for a one-year period and could be renewed annually up to five years with the consent of the City Council and Mariposa Horticultural Enterprises, Inc. Proposed Agreement No. 12-47 would become the fifth renewal period of the five-year overall term of the Agreement.

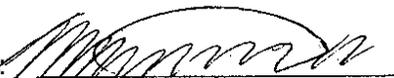
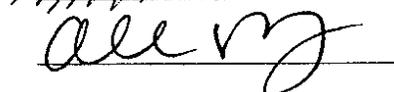
In Fiscal Year 2011-12, the City paid \$370,000 annually for landscape-maintenance services. An additional \$12,000 was budgeted by the City for miscellaneous repairs to the median islands and irrigation systems in the event of traffic accidents and the need to repair and/or replace controllers, valves, and similar items as needed.

With the exception of the new Mission Boulevard landscape costs, Mariposa Horticultural Enterprises, Inc., recognizes the City's current financial standing and is not requesting an increase for Fiscal Year 2012-13.

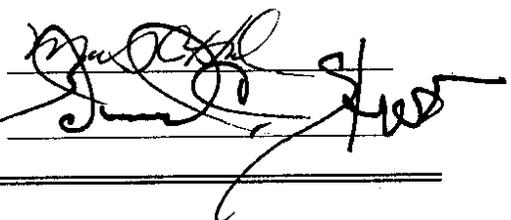
**FISCAL IMPACT:** The cost to provide landscape maintenance of median islands, parks, and parkways found in Agreement No. 12-47 is \$382,956. This amount is greater than Fiscal Year 2011-12 because of the addition of new segments of the Mission Boulevard landscaped medians. An additional \$24,000 (not included in the contract amount) is anticipated for repairs to the median islands and irrigation systems. The funds to provide these services are included in the Public Works Fiscal Year 2012-13 Parks Division Budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 12-47 with Mariposa Horticultural Enterprises, Inc., for landscape maintenance of median islands, parks, and parkways.

Prepared by:

Reviewed and  
Approved by:



Proofed by:

Presented by:

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

**THIS AGREEMENT**, made and entered into this 1st day of July, 2012, by and between the CITY OF MONTCLAIR, a Municipal Corporation, County of San Bernardino, State of California, hereinafter referred to as "CITY"; and Mariposa Horticultural Enterprises, Inc., hereinafter referred to as "CONTRACTOR."

**WITNESSETH:**

**SECTION I**

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

**SECTION II**

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

**SECTION III**

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

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

#### SECTION IV

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

#### SECTION V

Not used.

#### SECTION VI

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

#### SECTION VII

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

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

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

#### SECTION VIII

Throughout the term of this Agreement, at the CONTRACTOR'S sole cost and expense, the CONTRACTOR shall keep, or cause to be kept, in full force and effect for the mutual benefit of the CITY and the CONTRACTOR comprehensive, broad form, general public liability, and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from the CONTRACTOR'S activities,

providing protection of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person and Three Million Dollars (\$3,000,000) for any one accident or occurrence and at least One Million Dollars (\$1,000,000) for property damage.

#### **SECTION IX**

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

#### **SECTION X**

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

#### **SECTION XI**

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

It is further agreed that in the event the CONTRACTOR fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality or fails to prosecute the work or any part thereof, the Public Works Superintendent or his/her designated representative shall so certify to the City Manager of the CITY, and if thereafter the CONTRACTOR, for a period of ten (10) days after receipt of a written demand from the Public Works Superintendent or his/her designated representative, fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality and to prosecute said work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said ten (10) days, fails to continue to do so, then the CITY may exclude the CONTRACTOR from the premises or any portion thereof, together with all materials and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work either by furnishing the tools, equipment, materials, labor, or transportation necessary therefore or by letting the unfinished portion of said work or the portion taken over

by the CITY shall be a charge against the CONTRACTOR and may be deducted from any money due or becoming due to the CONTRACTOR for the CITY, or the CONTRACTOR may be compelled to pay the CITY the amount of said charge or the portion thereof unsatisfied. As used herein, the term "premises" shall include those areas and sites as set forth in SECTION XIII hereof.

## SECTION XII

### SPECIFIC

#### A. Trees, Plants, Shrubbery

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

#### B. Lawns

1. To comply with the Federal Clean Water Act and City of Montclair Municipal Code Section 9.24 – Storm Drain System, employees from said contractor shall be trained in Stormwater Best Management Practices. No blowing and/or depositing of grass clippings, leaves, or any other yard waste out into the street and catch basins.
2. All lawn areas will be mowed and edged weekly. As work is completed, the clippings, trimmings, weeds, and other extraneous materials shall be removed, leaving the lawns in a neat and attractive condition. The CONTRACTOR is responsible for cost of disposing such material.
3. All lawns shall be fed with commercial fertilizer supplied by the CONTRACTOR two times each year. Time of application of fertilizer shall be as specified by the CITY. Prior to fertilizing, the CONTRACTOR shall first mow the lawn to the appropriate height. Selective weedkiller supplied by the CONTRACTOR, shall be applied to provide complete dandelion, crabgrass, or other weed control. Chemicals used shall meet Department of Food and Agriculture regulations. The CONTRACTOR is liable for misuse.
4. All lawns shall be verticut, mowed to one inch, seeded, and covered with top dressing. Seed and top dressing will be furnished by CONTRACTOR upon approval by the CITY.
5. All lawns shall be mowed between 2 and 2 1/2 inches.

6. All landscape areas will be monitored and treated for Gopher Control by the CONTRACTOR as needed. The CONTRACTOR, at no additional cost to the CITY, shall furnish chemicals and licenses necessary for Gopher Control.

**C. Replacements**

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

**D. Irrigation System**

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

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

**E. Debris**

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

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

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

**G. Management and Supervision**

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

### SECTION XIII

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**I. Central Avenue Overpass**

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

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

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

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

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

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

The area to be maintained is located approximately 12 feet behind the sidewalk on the north and south sides of the street. The area is landscaped with lawn, trees, and shrubs. The area to be maintained is approximately 34,320 square feet.

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

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

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

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

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

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

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

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

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

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

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

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

**S. City-owned house at 9916 Central Avenue**

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

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

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

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

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

**V. Montclair Transcenter Platform**

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

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

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

**X. Freedom Plaza**

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

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

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

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

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

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

The area is undeveloped and is 5.4 acres in size.

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

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

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

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

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

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

**EE. Trash Collection**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**LL. Montclair Police Department Facility**

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

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

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

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

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

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

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

#### **SECTION XIV**

In the event that additional areas require maintenance services, such areas may be added to this Agreement at a negotiated price; however, during the period of time the CONTRACTOR is negotiating a cost to maintain the new areas, it is the CONTRACTOR'S responsibility to provide maintenance service to any area in question. In the event a maintenance area is deleted from this Agreement, the contract price for that area shall be deducted from the negotiated price.

#### **SECTION XV**

#### **MISCELLANEOUS PROVISIONS**

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

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

**Contractor:**

**MARIPOSA HORTICULTURAL ENTERPRISES, INC.**

_____	_____	_____
Name	Title	Date

**City:**

**CITY OF MONTCLAIR**

_____	_____
Paul M. Eaton Mayor	Date

**ATTEST:**

_____	_____
Yvonne L. Smith Deputy City Clerk	Date

**APPROVED AS TO FORM:**

_____	_____
Diane E. Robbins City Attorney	Date

## AGENDA REPORT

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 12-48 WITH WEST COAST ARBORISTS  
FOR TREE-MAINTENANCE SERVICES

**DATE:** July 2, 2012  
**SECTION:** AGREEMENTS  
**ITEM NO.:** 3  
**FILE I.D.:** STA700  
**DEPT.:** PUBLIC WORKS

**REASON FOR CONSIDERATION:** Agreement No. 11-88 with West Coast Arborists (WCA) for tree-maintenance services expires on June 30, 2012. The City Council is requested to consider approval of Agreement No. 12-48 with WCA to continue tree-maintenance services. A copy of proposed Agreement No. 12-48 is attached for the City Council's review and consideration.

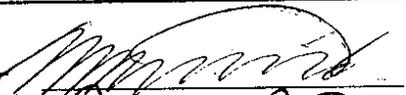
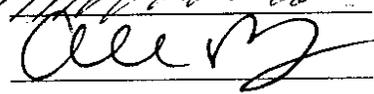
**BACKGROUND:** At its meeting of July 5, 2011, the City Council approved Agreement No. 11-88 with WCA for tree-maintenance services. Agreement No. 11-88 was the fifth year of a five-year Agreement expiring on June 30, 2012.

Proposed Agreement No 12-48 would extend the term of Agreement No. 11-88 by three years beginning July 1, 2012, and expiring on June 30, 2015.

In consideration of the City's ongoing financial challenges, WCA is not requesting a rate increase for Fiscal Year 2012-13 and has not had a rate increase for the past four years. A description of items and costs contained in proposed Agreement No. 12-48 is as follows:

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

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

Prepared by   
Proofed by 

Reviewed and Approved by:   
Presented by: 

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

**FISCAL IMPACT:** The cost to provide tree-maintenance services is not expected to exceed \$75,000 during Fiscal Year 2012-13. Funds for this purpose are included in the Fiscal Year 2012-13 City budget under Public Works/Tree Maintenance.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 12-48 with West Coast Arborists for tree-maintenance services.

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

**THIS AGREEMENT** is made and entered into this 1st day of July, 2012, by and between the CITY OF MONTCLAIR, a Municipal Corporation, County of San Bernardino, State of California, hereinafter referred to as "CITY," and WEST COAST ARBORISTS, hereinafter referred to as "CONTRACTOR."

**WITNESSETH:**

**SECTION I**

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

**SECTION II**

This Agreement is for a period of three (3) years from the date hereinabove set forth expiring on June 30, 2015, subject to the right of either party to cancel without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

**SECTION III**

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

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

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

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

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

#### SECTION IV

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

#### SECTION V

Not used.

#### SECTION VI

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

#### SECTION VII

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

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

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

#### SECTION VIII

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

#### SECTION IX

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

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

#### SECTION X

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

It is further agreed that in the event the CONTRACTOR fails to prosecute the work or any part thereof contemplated by this Agreement, the Public Works Superintendent, or his designated representative, shall so certify to the City Manager of the CITY; and if thereafter the CONTRACTOR, for a period of five (5) days after written notice, continues to fail to do so, then the CITY may exclude the CONTRACTOR from the premises or any portion thereof and may complete the work contemplated by this Agreement or any portion of said work by letting the unfinished

portion of said work, or the portion taken over by the CITY, the cost of which shall be a charge against the CONTRACTOR and may be deducted from any money due or becoming due to the CONTRACTOR from the CITY; or the CONTRACTOR may be compelled to pay the CITY the amount of said charge or the portion thereof unsatisfied.

## SECTION XI

### SPECIFIC

#### A. Scope of Work

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

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

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

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

All work shall be performed in a safe manner in compliance with the American National Safety Institute, Z133.1 Safety Standards for Tree Care

Operations, as published by American National Safety Institute, Inc., 1430 Broadway, New York, New York 10018.

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

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

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

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

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

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

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

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

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

1. Prevent branch and foliage interference with the requirements of safe public passage. Over residential streets, limbs shall be maintained gradually from eight (8) feet at the curb to seventeen (17) feet over traffic

lanes. Over arterial streets, limbs shall be maintained at a maximum height of fourteen (14) feet from grade to wood.

Over sidewalks, limbs shall be maintained at a height of seven (7) feet from the grade to wood.

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

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

- Flush cutting where a cut is made even with the surface with the trunk or limb, removing the branch collar and branch bark ridge.
- Stub cutting where branch removal results in the base of the branch removed protruding more than approximately one-quarter inch beyond the zone of the branch collar and branch bark ridge.
- Removal of all the inner branches and foliage also know as lion tailing.

### **C. Removals**

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

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

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

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

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

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

## **SECTION XII**

### **MISCELLANEOUS PROVISIONS**

- A. **Assignment.** No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by the CONTRACTOR without the written consent of the CITY.

- B. **Independent Contractor.** The parties hereto agree that CONTRACTOR and its employees, officers, and agents are independent contractors under this Agreement, and shall not be construed for any purpose whatsoever to be employees of the CITY.
- C. **Compliance With Laws.** The CONTRACTOR shall comply with all applicable laws in performing its obligations under this Agreement.
- D. **Discrimination.** The CONTRACTOR agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONTRACTOR agrees to comply with all County, State, and Federal laws relating to equal employment opportunity rights.
- E. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- F. **Attorneys' Fees.** In the event that any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount to be determined by the Court to be reasonable.
- G. **Entire Agreement.** This Agreement supersedes any and all other agreements either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any other party that is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing, signed by all parties.

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

**CONTRACTOR:**

**WEST COAST ARBORISTS**

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

\_\_\_\_\_  
Date

**CITY:**

**CITY OF MONTCLAIR**

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

\_\_\_\_\_  
Date

**ATTEST:**

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

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Date

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO 12-62 WITH ONTARIO-MONTCLAIR  
SCHOOL DISTRICT TO PROVIDE AFTER-  
SCHOOL PROGRAMS

**DATE:** July 2, 2012  
**SECTION:** AGREEMENTS  
**ITEM NO.:** 4  
**FILE I.D.:** HSV030  
**DEPT.:** COMMUNITY DEV

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**REASON FOR CONSIDERATION:** The Ontario-Montclair School District (OMSD) has presented an Agreement to provide after-school programs using funds provided by the After-School Education and Safety Program (ASES) grant.

A copy of Agreement No. 12-62 with OMSD is attached for the City Council's review and consideration.

**BACKGROUND:** The Montclair Community Collaborative (MCC), organized in 1996, is a partnership between the City, OMSD, and community organizations having the core objective of improving quality-of-life outcomes for children and youth. Through the ongoing strategic planning process, MCC identifies resources and develops services for children, youth, and adults.

The goal of the ASES grant is to promote after-school learning modules to enhance children's educational and learning capabilities. Such grants made available to local education authorities such as OMSD provide communities with enhanced community-based school services in an effort to strengthen healthy child development.

Proposed Agreement No. 12-62 would provide funding through the ASES grant for after-school programs at eleven school sites. El Camino, Howard, Kingsley, Lehigh, Mission, Monte Vista, Montera, Moreno, Ramona, Serrano, and Vernon.

The total amount of funding for these eleven school sites is \$1,284,562 and would be used to support academic, recreational, and enrichment activities for children in after-school programs.

The term of the Agreement is July 1, 2012, through June 30, 2013.

**FISCAL IMPACT:** Should the City Council approve Agreement No. 12-62, OMSD would pay the City of Montclair \$1,284,562 to fund personnel, supplies, training, and grant oversight.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 12-62 with the Ontario-Montclair School District to provide after-school programs.

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Prepared by:

*M. Richter*  
*Christine Smidely*

Proofed by:

Reviewed and  
Approved by:

Presented by:

*Steve Luster*  
*James J. ...*

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**Contract No. C-123-44**

**ONTARIO-MONTCLAIR SCHOOL DISTRICT  
950 WEST "D" STREET  
ONTARIO, CALIFORNIA 91762  
(909) 459-2500**

**AGREEMENT FOR CONSULTANT SERVICES**

**THIS AGREEMENT** is made and entered into this 21 day of June, by and between the Ontario-Montclair School District, hereinafter referred to as the "**DISTRICT**", and **City of Montclair**, hereinafter referred to as the "**CONSULTANT**".

**1. Services To Be Performed By Consultant.**

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

Consultant will provide staff and materials to operate the after school program services at the following sites: El Camino, Howard, Kingsley, Lehigh, Mission, Monte Vista, Moreno, Montera and Ramona elementary schools and Serrano and Vernon middle schools. Services rendered beginning July 1, 2012 and ending June 30, 2013. Funding source is the After School Education and Safety Program (ASES) Core (Mgmt. 0834; Resource 6010). Administrative costs may not exceed the 15% of the annual total grant award amount (OMSD – 7.5% and **City of Montclair** – 7.5%). **City of Montclair** will be paid 92.5% of the grant award from CDE for services rendered at contracted school sites.

(b) **CONSULTANT** may, at **CONSULTANT's** own expense, employ such assistants as **CONSULTANT** deems necessary to perform the services required of **CONSULTANT** by this Agreement. **DISTRICT** will not train, control, direct, or supervise **CONSULTANT's** assistants or employees in the performance of those services.

**CONSULTANT** will have the following responsibilities in support of the ASES programs:

- (1) Coordinate the academic assistance, homework support, and enrichment portions of the ASES program at each School Site.
- (2) Hire, train, and supervise site staff, including the Site Coordinators and Program Leaders.
- (3) Seek regular input from principals regarding performance evaluations, including recommendations for retraining and terminating a site coordinator and/or other site staff.
- (4) Participate in all trainings for Site Coordinators and Program Leaders.
- (5) Maintain ongoing communication between City of Montclair staff and school staff regarding student needs and progress, including but not limited to attendance at school-day meetings and/or one-on-one meetings with teachers.

- (6) Coordinate ASES activities with school staff to assure program supports current academic goals of teachers and administrators.
- (7) Provide academic assistance and other activities specifically supporting (but not duplicating) daytime curriculum and academic goals.
- (8) Foster communication with and involvement of parent through parent orientations, parent handbook, development and distribution of periodic newsletters, and hosting, at a minimum, one parent night.
- (9) Regularly attend and participate in regular scheduled governance and operation meetings.
- (10) Provide the District, in a timely manner, with any required documentation such as, but not limited to monthly program evaluations, attendance, and snack counts.

(c) **CONSULTANT** 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 **DISTRICT** and **CONSULTANT** or any of **CONSULTANT's** agents or employees. **CONSULTANT** 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. **CONSULTANT**, its agents and employees, shall not be entitled to any rights and/or privileges of **DISTRICT's** employees and shall not be considered in any manner to be **DISTRICT's** employees.

(d) If **CONSULTANT** is a regular employee of a public entity, all services which **CONSULTANT** renders under this Agreement will be performed at times other than **CONSULTANT's** regular assigned work day for said entity, or during periods of vacation or leave of absence from said entity.

## **2. Compensation.**

(a) Except as otherwise provided in this Agreement, **DISTRICT** agrees to compensate **CONSULTANT** for services rendered under this Agreement.

- (1) **CONSULTANT** will be paid 92.5% of grant award for operated sites from CDE according to schedule A, attached hereto.
- (2) If **DISTRICT** fails to receive 2012-2013 ASES grant funding, **CONSULTANT** will hold **DISTRICT** harmless for any financial liabilities or obligations it has incurred.
- (3) Timing and amounts of payment will be made according to Schedule A, attached hereto. If the funds received from CDE change, a pro rate adjustment to the maximum amount available for payment to **CONSULTANT** will be made.
- (4) **CONSULTANT** fee will only be paid out of funds received by the **DISTRICT** from the State and only up to the limits of this agreement.

(5) **CONSULTANT** is to provide documentation necessary for annual independent audits, in accordance with CDE requirements. Any additional audit cost billed to **DISTRICT** due to lack of documentation will be billed to **CONSULTANT** for payment.

(b) **DISTRICT** will pay no additional amount for travel or other expenses of **CONSULTANT** under this Agreement unless specified below. Should travel or other expenses be specified below, **CONSULTANT** shall be entitled to the lesser amount of (1) the not to exceed amount stated, or (2) the actual amount expended. Supporting documentation for the authorized travel or other expenses shall be attached to the Request for Payment@ form when submitted. N/A

c) **CONSULTANT** will send 10 monthly itemized invoices to **DISTRICT** for payment under this agreement.

(d) If this Agreement is with an individual consultant, **CONSULTANT** will complete the certification block on the "Request For Payment" form which shows whether or not **CONSULTANT** is a retired member of the California State Teacher's Retirement System (STRS) or the California Public Employees Retirement System (PERS).

(e) **DISTRICT** will not withhold any federal or state income tax for payment made pursuant to this Agreement, but will provide **CONSULTANT** with a statement of earnings at the end of each calendar year. **CONSULTANT** 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 from July 1, 2012, through June 30, 2013, unless sooner terminated pursuant to the provisions of Section 6 of this Agreement. **DISTRICT** and **CONSULTANT** may mutually agree in writing to extend the term of this Agreement provided, however, **DISTRICT** shall not be obligated to pay **CONSULTANT** any additional consideration unless **CONSULTANT** undertakes additional services, in which instance the consideration shall be increased as **DISTRICT** and **CONSULTANT** shall agree in writing.

### **4. Obligations of Consultant.**

(a) During the term of this Agreement, **CONSULTANT** agrees to diligently prosecute the work specified in the "Description of Services" to completion. **CONSULTANT** may represent, perform services for, and be employed by such additional clients, persons, or companies as **CONSULTANT**, in **CONSULTANT's** sole discretion, sees fit.

(b) **CONSULTANT** will provide all materials, tools, and instrumentalities required to perform the services under this Agreement.

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

(d) **CONSULTANT** shall comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the **DISTRICT'S** pupils. If at any time during the term of this Agreement **CONSULTANT** is either notified by the Department of Justice or otherwise becomes aware that any employee of **CONSULTANT** performing services under this Agreement has been arrested or convicted of a violent or serious felony listed in Penal Code section 667.5(c) or Penal Code section 1192.7, respectively, **CONSULTANT** agrees to immediately notify the **DISTRICT** and remove said employee from performing services on this Agreement.

(e) **CONSULTANT** shall indemnify, pay for the defense of, and hold harmless **DISTRICT** 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 **CONSULTANT'S** negligent or willful acts and/or omissions in rendering any services hereunder. **CONSULTANT** 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 **CONSULTANT** or any employee and shall further indemnify, pay for the defense of, and hold harmless **DISTRICT** of and from any such payment or liability arising out of or in any manner connected with **CONSULTANT'S** performance under this Agreement.

(f) Neither this Agreement nor any duties or obligations under this Agreement may be assigned by **CONSULTANT** without the prior written consent of **DISTRICT**.

## **5. Obligations of District.**

**DISTRICT** agrees to comply with all reasonable requests by **CONSULTANT** and to provide access to all documents reasonably necessary for the performance of **CONSULTANT'S** duties under this Agreement.

**DISTRICT** shall indemnify, pay for the defense of, and hold harmless **CONSULTANT** and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of **DISTRICT'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 in force during the term of the Agreement, or until the services provided for herein have been fully and completely performed, whichever shall occur first, and shall thereupon terminate.

(b) Should **CONSULTANT** default in the performance of this Agreement or breach any of its provisions, **DISTRICT** may terminate this Agreement by giving written notification to **CONSULTANT**.

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

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

**N/A**

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## **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 **DISTRICT** and **CONSULTANT**. 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 **CONSULTANT** 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 are 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 **DISTRICT** may unilaterally amend the Agreement to accomplish the changes listed below:

1. Increase or decrease dollar amounts based on final CDE award;
2. Administrative changes; and
3. Changes as required by law / ASES grant provisions

(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 **DISTRICT**, **CONSULTANT**, 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 General of the State of California, at the request of **DISTRICT** or as a part of any audit of **DISTRICT**, for a period of three (3) years after final payment is made under this Agreement. **CONSULTANT** 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.

**"DISTRICT"**

**"CONSULTANT"**

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signatures

Kim Stallings  
Printed Name

Paul Eaton  
Printed Name

Deputy Superintendent  
Title

Mayor, City of Montclair  
Title  
City of Montclair

5111 Benito Street  
Address  
Montclair, CA 91763  
City State Zip

(909) 626-8571  
Telephone Number

By: \_\_\_\_\_  
Signatures

Yvonne Smith, Deputy City Clerk  
Title

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

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

Date of Governing Board's Approval: June 21, 2012

END OF AGREEMENT FOR CONSULTANT SERVICES

**Schedule A**  
**City of Montclair ASES Payment Schedule. 2012-2013**

School	Program	Allocation	ADMIN	Balance	10 Monthly Payments
El Camino Elementary	ASES Afterschool Base	\$112,500.00	\$8,437.50	\$104,062.50	\$10,406.25
Howard Elementary	ASES Afterschool Base	112,500.00	\$8,437.50	\$104,062.50	\$10,406.25
Kingsley Elementary	ASES Afterschool Base	120,060.00	\$9,004.50	\$111,055.50	\$11,105.55
<b><i>Kingsley Elementary</i></b>	<b><i>ASES Supplemental</i></b>	<b><i>27,635.00</i></b>	<b><i>\$2,072.63</i></b>	<b><i>\$25,562.38</i></b>	<b><i>\$2,556.24</i></b>
Lehigh Elementary	ASES Afterschool Base	122,850.00	\$9,213.75	\$113,636.25	\$11,363.63
<b><i>Lehigh Elementary</i></b>	<b><i>ASES Supplemental</i></b>	<b><i>36,855.00</i></b>	<b><i>\$2,764.13</i></b>	<b><i>\$34,090.88</i></b>	<b><i>\$3,409.09</i></b>
Mission Elementary	ASES Afterschool Base	131,694.75	\$9,877.11	\$121,817.64	\$12,181.76
<b><i>Mission Elementary</i></b>	<b><i>ASES Supplemental</i></b>	<b><i>39,508.43</i></b>	<b><i>\$2,963.13</i></b>	<b><i>\$36,545.30</i></b>	<b><i>\$3,654.53</i></b>
Monte Vista Elementary	ASES Afterschool Base	160,080.00	\$12,006.00	\$148,074.00	\$14,807.40
<b><i>Monte Vista Elementary</i></b>	<b><i>ASES Supplemental</i></b>	<b><i>30,636.00</i></b>	<b><i>\$2,297.70</i></b>	<b><i>\$28,338.30</i></b>	<b><i>\$2,833.83</i></b>
Moreno Elementary	ASES Afterschool Base	112,500.00	\$8,437.50	\$104,062.50	\$10,406.25
Montera Elementary	ASES Afterschool Base	98,550.00	\$7,391.25	\$91,158.75	\$9,115.88
Ramona Elementary	ASES Afterschool Base	112,500.00	\$8,437.50	\$104,062.50	\$10,406.25
Serrano Middle School	ASES Afterschool Base	82,351.50	\$6,176.36	\$76,175.14	\$7,617.51
<b><i>Serrano Middle School</i></b>	<b><i>ASES Supplemental</i></b>	<b><i>24,706.00</i></b>	<b><i>\$1,852.95</i></b>	<b><i>\$22,853.05</i></b>	<b><i>\$2,285.31</i></b>
Vernon Middle School	ASES Afterschool Base	63,789.00	\$4,784.18	\$59,004.83	\$5,900.48
		<b>\$1,388,715.68</b>	<b>\$104,153.68</b>	<b>\$1,284,562.00</b>	<b>\$128,456.20</b>

## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 12-63 WITH FIRST 5, THE CHILDREN AND FAMILIES COMMISSION FOR SAN BERNARDINO COUNTY, IN SUPPORT OF INTEGRATED HEALTH SYSTEMS PLANNING AND IMPLEMENTATION

**DATE:** July 2, 2012  
**SECTION:** AGREEMENTS  
**ITEM NO.:** 5  
**FILE I.D.:** HSV042  
**DEPT.:** COMMUNITY DEV.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 12-63 with First 5, The Children and Families Commission for San Bernardino County, to accept and appropriate grant funds in the amount of \$90,500 to provide programs that will improve the health and well being of the community. A copy of proposed Agreement No. 12-63 is attached for the City Council's review and consideration.

**BACKGROUND:** The City was successful in obtaining a one-year First 5 San Bernardino County competitive grant. First 5 was formed as a result of the passage of Proposition 10, which created an additional tobacco tax to fund health and related services for children aged 0 to 5 and their families. Proposed Agreement No. 12-63 would provide funding for the following:

- Creation of a West End Healthy Cities Coalition comprised of the cities of Montclair, Ontario, and Upland as well as community partners including two community clinics and 30 other organizations.
- The planning and implementation of a health needs assessment of the three participating cities using GIS data.
- The hiring of a part-time program coordinator to administer the program and its activities.
- Promote community health activities.
- Fiscal and data management and reporting to meet First 5 requirements.

The term of proposed Agreement No. 12-63 is from July 1, 2012, through June 30, 2013.

**FISCAL IMPACT:** Agreement No. 12-63 would provide grant funding in the amount of \$90,500 to pay for personnel and program costs.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 12-63 with First 5, The Children and Families Commission for San Bernardino County, in support of integrated health systems planning and implementation.

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Prepared by:

*M. Richter*

Reviewed and  
Approved by:

*Steve Lusk*

Proofed by:

*Christine Smiderly*

Presented by:

**CHILDREN  
AND FAMILIES  
COMMISSION  
FOR  
SAN BERNARDINO COUNTY  
STANDARD CONTRACT**

FOR COMMISSION USE ONLY						
<input checked="" type="checkbox"/> New	Vendor Code			<b>S</b>	Dept. <b>A</b>	Contract Number
<input type="checkbox"/> Change				<b>C</b>	903	<b>SI006</b>
<input type="checkbox"/> Cancel						
Organization				Dept.	Orgn.	Contractor's License No.
Children and Families Commission				903	PROG	
Commission Representative				Telephone		Total Contract Amount
Cindy Faulkner, Operations Manager				909-386-7706		\$90,500
Contract Type						
<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason:						
Commodity Code		Contract Start Date		Contract End Date		Original Amount
95200		July 1, 2012		June 30, 2013		\$90,500
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
RRC	903	PROG	300	3357	CSIHCY13	\$90,500
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Abbreviated Use				Estimated Payment Total by Fiscal Year		
Healthy Cities/Communities				FY	Amount	I/D
				12-13	\$90,500	

THIS CONTRACT is entered into in the State of California by and between the Children and Families Commission for San Bernardino County, hereinafter called the Commission, and

Legal Name (hereinafter called the Contractor)

City of Montclair

Department/Division

Address

5111 Benito Street

Montclair, CA 91763

Phone

(909) 626-8571

Federal ID No.

95-600-5731

Program Address (if different from legal address):

**IT IS HEREBY AGREED AS FOLLOWS:**

**WHEREAS**, the Commission has been authorized by the State of California under Section 130100 -130155 of the Health and Safety Code and Section 30131.2 of the Revenue and Taxation Code, in accordance with the Children and Families Act of 1998, to promote, support and improve the early development of children prenatal through age five, and

**WHEREAS**, the Commission has been authorized by these cited references and by County of San Bernardino Code under Sections 12.291 – 12.297 to contract with organizations for services to children prenatal through age five and their families in San Bernardino County, and

**WHEREAS**, the Commission desires that such services be provided by Contractor and Contractor agrees to provide the services as set forth in this Contract,

**NOW THEREFORE**, in accordance with the conditions stated herein, the Commission and Contractor mutually agree to the following terms and conditions:

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## I. DEFINITIONS

**Accessibility:** Ease of obtaining services, measured by addressing geographical, travel and other barriers.

**Asthma:** Is a disease/condition that affects the lungs. It causes repeated episodes of wheezing, breathlessness, chest tightness, and nighttime or early morning coughing and is one of the most common long-term diseases of children although adults may also have this condition.

**Ages and Stages Questionnaire (ASQ-3):** A developmental screening tool to screen young children to easily identify potential delays as early as possible and determine which children need further assessment or ongoing monitoring. The ASQ:Social Emotional (ASQ-SE) tool measures the social and emotional competence of children.

**Basic Needs:** Necessities to meet the food, shelter, and immediate safety needs of a parent and/or child. These resources are meant to address an immediate need.

**C4Yourself:** A Component to the C-IV System that allows customers to apply for Food Stamps, Medi-Cal, CalWORKS, and CMSP via the internet. Customers enter information to apply online and the data transfers to the C-IV System automatically. Customers have the ability to complete and submit their annual redeterminations/recertifications, access their quarterly/mid-year status reports and have the ability to view the status of their cash/benefits.

**Capital Expenses:** Costs of construction projects, including but not limited to; brick and mortar type projects, demolition, room expansion, carpet installation, air-conditioner or water heater installation/replacement, wheel-chair access ramps, stationary playgrounds or vehicle purchases.

**Care Coordination:** A service deliverable that includes the following activities: implementing an active outreach system to underserved populations, establishing a family's eligibility for services or funding, providing information, answering questions and helping people make decisions about services, helping families complete paperwork to obtain services, making and following up on referrals to health care providers, helping families find interpreters, determining potential barriers for parents and problem-solving to reduce the barriers, arranging for transportation for medical appointments, scheduling appointments and coordinating with other health care appointments if possible, explaining the importance of health care and answering some common health questions, reviewing responsibilities and rights of patients and of health care providers, coordinating with families to facilitate follow-up on recommendations and routine care, and providing re-enrollment assistance.

**Case Management:** A collaborative process that assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet the client's needs in a limited time frame based on a service plan not to exceed one (1) year in duration. Characterized by advocacy, communication, resource management, quality cost-effective interventions and outcomes, and linking the client with systems.

**Cost Effectiveness:** Achieving the desired goal with the minimum of expenditure.

**Child Care Licensing:** Managed by the State of California. This agency licenses and monitors Family Child Care Homes and Child Care Centers in an effort to ensure they provide a safe and healthy environment for children who are in day care.

**Child Development Permit Matrix:** Issued through the California Commission on Teacher Credentialing who authorize multiple permit levels for a variety of services in child care and child development programs.

**Dental Screening:** A visual assessment of the child's oral health, done without instrumentation or the use of x-rays or any other diagnostic equipment. The provider observes, provides fluoride varnish and notes the condition of the teeth, surrounding soft tissues, simple jaw relationships and overall oral hygiene.

**Dental Treatment:** Includes a thorough dental examination with the use of x-rays and proper instruments to diagnose the condition of the teeth and other oral structures. A full scope of treatment may include preventative services, such as cleaning and oral hygiene instruction for parent and/or child, as well as restoration or removal of damaged teeth and proper space maintenance. Complete

treatment results in the proper function and comfort of the child's mouth in a developmentally appropriate way. It anticipates the best possible outcome for healthy permanent teeth.

**Desired Results Development Profile (DRDP):** An observation tool for teachers to record individual progress toward the achievement of four Desired Results for children: Children are personally and socially competent; Children are effective learners; Children show physical and motor competence; Children are safe and healthy

**Direct Costs:** Costs that can be identified specifically with a particular final cost objective, such as a particular project, service, or other direct activity of an organization.

**Evidence-Based:** Refers to the use of research and scientific studies as a base for determining best practices.

**Full Time Equivalent (FTE):** A measurement equal to one staff person employed in a full-time work schedule and which is, for purposes relating to this contract, calculated at 2,080 hours in a year. FTEs provide a common unit of measurement for positions budgeted. The number of FTEs is the cumulative value expressed, using the full-time equivalent measurement as a baseline, as a total percentage of time or as a total percentage of funds related to a particular classification.

**Federally Qualified Health Center (FQHC):** Entities as defined by the Social Security Act at section 1905(l)(2) which, "(i) is receiving a grant under section 330 of the Public Health Service Act, or (ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant and (II) meets the requirements to receive a grant under section 330 of the Public Health Service Act, (iii) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, and is determined by the Secretary to meet the requirements for receiving such a grant including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity; or (iv) was treated by the Secretary, for purposes of Part B of title XVIII, as a comprehensive Federally-funded health center as of January 1, 1990, and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an urban Indian organization receiving funds under Title V of the Indian Health Care Improvement Act for the provision of primary health services." In considering these definitions, it should be noted that programs meeting the FQHC requirements commonly include the following (but must be certified and meet all requirements stated above): Community Health Centers, Migrant Health Centers, Healthcare for the Homeless Programs, Public Housing Primary Care Programs, Federally Qualified Health Center Look-Alikes, and Tribal Health Centers.

**Indirect Costs:** Costs that have been incurred for the benefit of multiple projects or activities and cannot be readily identified with a particular final cost objective. An organization having several major functions may need to accumulate the indirect costs into separate groupings and then allocate proportionally to the benefiting functions by means of a base which best measures the relative degree of benefit. The indirect cost rate would be used to distribute the proportional amount of indirect costs to the individual projects or activities based on a Board approved cost allocation plan.

**Life Skills Progression (LSP):** An outcome measurement instrument designed for use by programs serving low income parents of children aged 0-3 years, but it can extend to age 60 months. There are 43 parent and child scales which describe a spectrum of skills and abilities over six major categories of functioning. The LSP is used to collect outcomes data, to monitor client strengths and needs, to plan clinical interventions, and provide data for research purposes.

**Kindergarten Student Entrance Profile (KSEP):** A screening tool to measure the developmental readiness of each student upon entering kindergarten for the first time. It serves as a baseline assessment and provides data on student's readiness as they enter kindergarten.

**Nurturing Parenting:** Family-centered initiative designed to build nurturing parenting skills as an alternative to abusive and neglecting parenting and child-rearing practices. The long term goals are to prevent recidivism in families receiving social services, lower the rate of multi-parent teenage pregnancies, reduce the rate of juvenile delinquency and alcohol abuse, and stop the intergenerational cycle of child abuse by teaching positive parenting behaviors.

**Obesity:** Defined as a BMI at or above the 95<sup>th</sup> percentile for children of the same age and sex within the ages of 2-19 years.

**Outcome:** The result, which the Commission seeks (as outlined in the Strategic Plan) and to which all performance targets must contribute to a measurable change.

**Overweight:** Is defined as a BMI at or above the 85<sup>th</sup> percentile and lower than the 95<sup>th</sup> percentile for children of the same age and sex within the ages of 2-19 years.

**Parenting Education:** Programs that improve knowledge and increase positive parenting skills.

**Participant:** A recipient of funded services in accordance with the target population; are children, prenatal through age five and/or pregnant women.

**Participant Support:** Budget line item category for items purchased to remove barriers or to provide motivation to participants upon completion of the program. Items purchased should be relative to the program objectives. Gift cards are not an allowable expense.

**Participant Transportation:** Budget line item category for costs involved with transporting participants to needed services and/or appointments.

**Perinatal Parent Education Program:** Programs that address the concerns and needs of a pregnant woman, her infant child, and the woman's support system. These programs address and affect not only healthy birth outcomes but improved child well being and family stability outcomes as well.

**Performance Target:** The specific result that a Contractor seeking investment will commit to achieve. It is tangible in the sense that it can be verified and narrow enough to be directly achieved by the Contractor. It almost always represents a measurable change in the participant of a program.

**Professional Services/Consultants:** Independent contractors hired to perform services not related to providing direct services. Examples include janitorial services, bookkeeping services, speakers, etc.

**Program Materials/Supplies:** Budget line item category for items directly related to service delivery such as course curriculum, children's books, journals used by participants, child development toys, etc.

**Program Work Plan:** A plan that includes the Performance Targets of a program and serves as a way to manage the program to achieve desired results and measurable outcomes.

**Quality Child Care:** Licensed child care and early learning programs (including home-based and center-based care) are safe, healthy, nurturing, stimulating, supportive, interactive, culturally appropriate and sensitive to the needs of all children. They promote early education and the development of trusting relationships to support individual children's physical, emotional, social and intellectual development.

**Relapse:** The process of becoming unable to cope with life in sobriety. The process may lead to renewed alcohol or drug abuse, physical or emotional collapse, or suicide and is marked by predictable and identifiable warning signs that begin long before a return to use or collapse occurs.

**Relapse Prevention:** Efforts to teach people to recognize and manage warning signs so that they can interrupt the progression to relapse or collapse and return to the process of recovery.

**Request for Proposal (RFP):** The document used to solicit a solution or solutions from potential Contractors to a specific problem or need.

**Researched Based:** See evidence-based: Using research as the basis for determining best practices.

**Resource Center:** A facility to which children, prenatal through age five, and families access services needed. Two basic program elements must be present at a Resource Center for it to meet the minimal definition: (i) referrals and linkages to critical services and programs, not represented physically at the center, and (ii) case management (see definition for Case Management).

**Rural Health Clinic (RHC):** Clinics that are certified under section 1861(aa)(2) of the Social Security Act to provide care in underserved areas, and therefore, to receive cost-based Medicare and Medicaid reimbursements.

**Satisfaction Survey:** Survey designed to measure the participant's overall satisfaction with the services rendered. Satisfaction Surveys address specific aspects of service provision in order to identify problems and opportunities for improvement.

**Special Needs:** Children having an identified disability, health, or mental health condition(s) that require early interventions, special education services, or other specialized supports.

**Staff Development/Training:** Budget line item category for expenses associated with staff training, conferences, retreats, classes, and any other staff development activities related to the funded program.

**Staff Mileage/Travel:** Budget line item category for employee mileage and travel costs (including lodging and food) for travel related to the program, based on the current IRS allowable rate.

**Strengthening Families™:** A framework for working with children and families. The approach allows for consistency across child- and family-serving systems and acknowledges the interdependent factors affecting families every day. The foundation of this framework is built upon five research-based Protective Factors. When these Protective Factors are present and robust, families are less likely to experience child abuse or neglect and are more equipped to create environments for young children's optimal development.

**Subcontractor:** Agencies contracted by the primary Contractor to provide direct services for which they will be responsible for achieving the performance targets for the portion of services they are providing. Contractor shall be responsible for the performance of any subcontractor.

**Verification:** Validates that something represented to happen does in fact take place. The verification tools must be approved by the Commission.

**Women, Infants, and Children (WIC):** The Special Supplemental Nutrition Program for Women, Infants, and Children - better known as the WIC Program - serves to safeguard the health of low-income pregnant, postpartum, and breastfeeding women, infants, and children up to age 5 who are at nutritional risk by providing nutritious foods to supplement diets, information on healthy eating including breastfeeding promotion and support, and referrals to health care. It is maintained by the Food and Nutrition Service (FNS), a Federal agency of the U.S. Department of Agriculture, responsible for administering the WIC Program at the national and regional levels.

## II. CONTRACTOR'S SERVICE RESPONSIBILITIES

A. Contractor shall provide all program services identified in this Contract, including Attachment A – Program Work Plan 2012-2013, Requirements and Expectations, Attachment C Pursuant to Section II, paragraphs D & F, and Section III, paragraph CC, and Section VIII, paragraph D of the Contract, Attachment A will list the specific quantitative targets for the respective year.

Initial Here

B. Contractor shall provide services in a manner consistent with the Principles on Equity as adopted by the Commission and as available on the Commission website at [www.first5sanbernardino.org](http://www.first5sanbernardino.org).

C. Contractor shall coordinate with appropriate agencies to enhance service provision and to maximize usage of California Children and Families Trust Fund monies available.

D. Contractor shall deliver performance targets as specified in the Contract and provide evidence of achievement as identified in the verification. The verification tools must be approved by the Commission. When specified by the Commission, verification tools must be developed in collaboration with staff or agencies as designated by Commission.

E. Contractor shall cooperate with any consultant, technical advisor, or committee as designated by the Commission to support the evaluation system development and implementation process.

F. Contractor's Program Work Plan (Attachment A) and other program specific data collection information requested by the Commission will be placed in the Commission's web based data system. Contractor is bound by the information contained in the data collection system. If there is a discrepancy between the Contractor's Program Work Plan (Attachment A) and the data collection system, the information in the system will take precedence over the Program Work Plan and will be used to evaluate Contractor's performance under the Contract. It is the responsibility of the Contractor to ensure that the information entered into the data system, as it relates to the Performance Program Work Plan and/or other program specific data collection information requested by the Commission, fully captures the intent of the program/project for the term identified in Section II.

### III. CONTRACTOR'S GENERAL RESPONSIBILITIES

#### A. Participants

Contractor understands and acknowledges that the services under this Contract are for the purposes of promoting, supporting and improving the early development of children prenatal through age five. As such, services provided under this Contract shall offer a direct benefit to this population. Any service provided beyond this limitation, unless as agreed upon in this Contract, is a breach of contract and an unauthorized expenditure of Children and Families First Act funds. Services to siblings and family members who are not parents or primary caregivers may only be incidental to services provided to children prenatal through age five.

#### B. Contractor Capacity

In the performance of this Contract, Contractor its agents and employees shall act in an independent capacity and not as officers, employees, or agents of the Commission.

#### C. Contract Assignability

Without the prior written consent of the Commission, the Contract is not assignable by Contractor either in whole or in part.

#### D Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, subcontractors, independent contractors, consultants, professional service representatives, volunteers and the Commission. Contractor shall make a reasonable effort to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family, business, or other ties. In addition, Contractor's employees shall not simultaneously receive payment for work done as an independent contractor without obtaining prior approval from the Executive Director of the Commission, or authorized designee. In the event that the Commission determines that a conflict of interest situation exists, the Commission may disallow any increase in costs associated with the conflict of interest situation and such conflict may constitute grounds for termination of this Contract.

#### E. Former Commission Administrative Officials

Contractor agrees to provide or has already provided information on former Commission administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former Commission administrative officials who terminated Commission employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "Commission Administrative Official" is defined as a member of the Commission or such Administrative Staff.

If during the course of the administration of this Contract, the Commission determines that the Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the Commission, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the Commission is entitled to pursue any available legal remedies.

#### F Subcontracting

Contractor agrees not to enter into any subcontracting agreements for work contemplated under this Contract without first obtaining written approval from the Commission. Any subcontractor shall be subject to the same provisions as the Contractor. Contractor shall be ultimately responsible for the performance of any subcontractor.

#### G Recordkeeping

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. Said records shall be kept and

maintained within the County of San Bernardino. County shall have the right upon reasonable notice and at reasonable hours of business to examine and inspect such records and books.

Records, should include, but are not limited to, monthly summary sheets, sign-in sheets, and other primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must also comply with the appropriate Office of Management and Budget (OMB) Circulars that state the administrative requirements, cost principles and other standards for accountancy.

All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records per the preceding requirements shall be considered grounds for withholding of payments for billings submitted and for termination of the Contract.

#### H. Change of Address

Contractor shall notify the Commission in writing of any change in mailing and/or service address. Notification shall occur in advance of the address change. At a minimum, notification must occur within five days of the address change. Change of address shall not interrupt service deliverables outlined in Attachment A.

#### I. Staffing and Notification

Contractor shall notify Commission of any continuing vacancies and any positions that become vacant during the term of this Contract that may result in reduction of services to be provided under this Contract. Upon notices of vacancies, the Contractor shall apprise Commission of the steps being taken to provide the services without interruption and to fill the position as expeditiously as possible. Vacancies and associated problems shall be reported to the Commission on each periodically required report for the duration of said vacancies and/or problems.

In the event of a problem or potential problem that will severely impact the quality or quantity of service delivery, or the level of performance under this Contract, Contractor will notify the Commission within one working day, in writing and by telephone.

#### J. Contractor Primary Contact

The Contractor will designate one individual to serve as the primary contact and one to serve as the alternate contact, if primary contact is unavailable, on behalf of the Contractor and will notify the Commission of these designees within 15 days after Contract approval. The primary contact shall have the authority to identify, on behalf of the Contractor, other parties able to give or receive information on behalf of this Contract.

Contractor shall notify the Commission when the primary contact will be unavailable or out of the office for two weeks or more or if there is any change in either the primary or alternate contact.

#### K. Responsiveness

Contractor or a designee must respond to Commission inquiries within five business days.

#### L. Grievance Policy

Contractor shall provide a system, approved by the Commission, through which participants of services shall have an opportunity to express their views and complaints regarding the delivery of service. Grievance procedure must be posted prominently in English and Spanish at service sites for participants to review.

#### M. Governing Board

Contractor shall provide the Commission with a listing identifying the members of the Board of Directors or other governing party, written schedule of all Board of Directors or other governing party meetings and provide the Commission with copies of the Board of Directors' minutes when discussions or actions taken during these meetings may impact on the Contract. All Board of Directors' minutes shall be submitted to the Commission with each periodically required report submitted following approval of the minutes. Further, the Commission representative shall have the option of attending Board meetings during the term of this Contract.<sup>60</sup>

N. Confidentiality

Contractor shall require its officers, agents, employees, volunteers and any subcontractor to sign a statement of understanding and comply with the provisions of federal, state and local statutes to assure that:

- All applications and records concerning any individual made or kept by any public officer or agency or contractor in connection with the administration of any services for which funds are received by the Contractor under this Contract, will be confidential and will not be open to examination for any purpose not directly connected with the administration, performance, compliance, monitoring or auditing of such services;
- No person will publish, disclose, or permit to be published or disclosed or used, any confidential information pertaining to any applicant or participant of services under this Contract;
- Contractor agrees to inform all subcontractors, consultants, employees, agents, and partners of the above provisions; and,
- Contractor shall comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as applicable.

O Child Abuse Reporting

Contractor shall ensure that all known or suspected instances of child abuse or neglect are reported to the appropriate law enforcement agency and/or to the appropriate Child Protective Services agency. This responsibility shall include:

- Assurance that all employees, agents, consultants or volunteers who perform services under this Contract and are mandated by Penal Code Sections 11164 et seq. to report child abuse or neglect, sign a statement, upon the commencement of their employment, acknowledging their reporting requirements and their compliance with them;
- Development and implementation of procedures for employees, agents, consultants, or volunteers who are not subject to the mandatory reporting laws for child abuse to report any observed or suspected incidents of child abuse to a mandated reporting party, within the program, who will ensure that the incident is reported to the appropriate agency;
- Provision of or arrangement of training in child abuse reporting laws (Penal Code, Sections 11164 et seq.) for all employees, agents, consultants, and volunteers, or verification that such persons have received training in the law within thirty (30) days of employment/volunteer activity.

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P. Department of Justice Clearance

Contractor shall obtain from the Department of Justice, records of all convictions involving any sex crimes, drug crimes, or crimes of violence of a person who is offered employment, or volunteers, for all positions in which he or she would have contact with a minor, the aged, the blind, the disabled or a domestic violence client, as provided for in Penal Code Section 11105.3. This includes licensed personnel who are not able to provide documentation of prior Department of Justice clearance. A copy of a license from the State of California is sufficient proof.

Contractor must have on file for review upon request a signed statement verifying Department of Justice clearance for all appropriate individuals.

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Q. Conditions of Employment

Contractor shall notify the Commission of any staff member, paid intern or volunteer who is knowingly or negligently employed who has been convicted of any crime of violence or of any sexual crime. Contractor shall investigate all incidents where an applicant, employee, or intern or volunteer has been arrested and/or convicted for any crime listed in Penal Code Section 11105.3 and shall notify the Commission. In the Commission's discretion, the Commission may instruct Contractor to take action to either deny/terminate employment or terminate internship and/or volunteer services where the

investigation shows that the underlying conduct renders the person unsuitable for employment, internship or volunteer services.

#### R. Meeting Attendance

Contractor will be required to attend meetings, workshops and training sessions around issues related to Contractor's particular region or directly related to the type of services being provided by Contractor as determined by the Commission. Notifications of such meetings will be provided to Contractor at least 10 business days prior to the meeting.

#### S. Indemnification and Insurance Requirements

Contractor agrees to and shall comply with the following indemnification and insurance requirements:

1. Indemnification – The Contractor agrees to indemnify, defend (with counsel reasonably approved by the Commission) and hold harmless the Commission and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Commission on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the Commission's "active" as well as "passive" negligence but does not apply to the Commission's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
2. Additional Insured – All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the Commission and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the Commission to vicarious liability but shall allow coverage for the Commission to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
3. Waiver of Subrogation Rights – The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the Commission, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the Commission.
4. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Commission.
5. Severability of Interests – The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the Commission or between the Commission and any other insured or additional insured under the policy.
6. Proof of Coverage – The Contractor shall furnish Certificates of Insurance to the Commission Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, the Contractor shall furnish a copy of the Declaration page for all applicable

policies and will provide complete certified copies of the policies and endorsements immediately upon request.

7. Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.
8. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
9. Failure to Procure Coverage – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, the Commission has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the Commission will be promptly reimbursed by the Contractor or Commission payments to the Contractor will be reduced to pay for Commission purchased insurance.
10. Insurance Review – Insurance requirements are subject to periodic review by the Commission. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Commission. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the Commission, inflation, or any other item reasonably related to the Commission’s risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the Commission to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Commission.

11. The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. Workers’ Compensation/Employers Liability – A program of Workers’ Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer’s Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to the Commission that it does not currently have any employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by the Commission’s Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- b. Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
- 1) Premises operations, fixed assets and mobile equipment.
  - 2) Products and completed operations.
  - 3) Broad form property damage (including completed operations).
  - 4) Explosion, collapse and underground hazards.
  - 5) Personal injury
  - 6) Contractual liability.
  - 7) \$2,000,000 general aggregate limit.

- c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

- e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

#### T. Licenses and Permits

Contractor shall comply with all applicable laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations and performance under the terms of the Contract and shall

procure all necessary licenses and permits required by the laws of the United States, State of California, San Bernardino County and all other appropriate governmental agencies, and agrees to pay all fees and other charges required thereby. Contractor shall maintain all required licenses during the term of this Contract. Contractor will notify the Commission immediately of loss or suspension of any such licenses and permits. Failure to comply with the provisions of this section may result in immediate termination of this Contract.

**U. Health and Safety**

Contractor shall comply with all applicable local, state and federal health and safety codes and regulations, including fire clearances, for each site where program services are provided under the terms of the Contract.

**V. Contract Compliance/Equal Employment Opportunity**

Contractor agrees to comply with the provisions of all applicable Federal, State, and County Laws, regulations and policies relating to equal employment or social services to Participant(s), including laws and regulations hereafter enacted. Contractor shall not unlawfully discriminate against any employee, applicant for employment, or service Participant(s) on the basis of race, national origin or ancestry, religion, sex, marital status, age, political affiliation, sexual orientation, or disability. Information on the above rules and regulations may be obtained from the Commission.

**W. Americans with Disabilities Act**

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (ADA).

**X. Attorney's Fees**

Contractor understands and agrees that any and all legal fees or costs associated with lawsuits concerning this Contract against the Commission shall be the Contractor's sole expense and shall not be charged as a cost under this Contract. In the event of any Contract dispute hereunder, each Party to this Contract shall bear its own attorney's fees and costs regardless of who prevails in the outcome of the dispute.

**Y. 2-1-1 Registration**

Contractor shall register with 2-1-1 San Bernardino County Inland Empire United Way within 30 days of Contract effective date and follow necessary procedures to be included in the 2-1-1 database. The Contractor shall notify the 2-1-1 San Bernardino County Inland Empire United Way of any changes in program services, location or contact information within ten (10) days of any change. Services performed as a result of being included in the 2-1-1 database, are separate and apart from the services being performed under this Contract and payment for such services will not be the responsibility of the Commission.

**Z. Ownership Rights**

The Commission shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material.

**AA. Attribution**

Contractor shall properly acknowledge the Commission per the requirements stated in the First 5 San Bernardino Attribution Standards.

**BB. Incongruous Activities**

Contractor agrees it will not perform or permit any political promotion or religious proselytizing activities in connection with the performance of this Contract. Contractor will ensure no staff will conduct activity intended to influence legislation, administrative rule making or the election of candidates for public office during the time compensated under this Contract or under representation such activity is being performed under this Contract.

## CC. Reports

Contractor, in a timely and accurate manner, shall submit reports on designated key aspects of the project as required by the Commission. Instructions, format and required information for the content will be provided by the Commission and available on the website: [www.first5sanbernardino.org](http://www.first5sanbernardino.org). FAILURE TO SUBMIT REPORTS IN A TIMELY AND ACCURATE MANNER SHALL BE A MATERIAL BREACH OF THIS CONTRACT.

Report requirements include, but are not limited to, the following and may be subject to change.

### ▪ Program Reports

Contractor will submit Program Reports which include monthly and year-to-date progress on actual achievement of program targets compared to projected achievements as detailed in Program Work Plan (Attachment A) and other data collection information as requested by the Commission. Program Reports will include data on participants served as well as narrative information on lessons learned, course corrections and client success stories for the quarter. Contractor is required by the Commission to complete and submit Program Reports electronically via the Commission's web based data system. Program Reports are due the last day of the month following the end of the program reporting period.

Contractor agrees that failure to submit reports as specified will be sufficient cause for the Commission to withhold any payment due until reporting requirements have been fulfilled.

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### ▪ Fiscal Reports

For each calendar month, Contractor shall provide the Commission with a Monthly Fiscal Request for Reimbursement/Invoice within 15 calendar days from the end of the reporting period.

Contractor shall submit any and all Final/Revised Fiscal Reports by July 31 for the previous fiscal year period or part thereof during the Contract term. All reports submitted by July 31 will be considered final and no additional reports will be accepted after this date.

Contractor will fulfill evaluation and other reporting requirements as mandated by the Commission and the California Children and Families Commission.

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### ▪ Asset Report

Contractor shall report all assets worth \$500 or more purchased with First 5 funds utilizing tools provided by the Commission for that purpose. The Straight Line method of depreciation will be applied to determine value. Closing Asset reports shall be submitted to the Commission staff no less than 30 days prior to the normal conclusion of a contract. If a contract is terminated early under any fiscal provision or due to correction of performance deficiencies, contractor shall submit the Closing Asset report within 10 business days of receiving notice of contract termination.

Contractor agrees that failure to submit reports as specified will be sufficient cause for the Commission to withhold any payment due until reporting requirements have been fulfilled.

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## DD Pro-Children Act of 1994

Contractor will comply with the Environmental Tobacco Smoke Act, also known as the Pro-Children Act of 1994 (20 U.S.C. 6081 et seq.).

#### EE. Environmental Regulations

EPA Regulations - If the amount available to Contractor under the Contract exceeds \$100,000, Contractor will agree to comply with the Clean Air Act (42 U.S.C. section 7606); section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738 [38 Fed. Reg. 25161 (Sept. 10, 1973)]; and Environmental Protection Agency regulations (40 C.F.R., part 32).

State Energy Conservation Clause - Contractor shall observe the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (California Code of Regulations, title 20, section 1401 et seq.).

#### FF. Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549 [51 Fed. Reg. 6370 (Feb. 18, 1986)] and Debarment and Suspension, And Other Responsibility Matters (45 C.F.R., section 76):

a. The Contractor certifies that it and any potential subcontractors:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (as defined at 45 C.F.R. section 76.200) by any federal department or agency;
- 2) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (a) (2) of this certification; and
- 4) Have not within a three-year period proceeding this application had one or more public transactions (federal, state, or local) terminated for cause or default; and

b. Where the Contractor is unable to certify as true any of the statements in this certification, he or she shall provide a written explanation to the Commission prior to the execution of this Contract. A failure to comply with this section may constitute grounds for termination of this Contract.

#### GG. Recycled Paper Products

The Commission has adopted a recycled product purchasing standards policy (11-10), which requires Contractors to use recycled paper for proposals and for any printed or photocopied material created as a result of a Contract with the Commission. The policy also requires Contractors to use both sides of the paper sheets for reports submitted to the Commission whenever practicable.

### IV. COMMISSION RESPONSIBILITIES

- A. Commission shall verify performance results of Contractor according to the Program Work Plan and other data collection information requested by the Commission in meeting terms of this Contract and the quality and effectiveness of services provided, based on criteria agreed upon, as delineated in this Contract.
- B. Commission shall compensate Contractor for approved expenses in accordance with Section V of this Contract.
- C. Commission shall specify all reports and deliverables required from the Contractor.
- D. Commission shall provide technical assistance as deemed necessary.
- E. The Commission will designate one individual to serve as the primary contact for the Contract and will notify the Contractor of this designee within 15 days of the Contract approval date.

## V. FISCAL PROVISIONS

### A. Contract Amount

The maximum amount of reimbursement under this Contract shall not exceed \$90,500 for the duration of the Contract term subject to the availability of California Children and Families Trust Fund monies. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof.

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### B. Payment Provisions

The Commission will disburse funds on a reimbursement payment process based on the Contract budget amount for the applicable fiscal year and monthly report submissions.

Funds may be advanced for the first month, if requested, for an amount up to, but not exceeding 15% of the Contract payment amount for Fiscal Year 2012-2013 only. All subsequent monthly reimbursements will be determined by actual expenditures reflected on the monthly reports.

If an advance is requested and approved, 10% of the total advanced amount will be withheld from the monthly reimbursements to recover the advanced funds over a ten (10) month period.

The Commission reserves the right to reduce or withhold any payments from the Contractor for failure to submit reports in a timely and accurate manner or when the Contractor is not in compliance with the Contract. Final payment under this Contract may be withheld until all requirements, including reports, for contract closure have been fulfilled by Contractor.

### C. EFT Payments

Contractor shall accept all payments from the Commission via electronic funds transfers (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by the Commission required to process EFT payments.

### D. Allowable Costs

Funds provided pursuant to this Contract shall be expended by Contractor in accordance with the Attachment B – Program Budget.

Such specified expenditures will be further limited to those that are considered both reasonable and necessary as determined by the Commission. Contractor agrees Commission may recover any payments for services or goods, including rental of facilities, which were not reasonable and necessary or which exceeded the fair market value. The recovery shall be limited to payments over and above reasonable or fair market amounts and any costs of recovery.

The reasonable and allowable reimbursement rate for use of motor vehicles, travel expenses and food is based on the current IRS allowable rate.

Costs must be incurred only during the contract term, except when specifically approved by the Commission. Contractor shall not use current year funds to pay prior or future year obligations. Contractor will not be reimbursed for expenditures incurred after the expiration or termination of this Contract.

Contractor shall obtain Commission approval for all overnight travel and out of State travel as it relates to services provided in this Contract. Reimbursement as it relates to pre-approved travel will be based on the Federal allowable rate. Request must be submitted in writing 30 days in advance of travel date and travel must be approved in advance by the Program Manager.

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### E. Supplanting of Funds

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In accordance with the Commission's Supplantation Policy, Contractor shall not supplant any Federal, State or County funds intended for the purposes of this Contract with any funds made available under this Contract. Contractor shall not claim reimbursement from Commission for, or apply sums received

from Commission with respect to that portion of its obligations, which have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining State funds under any State program or County funds under any County programs without prior written approval of the Commission.

#### F. Payment of Taxes

Commission is not liable for the payments of any taxes, other than applicable sales or use tax, resulting from this Contract however designated, levied or imposed, unless Commission would otherwise be liable for the payment of such taxes in the course of its normal business operations.

#### G. Budget Line Item Changes

A Budget Revision Request may be submitted by the Contractor to the Commission to modify a line or lines of the approved budget. The request must indicate the proposed line item changes, the budget as amended applying the requested changes and a written justification for each requested change. The request cannot result in any alteration or degradation to the program services and performance target as specified in this Contract.

The Executive Director, on behalf of the Commission, has the authority to approve (or deny) the request, provided that the modification does not deviate from the original intent of the contract or increase the total Contract amount. Contractor is limited to two Budget Revision Requests per fiscal year.

The Contractor must submit any requests to the Commission no later than March 31st of the fiscal year. Requests must be submitted in hard copy form with original signatures. Postmarked envelopes received after March 31st will not be accepted in lieu of receipt.

#### H. Budget Line Item Variance

Annual variances in excess of 10% of a line item cannot be made by the Contractor without prior approval of the Commission. Variance shall not result in a change to the total Contract amount or an increase to the administrative cost allocation of the approved budget. Contractor shall provide written justification for any budget line item variances of more than 10%.

#### I. Procurement

Contractor shall procure services or goods required under this Contract on a competitive basis, unless otherwise provided by law, and make selections based on obtaining the best value possible. When a non-competitive procurement is used, a written justification must be maintained and be made available upon request.

#### J. Fixed Assets

The purchase of any equipment, materials, supplies or property of any kind, including items such as publications and copyrights, which have a single unit cost of \$5000 or more, including tax, and was not included in Contractor's approved budget, shall require the prior written approval of the Executive Director of the Commission. Any such purchase shall directly relate to Contractor's services or activities under the terms of the Contract.

Any item with a single unit cost of \$500 or more, including tax, purchased with funds received under the terms of this Contract must undergo a 3-bid process. Items not fully consumed during the Contract term shall revert to be the property of the Commission, unless otherwise specified by the Commission. The disposition of such equipment or property must be approved by the Executive Director of the Commission upon Contract termination. If the reversion of any asset is demanded and not made to First 5 San Bernardino, the Commission reserves the right to reduce or withhold the value of the asset from any payments due to the Contractor for non-compliance.

Contractor shall maintain insurance against the loss, theft, or damage to any item with a single unit cost of \$500 or more, including tax, purchased with Commission funds for the full replacement value thereof in accordance with the provisions of Section III, subdivision S (Indemnification and Insurance Requirements).

**K. Payor of Last Resort**

Contractor shall attain funding through other sources than the Commission to provide services or support to participants whenever possible.

In cases where a participant is qualified for benefits from another source (such as MediCal, Healthy Families, federal or state funded programs, personal insurance, etc.), costs relating to services provided to that participant should be paid for by the primary payor first. Only the costs not covered will be allowable under this Contract. Written verification shall be provided upon request.

**L. Fiscal Record Keeping**

Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) and must account for all funds, tangible assets, revenue and expenditures.

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**VI. RIGHT TO MONITOR AND AUDIT**

**A. Right to Monitor and Audit**

The Commission or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Auditor General, shall have absolute right to monitor and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to observe the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation during any auditing or monitoring conducted.

Contractor shall cooperate with Commission in the implementation and evaluation of this Contract and comply with any and all reporting requirements established by Commission.

**B. Availability of Records**

All records pertaining to service delivery and all fiscal, statistical and management books and records shall be available for examination and audit by the Commission, and State representatives for a period of five years after final payment under the Contract or until all pending Commission and State audits are completed, whichever is later. Records, should include, but are not limited to participant files, monthly summary sheets, sign-in sheets, and other primary source documents. Contractor will have available for Commission review, all relevant financial records for the fiscal year being audited including documentation to verify shared costs or costs allocated to various funding sources as well as the basis for which the shared cost was allocated.

Program data shall be retained locally in San Bernardino County and made available upon request or turned over to Commission. If said records are not made available at the scheduled monitoring visit, Contractor may, at Commission's option, be required to reimburse Commission for expenses incurred due to required rescheduling of monitoring visit(s). Such reimbursement will not exceed \$50 per hour (including travel time) and be deducted from the invoiced monthly payment.

**C. Assistance by Contractor**

Contractor shall provide all reasonable facilities and assistance for the safety and convenience of Commission's representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of the Contractor.

**D. Independent Audit Provisions**

On an annual basis, Contractor is required to hire an independent licensed Certified Public Accountant (CPA), who shall prepare and file with the Commission, an Independent Auditor's Report for the term of the Contract.

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**E. Recovery of Investigation and Audit Costs**

Contractor shall reimburse the Commission for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation of the terms of the Contract. Reimbursement for such costs will be withheld from any amounts due to Contractor.

When additional information (receipts, paperwork, etc.) is requested of the Contractor as a result of any audit or monitoring, Contractor must provide all information requested by the deadline specified by the Commission. A failure to provide the information by the specified deadline, will subject the Contractor to the provisions of Section VII (Correction of Performance Deficiencies and Termination).

## **VII. CORRECTION OF PERFORMANCE DEFICIENCIES AND TERMINATION**

- A. Failure by Contractor to comply with any of the provisions, covenants, requirements, or conditions of this Contract shall be a material breach of this Contract. In such event the Commission, in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, may:
- Afford Contractor a time period within which to cure the breach, which period shall be established at the sole discretion of the Executive Director; and/or
  - Request Contractor provide and implement an action plan to correct breach within a reasonable timeframe; and/or
  - Discontinue reimbursement to the Contractor for and during the period in which the Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or;
  - Withhold funds pending duration of the breach; and/or
  - Offset against any monies billed by the Contractor but yet unpaid by the Commission those monies disallowed pursuant to bullet 3 of this paragraph; and/or
  - Immediately terminate this Contract with just cause and be relieved of the payment of any consideration to the Contractor should the Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the Commission may proceed with the work in any manner deemed proper by the Commission. The cost to the Commission shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.
- B. The Executive Director of the Commission, shall give Contractor notice of any action pursuant to this section, which notice shall be effective when given.
- C. The Executive Director of the Commission is authorized to exercise Commission's rights with respect to initiating any remedies or termination of this Contract in his/her sole discretion and to give notice as set forth below in this Contract.

## **VIII. TERM**

- A. This Contract is effective commencing July 1, 2012 and expires June 30, 2013, but may be terminated earlier in accordance with provisions of paragraph below or Section VII of this Contract.
- Initial Here
- B. Notwithstanding the preceding paragraph, this Contract may be terminated by either party by serving a written notice thirty (30) days in advance of termination. The Executive Director of the Commission has the authority and discretion to exercise this right on behalf of the Commission.
- C. The contract term may be extended for one additional one-year period by mutual agreement of the parties.
- D. Continuation of this Contract for each fiscal year after June 30, 2013 is contingent on a Program Work Plan and a Program Budget being submitted by Contractor and approved by the Commission. Continuation of this Contract is also contingent on the priorities, direction, and vision for investments of the Commission.

## IX. GENERAL PROVISIONS

### A. Notices

When notices are required to be given pursuant to this Contract, the notices shall be in writing and mailed to the following respective addresses listed below

**Contractor:** City of Montclair  
5111 Benito Street  
Montclair, CA 91763

**Commission:** First 5 San Bernardino  
330 North D Street, 5<sup>th</sup> Floor  
San Bernardino, CA 92415-0442

- B. Commission shall have Power of Attorney to pay delinquent debts and unpaid wages from accounts payable to Contractor in the event debts and wages have not been paid on a current basis.
- C. Nothing contained in this Contract shall be construed as creating a joint venture, partnership or employment arrangement between the parties hereto, nor shall either party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the party hereto.
- D. No waiver of any of the provisions of the Contract shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the parties in an amendment to this Contract.
- E. Any alterations, variations, modifications, or waivers of provisions of the Contract, unless specifically allowed in the Contract, shall be valid only when they have been reduced to writing, duly signed and approved by the authorized representatives of both parties as an amendment to this Contract. No oral understanding or contract not incorporated herein shall be binding on any of the parties hereto. No course of dealing and no delay or failure of a party in exercising any right under any contract shall affect any other or future exercise of that right or any exercise of any other right. A party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- Initial Here
- F. If any provision of the Contract is held by a court of competent jurisdiction to be unenforceable or contrary to law, it shall be modified where practicable to the extent necessary so as to be enforceable, giving effect to the intention of the parties, and the remaining provisions of the Contract shall not be affected.
- G. This Contract shall be governed by and construed in all aspects in accordance with the laws of the State of California without regard to principles of conflicts of laws. The parties agree to the exclusive jurisdiction of the federal court located in the County of Riverside and the state court located in the County of San Bernardino, for any and all disputes arising under this Contract, to the exclusion of all other federal and state courts.
- H. Contractor understands and agrees that any and all legal fees or costs associated with lawsuits against Commission concerning this Contract shall be Contractor's sole expense and shall not be charged as a cost under this Contract. In the event of any contract dispute hereunder, each party to this Contract shall bear its own attorneys' fees and costs regardless of who prevails in the outcome of the dispute.

## X. EQUAL EMPLOYMENT OPPORTUNITY/CIVIL RIGHTS

### A. Equal Employment Opportunity Program

Contractor agrees to comply with: the provisions of the County of San Bernardino Equal Employment Opportunity Program and rules and regulations adopted pursuant thereto; Executive Order 11246 [30 Fed. Reg. 12319 (Sept. 24, 1965)], as amended by Executive Orders 11375, 11625, 12138, 12432, and 12250; Title VII of the Civil Rights Act of 1964 (42 U.S.C. section 2000e, et seq.); Division 21 of the

California Department of Social Services Manual of Policies and Procedures; California Welfare and Institutions Code section 10000); the California Fair Employment and Housing Act (Cal. Gov. Code section 12900, et seq.); and other applicable federal, state, County and Commission laws, regulations and policies relating to equal employment or social services to welfare recipients, including laws and regulations hereafter enacted.

The Contractor shall not unlawfully discriminate against any employee, applicant for employment, or service recipient on the basis of race, color, national origin or ancestry, religion, sex, marital status, age, political affiliation or disability. Information on the above rules and regulations may be obtained from the Commission.

#### B. Civil Rights Compliance

The Contractor shall develop and maintain internal policies and procedures to assure compliance with each factor outlined by State regulation. These policies must be developed into a Civil Rights Plan, which is to be on file with the Commission within thirty (30) days of awarding of the Contract. The Plan must address prohibition of discriminatory practices, accessibility, language services, staff development and training, dissemination of information, complaints of discrimination, compliance review, and duties of the Civil Rights Liaison. Upon request, the Commission will supply a sample of the Plan format. The Contractor will be monitored by the Commission for compliance with provisions of its Civil Rights Plan.

### XI. IMPROPER CONSIDERATION

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the Commission in an attempt to secure favorable treatment regarding this Contract.

The Commission, by written notice, may immediately reject any proposal or terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the Commission with respect to this Contract. This prohibition shall apply to any amendment, extension or evaluation process once a Contract has been awarded.

Contractor shall immediately report any attempt by a Commission officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the Commission Administrative Office. In the event of a termination under this provision, the Commission is entitled to pursue any available legal remedies.

### XII. DISCLOSURE OF CRIMINAL AND CIVIL PROCEEDINGS

The Commission reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in termination of the Contract. The Commission also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information provided or discovered may result in termination of the Contract.

The Contractor may be asked to disclose whether the firm or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor may be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those

individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For the purposes of this provision "key employees" includes any individuals providing direct service to the Commission. "Key employees" do not include clerical personnel providing service at the Contractor's offices or locations.

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*Continued on next page*

**XIII. CONCLUSION**

- A. This Contract, consisting of 23 pages and Attachments A – C inclusive, is the full and complete document describing services to be rendered by Contractor to Commission, including all covenants, conditions, and benefits. Attachments A – C are attached hereto and incorporated herein as though set forth in full.
- B. The signatures of the parties affixed to this Contract affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.

**CHILDREN & FAMILIES COMMISSION FOR  
SAN BERNARDINO COUNTY**

**CITY OF MONTCLAIR**

▶ \_\_\_\_\_  
 Authorized Signature

**Linda Haugan**  
 Printed Name

**Commission Chair**  
 Title

\_\_\_\_\_  
 Dated

Legal Entity

▶ \_\_\_\_\_  
 Authorized Signature

**Paul M. Eaton**  
 Printed Name

**Mayor**  
 Title

\_\_\_\_\_  
 Dated

Official Stamp

ATTEST:

\_\_\_\_\_  
 Yvonne L. Smith

**Deputy City Clerk**  
 Title

\_\_\_\_\_  
 Dated

<p><b>Reviewed for Processing</b></p> <p>▶ _____  <b>Cindy Faulkner</b>          Operations Manager</p> <p>_____          Date</p>	<p><b>Approved as to Legal Form</b></p> <p>▶ _____  <b>Regina Coleman</b>          Commission Counsel</p> <p>_____          Date</p>	<p><b>Presented to Commission for Signature</b></p> <p>▶ _____  <b>Karen E. Scott</b>          Executive Director</p> <p>_____          Date</p>
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## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO 12-64 WITH FIRST 5, THE CHILDREN AND FAMILIES COMMISSION FOR SAN BERNARDINO COUNTY, TO PROVIDE A CHILDHOOD OBESITY PREVENTION PROGRAM	DATE: July 2, 2012
	SECTION: AGREEMENTS
	ITEM NO 6
	FILE I.D. HSV042
	DEPT.: COMMUNITY DEV.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 12-64 with First 5, The Children and Families Commission for San Bernardino County, to accept and appropriate grant funds in the amount of \$222,990 to provide a childhood obesity prevention and screening program for preschool age children in Montclair. A copy of proposed Agreement No. 12-64 is attached for the City Council's review and consideration.

**BACKGROUND:** The City was successful in obtaining a one-year First 5 San Bernardino County competitive grant. First 5 was formed as a result of the passage of Proposition 10, which created an additional tobacco tax to fund health and related services for children aged 0 to 5 and their families. Proposed Agreement No. 12-64 would provide funding for the following:

- The ability to screen 240 children aged 2 to 5 for overweight/obesity indicators
- Intensive one-on-one health intervention classes for at least 20 children identified as "high risk" for health problems related to obesity
- Fiscal and data management and reporting to meet First 5 requirements

The term of proposed Agreement No. 12-64 is July 1, 2012, through June 30, 2015.

**FISCAL IMPACT:** Agreement No. 12-64 would provide grant funding in the amount of \$222,900 to pay for personnel and program costs.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 12-64 with First 5, The Children and Families Commission for San Bernardino County, in support of a childhood obesity prevention and screening program.

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Prepared by: <u>M. Richter</u>	Reviewed and Approved by: <u>[Signature]</u>
Proofed by: <u>Christine Smedley</u>	Presented by: <u>[Signature]</u>

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**CHILDREN  
AND FAMILIES  
COMMISSION  
FOR  
SAN BERNARDINO COUNTY  
STANDARD CONTRACT**

FOR COMMISSION USE ONLY						
<input checked="" type="checkbox"/> New	Vendor Code		<b>S</b>	Dept. <b>A</b>	Contract Number	
<input type="checkbox"/> Change			<b>C</b>	903	HW048	
<input type="checkbox"/> Cancel						
Organization			Dept.	Orgn.	Contractor's License No.	
Children and Families Commission			903	PROG		
Commission Representative				Telephone	Total Contract Amount	
Cindy Faulkner, Operations Manager				909-386-7706	\$222,990	
Contract Type						
<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason:						
Commodity Code		Contract Start Date		Contract End Date		Original Amount
95200		July 1, 2012		June 30, 2015		\$222,990
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
RRC	903	PROG	300	3357	HESOOY13	\$222,990
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Abbreviated Use				Estimated Payment		Total by Fiscal Year
Early Screening & Intervention- Obesity				FY	Amount	I/D
				12-13	\$74,330	
				13-14	\$74,330	
				14-15	\$74,330	

THIS CONTRACT is entered into in the State of California by and between the Children and Families Commission for San Bernardino County, hereinafter called the Commission, and

Legal Name (hereinafter called the Contractor)

City of Montclair  
 Department/Division  
 Human Services  
 Address  
 5111 Benito Street  
 Montclair, CA 91763  
 Phone  
 (909) 626-8571  
 Federal ID No.  
 95-600-5731

Program Address (if different from legal address):

**IT IS HEREBY AGREED AS FOLLOWS:**

**WHEREAS**, the Commission has been authorized by the State of California under Section 130100 -130155 of the Health and Safety Code and Section 30131.2 of the Revenue and Taxation Code, in accordance with the Children and Families Act of 1998, to promote, support and improve the early development of children prenatal through age five, and

**WHEREAS**, the Commission has been authorized by these cited references and by County of San Bernardino Code under Sections 12.291 – 12.297 to contract with organizations for services to children prenatal through age five and their families in San Bernardino County, and

**WHEREAS**, the Commission desires that such services be provided by Contractor and Contractor agrees to provide the services as set forth in this Contract,

**NOW THEREFORE**, in accordance with the conditions stated herein, the Commission and Contractor mutually agree to the following terms and conditions:

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## I. DEFINITIONS

**Accessibility:** Ease of obtaining services, measured by addressing geographical, travel and other barriers.

**Asthma:** Is a disease/condition that affects the lungs. It causes repeated episodes of wheezing, breathlessness, chest tightness, and nighttime or early morning coughing and is one of the most common long-term diseases of children although adults may also have this condition.

**Ages and Stages Questionnaire (ASQ-3):** A developmental screening tool to screen young children to easily identify potential delays as early as possible and determine which children need further assessment or ongoing monitoring. The ASQ:Social Emotional (ASQ-SE) tool measures the social and emotional competence of children.

**Basic Needs:** Necessities to meet the food, shelter, and immediate safety needs of a parent and/or child. These resources are meant to address an immediate need.

**C4Yourself:** A Component to the C-IV System that allows customers to apply for Food Stamps, Medi-Cal, CalWORKS, and CMSP via the internet. Customers enter information to apply online and the data transfers to the C-IV System automatically. Customers have the ability to complete and submit their annual redeterminations/recertifications, access their quarterly/mid-year status reports and have the ability to view the status of their cash/benefits.

**Capital Expenses:** Costs of construction projects, including but not limited to; brick and mortar type projects, demolition, room expansion, carpet installation, air-conditioner or water heater installation/replacement, wheel-chair access ramps, stationary playgrounds or vehicle purchases.

**Care Coordination:** A service deliverable that includes the following activities: implementing an active outreach system to underserved populations, establishing a family's eligibility for services or funding, providing information, answering questions and helping people make decisions about services, helping families complete paperwork to obtain services, making and following up on referrals to health care providers, helping families find interpreters, determining potential barriers for parents and problem-solving to reduce the barriers, arranging for transportation for medical appointments, scheduling appointments and coordinating with other health care appointments if possible, explaining the importance of health care and answering some common health questions, reviewing responsibilities and rights of patients and of health care providers, coordinating with families to facilitate follow-up on recommendations and routine care, and providing re-enrollment assistance.

**Case Management:** A collaborative process that assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet the client's needs in a limited time frame based on a service plan not to exceed one (1) year in duration. Characterized by advocacy, communication, resource management, quality cost-effective interventions and outcomes, and linking the client with systems.

**Cost Effectiveness:** Achieving the desired goal with the minimum of expenditure.

**Child Care Licensing:** Managed by the State of California. This agency licenses and monitors Family Child Care Homes and Child Care Centers in an effort to ensure they provide a safe and healthy environment for children who are in day care.

**Child Development Permit Matrix:** Issued through the California Commission on Teacher Credentialing who authorize multiple permit levels for a variety of services in child care and child development programs.

**Dental Screening:** A visual assessment of the child's oral health, done without instrumentation or the use of x-rays or any other diagnostic equipment. The provider observes, provides fluoride varnish and notes the condition of the teeth, surrounding soft tissues, simple jaw relationships and overall oral hygiene.

**Dental Treatment:** Includes a thorough dental examination with the use of x-rays and proper instruments to diagnose the condition of the teeth and other oral structures. A full scope of treatment may include preventative services, such as cleaning and oral hygiene instruction for parent and/or child, as well as restoration or removal of damaged teeth and proper space maintenance. Complete

treatment results in the proper function and comfort of the child's mouth in a developmentally appropriate way. It anticipates the best possible outcome for healthy permanent teeth.

**Desired Results Development Profile (DRDP):** An observation tool for teachers to record individual progress toward the achievement of four Desired Results for children: Children are personally and socially competent; Children are effective learners; Children show physical and motor competence; Children are safe and healthy.

**Direct Costs:** Costs that can be identified specifically with a particular final cost objective, such as a particular project, service, or other direct activity of an organization.

**Evidence-Based:** Refers to the use of research and scientific studies as a base for determining best practices.

**Full Time Equivalent (FTE):** A measurement equal to one staff person employed in a full-time work schedule and which is, for purposes relating to this contract, calculated at 2,080 hours in a year. FTEs provide a common unit of measurement for positions budgeted. The number of FTEs is the cumulative value expressed, using the full-time equivalent measurement as a baseline, as a total percentage of time or as a total percentage of funds related to a particular classification.

**Federally Qualified Health Center (FQHC):** Entities as defined by the Social Security Act at section 1905(l)(2) which, "(i) is receiving a grant under section 330 of the Public Health Service Act, or (ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant and (II) meets the requirements to receive a grant under section 330 of the Public Health Service Act, (iii) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, and is determined by the Secretary to meet the requirements for receiving such a grant including requirements of the Secretary that an entity may not be owned, controlled, or operated by another entity; or (iv) was treated by the Secretary, for purposes of Part B of title XVIII, as a comprehensive Federally-funded health center as of January 1, 1990, and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an urban Indian organization receiving funds under Title V of the Indian Health Care Improvement Act for the provision of primary health services." In considering these definitions, it should be noted that programs meeting the FQHC requirements commonly include the following (but must be certified and meet all requirements stated above): Community Health Centers, Migrant Health Centers, Healthcare for the Homeless Programs, Public Housing Primary Care Programs, Federally Qualified Health Center Look-Alikes, and Tribal Health Centers.

**Indirect Costs:** Costs that have been incurred for the benefit of multiple projects or activities and cannot be readily identified with a particular final cost objective. An organization having several major functions may need to accumulate the indirect costs into separate groupings and then allocate proportionally to the benefiting functions by means of a base which best measures the relative degree of benefit. The indirect cost rate would be used to distribute the proportional amount of indirect costs to the individual projects or activities based on a Board approved cost allocation plan.

**Life Skills Progression (LSP):** An outcome measurement instrument designed for use by programs serving low income parents of children aged 0-3 years, but it can extend to age 60 months. There are 43 parent and child scales which describe a spectrum of skills and abilities over six major categories of functioning. The LSP is used to collect outcomes data, to monitor client strengths and needs, to plan clinical interventions, and provide data for research purposes.

**Kindergarten Student Entrance Profile (KSEP):** A screening tool to measure the developmental readiness of each student upon entering kindergarten for the first time. It serves as a baseline assessment and provides data on student's readiness as they enter kindergarten.

**Nurturing Parenting:** Family-centered initiative designed to build nurturing parenting skills as an alternative to abusive and neglecting parenting and child-rearing practices. The long term goals are to prevent recidivism in families receiving social services, lower the rate of multi-parent teenage pregnancies, reduce the rate of juvenile delinquency and alcohol abuse, and stop the intergenerational cycle of child abuse by teaching positive parenting behaviors.

**Obesity:** Defined as a BMI at or above the 95<sup>th</sup> percentile for children of the same age and sex within the ages of 2-19 years.

**Outcome:** The result, which the Commission seeks (as outlined in the Strategic Plan) and to which all performance targets must contribute to a measurable change.

**Overweight:** Is defined as a BMI at or above the 85<sup>th</sup> percentile and lower than the 95<sup>th</sup> percentile for children of the same age and sex within the ages of 2-19 years.

**Parenting Education:** Programs that improve knowledge and increase positive parenting skills.

**Participant:** A recipient of funded services in accordance with the target population, are children, prenatal through age five and/or pregnant women.

**Participant Support:** Budget line item category for items purchased to remove barriers or to provide motivation to participants upon completion of the program. Items purchased should be relative to the program objectives. Gift cards are not an allowable expense.

**Participant Transportation:** Budget line item category for costs involved with transporting participants to needed services and/or appointments.

**Perinatal Parent Education Program:** Programs that address the concerns and needs of a pregnant woman, her infant child, and the woman's support system. These programs address and affect not only healthy birth outcomes but improved child well being and family stability outcomes as well.

**Performance Target:** The specific result that a Contractor seeking investment will commit to achieve. It is tangible in the sense that it can be verified and narrow enough to be directly achieved by the Contractor. It almost always represents a measurable change in the participant of a program.

**Professional Services/Consultants:** Independent contractors hired to perform services not related to providing direct services. Examples include janitorial services, bookkeeping services, speakers, etc.

**Program Materials/Supplies:** Budget line item category for items directly related to service delivery such as course curriculum, children's books, journals used by participants, child development toys, etc.

**Program Work Plan:** A plan that includes the Performance Targets of a program and serves as a way to manage the program to achieve desired results and measurable outcomes.

**Quality Child Care:** Licensed child care and early learning programs (including home-based and center-based care) are safe, healthy, nurturing, stimulating, supportive, interactive, culturally appropriate and sensitive to the needs of all children. They promote early education and the development of trusting relationships to support individual children's physical, emotional, social and intellectual development.

**Relapse:** The process of becoming unable to cope with life in sobriety. The process may lead to renewed alcohol or drug abuse, physical or emotional collapse, or suicide and is marked by predictable and identifiable warning signs that begin long before a return to use or collapse occurs.

**Relapse Prevention:** Efforts to teach people to recognize and manage warning signs so that they can interrupt the progression to relapse or collapse and return to the process of recovery.

**Request for Proposal (RFP):** The document used to solicit a solution or solutions from potential Contractors to a specific problem or need.

**Researched Based:** See evidence-based: Using research as the basis for determining best practices.

**Resource Center:** A facility to which children, prenatal through age five, and families access services needed. Two basic program elements must be present at a Resource Center for it to meet the minimal definition: (i) referrals and linkages to critical services and programs, not represented physically at the center, and (ii) case management (see definition for Case Management).

**Rural Health Clinic (RHC):** Clinics that are certified under section 1861(aa)(2) of the Social Security Act to provide care in underserved areas, and therefore, to receive cost-based Medicare and Medicaid reimbursements.

**Satisfaction Survey:** Survey designed to measure the participant's overall satisfaction with the services rendered. Satisfaction Surveys address specific aspects of service provision in order to identify problems and opportunities for improvement.

**Special Needs:** Children having an identified disability, health, or mental health condition(s) that require early interventions, special education services, or other specialized supports.

**Staff Development/Training:** Budget line item category for expenses associated with staff training, conferences, retreats, classes, and any other staff development activities related to the funded program.

**Staff Mileage/Travel:** Budget line item category for employee mileage and travel costs (including lodging and food) for travel related to the program, based on the current IRS allowable rate.

**Strengthening Families™:** A framework for working with children and families. The approach allows for consistency across child- and family-serving systems and acknowledges the interdependent factors affecting families every day. The foundation of this framework is built upon five research-based Protective Factors. When these Protective Factors are present and robust, families are less likely to experience child abuse or neglect and are more equipped to create environments for young children's optimal development.

**Subcontractor:** Agencies contracted by the primary Contractor to provide direct services for which they will be responsible for achieving the performance targets for the portion of services they are providing. Contractor shall be responsible for the performance of any subcontractor.

**Verification:** Validates that something represented to happen does in fact take place. The verification tools must be approved by the Commission.

**Women, Infants, and Children (WIC):** The Special Supplemental Nutrition Program for Women, Infants, and Children - better known as the WIC Program - serves to safeguard the health of low-income pregnant, postpartum, and breastfeeding women, infants, and children up to age 5 who are at nutritional risk by providing nutritious foods to supplement diets, information on healthy eating including breastfeeding promotion and support, and referrals to health care. Is maintained by the Food and Nutrition Service (FNS), a Federal agency of the U.S. Department of Agriculture, responsible for administering the WIC Program at the national and regional levels.

## II. CONTRACTOR'S SERVICE RESPONSIBILITIES

A. Contractor shall provide all program services identified in this Contract, including Attachment A – Program Work Plan 2012-2013, Requirements and Expectations Attachment C. Pursuant to Section II, paragraphs D & F, and Section III, paragraph CC, and Section VIII, paragraph D of the Contract, Attachment A will be amended for Fiscal Year 2013-2014 and Fiscal Year 2014-2015 to list the specific quantitative targets for the respective year.

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B. Contractor shall provide services in a manner consistent with the Principles on Equity as adopted by the Commission and as available on the Commission website at [www.first5sanbernardino.org](http://www.first5sanbernardino.org).

C. Contractor shall coordinate with appropriate agencies to enhance service provision and to maximize usage of California Children and Families Trust Fund monies available.

D. Contractor shall deliver performance targets as specified in the Contract and provide evidence of achievement as identified in the verification. The verification tools must be approved by the Commission. When specified by the Commission, verification tools must be developed in collaboration with staff or agencies as designated by Commission.

E. Contractor shall cooperate with any consultant, technical advisor, or committee as designated by the Commission to support the evaluation system development and implementation process.

F. Contractor's Program Work Plan (Attachment A) and other program specific data collection information requested by the Commission will be placed in the Commission's web based data system. Contractor is bound by the information contained in the data collection system. If there is a discrepancy between the Contractor's Program Work Plan (Attachment A) and the data collection system, the information in the system will take precedence over the Program Work Plan and will be used to evaluate Contractor's performance under the Contract. It is the responsibility of the Contractor to ensure that the information entered into the data system, as it relates to the Performance Program Work Plan and/or other program specific data collection information requested by the Commission, fully captures the intent of the program/project for the term identified in Section II.

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### III. CONTRACTOR'S GENERAL RESPONSIBILITIES

#### A. Participants

Contractor understands and acknowledges that the services under this Contract are for the purposes of promoting, supporting and improving the early development of children prenatal through age five. As such, services provided under this Contract shall offer a direct benefit to this population. Any service provided beyond this limitation, unless as agreed upon in this Contract, is a breach of contract and an unauthorized expenditure of Children and Families First Act funds. Services to siblings and family members who are not parents or primary caregivers may only be incidental to services provided to children prenatal through age five.

#### B. Contractor Capacity

In the performance of this Contract, Contractor its agents and employees shall act in an independent capacity and not as officers, employees, or agents of the Commission.

#### C. Contract Assignability

Without the prior written consent of the Commission, the Contract is not assignable by Contractor either in whole or in part.

#### D. Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, subcontractors, independent contractors, consultants, professional service representatives, volunteers and the Commission. Contractor shall make a reasonable effort to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family, business, or other ties. In addition, Contractor's employees shall not simultaneously receive payment for work done as an independent contractor without obtaining prior approval from the Executive Director of the Commission, or authorized designee. In the event that the Commission determines that a conflict of interest situation exists, the Commission may disallow any increase in costs associated with the conflict of interest situation and such conflict may constitute grounds for termination of this Contract.

#### E. Former Commission Administrative Officials

Contractor agrees to provide or has already provided information on former Commission administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former Commission administrative officials who terminated Commission employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "Commission Administrative Official" is defined as a member of the Commission or such Administrative Staff.

If during the course of the administration of this Contract, the Commission determines that the Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the Commission, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the Commission is entitled to pursue any available legal remedies.

#### F. Subcontracting

Contractor agrees not to enter into any subcontracting agreements for work contemplated under this Contract without first obtaining written approval from the Commission. Any subcontractor shall be subject to the same provisions as the Contractor. Contractor shall be ultimately responsible for the performance of any subcontractor.

#### G. Recordkeeping

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. Said records shall be kept and

maintained within the County of San Bernardino. County shall have the right upon reasonable notice and at reasonable hours of business to examine and inspect such records and books.

Records, should include, but are not limited to, monthly summary sheets, sign-in sheets, and other primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must also comply with the appropriate Office of Management and Budget (OMB) Circulars that state the administrative requirements, cost principles and other standards for accountancy.

All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records per the preceding requirements shall be considered grounds for withholding of payments for billings submitted and for termination of the Contract.

#### H. Change of Address

Contractor shall notify the Commission in writing of any change in mailing and/or service address. Notification shall occur in advance of the address change. At a minimum, notification must occur within five days of the address change. Change of address shall not interrupt service deliverables outlined in Attachment A.

#### I. Staffing and Notification

Contractor shall notify Commission of any continuing vacancies and any positions that become vacant during the term of this Contract that may result in reduction of services to be provided under this Contract. Upon notices of vacancies, the Contractor shall apprise Commission of the steps being taken to provide the services without interruption and to fill the position as expeditiously as possible. Vacancies and associated problems shall be reported to the Commission on each periodically required report for the duration of said vacancies and/or problems.

In the event of a problem or potential problem that will severely impact the quality or quantity of service delivery, or the level of performance under this Contract, Contractor will notify the Commission within one working day, in writing and by telephone.

#### J. Contractor Primary Contact

The Contractor will designate one individual to serve as the primary contact and one to serve as the alternate contact, if primary contact is unavailable, on behalf of the Contractor and will notify the Commission of these designees within 15 days after Contract approval. The primary contact shall have the authority to identify, on behalf of the Contractor, other parties able to give or receive information on behalf of this Contract.

Contractor shall notify the Commission when the primary contact will be unavailable or out of the office for two weeks or more or if there is any change in either the primary or alternate contact.

#### K. Responsiveness

Contractor or a designee must respond to Commission inquiries within five business days.

#### L. Grievance Policy

Contractor shall provide a system, approved by the Commission, through which participants of services shall have an opportunity to express their views and complaints regarding the delivery of service. Grievance procedure must be posted prominently in English and Spanish at service sites for participants to review.

#### M. Governing Board

Contractor shall provide the Commission with a listing identifying the members of the Board of Directors or other governing party, written schedule of all Board of Directors or other governing party meetings and provide the Commission with copies of the Board of Directors' minutes when discussions or actions taken during these meetings may impact on the Contract. All Board of Directors' minutes shall be submitted to the Commission with each periodically required report submitted following approval of the minutes. Further, the Commission representative shall have the option of attending Board meetings during the term of this Contract.

N. Confidentiality

Contractor shall require its officers, agents, employees, volunteers and any subcontractor to sign a statement of understanding and comply with the provisions of federal, state and local statutes to assure that:

- All applications and records concerning any individual made or kept by any public officer or agency or contractor in connection with the administration of any services for which funds are received by the Contractor under this Contract, will be confidential and will not be open to examination for any purpose not directly connected with the administration, performance, compliance, monitoring or auditing of such services;
- No person will publish, disclose, or permit to be published or disclosed or used, any confidential information pertaining to any applicant or participant of services under this Contract;
- Contractor agrees to inform all subcontractors, consultants, employees, agents, and partners of the above provisions; and,
- Contractor shall comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as applicable.

O. Child Abuse Reporting

Contractor shall ensure that all known or suspected instances of child abuse or neglect are reported to the appropriate law enforcement agency and/or to the appropriate Child Protective Services agency. This responsibility shall include:

- Assurance that all employees, agents, consultants or volunteers who perform services under this Contract and are mandated by Penal Code Sections 11164 et seq. to report child abuse or neglect, sign a statement, upon the commencement of their employment, acknowledging their reporting requirements and their compliance with them;
- Development and implementation of procedures for employees, agents, consultants, or volunteers who are not subject to the mandatory reporting laws for child abuse to report any observed or suspected incidents of child abuse to a mandated reporting party, within the program, who will ensure that the incident is reported to the appropriate agency;
- Provision of or arrangement of training in child abuse reporting laws (Penal Code, Sections 11164 et seq.) for all employees, agents, consultants, and volunteers, or verification that such persons have received training in the law within thirty (30) days of employment/volunteer activity.

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P. Department of Justice Clearance

Contractor shall obtain from the Department of Justice, records of all convictions involving any sex crimes, drug crimes, or crimes of violence of a person who is offered employment, or volunteers, for all positions in which he or she would have contact with a minor, the aged, the blind, the disabled or a domestic violence client, as provided for in Penal Code Section 11105.3. This includes licensed personnel who are not able to provide documentation of prior Department of Justice clearance. A copy of a license from the State of California is sufficient proof.

Contractor must have on file for review upon request a signed statement verifying Department of Justice clearance for all appropriate individuals.

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Q. Conditions of Employment

Contractor shall notify the Commission of any staff member, paid intern or volunteer who is knowingly or negligently employed who has been convicted of any crime of violence or of any sexual crime. Contractor shall investigate all incidents where an applicant, employee, or intern or volunteer has been arrested and/or convicted for any crime listed in Penal Code Section 11105.3 and shall notify the Commission. In the Commission's discretion, the Commission may instruct Contractor to take action to either deny/terminate employment or terminate internship and/or volunteer services where the

investigation shows that the underlying conduct renders the person unsuitable for employment, internship or volunteer services.

R. Meeting Attendance

Contractor will be required to attend meetings, workshops and training sessions around issues related to Contractor's particular region or directly related to the type of services being provided by Contractor as determined by the Commission. Notifications of such meetings will be provided to Contractor at least 10 business days prior to the meeting.

S. Indemnification and Insurance Requirements

Contractor agrees to and shall comply with the following indemnification and insurance requirements:

1. Indemnification – The Contractor agrees to indemnify, defend (with counsel reasonably approved by the Commission) and hold harmless the Commission and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Commission on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the Commission's "active" as well as "passive" negligence but does not apply to the Commission's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
2. Additional Insured – All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the Commission and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the Commission to vicarious liability but shall allow coverage for the Commission to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
3. Waiver of Subrogation Rights – The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the Commission, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the Commission.
4. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Commission.
5. Severability of Interests – The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the Commission or between the Commission and any other insured or additional insured under the policy.
6. Proof of Coverage – The Contractor shall furnish Certificates of Insurance to the Commission Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required, shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, the Contractor shall furnish a copy of the Declaration page for all applicable

policies and will provide complete certified copies of the policies and endorsements immediately upon request.

7. Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.
8. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
9. Failure to Procure Coverage – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, the Commission has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the Commission will be promptly reimbursed by the Contractor or Commission payments to the Contractor will be reduced to pay for Commission purchased insurance.
10. Insurance Review – Insurance requirements are subject to periodic review by the Commission. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Commission. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the Commission, inflation, or any other item reasonably related to the Commission’s risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the Commission to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Commission.

11. The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. Workers’ Compensation/Employers Liability – A program of Workers’ Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer’s Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to the Commission that it does not currently have any employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by the Commission’s Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- b. Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- 1) Premises operations, fixed assets and mobile equipment.
- 2) Products and completed operations.
- 3) Broad form property damage (including completed operations).
- 4) Explosion, collapse and underground hazards.
- 5) Personal injury
- 6) Contractual liability.
- 7) \$2,000,000 general aggregate limit.

- c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

- e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

#### T. Licenses and Permits

Contractor shall comply with all applicable laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations and performance under the terms of the Contract and shall

procure all necessary licenses and permits required by the laws of the United States, State of California, San Bernardino County and all other appropriate governmental agencies, and agrees to pay all fees and other charges required thereby. Contractor shall maintain all required licenses during the term of this Contract. Contractor will notify the Commission immediately of loss or suspension of any such licenses and permits. Failure to comply with the provisions of this section may result in immediate termination of this Contract.

U. Health and Safety

Contractor shall comply with all applicable local, state and federal health and safety codes and regulations, including fire clearances, for each site where program services are provided under the terms of the Contract.

V. Contract Compliance/Equal Employment Opportunity

Contractor agrees to comply with the provisions of all applicable Federal, State, and County Laws, regulations and policies relating to equal employment or social services to Participant(s), including laws and regulations hereafter enacted. Contractor shall not unlawfully discriminate against any employee, applicant for employment, or service Participant(s) on the basis of race, national origin or ancestry, religion, sex, marital status, age, political affiliation, sexual orientation, or disability. Information on the above rules and regulations may be obtained from the Commission.

W. Americans with Disabilities Act

Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (ADA).

X. Attorney's Fees

Contractor understands and agrees that any and all legal fees or costs associated with lawsuits concerning this Contract against the Commission shall be the Contractor's sole expense and shall not be charged as a cost under this Contract. In the event of any Contract dispute hereunder, each Party to this Contract shall bear its own attorney's fees and costs regardless of who prevails in the outcome of the dispute.

Y. 2-1-1 Registration

Contractor shall register with 2-1-1 San Bernardino County Inland Empire United Way within 30 days of Contract effective date and follow necessary procedures to be included in the 2-1-1 database. The Contractor shall notify the 2-1-1 San Bernardino County Inland Empire United Way of any changes in program services, location or contact information within ten (10) days of any change. Services performed as a result of being included in the 2-1-1 database, are separate and apart from the services being performed under this Contract and payment for such services will not be the responsibility of the Commission.

Z. Ownership Rights

The Commission shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material.

AA. Attribution

Contractor shall properly acknowledge the Commission per the requirements stated in the First 5 San Bernardino Attribution Standards.

BB. Incongruous Activities

Contractor agrees it will not perform or permit any political promotion or religious proselytizing activities in connection with the performance of this Contract. Contractor will ensure no staff will conduct activity intended to influence legislation, administrative rule making or the election of candidates for public office during the time compensated under this Contract or under representation such activity is being performed under this Contract.

## CC. Reports

- Contractor, in a timely and accurate manner, shall submit reports on designated key aspects of the project as required by the Commission. Instructions, format and required information for the content will be provided by the Commission and available on the website: [www.first5sanbernardino.org](http://www.first5sanbernardino.org). FAILURE TO SUBMIT REPORTS IN A TIMELY AND ACCURATE MANNER SHALL BE A MATERIAL BREACH OF THIS CONTRACT.

Report requirements include, but are not limited to, the following and may be subject to change.

- Program Reports

Contractor will submit Program Reports which include monthly and year-to-date progress on actual achievement of program targets compared to projected achievements as detailed in Program Work Plan (Attachment A) and other data collection information as requested by the Commission. Program Reports will include data on participants served as well as narrative information on lessons learned, course corrections and client success stories for the quarter. Contractor is required by the Commission to complete and submit Program Reports electronically via the Commission's web based data system. Program Reports are due the last day of the month following the end of the program reporting period.

Contractor agrees that failure to submit reports as specified will be sufficient cause for the Commission to withhold any payment due until reporting requirements have been fulfilled.

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- Fiscal Reports

For each calendar month, Contractor shall provide the Commission with a Monthly Fiscal Request for Reimbursement/Invoice within 15 calendar days from the end of the reporting period.

Contractor shall submit any and all Final/Revised Fiscal Reports by July 31 for the previous fiscal year period or part thereof during the Contract term. All reports submitted by July 31 will be considered final and no additional reports will be accepted after this date.

Contractor will fulfill evaluation and other reporting requirements as mandated by the Commission and the California Children and Families Commission.

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- Asset Report

Contractor shall report all assets worth \$500 or more purchased with First 5 funds utilizing tools provided by the Commission for that purpose. The Straight Line method of depreciation will be applied to determine value. Closing Asset reports shall be submitted to the Commission staff no less than 30 days prior to the normal conclusion of a contract. If a contract is terminated early under any fiscal provision or due to correction of performance deficiencies, contractor shall submit the Closing Asset report within 10 business days of receiving notice of contract termination.

Contractor agrees that failure to submit reports as specified will be sufficient cause for the Commission to withhold any payment due until reporting requirements have been fulfilled.

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## DD. Pro-Children Act of 1994

Contractor will comply with the Environmental Tobacco Smoke Act, also known as the Pro-Children Act of 1994 (20 U.S.C. 6081 et seq.).

#### EE. Environmental Regulations

EPA Regulations - If the amount available to Contractor under the Contract exceeds \$100,000, Contractor will agree to comply with the Clean Air Act (42 U.S.C. section 7606); section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738 [38 Fed. Reg. 25161 (Sept. 10, 1973)]; and Environmental Protection Agency regulations (40 C.F.R., part 32).

State Energy Conservation Clause - Contractor shall observe the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (California Code of Regulations, title 20, section 1401 et seq.).

#### FF. Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549 [51 Fed. Reg. 6370 (Feb. 18, 1986)] and Debarment and Suspension, And Other Responsibility Matters (45 C.F.R., section 76):

- a. The Contractor certifies that it and any potential subcontractors:
  - 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (as defined at 45 C.F.R. section 76.200) by any federal department or agency;
  - 2) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (a) (2) of this certification; and
  - 4) Have not within a three-year period proceeding this application had one or more public transactions (federal, state, or local) terminated for cause or default; and
- b. Where the Contractor is unable to certify as true any of the statements in this certification, he or she shall provide a written explanation to the Commission prior to the execution of this Contract. A failure to comply with this section may constitute grounds for termination of this Contract.

#### GG. Recycled Paper Products

The Commission has adopted a recycled product purchasing standards policy (11-10), which requires Contractors to use recycled paper for proposals and for any printed or photocopied material created as a result of a Contract with the Commission. The policy also requires Contractors to use both sides of the paper sheets for reports submitted to the Commission whenever practicable.

### IV. COMMISSION RESPONSIBILITIES

- A. Commission shall verify performance results of Contractor according to the Program Work Plan and other data collection information requested by the Commission in meeting terms of this Contract and the quality and effectiveness of services provided, based on criteria agreed upon, as delineated in this Contract.
- B. Commission shall compensate Contractor for approved expenses in accordance with Section V of this Contract.
- C. Commission shall specify all reports and deliverables required from the Contractor.
- D. Commission shall provide technical assistance as deemed necessary.
- E. The Commission will designate one individual to serve as the primary contact for the Contract and will notify the Contractor of this designee within 15 days of the Contract approval date.

**V. FISCAL PROVISIONS**

**A. Contract Amount**

The maximum amount of reimbursement under this Contract shall not exceed \$222,990 for the duration of the Contract term subject to the availability of California Children and Families Trust Fund monies. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof. These funds are divided as follows:

Fiscal Year 2012-13	<u>\$74,330</u>	July 1, 2012 through June 30, 2013
Fiscal Year 2013-14	<u>\$74,330</u>	July 1, 2013 through June 30, 2014
Fiscal Year 2014-15	<u>\$74,330</u>	July 1, 2014 through June 30, 2015

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**B. Payment Provisions**

The Commission will disburse funds on a reimbursement payment process based on the Contract budget amount for the applicable fiscal year and monthly report submissions.

Funds may be advanced for the first month, if requested, for an amount up to, but not exceeding 15% of the Contract payment amount for Fiscal Year 2012-2013 only. All subsequent monthly reimbursements will be determined by actual expenditures reflected on the monthly reports.

If an advance is requested and approved, 10% of the total advanced amount will be withheld from the monthly reimbursements to recover the advanced funds over a ten (10) month period.

The Commission reserves the right to reduce or withhold any payments from the Contractor for failure to submit reports in a timely and accurate manner or when the Contractor is not in compliance with the Contract. Final payment under this Contract may be withheld until all requirements, including reports, for contract closure have been fulfilled by Contractor

**C. EFT Payments**

Contractor shall accept all payments from the Commission via electronic funds transfers (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by the Commission required to process EFT payments.

**D. Allowable Costs**

Funds provided pursuant to this Contract shall be expended by Contractor in accordance with the Attachment B – Program Budget.

Such specified expenditures will be further limited to those that are considered both reasonable and necessary as determined by the Commission. Contractor agrees Commission may recover any payments for services or goods, including rental of facilities, which were not reasonable and necessary or which exceeded the fair market value. The recovery shall be limited to payments over and above reasonable or fair market amounts and any costs of recovery.

The reasonable and allowable reimbursement rate for use of motor vehicles, travel expenses and food is based on the current IRS allowable rate.

Costs must be incurred only during the contract term, except when specifically approved by the Commission. Contractor shall not use current year funds to pay prior or future year obligations. Contractor will not be reimbursed for expenditures incurred after the expiration or termination of this Contract.

Contractor shall obtain Commission approval for all overnight travel and out of State travel as it relates to services provided in this Contract. Reimbursement as it relates to pre-approved travel will be based on the Federal allowable rate. Request must be submitted in writing 30 days in advance of travel date and travel must be approved in advance by the Program Manager.

E. Supplanting of Funds

In accordance with the Commission's Supplantation Policy, Contractor shall not supplant any Federal, State or County funds intended for the purposes of this Contract with any funds made available under this Contract. Contractor shall not claim reimbursement from Commission for, or apply sums received from Commission with respect to that portion of its obligations, which have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining State funds under any State program or County funds under any County programs without prior written approval of the Commission.

F. Payment of Taxes

Commission is not liable for the payments of any taxes, other than applicable sales or use tax, resulting from this Contract however designated, levied or imposed, unless Commission would otherwise be liable for the payment of such taxes in the course of its normal business operations.

G. Budget Line Item Changes

A Budget Revision Request may be submitted by the Contractor to the Commission to modify a line or lines of the approved budget. The request must indicate the proposed line item changes, the budget as amended applying the requested changes and a written justification for each requested change. The request cannot result in any alteration or degradation to the program services and performance target as specified in this Contract.

The Executive Director, on behalf of the Commission, has the authority to approve (or deny) the request, provided that the modification does not deviate from the original intent of the contract or increase the total Contract amount. Contractor is limited to two Budget Revision Requests per fiscal year

The Contractor must submit any requests to the Commission no later than March 31st of the fiscal year. Requests must be submitted in hard copy form with original signatures. Postmarked envelopes received after March 31st will not be accepted in lieu of receipt.

H. Budget Line Item Variance

Annual variances in excess of 10% of a line item cannot be made by the Contractor without prior approval of the Commission. Variance shall not result in a change to the total Contract amount or an increase to the administrative cost allocation of the approved budget. Contractor shall provide written justification for any budget line item variances of more than 10%.

I. Procurement

Contractor shall procure services or goods required under this Contract on a competitive basis, unless otherwise provided by law, and make selections based on obtaining the best value possible. When a non-competitive procurement is used, a written justification must be maintained and be made available upon request.

J. Fixed Assets

The purchase of any equipment, materials, supplies or property of any kind, including items such as publications and copyrights, which have a single unit cost of \$5000 or more, including tax, and was not included in Contractor's approved budget, shall require the prior written approval of the Executive Director of the Commission. Any such purchase shall directly relate to Contractor's services or activities under the terms of the Contract.

Any item with a single unit cost of \$500 or more, including tax, purchased with funds received under the terms of this Contract must undergo a 3-bid process. Items not fully consumed during the Contract term shall revert to be the property of the Commission, unless otherwise specified by the Commission. The disposition of such equipment or property must be approved by the Executive Director of the Commission upon Contract termination. If the reversion of any asset is demanded and not made to First 5 San Bernardino, the Commission reserves the right to reduce or withhold the value of the asset from any payments due to the Contractor for non-compliance.

Contractor shall maintain insurance against the loss, theft, or damage to any item with a single unit cost of \$500 or more, including tax, purchased with Commission funds for the full replacement value thereof in accordance with the provisions of Section III, subdivision S (Indemnification and Insurance Requirements).

**K. Payor of Last Resort**

Contractor shall attain funding through other sources than the Commission to provide services or support to participants whenever possible.

In cases where a participant is qualified for benefits from another source (such as MediCal, Healthy Families, federal or state funded programs, personal insurance, etc.), costs relating to services provided to that participant should be paid for by the primary payor first. Only the costs not covered will be allowable under this Contract. Written verification shall be provided upon request.

**L. Fiscal Record Keeping**

Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) and must account for all funds, tangible assets, revenue and expenditures.

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**VI. RIGHT TO MONITOR AND AUDIT**

**A. Right to Monitor and Audit**

The Commission or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Auditor General, shall have absolute right to monitor and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to observe the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation during any auditing or monitoring conducted.

Contractor shall cooperate with Commission in the implementation and evaluation of this Contract and comply with any and all reporting requirements established by Commission.

**B. Availability of Records**

All records pertaining to service delivery and all fiscal, statistical and management books and records shall be available for examination and audit by the Commission, and State representatives for a period of five years after final payment under the Contract or until all pending Commission and State audits are completed, whichever is later. Records, should include, but are not limited to participant files, monthly summary sheets, sign-in sheets, and other primary source documents. Contractor will have available for Commission review, all relevant financial records for the fiscal year being audited including documentation to verify shared costs or costs allocated to various funding sources as well as the basis for which the shared cost was allocated.

Program data shall be retained locally in San Bernardino County and made available upon request or turned over to Commission. If said records are not made available at the scheduled monitoring visit, Contractor may, at Commission's option, be required to reimburse Commission for expenses incurred due to required rescheduling of monitoring visit(s). Such reimbursement will not exceed \$50 per hour (including travel time) and be deducted from the invoiced monthly payment.

**C. Assistance by Contractor**

Contractor shall provide all reasonable facilities and assistance for the safety and convenience of Commission's representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of the Contractor.

**D. Independent Audit Provisions**

On an annual basis, Contractor is required to hire an independent licensed Certified Public Accountant (CPA), who shall prepare and file with the Commission, an Independent Auditor's Report for the term of the Contract.

E. Recovery of Investigation and Audit Costs

Contractor shall reimburse the Commission for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation of the terms of the Contract. Reimbursement for such costs will be withheld from any amounts due to Contractor.

When additional information (receipts, paperwork, etc.) is requested of the Contractor as a result of any audit or monitoring, Contractor must provide all information requested by the deadline specified by the Commission. A failure to provide the information by the specified deadline, will subject the Contractor to the provisions of Section VII (Correction of Performance Deficiencies and Termination).

**VII. CORRECTION OF PERFORMANCE DEFICIENCIES AND TERMINATION**

A. Failure by Contractor to comply with any of the provisions, covenants, requirements, or conditions of this Contract shall be a material breach of this Contract. In such event the Commission, in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, may:

- Afford Contractor a time period within which to cure the breach, which period shall be established at the sole discretion of the Executive Director; and/or
- Request Contractor provide and implement an action plan to correct breach within a reasonable timeframe; and/or
- Discontinue reimbursement to the Contractor for and during the period in which the Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or,
- Withhold funds pending duration of the breach; and/or
- Offset against any monies billed by the Contractor but yet unpaid by the Commission those monies disallowed pursuant to bullet 3 of this paragraph; and/or
- Immediately terminate this Contract with just cause and be relieved of the payment of any consideration to the Contractor should the Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the Commission may proceed with the work in any manner deemed proper by the Commission. The cost to the Commission shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

B. The Executive Director of the Commission, shall give Contractor notice of any action pursuant to this section, which notice shall be effective when given.

C. The Executive Director of the Commission is authorized to exercise Commission's rights with respect to initiating any remedies or termination of this Contract in his/her sole discretion and to give notice as set forth below in this Contract.

**VIII. TERM**

A. This Contract is effective commencing July 1, 2012 and expires June 30, 2015, but may be terminated earlier in accordance with provisions of paragraph below or Section VII of this Contract.

Initial Here

B. Notwithstanding the preceding paragraph, this Contract may be terminated by either party by serving a written notice thirty (30) days in advance of termination. The Executive Director of the Commission has the authority and discretion to exercise this right on behalf of the Commission.

C. The contract term may be extended for one additional one-year period by mutual agreement of the parties.

D. Continuation of this Contract for each fiscal year after June 30, 2013 is contingent on a Program Work Plan and a Program Budget being submitted by Contractor and approved by the Commission. Continuation of this Contract is also contingent on the priorities, direction, and vision for investments of the Commission.

**IX. GENERAL PROVISIONS**

**A. Notices**

When notices are required to be given pursuant to this Contract, the notices shall be in writing and mailed to the following respective addresses listed below.

**Contractor:** City of Montclair  
5111 Benito Street  
Montclair, CA 91763

**Commission:** First 5 San Bernardino  
330 North D Street, 5<sup>th</sup> Floor  
San Bernardino, CA 92415-0442

- B. Commission shall have Power of Attorney to pay delinquent debts and unpaid wages from accounts payable to Contractor in the event debts and wages have not been paid on a current basis.
  - C. Nothing contained in this Contract shall be construed as creating a joint venture, partnership or employment arrangement between the parties hereto, nor shall either party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the party hereto.
  - D. No waiver of any of the provisions of the Contract shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the parties in an amendment to this Contract.
  - E. Any alterations, variations, modifications, or waivers of provisions of the Contract, unless specifically allowed in the Contract, shall be valid only when they have been reduced to writing, duly signed and approved by the authorized representatives of both parties as an amendment to this Contract. No oral understanding or contract not incorporated herein shall be binding on any of the parties hereto. No course of dealing and no delay or failure of a party in exercising any right under any contract shall affect any other or future exercise of that right or any exercise of any other right. A party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- Initial Here
- F. If any provision of the Contract is held by a court of competent jurisdiction to be unenforceable or contrary to law, it shall be modified where practicable to the extent necessary so as to be enforceable, giving effect to the intention of the parties, and the remaining provisions of the Contract shall not be affected.
  - G. This Contract shall be governed by and construed in all aspects in accordance with the laws of the State of California without regard to principles of conflicts of laws. The parties agree to the exclusive jurisdiction of the federal court located in the County of Riverside and the state court located in the County of San Bernardino, for any and all disputes arising under this Contract, to the exclusion of all other federal and state courts.
  - H. Contractor understands and agrees that any and all legal fees or costs associated with lawsuits against Commission concerning this Contract shall be Contractor's sole expense and shall not be charged as a cost under this Contract. In the event of any contract dispute hereunder, each party to this Contract shall bear its own attorneys' fees and costs regardless of who prevails in the outcome of the dispute.

**X. EQUAL EMPLOYMENT OPPORTUNITY/CIVIL RIGHTS**

**A. Equal Employment Opportunity Program**

Contractor agrees to comply with: the provisions of the County of San Bernardino Equal Employment Opportunity Program and rules and regulations adopted pursuant thereto; Executive Order 11246 [30 Fed. Reg. 12319 (Sept. 24, 1965)], as amended by Executive Orders 11375, 11625, 12138, 12432, and 12250; Title VII of the Civil Rights Act of 1964 (42 U.S.C. section 2000e, et seq.); Division 21 of the

California Department of Social Services Manual of Policies and Procedures; California Welfare and Institutions Code section 10000); the California Fair Employment and Housing Act (Cal. Gov. Code section 12900, et seq.); and other applicable federal, state, County and Commission laws, regulations and policies relating to equal employment or social services to welfare recipients, including laws and regulations hereafter enacted.

The Contractor shall not unlawfully discriminate against any employee, applicant for employment, or service recipient on the basis of race, color, national origin or ancestry, religion, sex, marital status, age, political affiliation or disability. Information on the above rules and regulations may be obtained from the Commission.

#### **B. Civil Rights Compliance**

The Contractor shall develop and maintain internal policies and procedures to assure compliance with each factor outlined by State regulation. These policies must be developed into a Civil Rights Plan, which is to be on file with the Commission within thirty (30) days of awarding of the Contract. The Plan must address prohibition of discriminatory practices, accessibility, language services, staff development and training, dissemination of information, complaints of discrimination, compliance review, and duties of the Civil Rights Liaison. Upon request, the Commission will supply a sample of the Plan format. The Contractor will be monitored by the Commission for compliance with provisions of its Civil Rights Plan.

### **XI. IMPROPER CONSIDERATION**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the Commission in an attempt to secure favorable treatment regarding this Contract.

The Commission, by written notice, may immediately reject any proposal or terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the Commission with respect to this Contract. This prohibition shall apply to any amendment, extension or evaluation process once a Contract has been awarded.

Contractor shall immediately report any attempt by a Commission officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the Commission Administrative Office. In the event of a termination under this provision, the Commission is entitled to pursue any available legal remedies.

### **XII. DISCLOSURE OF CRIMINAL AND CIVIL PROCEEDINGS**

The Commission reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in termination of the Contract. The Commission also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information provided or discovered may result in termination of the Contract.

The Contractor may be asked to disclose whether the firm or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor may be asked to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those

individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For the purposes of this provision "key employees" includes any individuals providing direct service to the Commission. "Key employees" do not include clerical personnel providing service at the Contractor's offices or locations.

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*Continued on next page*

**XIII. CONCLUSION**

- A. This Contract, consisting of 23 pages and Attachments A, B and C, inclusive, is the full and complete document describing services to be rendered by Contractor to Commission, including all covenants, conditions, and benefits. Attachments A, B and C are attached hereto and incorporated herein as though set forth in full.
- B. The signatures of the parties affixed to this Contract affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.

**CHILDREN & FAMILIES COMMISSION FOR  
SAN BERNARDINO COUNTY**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
 Authorized Signature  
  
 Linda Haugan  
 Printed Name  
  
 Commission Chair  
 Title  
  
 \_\_\_\_\_  
 Dated

\_\_\_\_\_  
 Legal Entity  
  
 \_\_\_\_\_  
 Authorized Signature  
  
 Paul M Eaton  
 Printed Name  
  
 Mayor  
 Title  
  
 \_\_\_\_\_  
 Dated

Official Stamp

ATTEST:

\_\_\_\_\_

Yvonne L. Smith

\_\_\_\_\_

Deputy City Clerk  
Title

\_\_\_\_\_

Dated

Reviewed for Processing

\_\_\_\_\_

Cindy Faulkner  
Operations Manager

\_\_\_\_\_

Date

Approved as to Legal Form

\_\_\_\_\_

Regina Coleman  
Commission Counsel

\_\_\_\_\_

Date

Presented to Commission for  
Signature

\_\_\_\_\_

Karen E. Scott  
Executive Director

\_\_\_\_\_

Date



Agency Name: CITY OF MONTCLAIR  
 Program Name: CITY OF MONTCLAIR  
 Contract #: HW048 Fiscal Year (FY): 2012 – 2013  
 Service Area: MONTCLAIR

Commission Level Outcome	Performance Objective	Service Activity <i>(The services or activities that are provided or conducted as part of achieving the program goal(s).)</i>	Core or Aggregate	Client Target <i>(Expected # of unduplicated clients receiving service and client type)</i>	Verification Method <i>(How you will measure)</i>
Children are healthy, well-nourished and physically fit	By June 2013, 240 children ages 2 – 5 will be screened for overweight/obesity indicators	Overweight/Obesity Screening	Aggregate	120 Children	Body Mass Index (BMI)
Children are healthy, well-nourished and physically fit 100	By June 2013, 20 children who were screened and identified as "high risk" will be entered into care coordination for obesity assessments	Care Coordination	Core	30 Children	Child Intake/Exit Obesity Assessment (PRE/MID/POST)
Children are healthy, well-nourished and physically fit	By June 2013, 20 "high risk" children will receive developmental screening using the ASQ-3	Developmental Screening	Core	30 Children	ASQ-3
Children are healthy, well-nourished and physically fit	By June 2013, 18 "high risk" children will demonstrate improved positive nutritional habits and physical fitness	Overweight/Obesity Education	Aggregate	Parent	Sign In Sheets and Client Case Notes BMI/Obesity Assessment

**PROGRAM BUDGET  
FISCAL YEAR 2012-2013**

AGENCY NAME City of Montclair

CONTRACT # HW048

DESCRIPTION		TOTAL PROGRAM COSTS	OTHER FUNDING	DONATED RESOURCES	FIRST 5 FUNDED PROJECT COSTS	First 5 Program Related Cost	First 5 Admin Cost	FIRST 5 %
A. SALARIES & BENEFITS		A	B	C	D	E		
FTE	POSITION TITLE							
1	0.15 Assistant Director of Human Services	\$ 12,480		\$ 12,480	\$ 0			0.00%
2	0.3 Economic Development Coordinator	\$ 20,538		\$ 20,538	\$ 0			0.00%
3	0.15 Senior Accountant	\$ 10,325		\$ 10,325	\$ 0			0.00%
4	0.5 Medical Clinic Coordinator	\$ 40,000			\$ 40,000	\$ 35,000	\$ 5,000	100.00%
5	0.5 Clinic Assistant	\$ 11,000			\$ 11,000	\$ 11,000		100.00%
TOTAL SALARIES		\$ 94,343	\$ -	\$ 43,343	\$ 51,000	\$ 46,000	\$ 5,000	54.06%
6	TOTAL BENEFITS	\$ 21,625		\$ 21,625	\$ 0			0.00%
<b>TOTAL SALARIES, BENEFITS, PROGRAM &amp; ADMIN</b>		<b>\$ 115,968</b>	<b>\$ -</b>	<b>\$ 64,968</b>	<b>\$ 51,000</b>	<b>\$ 46,000</b>	<b>\$ 5,000</b>	<b>43.98%</b>

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**PROGRAM BUDGET  
FISCAL YEAR 2012-2013**

AGENCY NAME City of Montclair

CONTRACT # HW048

DESCRIPTION	TOTAL PROGRAM COSTS	OTHER FUNDING	DONATED RESOURCES	FIRST 5 FUNDED PROJECT COSTS	First 5 Program Related Cost	First 5 Admin Cost	FIRST 5 %
	A	B	C	D	D		E
<b>B. SERVICES &amp; SUPPLIES</b>							
1 PROGRAM MATERIALS/SUPPLIES	\$ 4,880		\$ 500	\$ 4,380	\$ 4,380		89.75%
2 PARTICIPANT SUPPORT/INCENTIVES	\$ 2,500	\$ 2,500		\$ 0			0.00%
3 PARTICIPANT TRANSPORTATION				\$ 0			
4 FOOD EXPENSE FOR CLASSES/MEETINGS	\$ 1,200			\$ 1,200	\$ 1,000	\$ 200	100.00%
5 STAFF DEVELOPMENT/TRAINING	\$ 2,000		\$ 2,000	\$ 0			0.00%
6 EMPLOYEE MILEAGE/TRAVEL				\$ 0			
7 ADVERTISEMENTS				\$ 0			
8 PRINTING	\$ 1,150		\$ 1,150	\$ 0			0.00%
9 POSTAGE	\$ 850		\$ 850	\$ 0			0.00%
10 SUBSCRIPTIONS				\$ 0			
11 OFFICE SUPPLIES	\$ 2,000			\$ 2,000		\$ 2,000	100.00%
12 OFFICE EQUIPMENT				\$ 0			
13 RENT/LEASE BUILDING				\$ 0			
14 BUILDING/EQUIPMENT MAINTENANCE				\$ 0			
15 UTILITIES	\$ 3,000	\$ 3,000		\$ 0			0.00%
16 INSURANCE / TAXES / LICENSES				\$ 0			
17 PROFESSIONAL SERVICES/CONSULTANTS							
17.1 Registered Dietician-Melanie Barbee	\$ 10,400			\$ 10,400	\$ 10,400		100.00%
Medical Interpretation (Spanish)-Por La Vida							
17.2 Consejeras	\$ 5,350			\$ 5,350	\$ 5,350		100.00%
17.3 Physician's Assistant	\$ 20,800		\$ 20,800	\$ 0			0.00%
17.4				\$ 0			
17.5				\$ 0			
PROFESSIONAL SERVICES - SUBTOTAL	\$ 36,550	\$ 20,800	\$ 20,800	\$ 15,750	\$ 15,750	\$ 2,200	43.09%
18 INDIRECT COSTS (AS APPROVED)				\$ 0			
<b>TOTAL SERVICES/SUPPLIES</b>	<b>\$ 54,130</b>	<b>\$ 5,500</b>	<b>\$ 25,300</b>	<b>\$ 23,330</b>	<b>\$ 21,130</b>	<b>\$ 2,200</b>	<b>43.10%</b>

**PROGRAM BUDGET**  
**FISCAL YEAR 2012-2013**

AGENCY NAME City of Montclair

CONTRACT # HW048

DESCRIPTION		TOTAL PROGRAM COSTS	OTHER FUNDING	DONATED RESOURCES	FIRST 5 FUNDED PROJECT COSTS	First 5 Program Related Cost	First 5 Admin Cost	FIRST 5 %
<b>C. SUBCONTRACTS</b>		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>ER</b>		<b>E</b>
SUBCONTRACTS - AGENCY NAME								
1	1 Montclair Community Collaborative	\$ 20,545		\$ 20,545	\$ 0			0.00%
2	1				\$ 0			
3	1				\$ 0			
4	1				\$ 0			
5	1				\$ 0			
6	1				\$ 0			
7	1				\$ 0			
8	1				\$ 0			
9	1				\$ 0			
10	1				\$ 0			
<b>TOTAL SUBCONTRACTS</b>		<b>\$ 20,545</b>	<b>\$</b>	<b>\$ 20,545</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>0.00%</b>
<b>TOTAL PROJECT BUDGET</b>		<b>\$ 190,643</b>	<b>\$ 5,500</b>	<b>\$ 110,813</b>	<b>\$ 74,330</b>	<b>\$ 67,130</b>	<b>\$ 7,200</b>	<b>38.99%</b>
<b>First 5 Funding %</b>		100.00%	2.88%	58.13%	38.99%			
<b>Administrative Cost %</b>					100.00%	90.31%	9.69%	

**PROGRAM BUDGET**  
**FISCAL YEAR 2013-2014**

AGENCY NAME City of Montclair

CONTRACT # HW048

DESCRIPTION		TOTAL PROGRAM COSTS	OTHER FUNDING	DONATED RESOURCES	FIRST 5 FUNDED PROJECT COSTS	First 5 Program Related Cost	First 5 Admin Cost	FIRST 5 %
A. SALARIES & BENEFITS		A	B	C	D	E		
FTE	POSITION TITLE							
1	0.15 Assistant Director of Human Services	\$ 12,480		\$ 12,480	\$ 0			
2	0.3 Economic Development Coordinator	\$ 20,538		\$ 20,538	\$ 0			
3	0.15 Senior Accountant	\$ 10,325		\$ 10,325	\$ 0			
4	0.5 Medical Clinic Coordinator	\$ 40,000			\$ 40,000	\$ 35,000	\$ 5,000	100.00%
5	0.5 Clinic Assistant	\$ 11,000			\$ 11,000	\$ 11,000		100.00%
<b>TOTAL SALARIES</b>		<b>\$ 94,343</b>	<b>\$ -</b>	<b>\$ 43,343</b>	<b>\$ 51,000</b>	<b>\$ 46,000</b>	<b>\$ 5,000</b>	<b>54.06%</b>
6	<b>TOTAL BENEFITS</b>	<b>\$ 21,625</b>		<b>\$ 21,625</b>	<b>\$ 0</b>			
<b>TOTAL SALARIES, BENEFITS, PROGRAM &amp; ADMIN</b>		<b>\$ 115,968</b>	<b>\$ -</b>	<b>\$ 64,968</b>	<b>\$ 51,000</b>	<b>\$ 46,000</b>	<b>\$ 5,000</b>	<b>43.98%</b>

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**PROGRAM BUDGET**  
FISCAL YEAR 2013-2014

AGENCY NAME City of Montclair

CONTRACT # HW048

DESCRIPTION	TOTAL PROGRAM COSTS	OTHER FUNDING	DONATED RESOURCES	FIRST 5 FUNDED PROJECT COSTS	First 5 Program Related Cost	First 5 Admin Cost	FIRST 5 %
	A	B	C	D	D		E
<b>B. SERVICES &amp; SUPPLIES</b>							
1 PROGRAM MATERIALS/SUPPLIES	\$ 4,880		\$ 500	\$ 4,380	\$ 4,380		89.75%
2 PARTICIPANT SUPPORT/INCENTIVES	\$ 2,500	\$ 2,500		\$ 0			
3 PARTICIPANT TRANSPORTATION				\$ 0			
4 FOOD EXPENSE FOR CLASSES/MEETINGS	\$ 1,200			\$ 1,200	\$ 1,000	\$ 200	100.00%
5 STAFF DEVELOPMENT/TRAINING	\$ 2,000		\$ 2,000	\$ 0			
6 EMPLOYEE MILEAGE/TRAVEL				\$ 0			
7 ADVERTISEMENTS				\$ 0			
8 PRINTING	\$ 1,150		\$ 1,150	\$ 0			
9 POSTAGE	\$ 850		\$ 850	\$ 0			
10 SUBSCRIPTIONS				\$ 0			
11 OFFICE SUPPLIES	\$ 2,000			\$ 2,000		\$ 2,000	100.00%
12 OFFICE EQUIPMENT				\$ 0			
13 RENT/LEASE BUILDING				\$ 0			
14 BUILDING/EQUIPMENT MAINTENANCE				\$ 0			
15 UTILITIES	\$ 3,000	\$ 3,000		\$ 0			
16 INSURANCE / TAXES / LICENSES				\$ 0			
17 PROFESSIONAL SERVICES/CONSULTANTS							
17.1 Registered Dietician-Melanie Barbee Medical Interpretation (Spanish)-Por La	\$ 10,400			\$ 10,400	\$ 10,400		100.00%
17.2 Vida Consejeras	\$ 5,350			\$ 5,350	\$ 5,350		100.00%
17.3 Physician's Assistant	\$ 20,800		\$ 20,800	\$ 0			
17.4				\$ 0			
17.5				\$ 0			
PROFESSIONAL SERVICES - SUBTOTAL	\$ 36,550	\$ 20,800		\$ 15,750	\$ 15,750		43.09%
18 INDIRECT COSTS (AS APPROVED)				\$ 0			
<b>TOTAL SERVICES/SUPPLIES</b>	<b>\$ 54,130</b>	<b>\$ 5,500</b>	<b>\$ 25,300</b>	<b>\$ 23,330</b>	<b>\$ 21,130</b>	<b>\$ 2,200</b>	<b>43.10%</b>

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**PROGRAM BUDGET  
FISCAL YEAR 2013-2014**

AGENCY NAME City of Montclair

CONTRACT # HW048

DESCRIPTION		TOTAL PROGRAM COSTS	OTHER FUNDING	DONATED RESOURCES	FIRST 5 FUNDED PROJECT COSTS	First 5 Program Related Cost	First 5 Admin Cost	FIRST 5 %
C. SUBCONTRACTS		A	B	C	D	ER		E
SUBCONTRACTS - AGENCY NAME								
1	1 Montclair Community Collaborative	\$ 20,545		\$ 20,545	\$ 0			
2	1				\$ 0			
3	1				\$ 0			
4	1				\$ 0			
5	1				\$ 0			
6	1				\$ 0			
7	1				\$ 0			
8	1				\$ 0			
9	1				\$ 0			
10	1				\$ 0			
<b>TOTAL SUBCONTRACTS</b>		<b>\$ 20,545</b>	<b>\$</b>	<b>\$ 20,545</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>TOTAL PROJECT BUDGET</b>		<b>\$ 190,643</b>	<b>\$ 5,500</b>	<b>\$ 110,813</b>	<b>\$ 74,330</b>	<b>\$ 67,130</b>	<b>\$ 7,200</b>	<b>38.99%</b>
<b>First 5 Funding %</b>		<b>100.00%</b>	<b>2.88%</b>	<b>58.13%</b>	<b>38.99%</b>			
<b>Administrative Cost %</b>					<b>100.00%</b>	<b>90.31%</b>	<b>9.69%</b>	

**PROGRAM BUDGET  
FISCAL YEAR 2014-2015**

AGENCY NAME City of Montclair

CONTRACT # HW048

DESCRIPTION		TOTAL PROGRAM COSTS	OTHER FUNDING	DONATED RESOURCES	FIRST 5 FUNDED PROJECT COSTS	First 5 Program Related Cost	First 5 Admin Cost	FIRST 5 %
A. SALARIES & BENEFITS		A	B	C	D	E		
FTE	POSITION TITLE							
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2	0.3 Economic Development Coordinator	\$ 20,538		\$ 20,538	\$ 0			0.00%
3	0.15 Senior Accountant	\$ 10,325		\$ 10,325	\$ 0			0.00%
4	0.5 Medical Clinic Coordinator	\$ 40,000			\$ 40,000	\$ 35,000	\$ 5,000	100.00%
5	0.5 Clinic Assistant	\$ 11,000			\$ 11,000	\$ 11,000		100.00%
<b>TOTAL SALARIES</b>		<b>\$ 94,343</b>	<b>\$ -</b>	<b>\$ 43,343</b>	<b>\$ 51,000</b>	<b>\$ 46,000</b>	<b>\$ 5,000</b>	<b>54.06%</b>
6	<b>TOTAL BENEFITS</b>	<b>\$ 21,625</b>		<b>\$ 21,625</b>	<b>\$ 0</b>			<b>0.00%</b>
<b>TOTAL SALARIES, BENEFITS, PROGRAM &amp; ADMIN</b>		<b>\$ 115,968</b>	<b>\$ -</b>	<b>\$ 64,968</b>	<b>\$ 51,000</b>	<b>\$ 46,000</b>	<b>\$ 5,000</b>	<b>43.98%</b>

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**PROGRAM BUDGET  
FISCAL YEAR 2014-2015**

AGENCY NAME City of Montclair

CONTRACT # HW048

DESCRIPTION	TOTAL PROGRAM COSTS	OTHER FUNDING	DONATED RESOURCES	FIRST 5 FUNDED PROJECT COSTS	First 5 Program Related Cost	First 5 Admin Cost	FIRST 5 %
	A	B	C	D	D		E
<b>B. SERVICES &amp; SUPPLIES</b>							
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2 PARTICIPANT SUPPORT/INCENTIVES	\$ 2,500	\$ 2,500		\$ 0			0.00%
3 PARTICIPANT TRANSPORTATION				\$ 0			
4 FOOD EXPENSE FOR CLASSES/MEETINGS	\$ 1,200			\$ 1,200	\$ 1,000	\$ 200	100.00%
5 STAFF DEVELOPMENT/TRAINING	\$ 2,000		\$ 2,000	\$ 0			0.00%
6 EMPLOYEE MILEAGE/TRAVEL				\$ 0			
7 ADVERTISEMENTS				\$ 0			
8 PRINTING	\$ 1,150		\$ 1,150	\$ 0			0.00%
9 POSTAGE	\$ 850		\$ 850	\$ 0			0.00%
10 SUBSCRIPTIONS				\$ 0			
11 OFFICE SUPPLIES	\$ 2,000			\$ 2,000		\$ 2,000	100.00%
12 OFFICE EQUIPMENT				\$ 0			
13 RENT/LEASE BUILDING				\$ 0			
14 BUILDING/EQUIPMENT MAINTENANCE				\$ 0			
15 UTILITIES	\$ 3,000	\$ 3,000		\$ 0			0.00%
16 INSURANCE / TAXES / LICENSES				\$ 0			
17 PROFESSIONAL SERVICES/CONSULTANTS							
17.1 Registered Dietician-Melanie Barbee	\$ 10,400			\$ 10,400	\$ 10,400		100.00%
Medical Interpretation (Spanish)-Por La							
17.2 Vida Consejeras	\$ 5,350			\$ 5,350	\$ 5,350		100.00%
17.3 Physician's Assistant	\$ 20,800		\$ 20,800	\$ 0			0.00%
17.4				\$ 0			
17.5				\$ 0			
PROFESSIONAL SERVICES - SUBTOTAL	\$ 36,550	\$ 20,800	\$ 20,800	\$ 15,750	\$ 15,750	\$ 2,200	43.09%
18 INDIRECT COSTS (AS APPROVED)				\$ 0			
<b>TOTAL SERVICES/SUPPLIES</b>	<b>\$ 54,130</b>	<b>\$ 5,500</b>	<b>\$ 25,300</b>	<b>\$ 23,330</b>	<b>\$ 21,130</b>	<b>\$ 2,200</b>	<b>43.10%</b>

**PROGRAM BUDGET**  
FISCAL YEAR 2014-2015

AGENCY NAME City of Montclair

CONTRACT # HW048

DESCRIPTION		TOTAL PROGRAM COSTS	OTHER FUNDING	DONATED RESOURCES	FIRST 5 FUNDED PROJECT COSTS	First 5 Program Related Cost	First 5 Admin Cost	FIRST 5 %
C. SUBCONTRACTS		A	B	C	D	ER		E
SUBCONTRACTS - AGENCY NAME								
1	1 Montclair Community Collaborative	\$ 20,545		\$ 20,545	\$ 0			0.00%
2	1				\$ 0			
3	1				\$ 0			
4	1				\$ 0			
5	1				\$ 0			
6	1				\$ 0			
7	1				\$ 0			
8	1				\$ 0			
9	1				\$ 0			
10	1				\$ 0			
<b>TOTAL SUBCONTRACTS</b>		<b>\$ 20,545</b>	<b>\$</b>	<b>\$ 20,545</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>0.00%</b>
<b>TOTAL PROJECT BUDGET</b>		<b>\$ 190,643</b>	<b>\$ 5,500</b>	<b>\$ 110,813</b>	<b>\$ 74,330</b>	<b>\$ 67,130</b>	<b>\$ 7,200</b>	<b>38.99%</b>
<b>First 5 Funding %</b>		<b>100.00%</b>	<b>2.88%</b>	<b>58.13%</b>	<b>38.99%</b>			
<b>Administrative Cost %</b>					<b>100.00%</b>	<b>90.31%</b>	<b>9.69%</b>	

**Obesity Intervention Services**

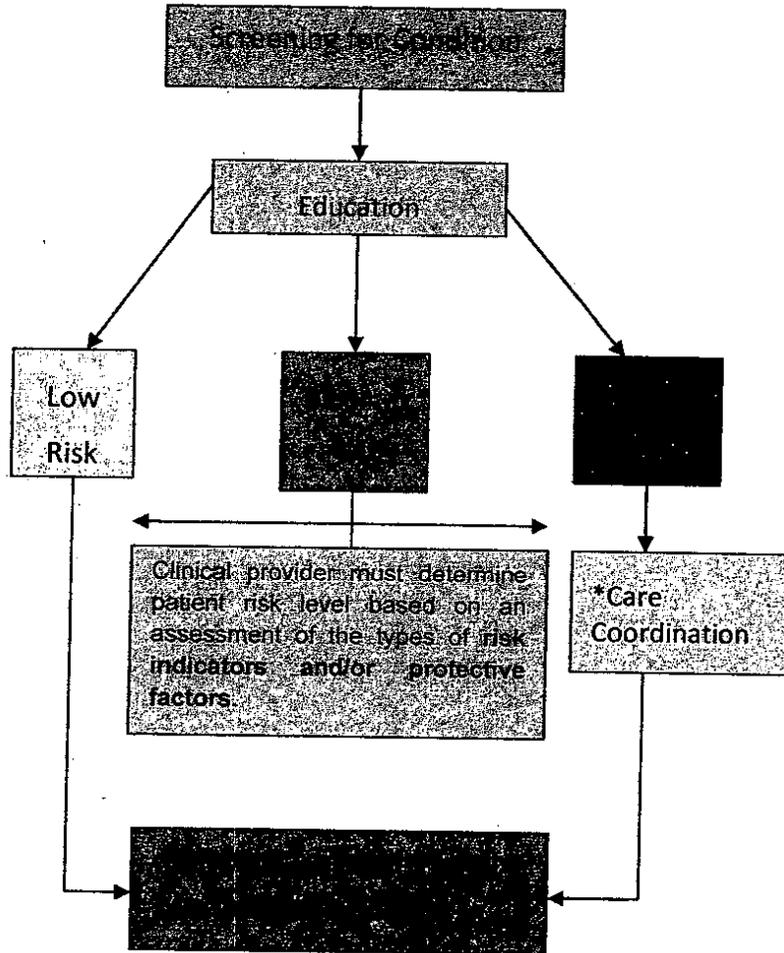
First 5 San Bernardino (F5SB) is committed to ensure that children, prenatal through age five have access to and utilize health and nutrition services that ensure children are born healthy, and remain well-nourished, physically fit, and safe. Contracted Agency will reduce instances of overweight/obesity in children by funding intervention programs that address and alleviate barriers to improve health and nutrition conditions for young overweight, obese and their parents/caregivers.

**Requirements and Expectations**

In addition to the minimum requirements outlined in the RFP, these specific and targeted program requirements apply to the Overweight/Obesity Intervention Services Providers:

<b>Requirements and Expectations</b>
<b>Program Focus: Overweight/Obesity Intervention Services</b>
<ul style="list-style-type: none"> <li>☒ Must implement the F5SB Overweight/Obesity Intervention Services Model</li> <li>☒ Must provide services to families of children 2-5 identified as overweight/obese</li> <li>☒ Must address the symptoms and conditions associated with overweight and/or obesity in children ages 2-5</li> <li>☒ Must reduce the rate of overweight and/or obese children ages 2-5</li> <li>☒ Must address improved physical fitness and activities among children 2-5</li> <li>☒ Must address education needs on nutrition and living and maintaining a healthy lifestyle</li> <li>☒ Must utilize evaluation tools approved by First 5 San Bernardino including, but not limited to associated with measuring Body Mass Index (BMI)</li> <li>☒ Must demonstrate quality coordination and collaboration with pediatricians and health care providers related to target population</li> </ul>

Strategy: Early Screening Intervention  
Obesity Intervention Services Model



## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 12-65 WITH TMAD TAYLOR & GAINES FOR PREPARATION OF A HIGHWAY BRIDGE PROGRAM GRANT APPLICATION FOR REPLACE- MENT OF THE CENTRAL AVENUE BRIDGE OVER THE UNION PACIFIC RAILROAD TRACKS, SUBJECT TO ANY MINOR REVISIONS FOUND NECESSARY BY THE CITY ATTORNEY	<b>DATE:</b> July 2, 2012
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b> 7
	<b>FILE I.D.:</b> STA100
	<b>DEPT.:</b> PUBLIC WORKS

CONSIDER AUTHORIZATION OF A \$30,000  
APPROPRIATION FROM THE GAS TAX FUND  
TO FUND AN APPLICATION TO THE STATE  
FOR HIGHWAY BRIDGE PROGRAM GRANT  
ASSISTANCE

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**REASON FOR CONSIDERATION:** Based on recent inspection reports for the Central Avenue/ Union Pacific Railroad bridge, it is time to consider rehabilitation work or replacement of the bridge. Federal money is available on a competitive basis for bridge work under the Highway Bridge Program (HBP). In order to be considered for an HBP grant, a detailed application must be submitted. Proposed Agreement No. 12-65 with TMAD Taylor & Gaines provides assistance for the City in applying for the grant. Agreements with the City require City Council approval.

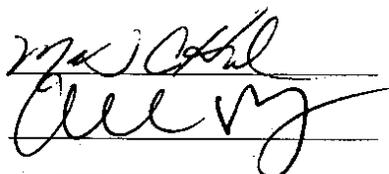
A copy of proposed Agreement No. 12-65 with TMAD Taylor & Gaines is attached for the City Council's review and consideration.

**BACKGROUND:** The Central Avenue Overhead (bridge) at the Union Pacific Railroad tracks was constructed in 1967. At 45 years old it is nearing the end of its design life and usefulness. The bridge is functionally obsolete, having only two traffic lanes in each direction and a narrow sidewalk along one side only. Central Avenue north and south of the bridge is generally wide enough to accommodate six lanes of traffic and sidewalks on both sides. Some portions of Central Avenue have already been striped for six lanes of traffic.

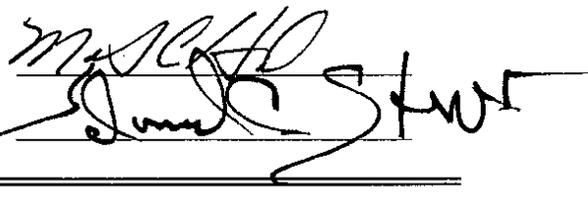
The bridge also has some structural deficiencies. Though not in danger of imminent collapse, spalling has occurred in many places, exposing reinforcing bars. Bridge inspections are performed by California Department of Transportation (Caltrans) inspectors every two to four years for all bridges within the City. For the past ten years, City staff has been addressing most of the deficiencies noted in these inspections. One deficiency that staff has not been able to address is deck cracking on the Central Avenue bridge. Extensive surface cracking in the bridge deck may eventually lead to more reinforcing bars being exposed to the elements, resulting in rusting and eventual failure. While there are methods of repair for the cracks and missing concrete, these problems, together with the functional obsolescence of the bridge, suggest that the City should start considering replacement of the structure.

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Prepared by:



Reviewed and  
Approved by:



Proofed by:

Presented by:

TMAD Taylor & Gaines (TTG) is a structural engineering firm specializing in bridge design. At the City's request, TTG performed a more thorough inspection of the Central Avenue bridge than what has been done over the past few years. The inspection confirmed the findings of the state's inspector regarding structural deficiencies and also noted the functional inadequacies of the existing structure.

The federal government provides funding for repairs, retrofits, rehabilitation, and replacement of bridges under its Highway Bridge Program (HBP). The funds are made available on a competitive basis with applications for funding being made through the state. The City requested a proposal from TTG to assist the City in getting HBP funding for the Central Avenue bridge. TTG would provide the necessary assistance with regard to grant writing services; coordination with Caltrans Local Assistance, field inspections, conceptual design, technical justifications, and engineering estimates; and would provide the necessary exhibits to support the HBP application for the above-mentioned bridge. The detailed scope of our services is outlined in Exhibit A in the Agreement.

**FISCAL IMPACT:** The fee to be paid to TTG under proposed Agreement No. 12-65 is \$25,000. The proposed Agreement also allows the scope of services and contract amount to be increased should additional services be required. The additional services are subject to the City Manager's authorization and approval. A total appropriation from the Gas Tax fund of \$30,000 is requested.

Should the City be successful in its grant application, some local funding will be necessary to match the federal grant. The grant will finance 88.539 percent of whatever work is authorized, with the City being responsible for the remaining 11.462 percent.

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

1. Approve Agreement No. 12-65 with TMAD Taylor & Gaines for preparation of a Highway Bridge Program grant application for replacement of the Central Avenue Bridge over the Union Pacific Railroad tracks, subject to any minor revisions found necessary by the City Attorney.
2. Authorize a \$30,000 appropriation from the Gas Tax Fund to fund an application to the state for Highway Bridge Program grant assistance.

**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**CENTRAL AVENUE/UPRR OVERHEAD  
HIGHWAY BRIDGE PROGRAM APPLICATION**

THIS AGREEMENT is made and effective as of July 1, 2012, between the City of Montclair, a municipal corporation ("City") and TMAD, Taylor & Gaines, a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on July 1, 2012, and shall remain and continue in effect for a period of three months until tasks described herein are completed, but in no event later than December 31, 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 Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 5 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, 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

\$25,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Twenty Seven Thousand Five Hundred Dollars (\$27,500.00). 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 non-disputed 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
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	\$2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	\$1,000,000
Professional Liability (per claim and aggregate)	\$1,000,000
Workers compensation	Statutory

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

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

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

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

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

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

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

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

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

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

#### 15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

(c) Consultant covenants that neither he/she nor any 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: Michael C. Hudson  
City Engineer  
City of Montclair  
5111 Benito  
Montclair, CA 91763

To Consultant: Majid Sarraf  
Director, Bridge Engineering  
TTG (TMAD Taylor & Gaines)  
300 N. Lake, Ave.  
Pasadena, CA 91101

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 Majid Sarraf (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

Consultant is bound by the contents of City's Request for Proposal, Exhibit "C" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, Exhibit "D" 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 proposals.

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 OF MONTCLAIR

By: \_\_\_\_\_  
Mayor

Attest:

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

Approved as to Form:

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

CONSULTANT

By: Majid Sarraf \_\_\_\_\_  
VP/ Bridge Engineering

By: Zareh Astourian \_\_\_\_\_  
President/ CEO

## EXHIBIT A

May 24, 2012

### FEE PROPOSAL for HBP ASSISTANCE

Mr. Michael Hudson, P.E.  
City Engineer  
5111 Benito Street  
Montclair, CA 91763

**Project: Highway Bridge Program (HBP) Funding Assistance for  
Central Avenue OH Structure (Br. # 54C0112)**

Dear Mr. Hudson:

We are pleased to submit this proposal for bridge consulting and funding services to assist City of Montclair (City) in preparation of Highway Bridge Program (HBP) funding application as well as supporting exhibits for Central Avenue OH over UPRR, Amtrak and Metrolink (Br. # 54C0112)

It is our understanding that the above mentioned bridge have been recently inspected by Caltrans and classified as structurally deficient or deteriorated enough to be eligible for HBP funding. The City is intending to secure federal HBP funds for the necessary repairs, retrofits, or even replacements as warranted. The funding assistance services proposed here is expected to be paid for through the City's funds. The HBP program however offers 88.539% federal and only requires 11.462% local (City) matching fund.

An exhibit showing the subject bridge and potential project needs developed after initial site visit is provided at the end of this proposal.

TTG will provide the necessary assistance with regard to grant writing services, coordination with Caltrans Local Assistance, field inspections, conceptual design, technical justifications, and engineering estimates, and will provide the necessary exhibits to support the HBP application for the above mentioned bridge. The detailed scope of our services is outlined in the following table:

No.	Description of Task
1.	Research, collect, and review pertinent information for the existing bridge and roadways. Including bridge as-built and inspection reports.
2.	Perform detailed field review of the bridge, roadways, and photo documentation.
3.	Identify existing utilities and incorporate relocation as well as ROW cost impacts
4.	Develop draft design concept for retrofit, widening, and replacement with 2 alternatives
6.	Coordination meeting w/City staff to confirm transportation needs pertaining bridge.
7.	Prepare cost estimates for potential retrofit/widening/replacement alternatives.
8.	Prepare Highway Bridge Replacement and Rehabilitation Application, Local Assistance Program Guideline Exhibit 6-A, 6-B, 7-B, 7-C, 7-D (as necessary)
9.	Address Caltrans and City's comments and update/finalize application as needed

TTG will obtain the as-built Plans for the existing bridge and detail inspection reports (older Caltrans Reports and if necessary, will obtain as-built of Channel from SBCFCD) to develop design concepts (Plan and typical sections for alternatives) for any proposed bridge widening, replacement structure, or sketches of improvements along with preliminary estimates to the extent needed to support the HBP application for each bridge. We will provide technical justification and re-evaluate the bridge condition rating if necessary to justify eligibility for funding and necessary rehabilitation/ retrofits/ replacements.

This proposal does not include collection of performing traffic counts, surveying, environmental, soils investigation, hydraulic and traffic studies, preparation of plans and specifications, or any construction documents. We will be relying on the City's authorization of TTG and coordination with other agencies (e.g. SB County, SBCFCD, Army Corp, Caltrans and UPRR) to allow full access to the bridge sites and relevant data and information on all the City Bridge, as well as any letter in support of the HBP, or RFA to Caltrans.

Upon your approval of this proposal, and receiving your notice to proceed, we will start with the above described tasks and prepare the draft application for your review, and approval before finalizing the application and ready for your submittal. We will work closely with you, Caltrans and others involved to prepare the application for your submission to Caltrans.

Our fee proposal is based on the following assumptions:

The total fee for completing the HBP application is a fixed amount of \$25,000 00

Please review our scope of work and assumptions and inform us of any omission so we can ensure our estimated fee is adequate. The original and a copy of this proposal will be mailed for your approval. Please sign a copy and return to us.

We thank you in advance for your consideration and providing TTG the opportunity to submit a proposal for Bridge Funding assistance. Should you have any questions, please contact me at (626) 463-2875 or e-mail me at [msarraf@ttgcorp.com](mailto:msarraf@ttgcorp.com)

Sincerely,

Please let me know if you have any questions.

Sincerely,

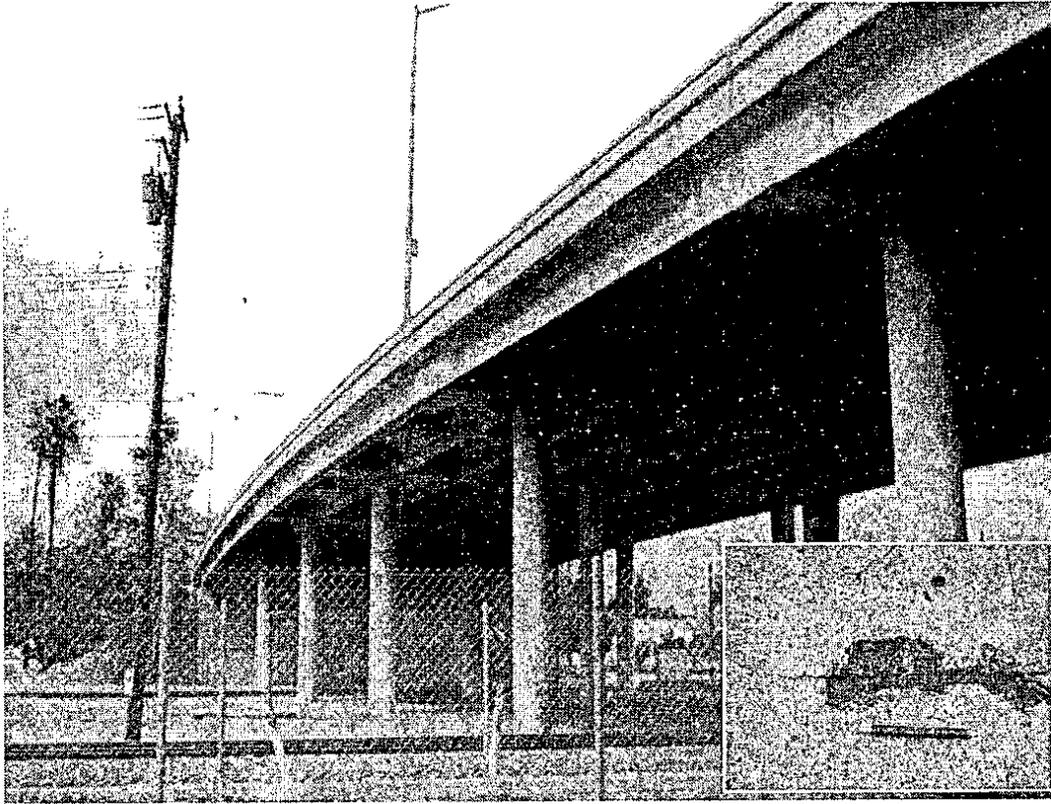
Majid Sarraf, Ph.D., P.E

VP, Director of Bridge Engineering/  
Seismic specialist

\_\_\_\_\_  
Approved

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

\_\_\_\_\_  
Date



**Figure 1 Central Avenue OH over UP RR, Amtrak and Metrolink, Br. # 54C0112**

**Built: 1967**

**Current SR: 85.9 (SD)**

**Potential Needs: Replacement and Widening**

**EXHIBIT B**

**2012  
SCHEDULE OF CHARGES FOR  
TTG ENGINEERING SERVICES**

The fee for our services will be based on the charges listed below. All fee quotations are applicable for a period of 90 days from the date of the proposal to which this schedule is attached. We reserve the right to modify these rates upon 30 days advance notice.

**PERSONNEL HOURLY RATES**

Principal.....	\$205	Designer .....	\$125
Project Manager.....	\$180	CADD Operator .....	\$ 90
Project/Senior Engineer.....	\$165	Construction Administrator .....	\$140
Engineer.....	\$140	Word Processor/Clerical .....	\$ 70

These rates apply to regular time and travel time in the continental United States. A maximum travel time of eight hours will be charged in any day. Overtime, if required in the interest of the project, will be charged at the above rates for professional personnel and at 1.5 times the above rates for other personnel. Overtime will apply to time in excess of forty hours per week and all time on Saturdays, Sundays, and holidays. In the event of adverse weather conditions or other factors beyond our control, a standby charge of four hours per weekday will be made for field personnel. Reimbursable expenses are in addition to personnel rates. Reimbursables will be billed at cost except as noted below.

**MISCELLANEOUS CHARGES**

Passenger Car.....	\$0.50/mile with minimum of .....	\$ 25/day
Plotting (except for in-house use).....	\$3.00/sheet	Photo Copy..... \$ 0 15/page

**ANNUAL ADJUSTMENT**

These rates will be adjusted annually effective the beginning of each new year.

## AGENDA REPORT

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**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 12-2960 AUTHORIZING SUBMITTAL OF USED OIL PAYMENT PROGRAM APPLICATIONS AND RELATED AUTHORIZATIONS TO THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY.

**DATE:** July 2, 2012

**SECTION:** RESOLUTIONS

**ITEM NO.:** 1

**FILE I.D.:** REF165

CONSIDER DESIGNATION OF CITY MANAGER EDWARD C. STARR OR HIS DESIGNEE AS THE PERSON AUTHORIZED TO EXECUTE ALL NECESSARY DOCUMENTS FOR THE PURPOSE OF SECURING PAYMENT FUNDS

**DEPT.:** PUBLIC WORKS

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

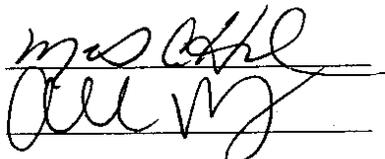
Proposed Resolution No. 12-60 would give the City Manager or his designee authorization to execute all necessary documentation to secure grant payment funds for multiple grant cycles and years, thus eliminating the annual resolution adoption process for each individual grant cycle. This Resolution would remain effective until it is rescinded by the City Council.

**BACKGROUND:** The State of California enacted the California Oil Recycling Enhancement Act (Act) authorizing CalRecycle to issue payments to enhance the collection and recycling of used oil. Under the Act, oil manufacturers make a four-cent per quart payment on every quart of oil sold, transferred, or imported into California. The Act mandates CalRecycle use these funds for specified activities that encourage the proper disposal of used oil and oil filters and set up necessary procedures governing payment applications by cities and counties.

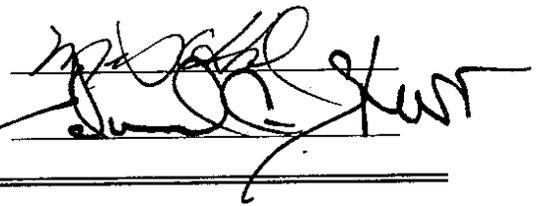
The Used Oil Payment Program Application proposes inclusion of the following program activities:

- Development and distribution of public education materials related to disposal of used oil and oil filters
  - Elementary school presentations/demonstrations teaching children about the proper disposal of used oil and oil filters
- 
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Prepared by:



Reviewed and  
Approved by:



Proofed by:

Presented by:

- Radio, newspaper, and direct-mail advertisement related to used oil and oil filter collection information and locations
- Promotion of used oil and oil filter recycling at the certified oil collection centers in the City of Montclair through newspaper and radio advertisements

**FISCAL IMPACT:** The City is eligible to receive minimum payments in the estimated amount of \$5,000 for each grant cycle.

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

1. Adopt Resolution No. 12-2960 authorizing the submittal of Used Oil Payment Program Applications and Related Authorizations to the Department of Resources Recycling and Recovery.
2. Designate City Manager Edward C. Starr or his designee as the person authorized to execute all necessary documents for the purpose of securing payment funds.

**RESOLUTION NO. 12-2960**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MONTCLAIR AUTHORIZ-  
ING SUBMITTAL OF USED OIL PAYMENT  
PROGRAM APPLICATIONS AND RELATED  
AUTHORIZATIONS TO THE DEPARTMENT  
OF RESOURCES RECYCLING AND RECOVERY**

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

**WHEREAS**, pursuant to Public Resources Code §48690, the Department of Resources Recycling and Recovery (CalRecycle), formerly known as the California Integrated Waste Management Board, has established the Used Oil Payment Program to make payments to cities and counties for implementation of their used oil programs; and

**WHEREAS**, in furtherance of this authority CalRecycle is required to establish procedures governing the administration of the Used Oil Payment Program; and

**WHEREAS**, CalRecycle's procedures for administering the Used Oil Payment Program require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of the Used Oil Payment Program.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby authorize submittal of Used Oil Payment Program Applications to CalRecycle.

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

**BE IT FURTHER RESOLVED** that this authorization is effective until rescinded by the Signature Authority or the City Council of the City of Montclair.

**APPROVED AND ADOPTED** this XX day of XX, 2012.

**ATTEST:**

\_\_\_\_\_  
Mayor

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

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 12-2960 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, 2012, and that it was adopted by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

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**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION  
NO 12-2961 AUTHORIZING PLACEMENT  
OF LIENS ON CERTAIN PROPERTIES FOR  
DELINQUENT SEWER AND TRASH CHARGES.

**DATE:** July 2, 2012  
**SECTION:** RESOLUTIONS  
**ITEM NO.:** 2  
**FILE I.D.:** STB300-17  
**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** Staff has identified 237 sewer and trash accounts in the odd-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

**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 the City Council's adoption of Ordinance No. 02-815, property owners were responsible for only those accounts in their own names.

The 237 liens presented for approval are for accounts that are at least 90 days delinquent.

**FISCAL IMPACT:** Recoverable amount is \$60,809.58 plus \$11,850.00 in lien fees, for a total of \$72,659.58.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 12-2961 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

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Prepared by:

*Janet Kullebeck*  
*Yvonne L. Lewis*

Reviewed and  
Approved by:

Presented by:

*James J. ...*  
*James J. ...*

**RESOLUTION NO. 12-2961**

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

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

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

**WHEREAS**, it has been determined that there are 237 sewer and/or trash accounts on which there are delinquencies in excess of 90 days; and

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

**WHEREAS**, the owners of these properties were notified on June 11, 2012, that their delinquent accounts are subject to causing a lien to be placed on their properties for settlement of such delinquencies; and

**WHEREAS**, the owners of these properties were again notified on June 21, 2012, that such liens would be considered for approval by the Montclair City Council on Monday, July 2, 2012.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair approves the placement of liens on the properties and in the amounts specified in Exhibit A, entitled, *Report of Delinquent Civil Debts - July 2012*, 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, 2012.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 12-2961 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, 2012, 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. 12-2961  
Report of Delinquent Civil Debts - July 2012

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
9222	Vernon Avenue	Residential	\$ 233.20	\$ 50.00	\$ 283.20
9859	Camulos Avenue	Residential	198.86	50.00	248.86
9425	Pradera Avenue #1	Residential	177.79	50.00	227.79
4328	Granada Street	Residential	198.86	50.00	248.86
9223	Ramona Avenue	Residential	196.63	50.00	246.63
10060	Camulos Avenue	Residential	177.79	50.00	227.79
9787	Coalinga Avenue	Residential	107.27	50.00	157.27
4274	San Bernardino Street	Residential	208.31	50.00	258.31
5628	Granada Street	Residential	198.86	50.00	248.86
9585	Poulsen Avenue	Residential	229.66	50.00	279.66
4872	Olive Street	Residential	206.97	50.00	256.97
4426	Princeton Street	Residential	198.86	50.00	248.86
5458	Cambridge Street	Residential	237.94	50.00	287.94
5438	Cambridge Street	Residential	198.86	50.00	248.86
5489	San Bernardino Street	Residential	227.89	50.00	277.89
10153	Camulos Avenue	Residential	180.55	50.00	230.55
9783	Greenwood Avenue	Residential	177.79	50.00	227.79
4832	Olive Street	Residential	206.97	50.00	256.97
9175	Mills Avenue	Residential	123.75	50.00	173.75
9136	Ramona Avenue	Residential	198.86	50.00	248.86
9151	Ramona Avenue	Residential	194.15	50.00	244.15
5544	Caroline Street	Senior	172.70	50.00	222.70
5461	Deodar Street	Residential	189.88	50.00	239.88
9341	Del Mar Avenue	Residential	199.37	50.00	249.37
5596	Hawthorne Street	Residential	198.86	50.00	248.86
9414	Rose Avenue	Residential	198.86	50.00	248.86
9567	Fremont Avenue	Residential	224.82	50.00	274.82
5257	Palo Verde Street	Senior	169.95	50.00	219.95
5490	Cambridge Street	Residential	198.86	50.00	248.86
5448	Cambridge Street	Residential	189.42	50.00	239.42
5570	Cambridge Street	Residential	191.45	50.00	241.45
9680	Bel Air Avenue	Residential	493.63	50.00	543.63
4594	San Jose Street	Residential	164.91	50.00	214.91
4522	Bonnie Brae Street	Residential	204.76	50.00	254.76
4585	San Jose Street	Residential	103.31	50.00	153.31
9387	Felipe Avenue	Residential	198.98	50.00	248.98
4485	San Jose Street	Residential	224.82	50.00	274.82
9547	Camulos Avenue	Residential	230.12	50.00	280.12
9511	Camulos Avenue	Residential	204.33	50.00	254.33
9614	Greenwood Avenue	Residential	177.79	50.00	227.79
4372	San Bernardino Court	Residential	194.77	50.00	244.77
4418	Harvard Street	Residential	198.91	50.00	248.91
4903	Rosewood Street	Residential	186.19	50.00	236.19
9757	Geneva Avenue	Residential	293.47	50.00	343.47
5366	Alamitos Street	Senior	201.06	50.00	251.06
5356	Alamitos Street	Residential	198.86	50.00	248.86

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
9784	Vernon Avenue	Residential	\$ 180.07	\$ 50.00	\$ 230.07
9863	Vernon Avenue	Residential	206.79	50.00	256.79
5389	Benito Street	Senior	200.64	50.00	250.64
9836	Lindero Avenue	Residential	177.79	50.00	227.79
9851	Camarena Avenue	Residential	198.86	50.00	248.86
9834	Tudor Avenue	Residential	101.44	50.00	151.44
9846	Greenwood Avenue	Senior	103.17	50.00	153.17
9802	Helena Avenue	Residential	128.31	50.00	178.31
9877	Camulos Avenue	Residential	224.82	50.00	274.82
4585	James Street	Residential	198.86	50.00	248.86
9757	Camulos Avenue	Residential	198.86	50.00	248.86
9737	Camulos Avenue	Residential	198.86	50.00	248.86
4400	Benito Street	Residential	206.97	50.00	256.97
9755	Kimberly Avenue	Residential	137.14	50.00	187.14
9849	Norton Avenue	Residential	196.65	50.00	246.65
4356	Alamitos Street	Residential	120.20	50.00	170.20
10069	Mills Avenue	Residential	135.64	50.00	185.64
4164	Rudisill Street	Residential	198.87	50.00	248.87
10063	Pradera Avenue	Residential	172.98	50.00	222.98
4277	Granada Street	Residential	198.86	50.00	248.86
9910	Amherst Avenue	Residential	198.87	50.00	248.87
4436	Granada Street	Residential	191.49	50.00	241.49
4390	El Morado Street	Residential	347.78	50.00	397.78
4979	Benito Street	Residential	205.94	50.00	255.94
9935	Poulsen Avenue	Residential	198.96	50.00	248.96
5360	Rudisill Street	Residential	224.82	50.00	274.82
9982	Bel Air Avenue	Residential	198.86	50.00	248.86
9909	Bel Air Avenue	Residential	207.99	50.00	257.99
5627	Granada Street	Residential	206.97	50.00	256.97
5616	Denver Street	Residential	198.86	50.00	248.86
5690	Orchard Street	Residential	198.96	50.00	248.96
9729	Fremont Avenue	Residential	280.23	50.00	330.23
10024	Bel Air Avenue	Residential	316.64	50.00	366.64
10015	Vernon Avenue	Residential	107.42	50.00	157.42
10043	Poulsen Avenue	Residential	198.86	50.00	248.86
10041	Lindero Avenue	Residential	198.83	50.00	248.83
10042	Lindero Avenue	Residential	200.12	50.00	250.12
4322	Orchard Street	Residential	224.94	50.00	274.94
9601	Carrillo Avenue	Residential	198.91	50.00	248.91
9539	Camulos Avenue	Senior	213.36	50.00	263.36
10086	Lindero Avenue	Senior	261.14	50.00	311.14
4424	San Jose Street #27	Residential	198.86	50.00	248.86
4424	San Jose Street #30	Residential	197.59	50.00	247.59
9250	Bel Air Avenue	Residential	129.92	50.00	179.92
5429	Benito Street	Residential	214.80	50.00	264.80
4456	Denver Street	Residential	128.11	50.00	178.11
5422	Granada Street	Residential	114.21	50.00	164.21
4575	Allesandro Street	Residential	198.88	50.00	248.88

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
9112	Camulos Avenue	Residential	\$ 198.86	\$ 50.00	\$ 248.86
11076	Roswell Avenue	Residential	176.25	50.00	226.25
4641	Rosewood Street	Residential	280.23	50.00	330.23
4334	Alamitos Street	Residential	280.23	50.00	330.23
9020	Fremont Avenue	Senior	179.59	50.00	229.59
4864	Highland Street	Residential	224.82	50.00	274.82
4982	Granada Street	Residential	201.99	50.00	251.99
9243	Camulos Avenue	Residential	198.86	50.00	248.86
5120	Howard Street	Multifamily	165.34	50.00	215.34
9896	Coalinga Avenue	Residential	130.23	50.00	180.23
4711	San Bernardino Street	Residential	198.86	50.00	248.86
9617	Surrey Avenue	Residential	198.86	50.00	248.86
5190	Howard Street A & B	Multifamily	455.52	50.00	505.52
9463	Exeter Avenue	Residential	280.23	50.00	330.23
5675	Deodar Street	Residential	199.21	50.00	249.21
9775	Monte Vista Avenue	Residential	188.26	50.00	238.26
9539	Ramona Avenue	Residential	206.97	50.00	256.97
9912	Vernon Avenue	Residential	198.72	50.00	248.72
5371	Alamitos Street	Residential	190.45	50.00	240.45
4430	Harvard Street	Residential	198.86	50.00	248.86
5133	San Bernardino Street	Residential	177.79	50.00	227.79
9375	Pradera Avenue	Multifamily	296.81	50.00	346.81
9380	Columbine Avenue	Residential	218.04	50.00	268.04
4424	San Jose Street #10	Residential	199.75	50.00	249.75
4683	Rosewood Street	Residential	198.88	50.00	248.88
9790	Lindero Avenue	Residential	100.23	50.00	150.23
9527	Marion Avenue	Residential	199.83	50.00	249.83
9908	Pradera Avenue	Residential	190.42	50.00	240.42
5422	San Jose Street	Residential	200.89	50.00	250.89
9950	Bel Air Avenue	Residential	134.32	50.00	184.32
9151	Camulos Avenue	Residential	198.86	50.00	248.86
5409	Rudisill Street	Residential	224.81	50.00	274.81
4843	San Bernardino Street	Residential	138.03	50.00	188.03
9824	Tudor Avenue	Residential	198.86	50.00	248.86
9836	Rose Avenue	Residential	204.04	50.00	254.04
4771	Orchard Street	Residential	177.27	50.00	227.27
4416	Denver Street	Residential	135.51	50.00	185.51
9254	Ramona Avenue	Residential	198.86	50.00	248.86
5273	Benito Street	Residential	198.87	50.00	248.87
9812	Rose Avenue	Residential	222.96	50.00	272.96
9725	Kimberly Avenue	Residential	198.86	50.00	248.86
9829	Fremont Avenue	Residential	177.79	50.00	227.79
9957	Lindero Avenue	Residential	198.85	50.00	248.85
5606	Granada Street	Residential	221.58	50.00	271.58
9656	Benson Avenue	Residential	198.86	50.00	248.86
9820	Saratoga Avenue	Residential	191.38	50.00	241.38
5174	Village Drive	Residential	129.97	50.00	179.97
4424	San Jose Street #12	Residential	198.90	50.00	248.90

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
9584	Surrey Avenue	Residential	\$ 228.20	\$ 50.00	\$ 278.20
4460	Benito Street	Residential	198.86	50.00	248.86
9660	Helena Avenue A	Residential	134.60	50.00	184.60
9537	Marion Avenue	Residential	229.66	50.00	279.66
5456	Princeton Street	Residential	152.41	50.00	202.41
9986	Central Avenue	Residential	224.82	50.00	274.82
5141-43	Harvard Street	Multifamily	395.32	50.00	445.32
5421	Rudisill Street	Residential	224.82	50.00	274.82
4424	San Jose Street #18	Residential	198.71	50.00	248.71
9720	Rose Avenue	Residential	224.83	50.00	274.83
9985	Geneva Avenue	Residential	177.79	50.00	227.79
9955	Amherst Avenue	Residential	289.74	50.00	339.74
9855	Central Avenue	Residential	198.86	50.00	248.86
9685	Monte Vista Avenue	Multifamily	13,531.69	50.00	13,581.69
5634	Alamitos Street	Residential	200.00	50.00	250.00
5577	Armsley Street	Residential	198.86	50.00	248.86
9025	Helena Avenue	Residential	198.86	50.00	248.86
4853	Cambridge Street	Residential	198.86	50.00	248.86
4531	Bonnie Brae Street	Residential	198.87	50.00	248.87
5121	Merle Street	Multifamily	397.74	50.00	447.74
9577	Camulos Avenue	Residential	184.66	50.00	234.66
5606	Cambridge Street	Residential	198.96	50.00	248.96
9610	Poulsen Avenue	Residential	207.71	50.00	257.71
5082	Moreno Street	Residential	280.23	50.00	330.23
9966	Rose Avenue	Residential	198.96	50.00	248.96
4787	State Street	Residential	167.88	50.00	217.88
9795	Central Avenue	Residential	198.54	50.00	248.54
4424	San Jose Street #06	Residential	108.19	50.00	158.19
9878	Galena Avenue	Residential	198.86	50.00	248.86
9803	Vernon Avenue	Residential	206.97	50.00	256.97
9434	Rose Avenue	Residential	198.86	50.00	248.86
4582	Highland Street	Residential	106.97	50.00	156.97
9542	Pradera Avenue	Residential	199.45	50.00	249.45
5470	Granada Street	Residential	198.86	50.00	248.86
9866	Rose Avenue	Senior	175.12	50.00	225.12
9823	Fremont Avenue	Residential	198.86	50.00	248.86
9607	Helena Avenue	Residential	186.97	50.00	236.97
5580	Yale Street	Residential	270.48	50.00	320.48
4304	Denver Street	Residential	224.82	50.00	274.82
9846	Mammoth Drive	Residential	193.68	50.00	243.68
5562	San Bernardino Street	Residential	198.85	50.00	248.85
5132	Holt Boulevard	Commercial	154.54	50.00	204.54
5134	Sundance Drive	Residential	132.71	50.00	182.71
5606	Alamitos Street	Residential	202.24	50.00	252.24
9529	Ramona Avenue	Residential	183.94	50.00	233.94
5144	June Mountain Drive	Residential	128.80	50.00	178.80
5471	Cambridge Street	Residential	198.86	50.00	248.86
4324	Denver Street	Residential	199.34	50.00	249.34

Street No.	Street	Account Type	Delinquency	Lien Fee	Total Lien Amount
4797	Berkeley Street	Residential	\$ 280.23	\$ 50.00	\$ 330.23
5416	El Morado Street	Residential	196.86	50.00	246.86
9641	Helena Avenue	Residential	206.82	50.00	256.82
9768	Bolton Avenue	Residential	259.43	50.00	309.43
4435	Benito Street	Residential	177.79	50.00	227.79
9932	Santa Anita Avenue	Residential	198.86	50.00	248.86
4560	Rosewood Street	Residential	198.87	50.00	248.87
10410	Ramona Avenue #C	Commercial	172.52	50.00	222.52
5527	Harvard Street	Residential	144.32	50.00	194.32
5446	San Jose Street	Residential	280.23	50.00	330.23
5564	La Deney Street	Residential	280.23	50.00	330.23
4375	San Bernardino Court	Residential	199.24	50.00	249.24
9440	Columbine Avenue	Residential	199.75	50.00	249.75
4854	Highland Street	Residential	100.89	50.00	150.89
4400	El Morado Street	Residential	197.59	50.00	247.59
9606	Camulos Avenue	Residential	177.79	50.00	227.79
5414	Palo Verde Street	Senior	227.83	50.00	277.83
9081	Ramona Avenue	Residential	198.86	50.00	248.86
5382	Berkeley Street	Residential	198.84	50.00	248.84
5474	San Bernardino Street	Residential	199.89	50.00	249.89
9958	Lindero Avenue	Residential	177.79	50.00	227.79
5415	Palo Verde Street	Residential	199.75	50.00	249.75
9660	Pradera Avenue	Residential	196.65	50.00	246.65
9827	Coalinga Avenue	Senior	176.02	50.00	226.02
9835	Central Avenue	Residential	206.97	50.00	256.97
9969	Mills Avenue	Residential	280.23	50.00	330.23
5607	Cambridge Street	Residential	196.65	50.00	246.65
9390	Columbine Avenue	Residential	121.83	50.00	171.83
9824	Columbine Avenue	Residential	180.14	50.00	230.14
4370	Holt Boulevard	Commercial	129.08	50.00	179.08
5666	Caroline Street	Residential	173.20	50.00	223.20
9627	Greenwood Avenue	Residential	188.03	50.00	238.03
5594	Harvard Street	Residential	192.74	50.00	242.74
4438	Princeton Street	Residential	183.25	50.00	233.25
5572	Princeton Street	Residential	409.64	50.00	459.64
9933	Lindero Avenue	Residential	102.44	50.00	152.44
9642	Helena Avenue	Residential	189.11	50.00	239.11
9636	Helena Avenue	Residential	280.23	50.00	330.23
5544	Bonnie Brae Street	Residential	164.05	50.00	214.05
4664	Mission Boulevard	Commercial	132.62	50.00	182.62
4653	Olive Street	Residential	136.57	50.00	186.57
9793	Surrey Avenue	Residential	285.39	50.00	335.39
11096	Central Avenue	Residential	183.44	50.00	233.44
9532	Tudor Avenue	Residential	177.79	50.00	227.79
9815	Camarena Avenue	Residential	177.79	50.00	227.79
4512	Bonnie Brae Street	Residential	271.83	50.00	321.83
5430	La Deney Street	Residential	270.14	50.00	320.14
			<b>\$60,809.58</b>	<b>\$11,850.00</b>	<b>\$72,659.58</b>

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
JUNE 18, 2012, AT 7:52 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 7:52 p.m.

**II. ROLL CALL**

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

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of  
June 4, 2012.**

Moved by City Manager Starr, seconded by Council Member Ruh,  
and carried unanimously to approve the minutes of the Personnel  
Committee meeting of June 4, 2012.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

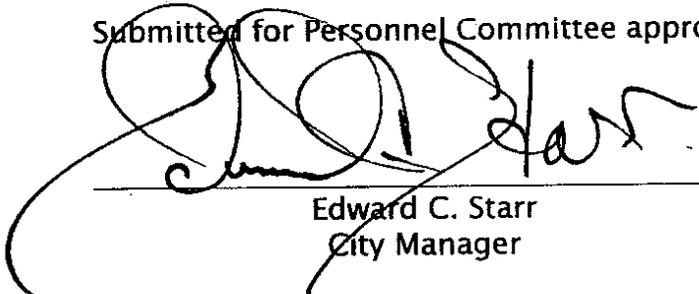
At 7:53 p.m., the Personnel Committee went into Closed Session  
regarding personnel matters related to appointments, resignations/  
terminations, and evaluations of employee performance.

At 8:10 p.m., the Personnel Committee returned from Closed Session.  
Mayor Eaton stated that no announcements would be made at this time.

**VI. ADJOURNMENT**

At 8:10 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr  
City Manager