

**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

December 17, 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, Successor Agency and Montclair Housing Corporation Boards of Directors, and the Montclair Housing Authority Commissioners

II. **INVOCATION**

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

III. **PLEDGE OF ALLEGIANCE**

IV. **ROLL CALL**

V. **PRESENTATIONS**

- A. 2012 Holiday Home Decoration Contest Winners

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, and Montclair Housing Corporation Board of Directors. (Government Code Section 54954.3)*

*Under the provisions of the Brown Act, the Council/Successor Agency Board/MHC/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 December 3, 2012  
[CC/SA/MHC/MHA]
2. Minutes of the Special Council Meeting of December 6, 2012  
[CC]

**B. Administrative Reports**

1. Consider Receiving and Filing of Treasurer's Report [CC] 5
2. Consider Approval of Warrant Register and Payroll  
Documentation [CC] 6
3. Consider Receiving and Filing of Treasurer's Report [SA] 7
4. Consider Approval of Warrant Register [SA] 8
5. Consider Receiving and Filing of Treasurer's Report [MHC] 9
6. Consider Approval of Warrant Register [MHC] 10
7. Consider Granting Easements to Southern California Edison for  
Street Lighting and Other Electrical Equipment in Conjunction  
With Development of Tract No. 18213 – The Paseos [CC]  
  
Consider Authorizing Mayor and Deputy City Clerk to Sign the  
Easement Deed [CC] 11
8. Consider Approval of Lot Line Adjustment No. 2012-1 and  
Authorize the Lot Line Adjustment to be Recorded with the  
Office of the San Bernardino County Recorder [CC] 17
9. Consider Authorizing Transfer of \$9,270 From the Contingency  
Account for Homeland Security Grant Program Equipment  
Purchases [CC] 25

**C. Agreements**

1. Consider Approval of Agreement No. 12-104 With Utility Cost  
Management LLC for Utility Bill Auditing Services [CC] 26
2. Consider Approval of Agreement No. 12-105 With the County  
of San Bernardino for Equipment Maintenance and Access to  
the County's Emergency Radio Communications Network [CC] 30

- 3. Consider Approval of Agreement No. 12-107 With the Department of California Highway Patrol, Inland Division Office, for Use of the Montclair Police Department Firearms Shooting Range [CC]

44

- 4. Consider Award of Contract to Gentry Brothers, Inc., in the Amount of \$776,636 [CC]

Consider Approval of Agreement No. 12-108 With Gentry Brothers, Inc., for the Northwest Montclair Street Rehabilitation Project [CC]

Consider Authorization of an \$80,000 Construction Contingency [CC]

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D. Resolutions - None

**IX. PULLED CONSENT CALENDAR ITEMS**

X. RESPONSE - None

**XI. COMMUNICATIONS**

A. City Attorney

- 1. Closed Session Pursuant to Government Code Section 54956.9(c) Regarding Potential Litigation

City of Montclair Successor Agency v. State of California Department of Finance

- 2. Closed Session Pursuant to Government Code Section 54956.9(a) Regarding Pending Litigation

City of Montclair v. Richard Beltran

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

Agency: City of Montclair

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

B. City Manager/Executive Director

C. Mayor/Chairman

D. Council/MHC Board/MHA Commission

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

1. Minutes of the Personnel Committee Meeting of December 3, 2012

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**XII. COUNCIL WORKSHOP**

- A. Governmental Accounting Standards Board (GASB) 45—Other Post-Employment Benefit (OPEB) Actuarial Study

(Council may consider continuing this item to an adjourned meeting on Monday, January 7, 2013, at 5:45 p.m. in the City Council Chambers.)

**XIII. ADJOURNMENT OF SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS OF DIRECTORS AND MONTCLAIR HOUSING AUTHORITY COMMISSIONERS**

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

**XIV. CLOSED SESSION ANNOUNCEMENTS**

**XV. ADJOURNMENT OF CITY COUNCIL**

*The next regularly scheduled City Council, Successor Agency and Montclair Housing Corporation Boards, and Montclair Housing Authority Commission meetings will be held on Monday, January 7, 2013, 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 Commission 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 north door of Montclair City Hall on December 13, 2012.*

## AGENDA REPORT

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**SUBJECT:** CONSIDER RECEIVING AND FILING OF  
TREASURER'S REPORT

**DATE:** December 17, 2012

**SECTION:** ADMIN. REPORTS

**ITEM NO.** 1

**FILE I.D.:** FIN520

**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending November 30, 2012, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending November 30, 2012.

**FISCAL IMPACT:** Routine—report of City's cash and investments.

**RECOMMENDATION:** Staff recommends the City Council receive and file the Treasurer's Report for the month ending November 30, 2012.

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Prepared by:

*Michael Pietromarchi*  
*Gyome L. Smith*

Reviewed and  
Approved by:

Presented by:

*[Signature]*  
*[Signature]*

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## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION	<b>DATE:</b> December 17, 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.

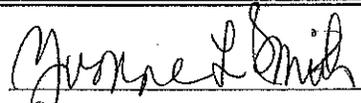
**BACKGROUND:** Mayor Pro Tem Ruh has examined the Warrant Register dated December 17, 2012, and Payroll Documentation dated November 18, 2012, finds them to be in order; and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated December 17, 2012, totals \$1,238,292.69. The Payroll Documentation November 18, 2012, totals \$592,021.38, with \$408,807.10 being the total cash disbursement.

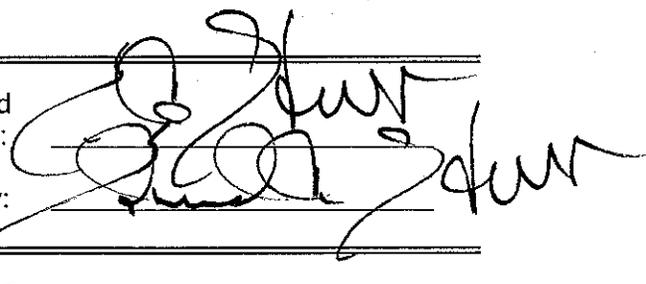
**RECOMMENDATION:** Staff recommends the City Council approve the above referenced Warrant Register and Payroll Documentation as presented.

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Prepared by:



Reviewed and  
Approved by:



Proofed by:



Presented by:

## AGENDA REPORT

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**SUBJECT:** CONSIDER RECEIVING AND FILING OF  
TREASURER'S REPORT

**DATE:** December 17, 2012

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 3

**FILE I.D.:** FIN510

**DEPT.:** SUCCESSOR RDA

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**REASON FOR CONSIDERATION:** The City Council acting as successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending November 30, 2012, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending November 30, 2012.

**FISCAL IMPACT:** Routine—report of the Agency's cash and investments.

**RECOMMENDATION:** Staff recommends the City Council acting as successor to the Redevelopment Agency Board of Directors receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending November 30, 2012.

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Prepared by:

*Michael Piotrowski*

Reviewed and  
Approved by:

*Donald P. ...*

Proofed by:

*Gronne L. Smith*

Presented by:

*June ...*

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## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF WARRANT REGISTER    **DATE:** December 17, 2012  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 4  
**FILE I.D.:** FIN530  
**DEPT.:** SUCCESSOR RDA

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**REASON FOR CONSIDERATION:** The City Council acting as successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending November 30, 2012, pursuant to state law.

**BACKGROUND:** Vice Chairman Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 11.01.12-11.30.12 in the amounts of \$2,724.65 for Project I; \$0.00 for Project II; \$2,228.61 for Project III; \$622.09 for Project IV; \$1,008.26 for Project V; (\$528.61) for the Mission Boulevard Joint Redevelopment Project; and \$0.00 for the Redevelopment Obligation Retirement Funds and finds it to be in order.

**FISCAL IMPACT:** Routine—report of Agency's obligations.

**RECOMMENDATION:** Vice Chairman Ruh recommends the City Council as successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending November 30, 2012.

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Prepared by:

*Michael Piotrowski*  
*Yvonne L. Smith*

Proofed by:

Reviewed and  
Approved by:

Presented by:

*Donald L. Smith*  
*James J. Smith*

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## AGENDA REPORT

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**SUBJECT:** CONSIDER RECEIVING AND FILING OF  
TREASURER'S REPORT

**DATE:** December 17, 2012

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 5

**FILE I.D.:** FIN525

**DEPT.:** MHC

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending November 30, 2012, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending November 30, 2012.

**FISCAL IMPACT:** Routine—report of the Montclair Housing Corporation's cash and investments.

**RECOMMENDATION:** Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending November 30, 2012.

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Prepared by:

*Michael P. Pichowski*

Reviewed and  
Approved by:

*David J. Lopez*

Proofed by:

*Groome & Smith*

Presented by:

*James S. Lee*

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## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF WARRANT REGISTER    **DATE:** December 17, 2012  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 6  
**FILE I.D.:** FIN545  
**DEPT.:** MHC

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending November 30, 2012, pursuant to state law.

**BACKGROUND:** Vice Chairman Ruh has examined the Warrant Register dated 11.01.12–11.30.12 in the amount of \$114,471.40 for the Montclair Housing Corporation and finds it to be in order.

**FISCAL IMPACT:** Routine—report of Montclair Housing Corporation's obligations.

**RECOMMENDATION:** Vice Chairman Ruh recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending November 30, 2012.

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Prepared by:

*Michael P. Kowalski*  
*Gyonna L. Smith*

Reviewed and  
Approved by:

*Samuel L. Baker*  
*Samuel L. Baker*

Proofed by:

Presented by:

## AGENDA REPORT

**SUBJECT:** CONSIDER GRANTING EASEMENTS TO SOUTHERN CALIFORNIA EDISON FOR STREET LIGHTING AND OTHER ELECTRICAL EQUIPMENT IN CONJUNCTION WITH DEVELOPMENT OF TRACT NO. 18213 - THE PASEOS

CONSIDER AUTHORIZING MAYOR AND DEPUTY CITY CLERK TO SIGN THE EASEMENT DEED

**DATE:** December 17, 2012

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 7

**FILE I.D.:** LDA210

**DEPT.:** PUBLIC WORKS

**REASON FOR CONSIDERATION:** As part of the development of Tract No. 18213 - The Paseos, street lighting was required by the City. The location of two of the streetlights and a service pedestal for landscape irrigation purposes falls outside of the dedicated street right-of-way and within the area designated for a new public park. Southern California Edison has requested easements for the streetlights and electrical equipment to be located within the park area. Grants of easement require City Council approval.

**BACKGROUND:** Development of Tract No. 18213 - The Paseos began last July. Over the course of the last several months, the developer has been working with Southern California Edison (Edison) and other utility service providers to bring the necessary utilities into the site. When Edison began the design of the electrical system for the tract, it was determined that two streetlights and an electrical service for irrigation purposes could not be kept within street right-of-way. Both will actually be within the limits of the new public park that is being developed.

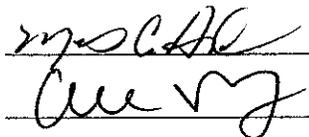
Because the electrical facilities are not within Edison's franchise area, it is requesting the City grant easements for the purposes stated in the attached easement deed.

**FISCAL IMPACT:** Approval of the grant deed request has no fiscal impact to the City. Failure to approve the grant deed will likely result in the deletion of two streetlights from the project and necessitate some redesign of the electrical system for the park irrigation. Any redesign costs would be borne by the developer.

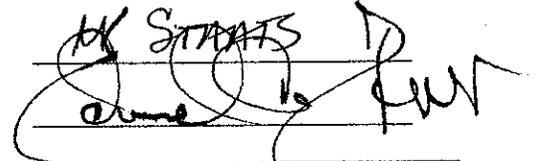
**RECOMMENDATION:** Staff recommends the City Council take the following actions:

1. Grant easements to Southern California Edison for street lighting and other electrical equipment in conjunction with development of Tract 18213- The Paseos.
2. Authorize Mayor and Deputy City Clerk to sign the easement deed.

Prepared by:



Reviewed and Approved by:



Proofed by:

Presented by:

RECORDING REQUESTED BY



SOUTHERN CALIFORNIA  
**EDISON**

An EDISON INTERNATIONAL Company

WHEN RECORDED MAIL TO

SOUTHERN CALIFORNIA EDISON COMPANY

Real Properties  
2131 Walnut Grove Avenue, 2<sup>nd</sup> Floor  
Rosemead, CA 91770

Attn: Distribution/TRES

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT OF  
EASEMENT**

DOCUMENTARY TRANSFER TAX \$ NONE (VALUE AND CONSIDERATION LESS THAN \$100.00)	DISTRICT Ontario	WORK ORDER TD# 404172	IDENTITY	MAP SIZE
SCE Company	FIM: 214-2091-0	APPROVED: Real Properties	BY SLS/BT	DATE 11/11/2012
SIG. OF DECLARANT OR AGENT DETERMINING TAX FIRM NAME	APN: 1008-161-35			

CITY OF MONTCLAIR (hereinafter referred to as "Grantor"), hereby grants to SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, its successors and assigns (hereinafter referred to as "Grantee"), an easement and right of way to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time underground electrical supply systems and communication systems (hereinafter referred to as "systems"), consisting of wires, underground conduits, cables, vaults, manholes, handholes, and including above-ground enclosures, markers and concrete pads and other appurtenant fixtures and equipment necessary or useful for distributing electrical energy and for transmitting intelligence by electrical means, in, on, over, under, across and along that certain real property in the County of San Bernardino, State of California, described as follows:

VARIOUS STRIPS OF LAND LYING WITHIN LOT A OF TRACT NO. 18213, AS PER MAP FILED IN BOOK 335, PAGES 96 THROUGH 99 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

STRIP #1 (8.00 FEET WIDE)

THE NORTHERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE NORTHERLY LINE OF SAID LOT A, EAST 6.94 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID NORTHERLY LINE OF LOT A, EAST 8.00 FEET TO A POINT OF ENDING, SAID POINT HEREINAFTER REFERRED TO AS POINT "A".

STRIP #2 (8.00 FEET WIDE)

THE NORTHERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

COMMENCING AT SAID POINT "A"; THENCE ALONG THE NORTHERLY LINE OF SAID LOT A, EAST 32.60 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING ALONG SAID NORTHERLY LINE OF LOT A, EAST 10.00 FEET TO A POINT OF ENDING.

STRIP #3 (6.00 FEET WIDE)

THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

COMMENCING AT SAID NORTHWEST CORNER OF LOT A; THENCE ALONG THE WESTERLY LINE OF SAID LOT A, SOUTH 42.26 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WESTERLY LINE OF LOT A, SOUTH 6.00 FEET TO A POINT OF ENDING.

This legal description was prepared pursuant to Sec. 8730(c) of the Business & Professions Code.

Grantor agrees for himself, his heirs and assigns, not to erect, place or maintain, nor to permit the erection, placement or maintenance of any building, planter boxes, earth fill or other structures except walls and fences on the above described real property. The Grantee, and its contractors, agents and employees, shall have the right to trim or cut tree roots as may endanger or interfere with said systems and shall have free access to said systems and every part thereof, at all times, for the purpose of exercising the rights herein granted; provided, however, that in making any excavation on said property of the Grantor, the Grantee shall make the same in such a manner as will cause the least injury to the surface of the ground around such excavation, and shall replace the earth so removed by it and restore the surface of the ground to as near the same condition as it was prior to such excavation as is practicable.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF MONTCLAIR

Attest:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

GRANTOR

CITY OF MONTCLAIR

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

GRANTEE

SOUTHERN CALIFORNIA EDISON COMPANY,  
a corporation

\_\_\_\_\_  
Dino J. LaBanca,  
Real Properties Department

Date \_\_\_\_\_

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, notary public,  
(here insert name)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on  
the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(This area for notary stamp)

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, notary public,  
(here insert name)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on  
the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

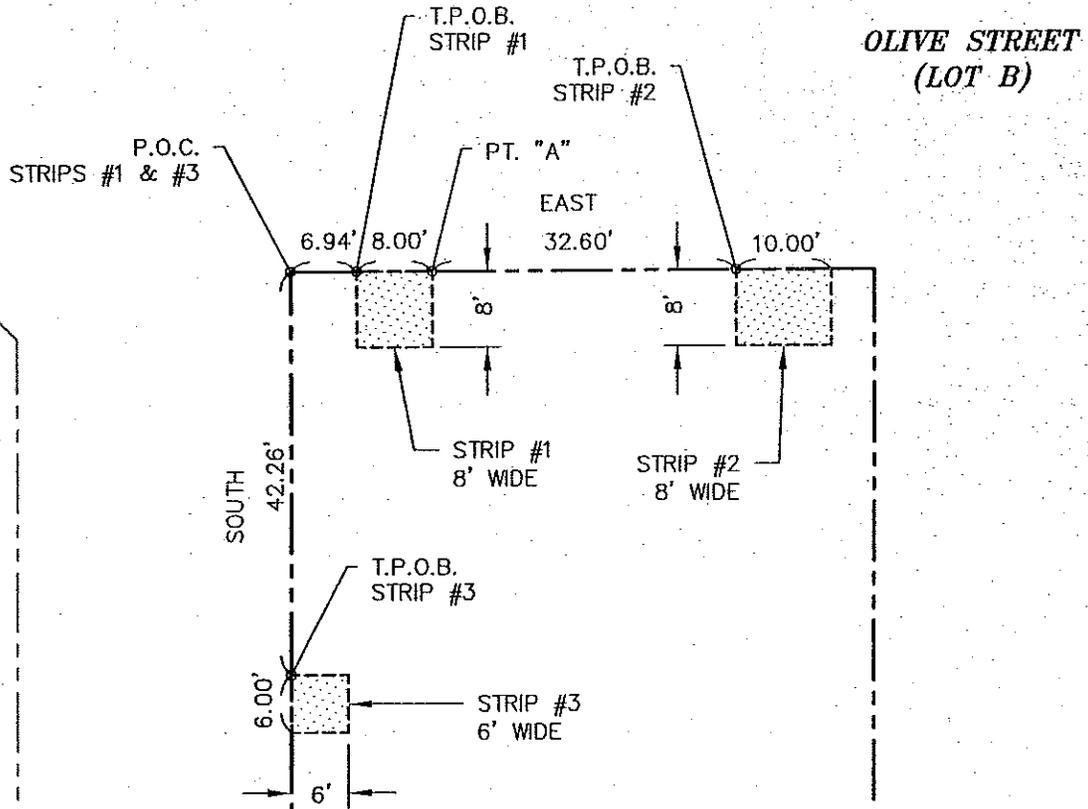
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(This area for notary stamp)

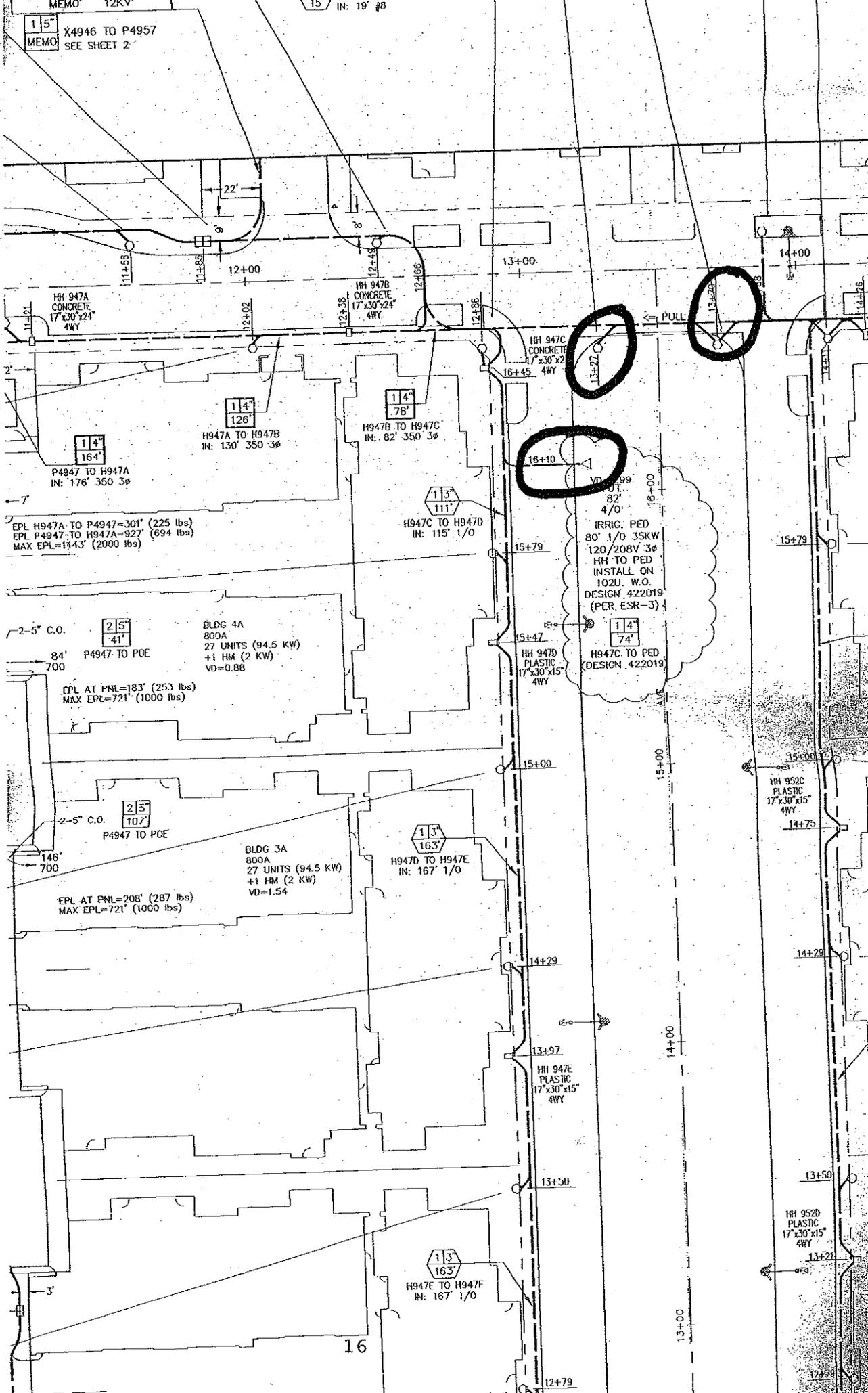
**NORTH**  
 SCALE: 1" = 20'



**LOT A**  
 TRACT NO. 18213  
 M.B. 335 / 96-99  
 SAN BERNARDINO COUNTY

SCE EASEMENT	
DST800972988	TD#400172
SLS/BT	11/11/12

15" MEMO X4946 TO P4957 SEE SHEET 2



HH 947A CONCRETE 17'x30'x24' 4WY

HH 947B CONCRETE 17'x30'x24' 4WY

HH 947C CONCRETE 17'x30'x24' 4WY

14" 126" H947A TO H947B IN: 130' 350 3#

14" 78" H947B TO H947C IN: 82' 350 3#

14" 164" P4947 TO H947A IN: 176' 350 3#

EPL H947A TO P4947=301' (225 lbs)  
EPL P4947 TO H947A=927' (694 lbs)  
MAX EPL=1443' (2000 lbs)

13" 111" H947C TO H947D IN: 115' 1/0

2-5" C.O. 25" 41" BLDG 4A 800A 27 UNITS (94.5 KW) +1 HM (2 KW) VD=0.88

P4947 TO POE

EPL AT PNL=183' (253 lbs)  
MAX EPL=721' (1000 lbs)

2-5" C.O. 25" 107" BLDG 3A 800A 27 UNITS (94.5 KW) +1 HM (2 KW) VD=1.54

P4947 TO POE

EPL AT PNL=208' (287 lbs)  
MAX EPL=721' (1000 lbs)

13" 99" 82' 4/0

IRRIG. PED 80' 1/0 35KW 120/208V 3# HH TO PED INSTALL ON 102U. W.O. DESIGN 422019 (PER. ESR-3)

14" 74" H947C TO PED (DESIGN 422019)

HH 947D PLASTIC 17'x30'x15' 4WY

13" 163" H947D TO H947E IN: 167' 1/0

13" 163" H947E TO H947F IN: 167' 1/0

HH 947E PLASTIC 17'x30'x15' 4WY

HH 952C PLASTIC 17'x30'x15' 4WY

HH 952D PLASTIC 17'x30'x15' 4WY

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF LOT LINE ADJUSTMENT NO. 2012-1 AND AUTHORIZE THE LOT LINE ADJUSTMENT TO BE RECORDED WITH THE OFFICE OF THE SAN BERNARDINO COUNTY RECORDER	<b>DATE:</b> December 17, 2012
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 8
	<b>FILE I.D.:</b> LDUI55
	<b>DEPT.:</b> PUBLIC WORKS

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**REASON FOR CONSIDERATION:** Lot line adjustments or boundary modifications are permitted under both the Subdivision Map Act and the Montclair Municipal Code, subject to approval by the City Council.

**BACKGROUND:** On October 15, 2012, the City approved Agreement No. 12-96 with Monte Vista Water District (District). This agreement was intended to clean up several property ownership issues affecting both the City and the District. One portion of the agreement included a lot line adjustment at Moreno Vista Park.

Several years ago the District drilled a well at the south edge of Moreno Vista Park adjacent to its own property south of the park. It was done with the City's knowledge and permission, with the intent to obtain legal rights to the property at some future date should the well be productive. Similar arrangements have been made in the past between the City and the District, including wells drilled at Sunset Park and at the northwest corner of Richton Street and Monte Vista Avenue. The well at Moreno Vista Park was productive.

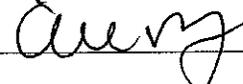
Lot Line Adjustment No. 2012-1 adjusts the common boundary between the City- and District-owned properties at Moreno Vista Park, adding the well site to the District property. The attached lot line adjustment application shows the new lot boundaries and new legal descriptions for both properties. No new parcels are being created with this lot line adjustment. City staff has reviewed the proposed realignments as shown on Exhibits A and B of the lot line adjustment application and recommend approval of the lot line adjustment.

**FISCAL IMPACT:** There is minimal fiscal impact to the City for the change being proposed. Recordation fees with the San Bernardino County Recorder are typically waived for government agencies, although a property transfer fee of \$20 may be applied.

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

1. Approve Lot Line Adjustment No. 2012-1.
2. Authorize the lot line adjustment be recorded with the Office of the San Bernardino County Recorder.

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Prepared by:   
Proofed by: 

Reviewed and Approved by:   
Presented by: 

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MONTCLAIR

APPLICATION FOR LOT LINE ADJUSTMENT

Request is hereby made for approval of the proposed lot line adjustment(s) as indicated below. We, the undersigned owners, understand that in order to be approved:

- (1) a greater number of parcels than currently exist may not be created;
(2) all parcels involved must be legal parcels as defined by ordinance;
(3) all right-of-way as required by the Master Plan of Streets and Highways must have been dedicated; and
(4) no parcels may be created which are substandard in either frontage or area, unless a variance has been granted by the Planning Commission.

To be completed by applicants

- 1. General location of parcels and Assessor's Parcel Numbers: Moreno Vista Park - affected parcels APN 1009-081-11 and APN 1009-081-10
2. Legal description of each existing parcel and the record owner(s) name(s) and address(es). Attach additional sheets, if necessary: Parcel Owners: Monte Vista County Water District & City of Montclair
3. Attach preliminary title report dated within six months of application for each parcel affected by the proposed lot line adjustment.
4. Attach an 8 1/2" x 11" sketch (Exhibit A) showing: (a) existing lot lines to be adjusted (shown as dashed lines); (b) proposed lot lines (shown as solid lines); (c) location of all structures on all parcels; and (d) distances between buildings and proposed lot lines.
5. Proposed legal descriptions of all parcels and names of owners (attach Exhibit B). (Note: Proposed legal descriptions must be prepared by a Licensed Surveyor or properly licensed Civil Engineer. Legal descriptions shall be signed and stamped.)
6. Signature of each owner (as indicated on the preliminary title report) consenting to the lot line adjustment(s). Corporation ownerships, LLCs, trusts, etc., shall include statement(s) certifying person or persons signing application and Certificate are authorized to do so.
7. Application must be submitted with the required fee of \$950.

Signature: [Handwritten signature] for Monte Vista Water District, 11/26/2012

\*\*\*The San Bernardino County Recorder's Office may require the applicants to file a new Grant Deed with the new property descriptions upon lot line adjustment recordation. The new deeds are the sole responsibility of the applicant.

Received in the Engineer's Office \_\_\_\_\_, 20\_\_.

Receipt No. \_\_\_\_\_ By: \_\_\_\_\_

RECORDING REQUESTED  
BY AND MAIL TO:

CITY OF MONTCLAIR  
ENGINEERING DIVISION  
P. O. BOX 2308  
MONTCLAIR, CA 91768

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ENGINEERING DIVISION  
City of Montclair, County of San Bernardino, State of California  
CERTIFICATE APPROVING LOT LINE ADJUSTMENT NO. 12 - 1  
OWNERS' CERTIFICATE

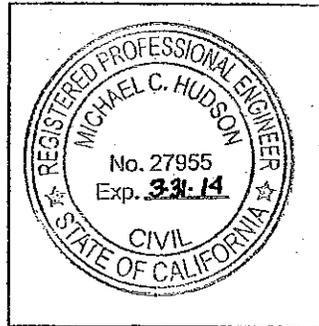
WE HEREBY CERTIFY that we are all and the only parties having any record title interest in the property as described in the attached description (Exhibit B) and we consent to the preparation and recordation of this certificate and the attached description.

By: Mark N. Kinsey Michael C. Hudson, City Engr.

Pursuant to Section 66412 (d) of the Government Code of the State of California, the following described property has been reviewed for a lot line adjustment by the City of Montclair, and has been approved by the City of Montclair.

Dated: \_\_\_\_\_  
City Engineer - Montclair, CA

(Engineer's Stamp)



State of \_\_\_\_\_  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
personally appeared \_\_\_\_\_  
\_\_\_\_\_ personally known to me or \_\_\_\_\_ proved to me on  
the basis of satisfactory evidence to be the person(s)  
whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary \_\_\_\_\_

SEE ATTACHED

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Bernardino

On 11/28/2012 before me, Nadia Paz, Notary Public  
(Here insert name and title of the officer)

personally appeared Michael C. Hudson

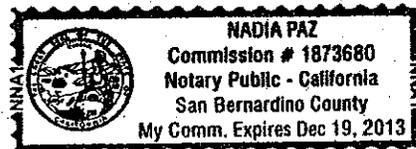
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Nadia Paz  
Signature of Notary Public

(Notary Seal)



## ADDITIONAL OPTIONAL INFORMATION

<b>DESCRIPTION OF THE ATTACHED DOCUMENT</b>	
<u>Engineering Division - Certificate</u> <small>(Title or description of attached document)</small>	
<u>Approving Lot Line Adjustment: 12-1</u> <small>(Title or description of attached document continued)</small>	
Number of Pages <u>2</u>	Document Date <u>11/28/12</u>
<u>Incl. ACK</u> <small>(Additional information)</small>	

<b>CAPACITY CLAIMED BY THE SIGNER</b>	
<input type="checkbox"/> Individual (s)	
<input type="checkbox"/> Corporate Officer	
<small>(Title)</small>	
<input type="checkbox"/> Partner(s)	
<input type="checkbox"/> Attorney-in-Fact	
<input type="checkbox"/> Trustee(s)	
<input type="checkbox"/> Other _____	

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is /are ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

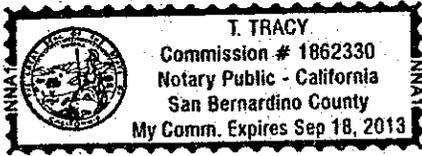
# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

On 12-3-12 before me, T. Tracy, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Mark N. Kinsey  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Engineering Division Certificate  
approving lot line adjustment 12-1  
 Document Date: 12-3-12 Number of Pages: 2

Signer(s) Other Than Named Above: Michael C. Hudson

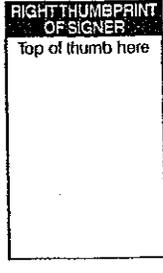
### Capacity(ies) Claimed by Signer(s)

- Signer's Name: Mark N. Kinsey
- Individual
  - Corporate Officer — Title(s): Gen. Mgr.
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing:  
Monter Vista Water District

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

## LEGAL DESCRIPTION

### PARCEL 1 (APN 1009-081-10)

That portion of Lot 20 of Claremont Orange Tract in the City of Montclair, County of San Bernardino, State of California, recorded in Book 17 of Maps page 87 records of said County, described as follows:

COMMENCING at a point on the north line of said Lot 20, a distance of 528.00 feet east of the northwest corner of said Lot 20 said north line also being the centerline of Moreno Avenue per said Claremont Orange Tract, said point also being a northwesterly corner of the land described in deed to Ira J. Cree by deed recorded February 20, 1924 in Book 831, page 245 of deeds records of said County;

thence South  $00^{\circ}01'55''$  West, 160.54 feet along a westerly line of said land described in deed to Ira J. Cree, to a point on a line that is parallel with and 160.50 feet southerly of the centerline of said Moreno Avenue, also being the POINT OF BEGINNING;

thence South  $00^{\circ}01'55''$  West, 247.47 feet continuing along said westerly line;

thence North  $88^{\circ}31'16''$  West, 76.76 feet;

thence South  $01^{\circ}01'12''$  West, 42.00 feet to a point on a line that is parallel with and 220.00 feet north of the south line of said Lot 20;

thence North  $88^{\circ}38'24''$  West, 120.52 feet along said parallel line to the most northwesterly corner of said land described in deed to Ira J. Cree;

thence North  $00^{\circ}01'55''$  East, 289.30 feet parallel with the easterly line of said Lot 20 to a point on a line that is parallel with and 160.50 feet southerly of the centerline of said Moreno Avenue;

thence South  $88^{\circ}38'47''$  East, 198.00, feet along said parallel line to the Point of Beginning.

This land described herein contains approximately 54,036 square feet.

### PARCEL 2 (APN 1009-081-11)

That portion of Lot 20 of Claremont Orange Tract in the City of Montclair, County of San Bernardino, State of California, recorded in Book 17 of Maps page 87 records of said County, described as follows:

COMMENCING at a point in the north line of said Lot 20, a distance of 528.00 feet east of the northwest corner of said Lot 20 said north line also being the centerline of Moreno Avenue per said Claremont Orange Tract, said point also being a northwesterly corner of the land described in deed to Ira J. Cree by deed recorded February 20, 1924 in Book 831, page 245 of deeds records of said County;

thence South 00°01'55" West, 30.00 feet along a westerly line of said land described in deed to Ira J. Cree to the southerly right-of-way line of Moreno Avenue as shown of said Claremont Orange Tract also being the POINT OF BEGINNING;

thence South 00°01'55" West, 378.01 feet continuing along said westerly line;

thence North 88°31'16 West, 76.76 feet;

thence South 01°01'12" West, 42.00 feet to a point on a line that is parallel with and 220.00 feet north of the south line of said Lot 20;

thence North 88°38'24" West, 120.52 feet along said parallel line to the most northwesterly corner of said parcel of land so conveyed to Ira J. Cree;

thence South 00°01'55" West, 220.06 feet along a line that is parallel with the easterly line of said Lot 20 to a point on the southerly line of said Lot 20;

thence South 88°38'24" East, 183.50 feet along said southerly line to a point on the northwesterly line of the land described in deed to Los Angeles County Flood Control District by document recorded January 26, 1921 in Book 708, page 294 records of said County;

thence North 12°43'28" East, 652.55 feet along said northwesterly line to a point on said southerly right-of-way line of Moreno Avenue;

thence North 88°38'47" West, 128.92 feet along said right-of-way line to the POINT OF BEGINNING.

This land described herein contains approximately 83,392 square feet.

See Sheet 3 for a plat depicting the above described properties.

This description prepared by me:

*Ronald A. Musser*

Ronald A. Musser, L.S. 4230, Expires 06-30-14



*12-6-12*  
Date



## AGENDA REPORT

**SUBJECT:** CONSIDER AUTHORIZING TRANSFER OF \$9,270 FROM THE CONTINGENCY ACCOUNT FOR HOMELAND SECURITY GRANT PROGRAM EQUIPMENT PURCHASES

**DATE:** December 17, 2012  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 9  
**FILE I.D.:** PDT362  
**DEPT.:** POLICE

**REASON FOR CONSIDERATION:** The Police Department has been awarded a grant from the Homeland Security Grant Program (HSGP) to purchase equipment in furtherance of emergency preparedness. The City Council is requested to consider authorizing transfer of \$9,270 from the Contingency Account to purchase the equipment, the cost of which would be fully reimbursed by HSGP funds.

**BACKGROUND:** The State of California Governor's Office of Homeland Security established that the subgrantee of the HSGP for San Bernardino County is the San Bernardino County Fire Protection District Office of Emergency Services (OES). In its capacity as subgrantee, OES is tasked with applying for Department of Homeland Security grant funds on behalf of regional jurisdictions. The Montclair Police Department was awarded \$18,105 through this process to purchase emergency preparedness equipment. Agencies are typically reimbursed by OES after the equipment is purchased.

The Police Department received notification on September 4, 2012, that its HSGP emergency equipment request was approved. Equipment allocations are as follows:

Mobile data computer docking stations (3)	\$4,440
Handheld Sokkia computing device (1)	1,509
Adult and infant external defibrillator electrodes	1,291
AR-15 lighting equipment	<u>2,030</u>
TOTAL	<u>\$9,270</u>

**FISCAL IMPACT:** The cost to purchase the emergency preparedness equipment is \$9,270. Should the City Council approve this item, \$9,270 would be transferred from the Contingency Account to the Police Department Fiscal Year 2012-13 Budget to pay for the equipment. The City would be fully reimbursed for the purchase from HSGP funds.

**RECOMMENDATION:** Staff recommends the City Council authorize transfer of \$9,270 from the Contingency Account for Homeland Security Grant Program equipment purchases.

Prepared by: Judy B...  
Reviewed and Approved by: [Signature]  
Proofed by: Sharon [Signature]  
Presented by: [Signature]

## AGENDA REPORT

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 12-104 WITH UTILITY COST MANAGE-  
MENT LLC FOR UTILITY BILL AUDITING  
SERVICES

**DATE:** December 17, 2012

**SECTION:** AGREEMENTS

**ITEM NO.:** 1

**FILE I.D.:** LDA450

**DEPT.:** PUBLIC WORKS

**REASON FOR CONSIDERATION:** Utility Cost Management LLC (UCM) has submitted a proposal to analyze City utility invoices to verify billing rates are correct and that rates most advantageous to the City are being used. The City Council is requested to consider approval of Agreement No. 12-104 with UCM for this purpose. A copy of proposed Agreement No. 12-104 is attached for the City Council's review and consideration.

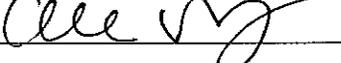
**BACKGROUND:** Since 1991, Utility Cost Management LLC has been helping its clients to reduce utility expenses through the informed application of utility regulations. It has generated \$90 million in refunds and savings for a wide variety of clients including public entities, educational institutions, residential and commercial real estate owners and managers, hospitals, manufacturers; food processors, farmers, hotels, and nonprofit organizations. UCM's clients include the cities of Upland, Highland, Downey, Duarte, and Moreno Valley, as well as several special districts and state agencies. The firm has represented customers in several landmark proceedings before the California Public Utilities Commission, which have altered the way electric utility companies interpret and apply their own rates. It has been a driving force in the formulation and adoption of new regulations that have benefited utility customers throughout the State.

UCM will analyze all telecommunications, water, sewer, trash, gas, and electrical accounts to determine whether the correct rates are being applied. If not, UCM will work with the utility companies to revise the rates as necessary.

Proposed Agreement No. 12-104 is a standard agreement used by UCM with modifications recommended by the City Attorney.

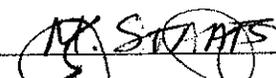
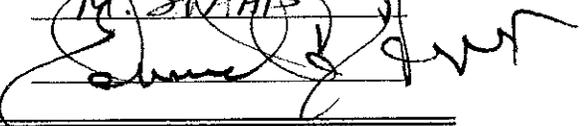
**FISCAL IMPACT:** UCM's compensation is based on the actual savings achieved by any changes in billing rates agreed to by the various utility companies. If the City receives a refund or credit that is identified in a Findings Letter to be generated as part of the study, the City will pay to UCM 50 percent of the savings or credit for the three-year period. If no savings or credits are found, UCM's compensation is nothing. Payment to UCM is not due on any item disputed by the utility company until such dispute has been resolved.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 12-104 with Utility Cost Management LLC for utility bill auditing services.

Prepared by:   
Proofed by: 

Reviewed and  
Approved by:

Presented by:

**AGREEMENT TO PROVIDE  
UTILITY BILL AUDITING SERVICE**

This agreement is made by and between Utility Cost Management LLC ("UCM") and the entity signing below ("Client") as follows:

**1. Applicable to Client's Utility Accounts.** Unless otherwise stated in an addendum initialed by both parties, this Agreement will apply to all telecommunications (including voice, data, cellular, long distance, VOIP), water, sewer, garbage, gas and electricity accounts (and any related utility user taxes, other taxes, assessments, surcharges or fees) with respect to which Client:

- (a) is receiving utility service as of the Effective Date (as defined below),
- (b) has received utility service within three years prior to the Effective Date,
- (c) receives utility service within one year after the Effective Date, or
- (d) has permitted or authorized UCM to obtain a copy of the utility bill.

The telecommunications, water, sewer, garbage, gas and electric accounts described in this paragraph are hereinafter collectively referred to as "Utility Accounts". The "Effective Date", as that term is used above, is the first day of the calendar month after both UCM and Client have signed this Agreement.

**2. Client to Provide Utility Bills.** On or promptly after Client's execution of this Agreement, Client will provide UCM with a copy of at least one month's utility bills for all of Client's Utility Accounts.

**3. UCM Authorized to Obtain Information on Utility Accounts.** UCM is hereby authorized to obtain and review information relating to the Utility Accounts. If site visits are necessary, UCM will first obtain proper authorization.

**4. UCM's Findings Letter.** UCM will use its best efforts to identify the basis for any refunds, credits or Future Savings (as defined below) on Client's Utility Accounts. UCM will send one or more a "Findings Letters" to Client that generally sets forth the basis for any refunds, credits or Future Savings identified by UCM. UCM may, from time to time, supplement or amend the Findings Letter.

**5. Steps to Obtain Refunds or Savings.** UCM is authorized by Client to take steps to obtain the refunds, credits or Future Savings identified in the Findings Letter. Such steps may include, but are not limited to, communicating, negotiating and dealing with utility providers (or, in the case of utility user taxes or other governmental charges, the appropriate government entity), and seeking relief from the California Public Utilities Commission in a complaint proceeding or other proceeding.

**6. Cooperation By Client.** Client will cooperate with UCM, as reasonable, in UCM's efforts to carry out the purposes and intent of this Agreement. Such cooperation will include, but not be limited to, providing information upon request by UCM concerning Client's utility expenditures, utility service and operations.

**7. UCM's Compensation.**

UCM's compensation will consist of the amounts set forth in both (a) and (b) below.

(a) **Refunds or Credits.** If Client receives a refund or credit that was identified in the Findings Letter, then Client will pay to UCM 50% of the amount refunded or credited. The amount of the refund or credit for this purpose will include all amounts refunded or credited (including any portion attributable to interest) for any overcharges that were incurred by Client prior to the date that the overcharges no longer appeared on the Client's utility bill. Payment of UCM's 50% compensation is due within 30 days of the date UCM mails an invoice to Client.

(b) **Future Savings.** If Client obtains Future Savings that were identified in the Findings Letter, then Client will pay UCM 50% of such Future Savings that accrue during a Three-Year Savings Period. "Future Savings" is the amount by which Client's charges on its Utility Accounts are reduced as a result of a change in the billing rate, calculation, method or procedure. Future Savings will be calculated as the difference between the amount Client was billed on its Utility Accounts during the Three-Year Savings Period, and the amount that it would have been billed on its Utility Accounts during the Three-Year Savings Period if there had been no change in its billing rate, calculation, method or procedure. The Three-Year Savings Period begins on the date that the change in the billing rate, calculation, method or procedure is first reflected on Client's utility bill, and ends three years thereafter. UCM will

submit invoices periodically to Client for payment based on the Future Savings as they accrue. The invoices will verify (a) that Future Savings have actually been realized by Client, and (b) the amount of such Future Savings. Payment of UCM's invoices is due within 30 days of the date the invoices are mailed to Client. The compensation under this subparagraph will not include compensation for Future Savings that are the result of a reduction in the amount of utility usage by Client.

- (c) **Client's Prior Knowledge of Basis For Refund, Credit, or Future Savings.** Client is not obligated to pay UCM pursuant to this paragraph for any refund, credit or Future Savings received by Client for which Client had submitted to the utility provider a written claim prior to the date of UCM's Findings Letter. However, Client is obligated to pay UCM pursuant to this paragraph whether or not Client knew of the basis for the refund, credit or Future Savings prior to the date of UCM's Findings Letter, and whether or not Client's receipt of the refund, credit or Future Savings was the result of steps taken by UCM or others, including attorneys.
8. **Termination; Effect.** This Agreement will terminate 7 days after either party faxes a written notice of termination to the other party. Upon termination, UCM will cease all work on behalf of Client. However, if termination occurs after UCM has sent its Findings Letter to Client, then Client will remain obligated to pay UCM, pursuant to this Agreement, for any refunds, credits or Future Savings that were identified in the Findings Letter and that are thereafter obtained by Client. UCM may continue to obtain and review Client's utility billing and other information following termination in order to periodically verify whether Client has obtained a refund, credit or Future Savings that was identified in the Findings Letter.
9. **Subcontract of Telecommunications Audit.** UCM may engage an outside firm (the "Subcontractor") to perform some or all of the following: obtain and review Client's telecommunications accounts (Paragraph 3), identify the basis for any refunds, credits or Future Savings on such telecommunications accounts (Paragraph 4), and take steps to obtain the refunds, credits or Future Savings on such telecommunications accounts that are identified in the Findings Letter (Paragraph 5). Payment of the Subcontractor's compensation, if any, will be the sole responsibility of UCM, and not Client. Client hereby acknowledges and consents to UCM's engagement of a Subcontractor as described herein.
10. **If Client Is Not Utility Customer.** By providing a copy of any utility bill to UCM, Client is thereby agreeing that the Utility Account represented by such bill will be governed by this Agreement, regardless of whether or not Client is the Utility Customer with respect to such Utility Account. For purposes of this Agreement, the Utility Customer is the entity that (i) is named on the Utility Account as reflected by the utility bill, (ii) receives the utility service on the Utility Account, (iii) pays for or is liable for the charges on the Utility Account, or (iv) is the owner of the property at which the utility service is provided on the Utility Account. Client hereby notifies UCM that Client is not the Utility Customer with respect to certain Utility Accounts on which utility service is provided to Caltrans; and that Client is not the owner of the property at which such utility service is provided to Caltrans. If Client is not the Utility Customer for a Utility Account then, with respect to that Utility Account, Client represents that it is signing this Agreement in its capacity as agent for the Utility Customer, and as such is authorized to legally bind the Utility Customer to the terms of this Agreement. Client further agrees that the terms of this Agreement will be equally binding on both Client and Customer, that all references in this Agreement to "Client" will also be deemed to be references to the Utility Customer, and that Client and the Utility Customer will be jointly and severally liable for payment of UCM's compensation under this Agreement.
11. **No Legal Services.** Client acknowledges and understands that: (1) Only an attorney can provide legal services or advice, (2) UCM is not an attorney or law firm, and does not and will not provide legal services or advice, (3) UCM does not and will not act as an attorney for Client or any other person, (4) Nothing in this Agreement, and no act, omission or statement by UCM, or its owners or employees, will be construed to create an attorney-client relationship between UCM and Client or any other person, (5) UCM is not subject to the California Rules of Professional Conduct, which govern the conduct of attorneys, and (6) Client should consult an attorney if it wishes to receive legal services or advice.
12. **Disclosure of Information.** UCM may obtain information that pertains to Client's business, operations, or affairs, including but not limited to its utility charges and utility usage. Client expressly authorizes UCM to use and disclose such information to others as necessary or convenient to carry out the services contemplated by this Agreement.
13. **Release of Claims Against UCM.** Client acknowledges and agrees that UCM has made no express or implied representation or warranty that it will be successful in identifying or obtaining any refunds, credits, or Future Savings on Client's Utility Accounts. Client hereby covenants not to bring any action for damages against UCM that is based upon or relates to any failure by UCM to identify or obtain refunds, credits, or Future Savings to which Client was or is entitled.

14. **Representations Made By Client.** It may become necessary for Client to make certain representations to the utility provider or other entity in order obtain refunds, credits or Future Savings identified by UCM in its Findings Letter. Client hereby warrants that any such representations made by Client will be true and correct in all respects.
15. **Late Payment Penalty.** If payment of any invoice is not received by UCM within 30 days of the date the invoice was mailed, then interest on the amount owing will accrue, beginning on the 31<sup>st</sup> day after the invoice was mailed to Client, at the rate of 1% per month (prorated on a daily basis). In addition, if any payment is not received by UCM within 60 days of the date the invoice was mailed to Client, then a fee equal to 5% of the amount owing (including any accrued interest) will be imposed on the 61<sup>st</sup> day after the invoice was mailed. Interest will continue to accrue at 1% per month (prorated on a daily basis) on the entire amount due until paid in full.
16. **Applicable Law.** This Agreement is executed in and intended to be performed in the State of California, and the laws of that state will govern its interpretation and effect.
17. **Venue.** Venue in any legal action arising from or related to this agreement will be San Bernardino County, California.
18. **Paragraph References.** A reference to a "paragraph" of this Agreement includes both the numbered paragraph, as well the subparagraphs, if any, that are part of such paragraph. Subparagraphs are designated by lower case letters (e.g., "(a)", "(b)", "(c)").
19. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
20. **Interpretation.** In construing this Agreement, no consideration shall be given to the fact or presumption that any party had a greater or lesser hand in drafting of this Agreement.
21. **Entire Agreement.** This instrument contains the entire Agreement of the parties relating to the rights granted and obligations assumed in this instrument. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the party to be charged.
22. **Signor Authorized to Bind Client.** The individual signing this agreement on behalf of Client hereby represents and warrants that he/she is authorized to sign on behalf of the Client and to legally bind Client to the terms of this Agreement.

<b>UTILITY COST MANAGEMENT LLC</b>	
By:	_____
	Signature
	_____
	Print Name
	_____
	Title
	_____
	Date

<b>CITY OF MONTCLAIR</b>	
Print Client Name Above	
By:	_____
	Paul M. Eaton, Mayor
Date:	_____
Attest:	_____
	Yvonne Smith, Deputy City Clerk
Date:	_____

## AGENDA REPORT

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 12-105 WITH THE COUNTY OF SAN BERNARDINO FOR EQUIPMENT MAINTENANCE AND ACCESS TO THE COUNTY'S EMERGENCY RADIO COMMUNICATIONS NETWORK

**DATE:** December 17, 2012  
**SECTION:** AGREEMENTS  
**ITEM NO.:** 2  
**FILE I.D.:** COM130  
**DEPT.:** CITY MGR

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 12-105 with the County of San Bernardino to continue the City's access to the County's emergency radio communications network.

A copy of proposed Agreement No. 12-105 is attached for the City Council's review and consideration.

**BACKGROUND:** The City Council approved the integration of West End Communications Authority facilities, equipment, and service and maintenance of support into the County of San Bernardino's emergency communications network on November 5, 2007. Approval of proposed Agreement No. 12-105 would continue the City's access to the County's emergency radio communications network.

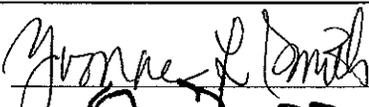
The term of proposed Agreement No. 12-105 is for a five-year period from January 1, 2013, through December 31, 2018.

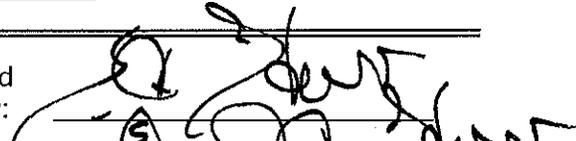
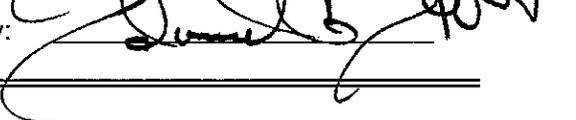
**FISCAL IMPACT:** For the five-year term of the contract period, Montclair's estimated cost for maintenance service is \$341,892 as indicated in Table 1 below:

Table 1

Estimated Contract Amount for County Maintenance  
West End System

<i>Fiscal Year</i>	<i>Estimated payment</i>
2012-13	\$ 34,189.20
2013-14	68,378.40
2014-15	68,378.40
2015-16	68,378.40
2016-17	68,378.40
2017-18	<u>\$ 34,189.20</u>
TOTAL	<u>\$341,892.00</u>

Prepared by:   
 Proofed by: 

Reviewed and Approved by:   
 Presented by: 

Per unit maintenance costs are indicated in Table 2 below:

Table 2

Charges for Maintenance Service

<i>Service Type</i>	<i>Monthly Unit Rate</i>	<i>Number of Units</i>	<i>Annual Cost</i>
Radio access	\$ 44.00	98	\$51,744.00
Radio maintenance	\$ 6.90	98	8,114.40
Telephone interconnect	\$ 5.50	0	0.00
Dispatch console maintenance	\$355.00	2	<u>8,520.00</u>
	TOTAL		<u>\$68,378.40</u>

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 12-105 with the County of San Bernardino for equipment maintenance and access to the County's emergency radio communications network.



County of San Bernardino

F A S

**STANDARD CONTRACT**

FOR COUNTY USE ONLY

Agreement No. 12-105

<input checked="" type="checkbox"/> New	Vendor Code		<b>SC</b>	Dept. <b>MHZ</b>	<b>A</b>	Contract Number	
<input type="checkbox"/> Change							
<input type="checkbox"/> Cancel							
County Department <b>Information Services Department</b>				Dept. <b>MHZ</b>	Orgn. <b>RAC</b>	Contractor's License No.	
County Department Contract Representative <b>Edward Emery</b>				Telephone <b>909-388-0672</b>		Total Contract Amount <b>\$341,892</b>	
Contract Type <input checked="" type="checkbox"/> Revenue <input 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 <b>1/1/2013</b>	Contract End Date <b>12/31/2018</b>	Original Amount	Amendment Amount		
Fund <b>IAM</b>	Dept. <b>MHZ</b>	Organization <b>RAC</b>	Appr. <b>9880</b>	Obj/Rev Source	GRC/PROJ/JOB No.	Amount <b>\$301,320</b>	
Fund <b>IAM</b>	Dept. <b>MHZ</b>	Organization <b>RSM</b>	Appr. <b>9880</b>	Obj/Rev Source	GRC/PROJ/JOB No.	Amount <b>\$40,572</b>	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount	
Project Name <b>800 MHz System Access And Maintenance</b>			Estimated Payment Total by Fiscal Year				
			FY	Amount	I/D	FY	Amount
			<b>12/13</b>	<b>\$34,189.20</b>		<b>15/16</b>	<b>\$68,378.40</b>
			<b>13/14</b>	<b>\$68,378.40</b>		<b>16/17</b>	<b>\$68,378.40</b>
			<b>14/15</b>	<b>\$68,378.40</b>		<b>17/18</b>	<b>\$34,189.20</b>

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

Name

City of Montclair

hereinafter called CUSTOMER OR CONTRACTOR

Address

5111 Benito

Montclair, CA 91763

Telephone

909-625-9402

Federal ID No. or Social Security No.

**IT IS HEREBY AGREED AS FOLLOWS:**

(Use space below and additional bond sheets. Set forth service to be rendered; amount to be paid; manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

**I. SAN BERNARDINO COUNTY 800 MHZ RADIO COMMUNICATION SYSTEM ACCESS**

The 800 MHz Radio Communications System, hereinafter called System, is composed of two components known as the Backbone and Field Equipment. The Backbone is defined as that portion of the System that provides the means by which dispatch centers, public safety locations, mobile radios, and portable radios communicate with each other via voice transmission. It is composed primarily of fixed relay equipment and associated centralized dispatch and control equipment. Field Equipment is defined as that portion of the System that uses the Backbone for communications and consists primarily of local dispatch equipment, mobile radios, and portable radios. Under this agreement, data communications, i.e. Mobile Digital Terminals and required support equipment, is excluded. Specific charges for such service(s) are set forth and attached hereto as Exhibit A, "800 MHz Radio Communications System Access/Paging Services and Payment Terms."

**Auditor/Controller-Recorder Use Only**

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

#### **A) System Purpose and Objective**

The primary purpose of the System is to serve the County and accommodate participation by public safety and local governmental agencies in the county of San Bernardino. Secondly, other governmental and safety related non-governmental customers may be allowed access to the System as conditions warrant and as provided for by this agreement. During a disaster, public safety will receive priority in all areas, based entirely on emergency response responsibilities. Non-public safety customers' access to System may be controlled or withheld.

#### **B) Backbone Operational Policies**

- 1) Public safety and local governmental customers shall have operational priority over all other customers.
- 2) County has the final authority, at all times, to exercise discretionary control over the Backbone to insure the ability of immediate-need public safety agencies to communicate, and/or to otherwise manage Backbone traffic to the overall benefit of all Backbone customers.

#### **C) Backbone Modification (Post Backbone Implementation)**

- 1) County may determine that Backbone modification is needed from time to time to meet the changing needs of County and/or customers.
- 2) Costs for Backbone modifications made after the execution of this agreement shall be shared by customers receiving benefits related to such modifications based on the benefit derived by each. Derived benefit shall be determined based on the number of units that are in service by each end user in relationship to the total units being serviced by the system Backbone infrastructure at the time the modification is made, unless the modification is specific to an end user or a group of users. In this case, the affected end user or group of users that caused the modification would bear the entire cost of the modification.
- 3) Costs for the implementation, operation, and maintenance of any modification requested by, and benefiting only one customer, shall be borne solely by that customer.
- 4) If modification improves service only in/for a definable local area, any customers in such definable local area, and participating in and receiving direct benefit from the modification, shall share the costs for its implementation, operation, and maintenance.
- 5) If the modification benefits all Backbone customers, costs for the implementation, operation, and maintenance shall be borne by all customers.

#### **D) Field Equipment**

- 1) Customer shall, at Customer expense and future financial liability, purchase and maintain its own Field Equipment.
- 2) Customer shall, at Customer expense, expand or modify existing Customer structures, facilities, or dispatch centers as required to support the installation of Customer's Field Equipment.

#### **E) Related Non-Governmental Customers**

- 1) At times, non-governmental customers may have a need to communicate with public safety/local government services during emergencies, or in their daily support of public safety/local government services. Where it is not in conflict with Federal Communications Commission (FCC) Regulations or other laws, and subject to approval by County, such customers may be allowed Backbone access. However, non-governmental use of the Backbone for day-to-day operations shall be on a non-interfering, prioritized basis, and subject to channel loading limits, as determined by County.
- 2) The County shall be responsible for coordinating Backbone access and implementing terms and conditions of such use, including one-time and recurring costs to be paid by such new customers.

- 3) County shall monitor non-governmental customers of the Backbone. If the future needs of public safety/local government expand to the point of competition with non-governmental use of the Backbone, said non-governmental customers may be required by the County to vacate their use of the Backbone.
- 4) Non-governmental customers shall generally be removed in reverse order of their entry into the System, i.e., the last customer to enter the System will customarily be the first to be removed unless any other customer(s) voluntarily relinquishes access.
- 5) Non-governmental customers being removed from the System shall have ninety (90) days to remove their equipment or transfer their operations to another communications system.

**F) Backbone Ownership**

It is understood that County has ownership of the Backbone, and upon any termination of this agreement by County or by Customer, any and all rights, title, and interest in the Backbone shall remain with the County. Customer shall retain all rights, title, and interest in its own Field Equipment.

**II. MHZ RADIO AND EQUIPMENT MAINTENANCE SERVICES**

The County of San Bernardino Information Services Department (ISD) provides a number of 800 MHz radio and equipment maintenance services that are available to public safety and local governmental agencies in the county of San Bernardino, as well as other governmental and safety related non-governmental customers. Maintenance services provided for under this agreement consist of 800MHz Backbone Radio Equipment, 800 MHz Mobile/Portable Radio Equipment, 800 MHz Vehicular Radio Modems (VRMs), 800 MHz Radio Dispatch Equipment, and 800 MHz Radio Battery Replacement. Specific charges for such service(s) are set forth and attached hereto as Exhibit A, "800 MHz Radio Communications System Access/Paging Services and Payment Terms".

**A) County Responsibilities in Providing Maintenance Services**

- 1) Maintain sufficient "loaner equipment" or "spare" mobile radios to temporarily replace equipment that is removed from service for maintenance reasons.
- 2) Remove, reinstall and maintain Customer owned radios or other covered equipment that has become defective from normal wear and usage. ISD shall determine if defects are normal wear and usage; said determination will be final. Repair work will be performed at ISD or elsewhere as prescribed by ISD.
- 3) Maintenance for Customer owned Radio Dispatch Equipment and Backbone Radio Equipment will be provided 24 hours per day, seven days per week with a two-hour response time. Maintenance for VRMs, and Mobile/Portable Radios to be provided during normal County work hours on normal County business days. After hours service will be available on a premium rate basis.
- 4) ISD reserves the right to subcontract for all or part of services from authorized Motorola repair facilities.
- 5) ISD assumes no liability for equipment failure in the field, or for any adverse consequences caused by such failed equipment.
- 6) ISD assumes no liability for failure to provide or delay in providing services, under this agreement.

**B) County Services Provided on a Time and Materials Basis**

- 1) Service required due to Customer abuse or abnormal wear.
- 2) Service to correct attempts by Customer or unauthorized third parties to repair or modify equipment.
- 3) Facility electrical problems at Customer location(s) or vehicle electrical problems.
- 4) Services not covered in Paragraph II, to the extent feasible/cost-effective as determined by ISD.

- 5) Program or re-program radios at Customer's request or in response to abnormal wear and usage, except for County originated systems reconfigurations.
- 6) Replacement of consumable items including portable radio batteries, mobile and portable antennas, and microphone cords.

### **C) Customer Responsibilities**

- 1) Customer shall own its own equipment.
  - a. Customer shall provide ISD with model and serial numbers of all equipment to be covered under this agreement.
  - b. Customer shall designate an individual as the single point of contact for maintenance coordination.
  - c. Customer shall coordinate and schedule service requirements with ISD in advance whenever possible.
  - d. Customer shall advise ISD of all radio relocations or reassignments within their fleet, within 24 hours of relocation or reassignment.

### **III. EFFECTIVE DATE AND TERMINATION**

This agreement shall commence on January 1, 2013. This agreement shall remain in effect for five (5) years, unless the County or the Customer, at the sole discretion of either, terminates the agreement by giving sixty (60) days written notice to the other. County may, at its sole discretion, opt not to terminate its services until replacement services are identified and in place; however, in no event shall County's services be continued beyond 120 days of the original written notice. Any such termination date shall coincide with the end of a calendar month. Neither party shall incur any liability to the other by reason of such termination.

### **IV. RATES AND PAYMENT TERMS**

Payment rates and conditions are set forth on Exhibit A, "800 MHz Radio Communications System Access/Paging Services and Payment Terms" attached hereto. Payment shall be due upon receipt of invoice and payable within sixty (60) days of invoice date. In order to amend this agreement for a change in service levels, County will provide to Customer a revised Exhibit A incorporating such change(s) which shall be signed by Customer and returned to County. Customer's subsequent invoice shall be adjusted in accordance with the change(s), on a prorated basis, as necessary.

Exhibit A reflects the rates in effect at the execution of this agreement. Any subsequent rate change(s) shall become effective on July 1 of the County fiscal year (July 1 through June 30) in which such rate change(s) is adopted as part of the County Budget. County shall provide notice to Customer of pending rate change(s) by providing Customer with a revised Exhibit A reflecting such rate change(s). Customer's subsequent invoice shall be adjusted in accordance with the rate change(s). Checks shall be made payable to the County of San Bernardino.

Payment address is: County of San Bernardino  
Information Services Department  
670 E. Gilbert Street, First Floor  
San Bernardino, CA 92415-0915  
Attn: Administration Services

### **V. AGREEMENT AUTHORIZATION**

The Customer warrants and represents that the individual signing this agreement is a properly authorized representative of the Customer and has the full power and authority to enter into this agreement on the Customer's behalf.

### **VI. ASSIGNMENT**

This agreement, or any interest therein, including any claims for monies due with respect thereto, shall not be assigned, and any such assignment shall be void and without effect.

## VII. DEFAULT

If the Customer does not make timely payment of amounts due under this agreement or breaches any term or condition of this agreement, County may declare immediately due and payable the entire unpaid amount, plus all other amounts due hereunder, less any unearned charges. County may also exercise all rights and remedies of a secured party under the Uniform Commercial Code (or other similar law) of the State of California and pursue any other remedies existing in law or in equity.

## VIII. INDEMNIFICATION AND INSURANCE

### A) Basic Requirements

1) Indemnification – The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County 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 County 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 indemnities. The Contractor's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County'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 County and its officers, employees, agents and volunteers as additional insured 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 County to vicarious liability but shall allow coverage for the County 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 County, 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 County.

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 County.

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 County or between the County and any other insured or additional insured under the policy.

6) Proof of Coverage – The Contractor shall furnish Certificates of Insurance to the County Department administering the contract evidencing the insurance coverage, including endorsements, as required, 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 County 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 County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

10) Insurance Review - Insurance requirements are subject to periodic review by the County. 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 County. 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 County, inflation, or any other item reasonably related to the County'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 County 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 County.

B) Insurance Specifications

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:

1) 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 County 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 County'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.

2) 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:

- a) Premises operations and mobile equipment
- b) Products and completed operations

- c) Broad form property damage (including completed operations)
- d) Explosion, collapse and underground hazards
- e) Personal injury
- f) Contractual liability
- g) \$2,000,000 general aggregate limit

3) 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.

4) 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.

5) 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.

## IX. GENERAL TERMS AND CONDITIONS

- A) Permits - Customer is responsible for obtaining and paying any costs of all permits, licenses or approvals by any regulatory bodies having jurisdiction over the uses authorized herein, as appropriate.
- B) Waiver - No waiver of a breach of any provision of this agreement shall constitute a waiver of any other breach, or of such provision. Failure of County to enforce at any time, or from time to time, any provision of this agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.
- C) Validity - The invalidity in whole or in part of any provision of this agreement shall not void or affect the validity of any other provision.
- D) Caption and Paragraph Headings - Captions and paragraph headings used herein are for convenience only and are not a part of this agreement and shall not be used in construing it.
- E) Exhibits - All Exhibits attached hereto, if any, are an integral part of this agreement and are incorporated herein by reference.
- F) Entire Agreement - This agreement shall be governed by the laws of the State of California and constitutes the entire agreement between the parties and supersedes all prior negotiations, discussions, and preliminary understanding. This agreement may be amended as County and the Customer mutually agree in writing. Any such amendment must be signed/approved by authorized representatives of the County and Customer.

- G) Notifications - All notices or demands required or permitted to be given or made hereunder shall be in writing and shall be deemed duly given: Upon actual delivery, if delivery is by hand; or Upon receipt by the transmitting party of confirmation or answer back if delivery is by telex, telegram or facsimile; or Three days following delivery into the First Class United States mail. Each such notice is to be sent to the respective party at the address indicated below or to any other address or person that the respective party may designate by written notice delivered pursuant hereto:

Customer: City of Montclair  
5111 Benito  
Montclair, CA 91763  
Attn: Contracts Administration

County: Information Services Department  
670 E. Gilbert Street, First Floor  
San Bernardino, CA 92415-0915  
Attn: Administration Services

- H) Contractor shall comply with all applicable local health and safety clearances, including fire clearances, for each site where services are provided under the terms of this Contract.
- I) Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (ADA).
- J) Contractor shall observe the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (Title 20, Division 2, California Code of Regulations).
- K) Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this contract.
- L) The County 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 County. The policy also requires Contractors to use both sides of the paper sheets for reports submitted to the County whenever practicable.
- M) If any legal action is instituted to enforce any party's rights hereunder, each party agrees to bear its own attorneys' fees and costs regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Part B-1 Indemnification.

## **X. ARRA Funds**

ARRA Funds - This Contract may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the County for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. Contractor must contact the County contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. Contractor will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the County may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Contractor may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. Contractor must contact the County with any questions regarding registration requirements.

#### **Schedule of Expenditure of Federal Awards (ARRA section No. 1512 C)**

In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. Contractor agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, Contractor agrees to separately identify to each subcontractor and document at the time of sub-contract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

Contractor may be required to provide detailed information regarding expenditures so that the County may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

#### **Whistleblower Protection (ARRA section No. 1553)**

Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA.

**XI. INFORMATION SERVICES DEPARTMENT AUTHORIZATION**

The County's Information Services Department, through its Chief Information Officer or designee, is authorized to discharge all functions ascribed to County in this agreement, except those specifically reserved by law to the Board of Supervisors.

**XII. FORCE MAJEURE**

County shall not be held liable for any delay or failure in performance of any part of this agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, strikes, labor disputes, embargoes, epidemics, war, terrorist acts, riots, insurrections, fire, explosions, earthquakes, nuclear accidents, floods, power blackouts, brownouts, or surges, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure product or services of other persons or transportation facilities, or acts or omissions of transportation common carriers.

IN WITNESS WHEREOF, the Board of Supervisors of the County of San Bernardino has caused this Contract to be subscribed to by the Clerk thereof, and Contractor has caused this Contract to be subscribed in its behalf by its duly authorized officers, the day, month and year written.

COUNTY OF SAN BERNARDINO

►  
\_\_\_\_\_  
Josie Gonzales, Chair, Board of Supervisors

Dated \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD.

Laura H. Welch, Clerk of the Board of Supervisors of the County of San Bernardino

By \_\_\_\_\_  
*Deputy*

\_\_\_\_\_  
City of Montclair  
*(State if corporation, company, etc.)*

By ► \_\_\_\_\_  
*(Authorized Signature)*  
Paul M. Eaton

Dated \_\_\_\_\_

Title \_\_\_\_\_  
Mayor

Address 5111 Benito \_\_\_\_\_

Montclair, CA 91763 \_\_\_\_\_

Approved as to Legal Form  
►  
\_\_\_\_\_  
Phebe W. Chu, Deputy County Counsel  
Date \_\_\_\_\_

Reviewed by Contract Compliance  
►  
\_\_\_\_\_  
Date \_\_\_\_\_

Presented to BOS for Signature  
►  
\_\_\_\_\_  
Department Head  
Date \_\_\_\_\_

## EXHIBIT A

### SAN BERNARDINO COUNTY INFORMATION SERVICES DEPARTMENT 800 MHz RADIO COMMUNICATIONS SYSTEM ACCESS/PAGING SERVICES AND PAYMENT TERMS

#### SERVICES TO BE PROVIDED

The following access/paging service(s) selected by check mark shall be rendered to Customer under this agreement:

**BASIC SERVICES PER RADIO:** System Access Charge, including Entire Segment, Mutual Aid, Basic System Services, including Operator Training, Fixed System Maintenance, Basic System Admin (including FCC Licensing Violations Review, Improper System Use Analysis, Financial, Accounting), Basic System Management (Dynamic Regrouping, Selective Unit, Inhibit, Unique Unit ID Tracking Mutual Aid Access Crosspatch)

#### *ENHANCED SERVICES:*

A. EACH ADDITIONAL TALK GROUP: (Talk Groups defined by County for each customer from available Talk Groups)

B. TELEPHONE INTERCONNECT: Air Time (first 15 minutes free) Plus applicable Telco-Net and Toll Charges  
*Use of this option is restricted-Constraints as established by the County.*

C. PAGING SERVICES

D. DISPATCH CONSOLE

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#### PAYMENT SCHEDULE

**Monthly Invoicing:** County will invoice customer in advance for services.

Payments are due upon receipt of invoice and payable within sixty (60) days of invoice date.

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#### CHARGES FOR SERVICES

Equipment Type	No of Units	Monthly Unit Charge	Monthly Charge
800 MHz Radio Access	98	\$44.00	\$4,312.00
800 MHz Radio Maintenance	98	\$6.90	\$676.20
Telephone Interconnect	0	\$5.50	\$0.00
Dispatch Console Maintenance	2	\$355.00	\$710.00
Total ESTIMATED Monthly Cost			\$5,698.20
Total Estimated First Year Cost			\$68,378.40
Total Estimated Cost Per Additional Year			\$68,378.40

## AGENDA REPORT

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 12-107 WITH THE DEPARTMENT OF CALIFORNIA HIGHWAY PATROL, INLAND DIVISION OFFICE, FOR USE OF THE MONTCLAIR POLICE DEPARTMENT FIREARMS SHOOTING RANGE

**DATE:** December 17, 2012

**SECTION:** AGREEMENTS

**ITEM NO.:** 3

**FILE I.D.:** PDT725

**DEPT.:** POLICE

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 12-107 with the Department of California Highway Patrol (CHP), Inland Division Office (San Bernardino), for use of the Montclair Police Department firearms shooting range. Proposed Agreement No. 12-107 has been approved by the City Attorney and is attached for the City Council's review and consideration.

**BACKGROUND:** The indoor shooting range at Police headquarters is used at least two days each month for firearms training. When not in use by staff, the facility is rented to other law enforcement agencies to offset costs associated with maintenance.

The City Council approved Agreement No. 12-87 with the CHP, Rancho Cucamonga Area Office, on September 4, 2012, at a rental cost of \$300 per day, an amount staff decided to be fair and competitive as a result of an indoor shooting range facility survey. The \$300 per day rental amount would likewise apply to the CHP, Inland Division Office's use of the range. The agency would be responsible for providing its own supplies and equipment.

The term of proposed Agreement No. 12-107 is February 1, 2013, through January 31, 2016.

**FISCAL IMPACT:** Approval of Agreement No. 12-107 would net approximately \$32,400 in revenue to the City.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 12-107 with the Department of California Highway Patrol, Inland Division Office, for use of the Montclair Police Department firearms shooting range.

Prepared by:

*M. DeMoe*

Reviewed and  
Approved by:

*[Signature]*

Proofed by:

*Sharon Aguirre*

Presented by:

*[Signature]*

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 06/03)

DT

AGREEMENT NUMBER <b>12C801002</b>
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Department of California Highway Patrol

CONTRACTOR'S NAME

Montclair Police Department

2. The term of this

Agreement is: **02/01/2013** or upon approval (*whichever is later*) through **01/31/2016**

3. The maximum amount of this Agreement is: **\$ 32,400.00**  
 Thirty Two Thousand Four Hundred Dollars and Zero Cents

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	2 page(s)
Exhibit B – Budget Detail and Payment Provisions	1 page(s)
Exhibit C* – General Terms and Conditions	GTC 610
Exhibit - D Additional Provisions	2 page(s)
Attachment 1 – Range Safety Rules	3 page(s)

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		California Department of General Services Use Only  <b>EXEMPT FROM DEPARTMENT OF GENERAL SERVICES APPROVAL IN ACCORDANCE WITH THE STATE ADMINISTRATIVE MANUAL</b>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) Montclair Police Department		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Paul M. Eaton, Mayor, City of Montclair		
ADDRESS 4870 Arrow Highway, Montclair, CA 91763		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME Department of California Highway Patrol		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING K. V. SMITH, Commander, Business Services Section		
ADDRESS P.O. Box 942898, Sacramento, CA 94298-0001		

Exempt per: **SCM 4.04**

Department of California Highway Patrol  
**SCOPE OF WORK**

Agreement Number 12C801002  
**EXHIBIT A**

**WEAPONS FIRING RANGE**

Contractor shall provide use of their Weapons Firing Range, located at 4870 Arrow Highway, Montclair, CA 91763 to the Department of California Highway Patrol (CHP), Inland Division Office.

**A. PROJECT REPRESENTATIVES**

The project representatives during the term of this Contract will be:

Department of California Highway Patrol  
Inland Division Office  
Name: Officer Kevin Reese  
Phone: (909) 806-2480  
Email: [kreese@chp.ca.gov](mailto:kreese@chp.ca.gov)

Montclair Police Department  
Name: Cpt. Mike deMoet  
Phone: (909) 448-3606  
Fax: (909) 621-4413

Direct all contract inquires to:

Department of California Highway Patrol  
Contract Services Unit

Attn: Debra Teixeira  
Phone: (916) 843-3623  
Fax: (916) 322-3155  
Email: [dteixeira@chp.ca.gov](mailto:dteixeira@chp.ca.gov)  
Address: PO Box 942898  
Sacramento, CA 94298

Montclair Police Department  
Attn: Cpt. Mike deMoet  
Phone: (909) 448-3606  
Fax: (909) 621-4413

Address: 4870 Arrow Highway  
Montclair, CA 91763

**B. SERVICES TO BE PROVIDED**

1. The weapons range use shall be limited to CHP personnel assigned to the CHP Inland Division Office, located at 847 E. Brier Drive, San Bernardino, CA 92408.
2. Contractor agrees that CHP shall have the use of all on-site facilities located on the range for training programs without additional charge.
3. Contractor and CHP agree the weapons range shall be open and usable by members of CHP at such times that are mutually agreeable to both parties. Exclusive use of the facilities by CHP must be coordinated and mutually agreed to by both parties.
4. Contractor acknowledges that due to the nature of work required by the personnel assigned to the Inland Division Office, scheduling may be erratic and use of facilities may be required upon short notice.
5. The CHP agrees that its members using the weapons range facilities under this Contract shall be governed by the range safety rules established by Contractor.
6. Brass will be retained by Contractor.

7. The weapons range must be able to accommodate the following:
  - A. .40 caliber pistol (loaded with Department-issued ammunition currently 180G).
    - 1) Twelve (12) shoots per year, one (1) each month or two (2) every other month.
    - 2) Two (2) qualification shoots which must be performed at the following distances:  
2 yards, 4 yards, 7 yards, 10 yards, 15 yards, and 25 yards.
    - 3) Ten (10) practice shoots, of which two (2) night shoots are recommended.
    - 4) Use for make-up shoots at times mutually agreeable to both parties.
  - B. Tactical rifle (.223 caliber).
    - 1) Four (4) shoots per year (quarterly).
    - 2) One (1) night shoot is required.
    - 3) Maximum distance of 50 yards.
  - C. Shotgun (00 buckshot).
    - 1) Eight (8) shoots per year (two quarterly).
    - 2) Two (2) night shoots required.
    - 3) Distance 15 yards maximum.
8. Inspection and test firing of weapons:
  - A. All weapons are to be test fired after each required inspection by the CHP Weapons Range Officer.
  - B. Use of facility to test fire weapons will be coordinated between the CHP Weapons Range Officer and the Contractor.

**1. INVOICING**

- A. For services satisfactorily rendered, and upon receipt and approval of invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein.
- B. Invoices shall include the Agreement Number and shall be submitted in duplicate not more frequently than monthly in arrears to:

Name: Officer Kevin Reese  
Office: Inland Division Office  
Address: 847 E. Brier Drive  
San Bernardino, CA 92408

**2. BUDGET CONTINGENCY CLAUSE**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

**3. PROMPT PAYMENT CLAUSE**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

**4. RATE SCHEDULE**

The CHP agrees to pay Contractor Three Hundred Dollars and Zero Cents (\$300.00), per day in arrears, for use of its weapons range facility for the Inland Division Office.

The Contractor shall have the right to renegotiate the rate for range usage under this agreement at the end of each fiscal year, [maximum of one (1) fiscal year], for the ensuing fiscal year. At the end of the second fiscal year, any rate change shall require a new contract between Contractor and CHP.

### 1. USE OF RANGE

Contractor shall make the Range available to CHP's sworn law enforcement officers at such times as are mutually agreeable to both parties. CHP shall only allow its currently employed sworn law enforcement officers (hereinafter "personnel") to use the Range. CHP's personnel shall have exclusive use of the Range at CHP's scheduled time. CHP's personnel shall not share use of the Range with personnel from any other public agency. CHP's personnel shall comply with the Range Safety Rules set forth in Attachment I, attached hereto. Violations of Range Safety Rules may result in immediate termination of CHP's Range privileges.

### 2. RANGE MASTER REQUIRED

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

### 3. SUPPLIES AND EQUIPMENT

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

### 4. DAMAGE TO RANGE

CHP shall pay for any damage or necessary repairs to Range resulting from any negligent actions of CHP personnel during Range usage.

### 5. INDEMNIFICATION (supersedes Exhibit C, General Terms and Conditions, Item 5)

CHP shall defend, indemnify and hold the Contractor, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any actual or alleged acts, omissions or willful misconduct of CHP, its officials, officers, employees, agents, contractors and subcontractors arising out of or in connection with the performance of this Agreement.

Contractor shall defend, indemnify and hold CHP, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any actual or alleged acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, contractors and subcontractors arising out of or in connection with the performance of this Agreement.

### 6. INSURANCE REQUIREMENTS

The parties acknowledge that CHP is self-insured. Contractor shall furnish to CHP a valid certificate of commercial general liability insurance or proof of self-insurance.

### 7. TERM

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

the date of such termination, and each party shall be released from all obligations or performance which would otherwise accrue subsequent to the date of termination.

**8. AMENDMENT**

This agreement may be amended in writing with mutual consent of the parties hereto.

**9. NOTICES**

Any notices which either party may desire to give to the other party under this agreement must be in writing and may be given either by personal service, delivery by a reputable document delivery service (such as Federal Express) or US mail, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

Montclair Police Department  
4870 Arrow Highway  
Montclair, CA 91763

Department of California Highway Patrol  
Contract Services Unit  
601 North 7th  
Sacramento, CA 95811

**10. GOVERNING LAW**

The Contractor agrees to provide CHP with a resolution, motion, order or ordinance of the governing body, which authorizes execution of this Agreement, and indicates the individual who is authorized to sign the Agreement on behalf of Montclair Police Department.

The Contractor and CHP 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 Montclair Police Department.

### MONTCLAIR POLICE DEPARTMENT

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

4. Persons lawfully possessing loaded firearms may enter the range facility with loaded firearms. Except on the firing line at the direction of a range master, firearms shall be loaded and unloaded utilizing the projectile containment systems located in the Range Ready Room and the Weapon Cleaning Room.
5. When entering and the leaving the Shooting Range Room (firing line room), handguns must be unloaded, with actions open, magazines removed and holstered (or unloaded and encased). Rifles must be unloaded with actions open and magazines removed (or unloaded and encased). Rifles will be carried safely with the muzzle pointed upward. **Persons utilizing the range shall not enter or leave the "Shooting Range" with a loaded firearm.**
6. Shooters shall not enter the Shooting Range Room until directed to do so by a member of the range staff. The Shooting Range Room doors shall remain closed during an active course of fire.
7. While in the Shooting Range Room (firing line), firearms will only be loaded and unloaded at the direction of a range master with the muzzle pointed down-range, unless otherwise directed.
8. In order to prevent damage to the range equipment, cross-firing at targets is not allowed unless authorized by a range master.
9. Eye and ear protection shall be utilized in the Shooting Range Room. Ear protection shall be utilized in the Range Ready Room. This includes observers.
10. Food, beverages, and use of tobacco products are prohibited within the range facility.
11. Commands issued by range masters and range personnel must be obeyed immediately and without question.
12. To prevent lead buildup in the range backstop and the air filtration system, personnel shall only use "clean fire" ammunition. Personnel required to shoot duty ammunition that is not "clean fire" shall notify and obtain the approval of the Montclair Police Department Support Services Lieutenant in advance of the scheduled shoot.
13. Never use tracer ammunition in the range.
14. Personnel may not shoot rifle ammunition over .223 caliber.

15. Personnel using shotguns at the range shall not use the target carrier to hold the target. When firing shotguns, the target carriers shall remain at the "home" position.
16. Personnel shall clean the range facility at the end of the shooting period, including the removal of all expended casings, and debris. *Brooms shall not be used in the Shooting Range Room.* Instructions on proper cleaning techniques will be provided to range staff.
17. Steel targets shall not be used in the range facility.
18. No vehicles shall be allowed inside the range facility without the advanced approval of the Montclair Police Department Support Services Lieutenant.
19. Personnel shall report all injuries or property damage to the Montclair Police Department Watch Commander, who will forward the information to Montclair Police Department Support Services Lieutenant.
20. All shooters must utilize proper personal safety equipment as required by their agency's policy and/or range staff.
21. Unsafe conditions, defective equipment, and facility repair requests should be reported immediately to a range staff member. Conditions requiring repair or alteration shall be reported to the Montclair Police Department Support Services Lieutenant.
22. ALWAYS practice basic firearms safety:
  - ALWAYS point the muzzle in a safe direction
  - Keep your finger off the trigger until the command to fire has been given.
  - ALWAYS be sure of the target and what is beyond
  - ALWAYS treat the firearm as if it were loaded
  - Shoot only at authorized targets
  - When making a firearm "safe," visually and physically inspect the firearm
  - OBEY all commands given by range staff

CCC-307

**CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

**3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

**4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:** Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

**5. EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

**6. SWEATFREE CODE OF CONDUCT:**

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. **DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

### **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST:** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

July 1, 2012

California Highway Patrol

**STATE OF CALIFORNIA  
PUBLIC LIABILITY AND WORKERS' COMPENSATION INSURANCE  
FISCAL YEAR JULY 1, 2012 / JUNE 30, 2013**

To Whom It May Concern:

The State of California has elected to be self-insured for general liability exposures. (Gov. Code section 990, et. seq.) Under this form of insurance, the State and its employees (as defined in Section 810.2 of the Government Code) are insured for any tort liability that may develop through the carrying out of official State activities and operations. All general liability tort claims against the State of California should be presented to the Victim Compensation and Government Claims Board, P.O. Box 3035, Sacramento, CA 95812-3035. (Gov. Code section 900, et. seq.) Internet link: [www.vcgcb.ca.gov](http://www.vcgcb.ca.gov).

In addition, the State of California has elected to be insured for its motor vehicle liability exposures through a self-insurance program, administered by the Office of Risk and Insurance Management. Under this program, the Office of Risk and Insurance Management administers liability claims arising out of the operation of motor vehicles. This self-insurance program and the protection it affords applies to vehicles owned and leased by the State of California. All motor vehicle liability tort claims against the State of California should be presented to the Office of Risk and Insurance Management, P.O. Box 989052 MS-403, West Sacramento, CA 95798-9052, (800) 900-3634.

The State of California has a Master Agreement with the State Compensation Insurance Fund regarding workers' compensation benefits for all state employees, as required by the Labor Code.

Sincerely,

*Donna Sanderson*

Donna Sanderson  
Associate Risk Analyst  
(916) 376-1621  
[donna.sanderson@dgs.ca.gov](mailto:donna.sanderson@dgs.ca.gov)

## AGENDA REPORT

<b>SUBJECT:</b> CONSIDER AWARD OF CONTRACT TO GENTRY BROTHERS, INC., IN THE AMOUNT OF \$776,636  CONSIDER APPROVAL OF AGREEMENT NO. 12-108 WITH GENTRY BROTHERS, INC., FOR THE NORTHWEST MONTCLAIR STREET REHABILITATION PROJECT  CONSIDER AUTHORIZATION OF AN \$80,000 CONSTRUCTION CONTINGENCY	<b>DATE:</b> December 17, 2012  <b>SECTION:</b> AGREEMENTS  <b>ITEM NO.:</b> 4  <b>FILE I.D.:</b> STA540  <b>DEPT.:</b> PUBLIC WORKS
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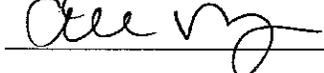
**REASON FOR CONSIDERATION:** Awards of contracts and agreements with the City require City Council approval.

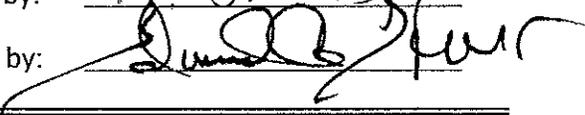
**BACKGROUND:** The City Council, at its meeting of September 17, 2012, authorized staff to advertise for bids for the Northwest Montclair Street Rehabilitation Project.

The Northwest Montclair Street Rehabilitation Project is intended to repair uplifted curb, gutter, and sidewalk as well as resurface residential streets throughout a large portion of the northwest corner of the City. Project limits are from San Bernardino Street on the south, Mills Avenue on the west, Arrow Highway on the north, and the San Antonio Channel on the east.

On Thursday, December 6, 2012, the Deputy City Clerk received and opened seven bid proposals for construction of the Northwest Montclair Street Rehabilitation Project. Following are the bid results:

<i>Contractor</i>	<i>Bid Amount</i>
Gentry Brothers, Inc.,	\$776,636.00
Bannaoun Engineers Corporation	\$815,765.00
Sully Miller Contracting Co.	\$846,500.00
United Paving Co.	\$848,852.00
<b>Engineer's Estimate</b>	<b>\$860,000.00</b>
All American Asphalt	\$894,000.00
Laird Construction Co., Inc.,	\$899,889.00
Palp Inc. dba Excel Paving Co.	\$936,716.50

Prepared by:   
 Proofed by: 

Reviewed and Approved by:   
 Presented by: 

Following the bid opening, the seven bid proposals were reviewed for completeness and accuracy. The bid proposal of the apparent low bidder, Gentry Brothers, Inc., provided all the required documents and was deemed the lowest responsible, responsive bidder for the project. Gentry Brothers, Inc., has performed several street improvement projects within the City and is known to have the personnel, equipment, and job experience necessary to complete this contract in accordance with the plans and specifications.

**FISCAL IMPACT:** The project is funded with Proposition 1B funds.

**RECOMMENDATION:** Staff recommends the City Council take the following actions related to the Northwest Montclair Street Rehabilitation Project:

1. Award contract to Gentry Brothers, Inc., in the amount of \$776,636.
2. Approve Agreement No. 12-108 with Gentry Brothers, Inc.
3. Authorize an \$80,000 construction contingency.

KNOW ALL MEN BY THESE PRESENTS: That the following Agreement is made and entered into as of the date executed by the City Clerk and the Mayor, by and between **Gentry Brothers, Inc.**, hereinafter referred to as "CONTRACTOR," and the CITY OF MONTCLAIR, hereinafter referred to as "CITY."

**A. Recitals.**

- (i) Pursuant to Notice Inviting Sealed Bids or Proposals, bids were received, publicly opened, and declared on the date specified in said notice.
- (ii) CITY did accept the bid of CONTRACTOR.
- (iii) CITY has authorized the Deputy City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:

**NORTHWEST MONTCLAIR STREET REHABILITATION PROJECT**

"PROJECT" hereinafter.

**B. Resolution.**

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do all work contemplated and embraced for the PROJECT. Said PROJECT to be performed in accordance with specifications and standards on file in the Office of the City Engineer and in accordance with bid prices hereinafter mentioned and in accordance with the instructions of the Engineer.
2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The aforesaid specifications are incorporated herein by reference thereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Notice Inviting Bids, the Instructions to Bidders, the Proposal, and any City-issued addenda, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.
3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within the time specified in the Special Provisions. CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher, for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

## AGREEMENT

4. **INSURANCE:** The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been obtained. The CONTRACTOR shall take out and maintain at all times during the life of this contract the following policies of insurance:

a. Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish to the Engineer a policy of insurance or proper endorsement as proof that he has taken out full compensation insurance for all persons whom he may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract.

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

**"I am aware of the provisions of § 3700 of the 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 contract."**

b. For all operations of the CONTRACTOR or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:

- (1) Public Liability – Bodily Injury (not auto) \$1,000,000 each person; \$2,000,000 each accident.
- (2) Public Liability – Property Damage (not auto) \$500,000 each accident; \$1,000,000 aggregate.
- (3) Contractor's Protective – Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
- (4) Contractor's Protective – Property Damage \$500,000 each accident; \$1,000,000 aggregate.
- (5) Automobile – Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
- (6) Automobile – Property Damage \$500,000 each accident.

c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:

- (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4(d)(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of

## AGREEMENT

CONTRACTOR or any subcontractor in performing the work provided for herein;

- (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.

d. Each such policy of insurance provided for in paragraph b. shall:

- (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
- (2) Name as additional insureds the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
- (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
- (4) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."

- (5) Otherwise be in form satisfactory to CITY.

e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs (a) and (b), hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

5. CONTRACTOR'S LIABILITY: The City of Montclair and its respective officers, agents, and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof or for any of the materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors, or the public whatsoever arising out of or in connection with the performance of the project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the project or at any time before its completion and final acceptance.

The CONTRACTOR will indemnify CITY against and will hold and save CITY harmless from any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or

## AGREEMENT

invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, and damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY, and in connection therewith:

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
- b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or CITY covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the CITY harmless therefrom.
- c. In the event CITY is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the project, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to CITY any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

Money due to the CONTRACTOR under and by virtue of the contract, as shall be considered necessary by CITY, may be retained by CITY until disposition has been made of such actions or claims for damage as aforesaid.

6. NONDISCRIMINATION: No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, sexual preference, sexual orientation, or religion of such persons, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of § 1735 of said Code.

7. INELIGIBLE SUBCONTRACTORS: The CONTRACTOR shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform on the project pursuant to § 1777.1 and § 1777.7 of the Labor Code.

8. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **December 6, 2012**.

9. ATTORNEYS' FEES: In the event that any action or proceeding is brought by either party to enforce any term or provision of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.

10. HUD FEDERAL LABOR STANDARDS: Labor Standards (HUD form 4010) apply to this project and are attached.

**AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

CITY:

**CITY OF MONTCLAIR, CALIFORNIA**

CONTRACTOR:

**GENTRY BROTHERS, INC.**

384 Live Oak Avenue  
Irwindale, CA 91706

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

\_\_\_\_\_  
Name

ATTEST:

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
DECEMBER 3, 2012, AT 7:42 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 7:42 p.m.

**II. ROLL CALL**

Present: Mayor Eaton; Council Member Ruh; and Deputy City  
Manager/Executive Director Office of Economic  
Development Staats

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of  
November 19, 2012.**

Moved by Mayor Eaton, seconded by Council Member Ruh, and  
carried unanimously to approve the minutes of the Personnel  
Committee meeting of November 19, 2012.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

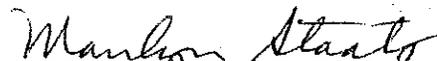
At 7:43 p.m., the Personnel Committee went into Closed Session  
regarding personnel matters related to appointments, resignations/  
terminations, and evaluations of employee performance.

At 7:48 p.m., the Personnel Committee returned from Closed Session.  
Mayor Eaton stated that no announcements would be made at this time.

**VI. ADJOURNMENT**

At 7:48 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Marilyn Staats  
Marilyn Staats  
Deputy City Manager/  
Executive Director Office of Economic Development