

CITY OF MONTCLAIR

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

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

December 16, 2013

7:00 p.m.

As a courtesy please silence your cell phones 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 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 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. 2013 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, Montclair Housing Corporation Board of Directors, and Montclair Housing Authority Commissioners. (Government Code Section 54954.3)

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

VII. PUBLIC HEARINGS

- A. First Reading – Consider Adoption of Ordinance No. 13-939 Amending Specific Chapters of Title 10 of the Montclair Municipal Code Related to Adoption of the 2013 Edition of the California Fire Code and to Establish February 5, 2014, as the Effective Date of the Codes [CC] 5
- B. First Reading – Consider Adoption of Ordinance No. 13-940 Amending Section 4.04.100 of the Montclair Municipal Code to Include Exemption of Business License Requirements for City Services, City Suppliers, and Common Carriers and to Establish March 1, 2014, as the Effective Date of the Amendment [CC] 21

VIII. CONSENT CALENDAR

- A. Approval of Minutes
 - 1. Minutes of the Regular Joint Council/Successor Agency Board/ MHC Board/MHA Commission Meeting of December 2, 2013 [CC/SA/MHC/MHA]
- B. Administrative Reports
 - 1. Consider Receiving and Filing of Treasurer's Report [CC] 25
 - 2. Consider Approval of Warrant Register and Payroll Documentations [CC] 26
 - 3. Consider Receiving and Filing of Treasurer's Report [SA] 27
 - 4. Consider Approval of Warrant Register [SA] 28
 - 5. Consider Receiving and Filing of Treasurer's Report [MHC] 29
 - 6. Consider Approval of Warrant Register [MHC] 30
 - 7. Consider Receiving and Filing of Treasurer's Report [MHA] 31
 - 8. Consider Approval of Warrant Register [MHA] 32
 - 9. Consider Authorization to Install Stop Signs at the Intersection of Bandera Street and Fremont Avenue [CC] 33
 - 10. Consider Approval of Fiscal Year 2013-14 Schedule of Recommendations for Community Benefits Funding [CC] 34
 - 11. Consider Authorization to Purchase a 2013 Multiquip AR13HAR 2.5-Ton Tandem Vibratory Asphalt Roller and Air-Tow T10-7 Hydraulic Lifting Trailer [CC] 37
 - 12. Consider Declaring City Vehicles as Surplus and Authorizing Their Sale at Auction or as Scrap Metal [CC] 38

C. Agreements

- 1. Consider Approval of Agreement No. 13-97 with Ontario-Montclair School District for Use of Golden Girls Ball Fields [CC] 39
- 2. Consider Approval of Agreement No. 13-98 With Graffiti Tracker Inc. for Continued Use of Its Database to Track and Analyze Graffiti [CC] 56
- 3. Consider Approval of Tract Map No. 18728 Located on the South Side of Bandera Street West of Central Avenue [CC]

Consider Authorizing Tract Map No. 18728 to Be Recorded With the Office of the San Bernardino County Recorder [CC]

Consider Approval of Agreement No. 13-99 With AGS Construction, Inc., a Subdivision Agreement for Development of Tract No. 18728 [CC] 65

- 4. Consider Approval of Agreement No. 13-100 Between the Cities of Montclair and Upland for Joint Sharing of Fire Department Command Staff and Expansion of Automatic and Mutual Aid Through Mutual Agreement to Vacate Service Boundaries [CC]

Consider Authorizing City Manager to Execute Documents in Relation to Implementation of Agreement No. 13-100 [CC]

Consider Authorizing City Manager to Provide the Ontario Communication Division Notice to Terminate Agreement No. 01-102 for Provision of Fire Service Dispatch and Communication Services [CC]

Consider Authorizing City Manager to Negotiate an Agreement With CONFIRE for Dispatch and Communication Services and a \$14,320 Allocation for Startup Costs with CONFIRE [CC] 91

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(d)(1) Regarding Pending Litigation
Patton v. Montclair

B. City Manager/Executive Director

C. Mayor/Chairman

D. Council/SA and MHC Boards/MHA Commission

- E. Committee Meeting Minutes *(for informational purposes only)*
 - 1. Minutes of the Public Works Committee Meeting of November 21, 2013 160
 - 2. Minutes of the Personnel Committee Meeting of December 2, 2013 171

XII. 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 pending litigation.)

XIII. CLOSED SESSION ANNOUNCEMENTS

XIV. ADJOURNMENT OF CITY COUNCIL

The next regularly scheduled City Council, Successor Agency Board, Montclair Housing Corporation Board, and Montclair Housing Authority Commission meetings will be held on Monday, January 6, 2014, 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, and 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 12, 2013.

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF ORDINANCE NO. 13-939 AMENDING SPECIFIC CHAPTERS OF TITLE 10 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO ADOPTION OF THE 2013 EDITION OF THE CALIFORNIA FIRE CODE AND TO ESTABLISH FEBRUARY 5, 2014, AS THE EFFECTIVE DATE OF THE CODES	DATE: December 16, 2013 SECTION: PUBLIC HEARINGS ITEM NO.: A FILE I.D.: FRD300 DEPT.: FIRE
<u>FIRST READING</u>	

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Ordinance No. 13-939 amending specific chapters of Title 10 of the Montclair Municipal Code related to adoption of the 2013 Edition of the California Fire Code and to establish February 5, 2014, as the effective date of the codes.

A copy of proposed Ordinance No. 13-939 is attached for the City Council's review and consideration.

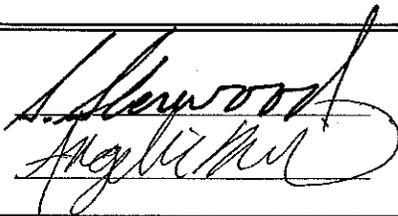
BACKGROUND: Every three years, the City adopts the latest version of the California Fire Code. The State of California has chosen to adopt the most recent version of the California Fire Code (2013 Edition), which is based on the 2012 International Fire Code and is part of the California Code of Regulations, Title 24, Part 9.

The 2013 California Fire Code merges the State's amendments with the International Fire Code. This updated version includes the most recent fire safety requirements in an effort to maintain a code that is current and useful. The California Building Standards Commission incorporates many of its regulations and amendments unique to California into the Fire Code. Proposed Ordinance No. 13-939 proposes adoption of the 2013 California Fire Code and includes local modifications to the Fire Code, which would allow the Fire Department to provide the highest level of fire and life safety services to the residents and businesses of Montclair.

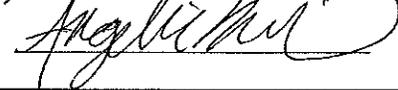
FISCAL IMPACT: There would be no fiscal impact associated with the City Council's adoption of proposed Ordinance No. 13-939.

RECOMMENDATION: Staff recommends the City Council adopt the first reading of Ordinance No. 13-939 amending specific chapters of Title 10 of the Montclair Municipal Code related to adoption of the 2013 Edition of the California Fire Code and to establish February 5, 2014, as the effective date of the codes.

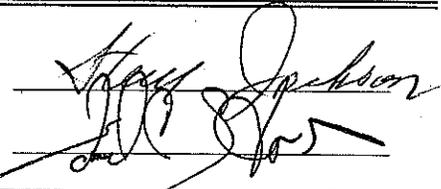
Prepared by:



Proofed by:



Reviewed and
Approved by:



Presented by:



ORDINANCE NO. 13-939

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SPECIFIED CHAPTERS OF TITLE 10 OF THE MONTCLAIR MUNICIPAL CODE AND ADOPTING BY REFERENCE THE 2013 EDITION OF THE CALIFORNIA FIRE CODE, TOGETHER WITH CERTAIN AMENDMENTS, ADDITIONS, DELETIONS, AND EXCEPTIONS INCLUDING FEES AND PENALTIES

THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:

SECTION I. Section 10.02.010, "Definitions," of Chapter 1.02 of the Montclair Municipal Code is hereby amended to include the following revised existing definitions:

Section 10.02.010 Definitions.

Fire control center means a central location within a high-rise building for Fire Department operations and monitoring of such systems and equipment as required in this title. For the purpose of this section, fire control center also means fire command center.

High-rise building, in other than Group 1-2 occupancies, means every building of any type of construction or occupancy having floors used for human occupancy located more than 45 feet above the lowest floor level having building access (see California Building Code Section 403.1.2), except buildings used as hospitals as defined in Health and Safety Code Section 1250.

SECTION II. Article I of Chapter 10.28 of the Montclair Municipal Code is hereby repealed in its entirety and replaced with the following:

Article I. Fire Prevention

Section 10.28.010 Adoption of the California Fire Code, 2013 Edition.

- A. There is adopted by the City Council for the purpose of prescribing regulations governing conditions hazardous to life and property from fire, hazardous materials or explosion, that certain Code known as the California Fire Code, 2013 Edition, based on the 2012 International Fire Code as published by the "International Code Council," and referenced as the California Code of Regulations, Title 24, Part 9, including: Chapter 5, Sections 503 and 510.3, and Appendices A, B, C, D, E, F, G, H, I, and K, and the whole thereof, save and except such portions as are hereinafter deleted, modified, or amended by this chapter. The California Fire Code and its appendix chapters will be on file for public examination in the Office of the Fire Marshal, and the same are hereby adopted and incorporated as fully as if set out at length in this chapter, and from

the date on which the Ordinance codified in this chapter shall take effect, the provision thereof shall be controlling within the corporate limits of the City of Montclair and the jurisdiction of the Fire Department.

- B. The modifications and changes adopted in this Chapter are reasonably necessary because of local climatic, geological, and topographical conditions as set forth in Resolution No. 13-3014 attached to the Ordinance codified in this Chapter as Exhibit A and incorporated in this Chapter as though fully set forth. These facts and findings are made pursuant to Sections 17958, 17958.5, and 17958.7 of the California Health and Safety Code and the California Building Standards Commission.

Section 10.28.020 Bureau of Fire Prevention—Established—Supervision.

- A. The California Fire Code shall be enforced by the Office of the Fire Marshal in the Fire Department of the City, which is established and which shall be operated under the supervision of the Fire Chief.
- B. The Fire Chief shall also act as the Fire Marshal.

Section 10.28.030 Storage of flammable or combustible liquids—Districts in which prohibited.

- A. The limits referred to in Chapter 55, Section 5504.3.1.1 of the California Fire Code in which the storage of flammable cryogenic fluids in stationary containers outside of buildings is restricted are established as follows: The storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited.
- B. The limits referred to in Chapter 57, Section 5704.2.9.6.1 of the California Fire Code in which the storage of Class I and Class II flammable and combustible liquids in aboveground tanks outside of buildings is restricted are established as follows: The storage of Class I and Class II flammable and combustible liquids in aboveground tanks outside of buildings is prohibited.
- C. Section 5704.2.9.6.1 is amended to include the limits of storage of Class IIIA and Class IIIB combustible liquids in aboveground tanks outside of buildings is restricted and amended as follows: The storage of Class IIIA and Class IIIB liquids in aboveground tanks outside of buildings shall be limited to tanks not exceeding 500 gallons.
- D. Section 5704.2.9.6.1.1, "Location of tanks with pressures 2.5 psig or less," is amended to read as follows:

Aboveground tanks operating at pressures not exceeding 2.5 psig (17.2 kPa) for the storage of Class I, II, or IIIA liquids shall be restricted to listed concrete vaults

in industrial and manufacturing areas where, in the opinion of the Fire Marshal, aboveground tanks would not create undue hazard to nearby occupants or property. Quantities shall be limited to 1000 gallons of Class I liquid and 2000 gallons of Class II and IIIA liquids. In no case shall the aggregate of Class I and Class II liquids exceed 2500 gallons at one site.

- E. Section 5504.2.9.6.1.2, "Location of tanks with pressures exceeding 2.5 psig," is amended to read as follows:

Aboveground tanks operating pressures exceeding 2.5 psig (17.2 kPa) or equipped with emergency venting allowing pressures to exceed 2.5 psig (17.2 kPa) for the storage of Class I, II, or IIIA liquids shall be restricted to listed concrete vaults in industrial and manufacturing areas where, in the opinion of the Fire Marshal, aboveground tanks would not create undue hazard to occupants or property. Quantities shall be limited to tanks not exceeding 1000 gallons of Class I liquid and 2000 gallons of Class II and IIIA liquids. In no case shall the aggregate of Class I and Class II liquids exceed 2500 gallons at one site.

- F. Section 5504.2.9.6.1.5, "Location of tanks for Class IIIB liquids," is amended to read as follows:

Aboveground tanks for the storage of Class IIIB liquids, excluding unstable liquids, shall be restricted to industrial and manufacturing areas where, in the opinion of the Fire Marshal, aboveground tanks would not create undue hazard to occupants or property. Quantities shall be limited to tanks not exceeding 2500 gallons. In no case shall the aggregate of Class IIIB liquids exceed 5000 gallons at one site.

Section 10.28.040 Storage of liquefied petroleum gas restricted.

The limits referred to in Chapter 61, Section 6104.2 of the California Fire Code, in which the storage of liquefied petroleum gas is restricted, are established as follows: Aboveground liquefied petroleum gas containers shall be limited to containers of not more than 2,000 gallons water capacity. The maximum aggregate capacity per site shall not exceed that as specified in Section 6104.2.

Section 10.28.050 Storage of explosives and fireworks restricted.

Chapter 56, Section 5603.1.1, "Scope," is amended to read as follows:

5603.1.1 Scope. The storage of explosives is prohibited within the jurisdiction. Exceptions: Exceptions are as outlined in Section 5603.1.1:

- (1) The Armed Forces of the United States, Coast Guard, or National Guard.
- (2) Explosives in forms prescribed by the official United States Pharmacopeia.
- (3) The possession, storage, and use of small arms ammunition when packaged in accordance with DOTn packaging requirements.
- (4) The use of explosive materials by federal, state, and local regulatory, law enforcement, and fire agencies acting in their official capacities.
- (5) Items preempted by federal regulations.

Section 10.28.060 Amendments to the California Fire Code.

- A. Subsection 103.2 Appointment established.

Subsection 103.2 of Section 103 of Chapter 1 of the California Fire Code is hereby deleted in its entirety.

- B. Subsection 103.4.2 is added to Section 103 of Chapter 1 of the California Fire Code to read as follows:

103.4.2 Liability for Costs. The expenses for the response or any action by the Montclair Fire Department that is the result of a violation of the provisions of this Code or any damage caused by malicious mischief or any action determined to be negligent requiring any assistance, corrective, or preventive action conducted by Fire Department personnel shall be a charge against the responsible person, company, or agent whose violation or action caused the Fire Department response. Expenses caused by such response or actions shall constitute a debt of such person, company, or agent. The Fire Marshal shall keep an itemized account of expenses incurred by the City in carrying out the duties hereunder and shall prepare and file a report of such expenses, as outlined in the Montclair Fire Department Policy Manual, with the City Treasurer, together with the names and addresses of those responsible. The City Treasurer shall give notice to such person, company, or agent, who shall be afforded an

opportunity to be heard regarding such charges by requesting to be heard within 15 days after the mailing of such notice. The City Treasurer shall take such reasonable and necessary action to recover such expenses from any and all responsible persons, companies, or agents.

- C. Subsection 104.10.2 is added to Section 104 of Chapter 1 of the California Fire Code to read as follows:

104.10.2 Police Powers. The Fire Marshal and members of the arson investigation unit shall have the powers of a police officer in performing their duties under this Code and as defined in Section 830.37 of the California Penal Code.

- D. Subsection 105.3.9 is added to Section 105 Chapter 1 of the California Fire Code to read as follows:

105.3.9 Conditions of Permits. Fees. The City Council of the City of Montclair shall establish, as permitted by law, standard governing fees for the issuance of permits. Said fees shall be established by Resolution.

- E. Subsection 108.1 Board of Appeals established.

Subsection 108.1 of Section 108 of Chapter 1 of the California Fire Code is hereby deleted in its entirety.

- F. Subsection 109.4 of Section 109 of Chapter 1 of the California Fire Code is amended to read as follows:

109.4 Violation penalties. Persons who shall violate a provision of this Code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair, or do work in violation of the approved construction documents or directive of the Fire Marshal or his/her designee, or of a permit or certificate used under provisions of this Code, shall be guilty of a misdemeanor, punishable by a fine of not more than One Thousand (1,000) dollars or by imprisonment in the City or County jail for a period not to exceed 180 days, or by both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

- G. Subsection 315.3.3 is added to Section 315 of the California Fire Code to read as follows:

315.3.3 Mobile Home Sales Lots. The spacing between individual mobile homes located on mobile home sales lots shall not be less than ten (10) feet and not less than five (5) feet from any property line.

H. Subsection 503.2.4 of Section 503 of the California Fire Code is amended to read as follows:

503.2.4 Turning radius. The required turning radius of a fire apparatus access road or any required interior roadway of any facility or commercial or residential development shall be determined by the Fire Department.

I. Subsection 503.4.1 is added to Section 503.4 of the California Fire Code to read as follows:

503.4.1 Penalties. The parking of vehicles within a properly posted or designated fire apparatus access road may be cited or removed at the owner's expense as provided by law.

J. Subsection 903.2 of the California Fire Code is replaced to read as follows:

903.2 Where required. Approved automatic fire sprinkler systems in buildings and structures shall be required in the locations described in Sections 903.2.1 through 903.2.12 and as follows:

(1) Every structure hereafter constructed, erected, or moved onto a property, regardless of separation walls as outlined in the California Building Code, shall have an approved automatic fire sprinkler system installed throughout therein.

(2) Every structure, except Group R, Division 3, and Group R, Division 4 occupancies, hereafter remodeled, rebuilt, or renovated where such costs exceed fifty (50) percent of the assessed valuation as determined by the San Bernardino County Tax Assessor shall have an approved automatic fire sprinkler system installed throughout therein.

(3) Group R, Division 3, and Group R, Division 4 occupancies, including attached Group U occupancies, where fifty (50) percent or more of the existing floor area is hereafter

added to, remodeled, rebuilt, or renovated shall have an approved automatic fire sprinkler system installed throughout therein.

Exceptions:

- (1) Spaces or areas in telecommunications buildings used exclusively for telecommunications equipment, associated electrical power distribution equipment, batteries, and standby engines, provided those spaces or areas are equipped throughout with an automatic fire alarm system and are separated from the remainder of the building by fire barriers consisting of not less than one-hour fire-resistance-rated walls and two-hour fire-resistance-rated floor/ceiling assemblies.
- (2) Automatic fire sprinkler protection for fixed guideway transit systems shall be as per Section 903.2.17.
- (3) Outdoor, detached storage facilities of 200 square feet or less.
- (4) Any work for which a building permit is not required.
- (5) Block walls.
- (6) Swimming pools and spas.
- (7) Lattice patio covers.
- (8) Reroofing.
- (9) Decks.
 - (i) Except a covered deck constructed as part of a new building or structure.
- (10) Gazebos.

K. Subsection 903.3.1 of the California Fire Code is amended to read as follows:

903.3.1 Standards. Sprinkler systems shall be designed and installed in accordance with Section 903.3.1.1, unless otherwise permitted by

Sections 903.3.1.2 and 903.3.1.3, and the following:

- (1) Every sprinkler system shall have at least one (1) fire department connection located within fifty (50) feet of a fire hydrant.

Exceptions:

- (i) Sprinkler systems complying with NFPA 13 D (latest edition).
 - (ii) Sprinkler systems supplying fewer than twenty (20) heads.
- (2) Sprinkler system risers shall be located within buildings or structures.
 - (3) Post indicator valves, riser control valves, or secondary control valves shall be located and installed as determined by the Montclair Fire Department.
 - (4) Each fire department connection and any controlling valves shall bear a nameplate indicating occupancy name, address, or both as determined by the Fire Department.
 - (5) Minimum underground pipe size shall be six (6) inches in diameter.

Exceptions:

- (i) Sprinkler systems hydraulically calculated may have an underground pipe size of a smaller diameter upon approval of the Fire Department.
 - (ii) Sprinkler systems designed per NFPA 13 D (latest edition).
- (6) Minimum sprinkler system design requirements for new multioccupancy retail centers shall be as required for NFPA 13 (latest edition), ordinary hazard (group 2).
 - (7) Minimum sprinkler system design requirements for new industrial "spec" buildings shall be as required for NFPA 13 (latest edition), extra hazard (group 1).

(8) NFPA 13 R (latest edition) sprinkler systems shall utilize separate underground water mains to supply the fire sprinkler system and the domestic water supply.

L. Subsection 907.1.6 is added to Section 907 of the California Fire Code to read as follows:

907.1.6 False Alarms. More than two (2) false alarms transmitted from any required or nonrequired fire alarm system in a one (1) month period of time or three (3) false alarms transmitted from any required or nonrequired fire alarm system in any two (2) month period of time shall result in an assessment of fees for services provided by the Fire Department for all subsequent false alarms in the remainder of the calendar year.

M. Subsection 1021.1.4 is added to Section 1021 of the California Fire Code to read as follows:

1021.1.4 Second Exit Required. Where the third floor and above within an individual dwelling unit, a Group R, Division 3 congregate residence, or a Group R, Division 4 occupancy exceeds 750 square feet of gross floor area, a second exit shall be provided. For the purposes of this section, the gross floor area shall include all interior and exterior walls, stairways, shafts, and courts.

SECTION III. Article II of Chapter 10.28 of the Montclair Municipal Code is hereby amended as follows:

Article II. Permits, Reviews, and Fees

Section 10.28.100 Permits required.

Section 10.28.100 is amended to read as follows:

10.28.100 Permits required.

Reference California Fire Code, Chapter 1, Subsection 105.1.1 of Section 105.

SECTION IV. Article III of Chapter 10.28 of the Montclair Municipal Code is hereby amended as follows:

Article III. High-Rise Building Regulations

Section 10.28.150 Intent.

Section 10.28.150(A) is repealed in its entirety.

Section 10.28.150(B) [now "Section 10.28.150(A)"] is amended to read as follows:

10.28.150 Intent.

A. If no specific standards or requirements are specified in this chapter, or contained within other applicable laws, adopted codes or ordinances, compliance with the standards of the American Insurance Association, Factory Mutual Engineering, the National Fire Protection Association, or other nationally recognized fire safety standards as are approved by the Fire Marshal and Building Official, shall be deemed prima facie evidence of compliance with this intent.

Section 10.28.160 Scope.

Section 10.28.160(A) is amended to read as follows:

10.28.160 Scope.

A. Every high-rise building 45 feet in height above the lowest floor level having building access as defined in Section 10.02.010 hereafter constructed shall conform to Section 10.28.180.

Section 10.28.220 Exits.

Section 10.28.220(B) is amended to read as follows:

10.28.220 Exits.

B. Smoke-proof enclosures may be eliminated if all enclosed stairways are pressurized pursuant to the requirements of the California Building Code.

Section 10.28.250 Seismic considerations.

Section 10.28.250 is amended to read as follows:

10.28.250 Seismic considerations.

A. Every high-rise building shall have the anchorage of the following mechanical and electrical equipment designed and installed in accordance with the California Building Code for lateral force based on ASCE 7 unless data substantiating a lesser value is furnished.

- (1) Elevator drive and suspension systems.

- (2) Standby power and lighting facilities.
- (3) Fire pumps, automatic fire extinguishing systems, and other fire protection equipment.
- (4) Air handling equipment regulated by this chapter.

B. Verification of such conformance shall be substantiated by a licensed structural engineer.

Section 10.28.280 Automatic sprinkler systems.

Section 10.28.280(B) is amended to read as follows:

10.28.280 Automatic sprinkler systems.

B. In addition to the main water supply, a secondary onsite supply of water equal to the hydraulically calculated sprinkler design demand, plus 100 gallons per minute additional for the total standpipe system, shall be provided. This supply shall be automatically available if the principal supply falls, and shall have a duration of 30 minutes. The onsite supply of water as indicated above shall be maintained in a separate system from the public domestic water system, and shall conform to all applicable cross-connection requirements of the City Engineer's Office.

Section 10.28.290 Fire control center.

Section 10.28.290 is amended to read as follows:

10.28.290 Fire command center.

A. Every high-rise building in excess of 75 feet, as specified in Section 10.28.160(B), shall be provided with a fire command center located near or adjacent to the main entrance to the building or at any location approved by the Fire Marshal and Building Official. The fire command center shall be directly accessible from the outside of the building, consistent with standards developed by the Fire Marshal.

B. The fire command center shall be designed to accommodate the functional control and command personnel required to conduct an emergency activity. There shall be a minimum net floor area of 200 square feet with minimum dimension of 1 foot. This floor area shall not be encumbered upon by any walls, equipment, or other appurtenances not necessary to the function of the room.

C. The fire command center shall be separated from the remainder of the building by not less than a one-hour fire barrier, or minimum construction as required by the California Building Code, with all openings protected by assemblies having a fire-resistive rating of not less than 90 minutes or minimum construction as required by the California Building Code.

D. The fire command center shall be used to house the following equipment:

- (1) Voice communication control equipment including equipment necessary to the function of the control unit and its display and status panels.
- (2) Fire alarm and fire detection control equipment including equipment necessary to the function of the control unit and its display and status panels.
- (3) Status indicators and controls for elevators.
- (4) Air handling system status indicators and control switches.
- (5) Controls for unlocking stairway doors and status board indicating whether such doors are locked or unlocked.
- (6) Sprinkler valve supervision and water flow detector display panels.
- (7) Alarm, water flow, and trouble signals shall be annunciated by means of an audible signal and a visual display, which indicates the building, floor, zone, or other designated area from which the alarm, water flow, or trouble signal originated.
- (8) Standby power status display and controls.
- (9) A telephone connected to the public telephone system adjacent to the Fire Department communication systems. This telephone to be for express use of the Fire Department. Telephones for building occupant use shall be separate.

- (10) Intercom to exterior of fire command center to allow for verbal communication without opening the door.
- (11) Supervision indicator of the Fire Department's cabinets.
- (12) Three certified copies of the building floor plans, mechanical plans, and electrical plans.
- (13) Three copies of the Fire Department pre-plans.
- (14) Other fire protection equipment and system controls, such as the following:
 - (a) Water tank level indicators.
 - (b) Fire pump controls and status indicators.
 - (c) Fire level indicator on auxiliary generators and fire pumps.
- (15) Any other similar equipment, controls, or status indicators as deemed necessary by the Fire Marshal and Building Official.

E. Any equipment that is a status indicator shall be in the form of a graphic annunciator. The graphic annunciator shall be a line diagram of the building with the lights and activation switches in proper perspective on the diagram. The graphic annunciator shall be further keyed to the required building floor plans per floor and location on the floor.

F. As well as the graphic annunciator, an alphanumeric printout of all status indications or switch activations, along with the date and time of alarm or activation, shall be provided. This printout shall also be coded to provide the location of the activation on the building floor plans per floor and location of the floor.

G. The fire command center shall not be used for the housing of any boiler, heating unit, generator, or storage.

Section 10.28.300 Emergency helicopter landing facility.

Section 10.28.300 of the Montclair Municipal Code is hereby repealed in its entirety and replaced with the following:

10.28.300 Emergency helicopter landing facility.

Each high-rise building, in excess of 75 feet, as specified in Section 10.28.160(B) shall incorporate an emergency helicopter landing facility located on the roof of the building in an area approved by the Fire Department in accordance to Section 412.7 of the California Building Code and the following:

- A. A landing glide slope angle determined by a ratio of eight feet horizontal distance for every one foot of vertical clearance required. Two such approaches shall be available at least 90 degrees removed from each other.
- B. A clear, unobstructed landing and takeoff area with a minimum dimension of 100 feet by 100 feet and a reinforced touchdown area having a minimum dimension of 50 feet by 50 feet.
- C. If the roof has no parapet wall, a substantial fence or safety net shall be provided around the perimeter of the roof in such a manner that it will not restrict or reduce the required landing and takeoff area.
- D. A wind-indicating device shall be provided.
- E. The roof top shall be marked by an emergency marker as required by the Fire Marshal.
- F. The roof top shall be marked with the numerical street address of the building with the numbers facing the street frontage corresponding to the address. The size of the numbers is to be three feet high and one foot wide.

SECTION V. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

SECTION VI. Effective Date.

This Ordinance shall be in full force and effect on February 5, 2014.

SECTION VII. Posting.

The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2014.

Mayor

ATTEST:

Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 13-939 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2013, and finally passed not less than five (5) days thereafter on the XX day of XX, 2014, by the following vote, to-wit:

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

Yvonne L. Smith
Deputy City Clerk

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF ORDINANCE NO. 13-940 AMENDING SECTION 4.04.100 OF THE MONTCLAIR MUNICIPAL CODE TO INCLUDE EXEMPTION OF BUSINESS LICENSE REQUIREMENTS FOR CITY SERVICES, CITY SUPPLIERS, AND COMMON CARRIERS AND TO ESTABLISH MARCH 1, 2014, AS THE EFFECTIVE DATE OF THE AMENDMENT	DATE: December 16, 2013
	SECTION: PUBLIC HEARINGS
	ITEM NO.: B
	FILE I.D.: FLP100
	DEPT.: ADMIN. SVCS.

FIRST READING

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of the first reading of Ordinance No. 13-940 amending Section 4.04.100 of the Montclair Municipal Code to include exemption of business license requirements for City services, City suppliers, and common carriers.

A copy of proposed Ordinance No. 13-940 is attached for the City Council's review and consideration.

BACKGROUND: The Montclair Municipal Code requires all individuals and companies doing business within the City to obtain a City business license with some limited exceptions. There have been instances, however, in which additional exceptions to having a business license are warranted and would be in the best interest of the City. These are as follows:

1. When services are being provided in connection with City contracts, such as event vendors (food, supplies, etc.) or event entertainers, etc. To require these entities to have a business license increases their cost of operations, and that could also increase the costs of those services to the City. Since increased cost of City-purchased services offsets the benefits from the business license this only results in additional staff time and effort to process the licenses with limited, if any financial gain. Also, going through the process of obtaining a business license may prevent the City from obtaining services from vendors not wanting the additional administrative burden. Most entities that have larger contracts to provide services or products to the City have business licenses, and it is smaller ones that would find these requirements burdensome. To avoid a blanket exemption for City services, it is, therefore, recommended that an annual dollar limit of \$5,000 be established for City contracts that are being exempted from the City's business license requirements.

2. Under City construction contracts, delivery of products to City jobsites occurs by subcontractors or common carriers that are utilized by the prime contractor. The prime contractor has a City business license; however, to require that all of their subcontractors or delivery companies also have business licenses would impose a substantial burden upon the prime contractor and could cause these entities to not

Prepared by:

Donald L. Parker
James L. Smith

Proofed by:

Reviewed and
Approved by:

Presented by:

[Signature]
[Signature]

wish to do business with the City. Therefore, it is recommended that a supplier delivering materials in connection with a City contract and of use on a City project be exempted from the City's business license requirements.

3. Common carrier deliveries are made to Montclair residents even though the shipper is not located within the City. Most of these likely originate over the Internet, and the products should be coming from worldwide manufacturers, etc. Existing business license requirements do not grant an exemption for such, and our ability to regulate these is beyond our capability. Therefore, it is recommended that common carriers be exempted from the City's business license requirements.

FISCAL IMPACT: Unknown

RECOMMENDATION: Staff recommends the City Council adopt the first reading of Ordinance No. 13-940 amending Section 4.04.100 of the Montclair Municipal Code to include exemptions of business license requirements for City services, City suppliers, and common carriers and establishing March 1, 2014, as the effective date of the amendment.

ORDINANCE NO. 13-940

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SECTION 4.04.100 OF THE MONTCLAIR MUNICIPAL CODE TO INCLUDE EXEMPTION OF BUSINESS LICENSE REQUIREMENTS FOR CITY SERVICES, CITY SUPPLIERS, AND COMMON CARRIERS

THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:

SECTION I. Section 4.04.100 ("Mandatory Exemptions") of Chapter 4.04 ("Business License Provisions Generally") of Title 4 ("Business Taxes, Licenses, and Regulations") of the Montclair Municipal Code is hereby amended by adding the following exemptions:

E. City Services. No license fee shall be required of any vendor performing services to the City in which the aggregate value of all City payments to the vendor during the calendar year is Five Thousand Dollars (\$5,000) or less and the vendor is engaged in no other business within the City. If the vendor is engaged in other business within the City, the vendor shall be required to obtain a license. Additionally, a supplier delivering materials in connection with a contract with the City and for use on a City project is not required to obtain a business license unless otherwise provided in the contract.

F. Delivery by common carrier. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to obtain a business license provided it engages in no other business activities in or with the City. If a seller performs other business activities in the City in addition to delivering goods by common carrier, the seller must obtain a business license.

SECTION II. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

SECTION III. Effective Date.

This Ordinance shall be in full force and effect thirty (30) days after passage.

SECTION IV. Posting.

The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2014.

Mayor

ATTEST:

Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 13-940 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2013, and finally passed not less than five (5) days thereafter on the XX day of XX, 2014, by the following vote, to-wit:

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

Yvonne L. Smith
Deputy City Clerk

AGENDA REPORT

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

DATE: December 16, 2013

SECTION: ADMIN. REPORTS

ITEM NO. 1

FILE I.D.: FIN520

DEPT.: ADMIN. SVCS.

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, 2013, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending November 30, 2013.

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, 2013.

Prepared by:

Janet Kullback
Elyse Smith

Reviewed and
Approved by:

Ronald L. Parker
[Signature]

Proofed by:

Presented by:

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATIONS **DATE:** December 16, 2013
SECTION: ADMIN. REPORTS
ITEM NO.: 2
FILE I.D.: FIN540
DEPT.: ADMIN. SVCS

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

BACKGROUND: Mayor Pro Tem Ruh has examined the Warrant Register dated December 16, 2013, and Payroll Documentations dated November 17, 2013, and December 1, 2013; finds them to be in order; and recommends their approval.

FISCAL IMPACT: The Warrant Register dated December 16, 2013, totals \$895,084.83. The Payroll Documentation dated November 17, 2013, totals \$539,335.32, with \$378,495.60 being the total cash disbursement. The Payroll Documentation dated December 1, 2013, totals \$639,063.50, with \$438,312.29 being the total cash disbursement.

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

Prepared by: Gene R Smith Reviewed and Approved by: [Signature]
Proofed by: Andre D Lillis Presented by: [Signature]

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: December 16, 2013

SECTION: ADMIN. REPORTS

ITEM NO.: 3

FILE I.D.: FIN510

DEPT.: SUCCESSOR RDA

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, 2013, 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, 2013.

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, 2013.

Prepared by:

Michael Piotrowski

Reviewed and
Approved by:

Ronald Becker

Proofed by:

James R. Smith

Presented by:

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER **DATE:** December 16, 2013
SECTION: ADMIN. REPORTS
ITEM NO.: 4
FILE I.D.: FIN530
DEPT.: SUCCESSOR RDA

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, 2013, pursuant to state law.

BACKGROUND: Vice Chairman Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 11.01.13-11.30.13 in the amounts of \$1,331.67 for Project I; \$0.00 for Project II; \$15,936.77 for Project III; \$11,186.21 for Project IV; \$15,977.73 for Project V; \$0.00 for the Mission Boulevard Joint Redevelopment Project; \$0.00 for the Redevelopment Obligation Retirement Funds; \$0.00 from the Tax Exempt Bond Proceeds and \$0.00 from the Taxable Bond Proceeds 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, 2013.

Prepared by:

Michael P. Thompson

Reviewed and
Approved by:

Donna L. Baker

Proofed by:

Gene L. Smith

Presented by:

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: December 16, 2013

SECTION: ADMIN. REPORTS

ITEM NO.: 5

FILE I.D.: FIN525

DEPT.: MHC

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, 2013, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending November 30, 2013.

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, 2013.

Prepared by:

Michael Pithonku

Reviewed and
Approved by:

Ronald L. Parker

Proofed by:

Yvonne L. Smith

Presented by:

[Signature]

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER **DATE:** December 16, 2013
SECTION: ADMIN. REPORTS
ITEM NO.: 6
FILE I.D.: FIN545
DEPT.: MHC

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, 2013, pursuant to state law.

BACKGROUND: Vice Chairman Ruh has examined the Warrant Register dated 11.01.13-11.30.13 in the amount of \$86,146.57 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, 2013.

Prepared by:

Michael P. Piro

Reviewed and
Approved by:

Donald L. Parker

Proofed by:

Gonnie L. Smith

Presented by:

[Signature]

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: December 16, 2013

SECTION: ADMIN. REPORTS

ITEM NO.: 7

FILE I.D.: FIN525

DEPT.: MHA

REASON FOR CONSIDERATION: The Montclair Housing Authority Board of Directors is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending November-30, 2013, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending November 30, 2013.

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

RECOMMENDATION: Staff recommends the Montclair Housing Authority Board of Directors receive and file the Treasurer's Report for the month ending November 30, 2013.

Prepared by:

Michael Pitrolo

Reviewed and
Approved by:

Donald L. Parker

Proofed by:

Zonne & Smith

Presented by:

[Signature]

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER **DATE:** December 16, 2013
SECTION: ADMIN. REPORTS
ITEM NO.: 8
FILE I.D.: FIN545
DEPT.: MHA

REASON FOR CONSIDERATION: The Montclair Housing Authority Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending November 30, 2013, pursuant to state law.

BACKGROUND: Vice Chairman Ruh has examined the Warrant Register dated 11.01.13-11.30.13 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

RECOMMENDATION: Vice Chairman Ruh recommends the Montclair Housing Authority Board of Directors approve the Warrant Register for the period ending November 30, 2013.

Prepared by:

Michael Piotrowski

Reviewed and
Approved by:

Ronald Park

Proofed by:

Gonnie L Smith

Presented by:

Michael Piotrowski

AGENDA REPORT

SUBJECT: CONSIDER AUTHORIZATION TO INSTALL
STOP SIGNS AT THE INTERSECTION OF
BANDERA STREET AND FREMONT AVENUE

DATE: December 16, 2013

SECTION: ADMIN. REPORTS

ITEM NO.: 9

FILE I.D.: TRC800

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the installation of stop signs.

BACKGROUND: In response to a request from a Bandera Street resident, staff has investigated complaints of speeding along a segment of Bandera Street from Monte Vista Avenue to Central Avenue. This segment is approximately one-half-mile long with no stops but several intersecting streets. Several traffic counts and speed surveys were conducted by staff at random intervals and locations. Staff was able to verify that the 85th percentile speed is greater than 30 miles per hour, even approaching 35 miles per hour. The posted speed for Bandera Street is 25 miles per hour.

All the warrants are met for speed humps in accordance with the City's speed hump policy. However, the Police Chief/Executive Director of Public Safety has suggested installing a stop sign at Fremont Avenue and Bandera Street. The Public Works Director and Public Works Committee both concur to install speed humps only as a last resort.

The placement of stop signs is generally governed by the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD considers such factors as:

- An intersection of a less important road with a main road where application of the normal right-of-way rule is unduly hazardous.
- A street enters a through highway or street.
- An unsignalized intersection in a signalized area.
- Other intersections where a combination of high speed, restricted view, and serious accident records indicates a need for control by the STOP sign.
- Traffic volumes of major and minor street.

These warrants are not met. Therefore, staff is requesting Council approval to install a three-way stop at Bandera Street and Fremont Avenue.

FISCAL IMPACT: Installation of two additional stop signs, stop bars, and stop legends to make this intersection a three-way stop is estimated to be under \$300. The work would be performed by City crews.

RECOMMENDATION: Staff recommends the City Council authorize the installation of stop signs at the intersection of Bandera Street and Fremont Avenue.

Prepared by:

Miscala
Alley

Reviewed and
Approved by:

[Signature]
[Signature]

Proofed by:

Presented by:

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF FISCAL
YEAR 2013-14 SCHEDULE OF
RECOMMENDATIONS FOR
COMMUNITY BENEFITS FUNDING

DATE: December 16, 2013

SECTION: ADMIN. REPORTS

ITEM NO.: 10

FILE I.D.: CAC080

DEPT.: HUMAN SERVICES

REASON FOR CONSIDERATION: Annually, the Human Services Department presents the City Council with a list of Community Action Committee (CAC) organizations that are recommended to receive a portion of funds appropriated in the Community Benefits Account. The City Council is requested to consider the CAC organization requests listed on the Fiscal Year 2013-14 Community Benefits Assistance Program Agency Funding Requests at the end of this report and consider approval of the funding recommendations.

BACKGROUND: The City Council established an annual policy of appropriating funds to social service agencies that provide special services to Montclair residents. At the direction of the City Council, the CAC conducts a public hearing each year to provide CAC members with the following opportunities:

- Become acquainted with the requesting organizations and their programs of service.
- Inquire about requesting agencies' operating budgets and revenue sources in order to evaluate their financial needs.
- Determine the appropriate use of funds that may have been previously allocated by the City to requesting agencies.

The CAC heard presentations at its regular meeting on Wednesday, November 6, 2013, from ten organizations related to their requests for community benefits assistance, which are summarized below:

1. *Foothill Family Shelter.* The Foothill Family Shelter provides services for at-risk homeless individuals and families. The funds received would be used for the 120-day Stepping Stones Program that provides shelter, food, and clothing for at-risk homeless families in Montclair and surrounding communities. Foothill Family Shelter provided 120-day transitional housing for 24 homeless and low-income families during 2012, 15 percent of whom were Montclair residents.
2. *House of Ruth.* The House of Ruth provides shelter and support services for Montclair women and their children who are victims of physical abuse including

Prepared by: M. Richter

Reviewed and Approved by: M. Richter

Proofed by: Christine Smidely

Presented by: [Signature]

legal and social services advocacy, job counseling, housing advocacy, case management, information and referral, and community education. During 2012, the House of Ruth gave direct services to 57 Montclair families of battered women and their children, provided hotline crisis intervention for 48 Montclair residents, and presented domestic violence-prevention education to 1,038 Montclair students.

3. *Incredible Edible Community Garden.* This organization provides opportunities to grow fresh organic produce in noncontiguous urban growing spaces so communities have access to fresh and healthy produce at no cost. The funds received would be used to support a mural art project for the Montclair Community Fruit Park because Montclair youth have expressed a desire to artistically express that the Fruit Park symbolizes a means of hope for their future.
4. *Inland Hospice.* The Inland Hospice Association assists terminally ill patients and their families with facing the process of death. Organization representatives stay with the patients to provide companionship and emotional support and respite for families. The representatives also assist with personal care and transportation. During this fiscal year, Inland Hospice assisted 31 Montclair residents.
5. *Montclair Community Collaborative (MCC).* The MCC was founded in 1996 to coordinate services for struggling children and families in crisis. The goal of MCC's Case Management Program is to help families access food, shelter, education, health-care, and transportation. In 2012, the MCC Case Management Program provided 613 families/individuals with these services.
6. *Montclair Meals on Wheels.* Services include the home delivery of lunches to Montclair residents who are unable to shop for themselves or prepare their own meals. This year, volunteers delivered 3,300 meals to Montclair residents. The Meals on Wheels Program is charged \$3.60 per meal, and the cost to the recipient is also \$3.60. The funds received would pay for the fixed costs needed to support the program volunteers who deliver the meals, such as insurance and mileage fees.
7. *OPARC.* OPARC is a nonprofit organization located in Monclair that serves 800 disabled adults. The funds received would be used to purchase a point-of-sale cash register to expand employment opportunities for participants and to provide training in the restaurant industry. Sixty-one percent of OPARC's participants are served in and/or are residents of Montclair.
8. *Pomona Valley Workshop (PVW).* Pomona Valley Workshop provides vocational and social opportunities for adults with developmental/physical disabilities, improving their quality of life. Funding would be used to purchase production equipment (five weight scales and four forklift tires) for a Work Activity Program that allows PVW to provide contract workers to local business vendors at a reduced cost, thereby employing our disabled workforce while also benefiting our local business economy.
9. *Project Sister.* Services are provided to survivors of sexual assault and include the following: a 24-hour hotline, information and referral, advocacy and accompaniment, individual counseling and support groups, community education, teen programs, child-abuse prevention, and self-defense instruction. Funding would be used to provide violence prevention services to 150 Montclair residents during Fiscal Year 2013-14.

10. *Visiting Nurse Association and Hospice (VNA)*. The VNA provides home health-care and hospice services in our community. The VNA provided free care to 28 Montclair residents who are full-time caregivers of ill and dependent family members through the Take the Afternoon Off Program.

FISCAL IMPACT: The City Council authorized spending \$10,000 on community benefits assistance during Fiscal Year 2013-14. Funding levels for each eligible agency are based on the following factors:

- Level of service to the Montclair community
- Level of service need in the community
- Amount of each request
- Previous year's allocation
- Available funds

RECOMMENDATION: Staff recommends the City Council approve the following Fiscal Year 2013-14 schedule of recommendations for community benefits funding:

FISCAL YEAR 2013-14
COMMUNITY BENEFITS ASSISTANCE PROGRAM
AGENCY FUNDING REQUESTS

<i>Requesting Agencies</i>	<i>FY 2013-14 Funding Requests</i>	<i>FY 2013-14 Recommen- dations</i>
(1) Foothill Family Shelter	\$ 2,000	\$ 1,000
(2) House of Ruth	1,500	1,000
(3) Incredible Edible Community Garden	5,000	1,000
(4) Inland Hospice	2,500	1,000
(5) Montclair Community Collaborative	1,000	1,000
(6) Montclair Meals on Wheels	1,500	1,000
(7) OPARC	1,000	1,000
(8) Pomona Valley Workshop	2,623	1,000
(9) Project Sister	1,500	1,000
(10) Visiting Nurse Association	<u>\$ 5,000</u>	<u>\$ 1,000</u>
TOTALS	<u>\$23,623</u>	<u>\$10,000</u>

AGENDA REPORT

SUBJECT: CONSIDER AUTHORIZATION TO PURCHASE A 2013 MULTIQUIP AR13HAR 2.5-TON TANDEM VIBRATORY ASPHALT ROLLER AND AIR-TOW T10-7 HYDRAULIC LIFTING-TRAILER

DATE: December 16, 2013

SECTION: ADMIN REPORTS

ITEM NO.: 11

FILE I.D.: EQS230

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of an asphalt pavement roller and trailer.

BACKGROUND: In order to perform some of the pavement repairs throughout the City, an asphalt pavement compactor is required. The City currently uses a 1996 Essick Walk Behind Roller that it purchased new in 1996. Its capabilities are limited, it is primarily used for small patches in streets and parking lots. Larger projects require rental equipment. The Essick roller also has problems with the vibratory motor mechanism, and replacement parts are either obsolete or difficult to find. This roller was approved for replacement in the Fiscal Year 2013-14 Budget.

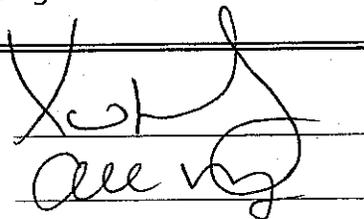
Staff requested and received quotes from several vendors for a ride-on asphalt roller and has determined that the 2013 Multiquip AR13HAR 2.5-ton Tandem Vibratory Asphalt Roller met all Public Works requirements and was the lowest bid. Staff also found that Direct Edge, Inc., is the only vendor that carries the air ride trailer system with hydraulic lifting capabilities needed to transport this piece of heavy equipment and is being recommended as the sole source vendor.

<i>Vendor</i>	<i>Cost</i>
Multiquip Inc./Direct Edge	\$14,415.44 + \$11,594.50 = \$26,009.94
H & E Equipment/Direct Edge	\$17,066.70 + \$11,594.50 = \$28,661.20
United Rentals/Direct Edge	\$17,428.25 + \$11,594.50 = \$29,022.75

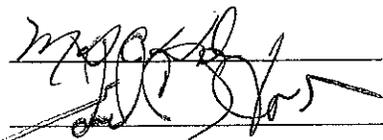
FISCAL IMPACT: The Fiscal Year 2013-14 Budget includes funding in the Equipment Replacement Fund in the amount of \$30,000 for replacement of the 1996 Essick Walk Behind roller. The total cost of the 2013 Multiquip AR13HAR Tandem Vibratory 2.5-Ton Asphalt Roller and Direct Edge, Inc. Air-Tow T10-7 Hydraulic Lifting Trailer is \$26,009.94, \$3,990.06 below the budgeted amount.

RECOMMENDATION: Staff recommends the City Council authorize the purchase of a Multiquip AR13HAR Tandem Vibratory 2.5-Ton Asphalt Roller and Air-Tow T10-7 Hydraulic Lifting Trailer.

Prepared by:



Reviewed and Approved by:



Proofed by:

Presented by:



AGENDA REPORT

SUBJECT: CONSIDER DECLARING CITY VEHICLES AS SURPLUS AND AUTHORIZING THEIR SALE AT AUCTION OR AS SCRAP METAL

DATE: December 16, 2013

SECTION: ADMIN. REPORTS

ITEM NO.: 12

FILE I.D.: VEH120

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: The City Council is requested to consider declaring City vehicles that are no longer in service as surplus so they may be sold at auction or as scrap metal.

BACKGROUND: The following vehicles have reached the end of their service lives, are no longer in use, and are proposed to be declared as surplus for sale by auction or as scrap metal. Vehicle identification numbers, mileage, and estimated sales prices are listed below:

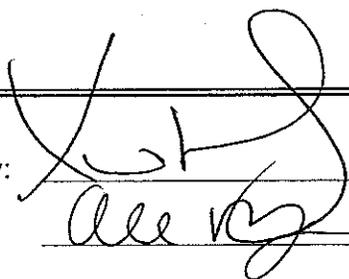
<i>Year and Model</i>	<i>Vehicle Identification Number</i>	<i>Mileage</i>	<i>Estimated Sales Price</i>
1998 Ford CNG Club Wagon	1FMNE31M4WHB29889	38,418	\$1,500
1993 Chevrolet Pickup	1GCCG24N1PE180139	105,296	\$800
1992 Ford Stencil Truck	2FDJF37G9NCB11777	43,969	\$1,500
2006 Ford Crown Victoria	2FAFP71W86X123868	108,206	\$500
2006 Ford Crown Victoria	2FAFP71W66X123867	106,326	\$500

The vehicles have high mileage and/or have undergone excessive repair, and they would not pass the smog inspection required for registration without extensive costly repairs.

FISCAL IMPACT: The City anticipates receipt of \$4,800 from the sale of the vehicles by the auction company. Proceeds from the sale would be returned to the Equipment Replacement Fund.

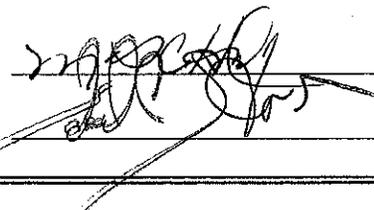
RECOMMENDATION: Staff recommends the City Council declare City vehicles as surplus and authorize their sale at auction or as scrap metal.

Prepared by:



Proofed by:

Reviewed and Approved by:



Presented by:

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT
NO. 13-97 WITH ONTARIO-MONTCLAIR
SCHOOL DISTRICT FOR USE OF GOLDEN
GIRLS BALL FIELDS

DATE: December 16, 2013

SECTION: AGREEMENTS

ITEM NO.: 1

FILE I.D.: PRK675

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: The agreement with Ontario-Montclair School District (OMSD) for the use of Golden Girls Ball Fields has expired. The City Council is requested to consider approval of Agreement No. 13-97 with OMSD for use of Golden Girls Ball Fields, a copy of which is attached for the City Council's review and consideration.

BACKGROUND: Since 1980, the City has had agreements with OMSD for the use of a portion of Vernon Middle School for ball fields. The portion of the school used for this purpose has come to be known as Golden Girls Ball Fields. The most recent agreement, Agreement No. 02-76, was written for a term of ten years and expired June 30, 2012.

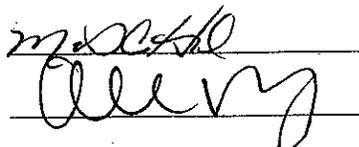
A new agreement has been negotiated with School District staff and would be retroactive back to July 1, 2012. The proposed agreement would be valid through June 30, 2020. In most respects, the new agreement is similar to previous agreements, with new clauses added reflecting current contract language with respect to indemnification and insurance. The City would continue to be responsible for maintenance of the site and payment of utilities.

An additional clause has been added to the proposed agreement not addressed in any of the previous agreements. As a form of compensation, the City agrees to perform crack sealing and slurry sealing of the Vernon Middle School parking lot at the end of the second and seventh years of the agreement term. This form of compensation is not unprecedented. Under the terms of the original 1975 agreement with OMSD for the use of the Kingsley Ball Fields, the City was required to connect Serrano Junior High School to the City sewer system at City expense. As a condition for the renewal of that agreement earlier this year, the City agreed to crack and slurry seal a parking lot at Kingsley Elementary School.

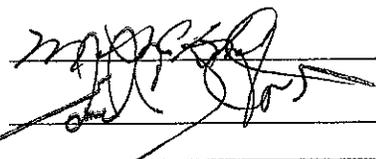
FISCAL IMPACT: The annual cost of maintenance and repairs at Golden Girls Ball Fields is estimated at under \$1,500. In the second and seventh years of the contract, crack sealing and slurry sealing would be required at an estimated cost of \$3,500 each year. These costs would be budgeted in the applicable years as General Fund expenditures.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 13-97 with Ontario-Montclair School District for the use of Golden Girls Ball Fields.

Prepared by: _____



Reviewed and
Approved by: _____



Proofed by: _____

Presented by: _____

**AGREEMENT BETWEEN
ONTARIO-MONTCLAIR SCHOOL DISTRICT
AND
THE CITY OF MONTCLAIR
FOR RECREATIONAL USE OF FACILITIES**

THIS AGREEMENT, effective July 1, 2012, by and between the Ontario-Montclair School District (hereinafter School District), a California public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California, and the City of Montclair (hereinafter City), a municipal corporation (individually a Party and collectively the Parties).

RECITALS

WHEREAS, California Education Code sections 10900, et seq., (Community Recreation Programs Law) authorizes public authorities to organize, promote and conduct such programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults and further empowers public authorities to cooperate with each other to attain such objectives; and

WHEREAS, the Community Recreation Programs Law defines recreation to include any activity, voluntarily engaged in, which contributes to the "...mental or moral development of the individual or group participating therein, and includes any activity in the fields of... art, handicrafts, ... nature contacting, aquatic sports, and athletics..."; and

WHEREAS, School District and City are authorized under California law to operate and maintain recreation centers, as defined in Education Code section 10901(f), for community recreation (Recreation Center); and

WHEREAS, School District and City desire to enter into an agreement pursuant to the aforesaid provisions of the Education Code of the State of California, providing for the joint use of a Recreation Center which is located within the boundaries of both School District and City; and

WHEREAS, School District owns property located at 9775 Vernon Avenue, Montclair, California 91763, known as Vernon Middle School ("School Site"); and

WHEREAS, a softball field and related amenities ("Licensed Facilities"), commonly known by City as Golden Girls Ball Fields, are located at the School Site; and

WHEREAS, City desires to use the Licensed Facilities for community recreation activities; and

WHEREAS, School District desires to license the Licensed Facilities to City for the purpose of organizing and implementing community recreation activities; and

WHEREAS, the Parties desire by this Agreement to provide for the terms and conditions for the use of the Licensed Facilities.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises of the covenants hereinafter contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

Section 1. This agreement shall supersede any and all previous agreements between School District and City for the use of School Site and Licensed Facilities.

Section 2. Description of Licensed Facilities. A description and map depicting the Licensed Facilities subject to this Agreement are attached hereto and incorporated by reference as Exhibit A.

Section 3. License. School District grants a license to City to use the Licensed Facilities for conducting community recreation activities pursuant to the terms and conditions set forth herein. School District shall not charge the City a license fee for use of the Licensed Facilities; however, City agrees to provide funding for and/or perform the services described in Exhibit B, attached hereto and incorporated by reference. City shall ensure that any use of the Licensed Facilities by a community recreation group complies with the terms and conditions of this Agreement. City shall not charge for the use of the Licensed Facilities without the advance written approval by School District.

Section 4. Term. Subject to the early termination provisions of Section 6 of this Agreement, the term of this Agreement shall commence July 1, 2012, and extend through June 30, 2020, unless mutually extended in writing by both Parties. Upon the expiration or termination of this Agreement, at any time or upon any grounds provided herein, City shall immediately vacate the Licensed Facilities, and unless School District requires their removal, all alterations, improvements or additions which are made at the Licensed Facilities by City shall become the property of School District and remain upon, and be surrendered with, the Licensed Facilities at the expiration of the Term. If School District so elects it may require City, at City's sole cost, to remove the alterations, improvements, or additions, and to restore the Licensed Facilities to the prior condition before the last day of the term of the Agreement.

Section 5. Conditions to Use.

(a) Maintenance and Operation of the Licensed Facilities by City. City hereby acknowledges that it has received the Licensed Facilities in good order and condition, except as noted in Exhibit C to this Agreement. City agrees that it will, at its sole cost and expense, keep and maintain (including custodial and groundskeeping services) the entire Licensed Facilities and improvements thereon or therein in good repair and appearance, except for ordinary wear and tear, and will with reasonable promptness make all structural and non-structural, foreseen and unforeseen, and ordinary and extraordinary changes and repairs of every kind and nature which may be required to be made upon or in connection with the Licensed Facilities or improvements thereon or therein in order to keep and maintain the same in such good order, condition and repair. City shall promptly repair any vandalism, including graffiti, on the Licensed Facilities. School District shall not be required to maintain, repair or rebuild, or to make any

alterations, replacements or renewals of any nature or description to the Licensed Facilities or improvements thereon or therein (or any part thereof), whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to maintain the Licensed Facilities or improvements or any part thereof in any way, during the term of this Agreement, and City hereby expressly waives the right to make repairs at the expense of School District. City shall not be responsible for repair of damages resulting from School District use or School District authorized use of the Licensed Facilities.

(b) Clean-up of Licensed Facilities. During their respective times of use of the Licensed Facilities as set forth in this Agreement, School District and City shall be responsible for cleanup of the Licensed Facilities. School District and City shall each require users of the Licensed Facilities to provide adequate supervision and guarantee that the Licensed Facilities will be cleaned up after such usage. As used herein, the term "cleanup" shall mean putting away equipment and supplies, picking up trash and similar related activities. In the event that City fails to clean up and maintain the Licensed Facilities, School District may, at School District's sole discretion, undertake any cleanup or maintenance of the Licensed Facilities and City shall reimburse School District for the costs of such cleanup or maintenance within thirty (30) days of invoice by School District. Additionally, under no circumstances during the term of this Agreement shall City use or cause to be used in the Licensed Facilities any hazardous or toxic substances or materials, and under no circumstance during the term of this Agreement shall City store or dispose of any such substances or materials in the Licensed Facilities.

(c) Non-Interference with School District Activities. This Agreement shall not grant City the right to interfere with any activities of School District.

(d) Conduct of City, Employees and Invitees. City shall ensure that all employees, invitees, and all others in attendance at the Licensed Facilities will adhere to proper standards of public conduct. There is to be no consumption of intoxicating liquors or other controlled substances, smoking, gambling, quarreling, fighting, use of profane language, or indecent exposure on or near the Licensed Facilities. Each Party agrees to utilize the Licensed Facilities in conformance with Federal and State law as well as School District and City administrative regulations, ordinances, and policies.

(e) Utilities. City shall be responsible for payment of all utilities associated with the operation and use of the Licensed Facilities during the periods when City uses the Licensed Facilities. For any portion of the City's share of utility costs not billed directly to City, City's pro-rata share shall be billed to City each quarter. Said invoice shall itemize City's share of the total costs of utilities for the Licensed Facilities. City shall promptly pay to School District its share of such utility costs within thirty (30) days of receipt of such invoice.

(f) Insurance.

(i) Public Liability and Property Damage. City agrees to maintain in full force and effect throughout the duration of the Agreement a suitable policy or policies of public liability and property damage insurance, insuring against all bodily injury, property damage, personal injury, and other loss or liability caused by or

connected with City's use of the Licensed Facilities under this Agreement. Such insurance shall be in amounts not less than \$1,000,000 per occurrence; \$3,000,000 for general aggregate and \$1,000,000 for property damage.

(ii) Automobile Liability. City also agrees to maintain in full force and effect with regard to any City-owned vehicles, which City brings onto the Licensed Facilities, a suitable policy or policies of automobile liability insurance with a combined single limit of \$1,000,000 per accident throughout the duration of the Agreement.

(iii) Workers' Compensation. City shall also maintain, in full force and effect throughout the term of this Agreement, Workers' Compensation insurance in accordance with the laws of California, and employers' liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence.

(iv) Notice; Additional Named Insureds. All insurance required under this Agreement shall be issued as a primary policy and contain an endorsement requiring thirty (30) days written notice from the insurance company to both Parties hereto before cancellation or change in coverage, scope or amount of any policy. School District, its directors, officers, agents, employees and consultants, shall be designated as additional named insureds.

(v) Insurance Endorsements. Concurrent with the execution of the Agreement and prior to any use by City of the Licensed Facilities, City will provide School District with an endorsement(s) verifying such insurance and the terms described herein.

(vi) Right to Self Insure. In lieu of commercial insurance, City shall retain the right to self-insure all or any portion of its insurance obligations herein.

(g) Indemnification. City shall be responsible for, and School District shall not be answerable or accountable in any manner for, any loss or expense by reason of any damage or injury to person or property, or both, arising out of the acts of City, its agents, officers, employees, guests or invitees, or resulting from City's activities at the Licensed Facilities or from any cause whatsoever arising out of or in connection with this Agreement or any other use or operations by City at the Licensed Facilities. City shall indemnify and defend School District, its directors, officers, agents, employees, and invitees against, and will hold and save them and each of them harmless, from any and all actions, claims, liens, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, association, entity, corporation, political subdivision, or other organization arising out of or in connection with City's activities at the Licensed Facilities, this Agreement, and any other use of and operations by City at the Licensed Facilities pursuant to this Agreement, whether or not there is concurrent passive negligence on the part of School District, its agents, employees or officers, but excluding such actions, claims, damages to persons or property, penalties, obligations or liabilities arising from the active negligence or willful misconduct of School District. City further agrees to indemnify, defend and hold harmless School District, its directors, officers and employees and each of them from any claim or cause of action arising out of or related to liability resulting from City's violation of any applicable Federal, State or local statute, ordinance, order, requirement,

law or regulation that may adversely affect the Licensed Facilities, including, without limitation, any applicable labor laws and/or regulations. In connection therewith:

(i) Actions Filed. City shall defend any action or actions filed in connection with any of said claims, liens, damages, penalties, obligations or liabilities, and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.

(ii) Judgments Rendered. City shall promptly pay any judgment rendered against City or School District covering such claims, liens, damages, penalties, obligations and liabilities arising out of or in connection with such use of and operations by City at the Licensed Facilities referred to herein and agrees to save and hold School District harmless therefrom.

(iii) Costs and Expenses; Attorneys' Fees. In the event School District is made a party to any action or proceeding filed or prosecuted against City for such damages or other claims arising out of the use of and operations by City at the Licensed Facilities referred to herein, City agrees to pay School District any and all costs and expenses incurred by them in such action or proceeding together with reasonable attorneys' and expert witness fees.

The provisions of this Section shall survive the termination or expiration of this Agreement.

(h) Scheduling. Representatives of School District and City shall meet as needed to discuss scheduled use of the Licensed Facilities (Scheduling Meetings). City shall coordinate and schedule use of the Licensed Facilities by community recreation groups. Within ten (10) days of receiving the request, City shall provide School District with notice of the community recreation group schedules via email to the District's representative.

Parties agree that the Licensed Facilities shall be for the exclusive use of School District during school hours, defined as 6:00 a.m. – 4:00 p.m., Monday through Friday, excluding School District holidays. Should School District have an emergency need to use the Licensed Facilities outside these hours, it will attempt to provide City a minimum of twenty-four (24) hours notice prior to the anticipated need.

For scheduling purposes, District shall contact Marcia Richter at 909-625-9453, or mrichter@cityofmontclair.org, and City shall contact Craig Misso at 909-418-6369 or craig.misso@omsd.net.

(i) Program Costs and Equipment. The Parties agree that each Party shall provide all materials and equipment to be used in their respective activities.

(j) Program Supervision and Security. The Parties agree that each Party will provide all necessary supervision and security at their respective activities. City shall be responsible for supervising/staffing its recreational programs and ensuring that community recreation groups supervise and staff their recreation programs to provide

adequate supervision. City shall require community recreation groups designate one or more representatives and ensure that at least one such representative is present and available at the Licensed Facilities during all hours of groups' use.

(k) Locks - Keying and Access Authorization. The lock style, types of gates, and key/code authorization to be utilized at the Licensed Facilities will be coordinated in such a manner as to allow dual access while maintaining the safety and security of people and property. School District shall retain sole discretion and authority to determine lock style, types of gates, and key/code authorization at the Licensed Facilities. If required, the School District Representative shall provide City Representative with one copy of each key necessary to access the Licensed Facilities. A City Representative shall sign and complete a Contractor Key Use Agreement for each key/code. This requirement is not applicable to snack bar, electrical room, or other buildings at the Licensed Facilities.

(l) Parking. Parking in the lots at the School Site shall not be reserved and shall be limited to standard-sized automobiles. City shall not allow large trucks or other large vehicles to use the parking lot at the School Site and shall not allow overnight parking. All vehicles shall be parked only in marked parking areas and not in driveways, loading areas, or other areas not specifically designated for parking.

(m) Alterations. City shall not structurally alter improvements on the Licensed Facilities or make any alteration or change to the improvements on the Licensed Facilities, or make any additional improvements to the Licensed Facilities, without the prior written consent of School District, which may be granted in School District's sole discretion. Any request for such an alteration, change, or improvement shall be accompanied by plans and specifications providing for the alteration, change, or improvement, which plans and specifications shall be subject to School District's approval. All construction or alterations shall be performed diligently and in a good and workmanlike manner, and shall comply with all applicable laws, rules, and regulations of the Division of the State Architect (DSA) and any and all other governmental authorities having jurisdiction over the Licensed Facilities.

City shall pay all costs, including, but not limited to, demolition and construction; planning and permit fees; architectural, engineering and legal fees; taxes; and insurance, for or related to construction or alterations performed by it, or caused to be performed by it, on the Licensed Facilities as permitted by this Agreement. City shall keep the Licensed Facilities and improvements thereon or therein free and clear of all mechanics' liens resulting from construction and/or alterations performed by, for or at the request of City, it being acknowledged and agreed that nothing herein is intended to state or imply that the Licensed Facilities is subject to mechanics' liens, as the Licensed Facilities is and will continue to constitute real property owned by a public entity during the entire term of this Agreement. City shall do all things reasonably necessary to prevent the filing of any such mechanics' or other liens against the Licensed Facilities or improvements thereon or therein. If any such lien shall at any time be filed against the Licensed Facilities and/or improvements thereon or therein as a result of construction activities or maintenance services initiated by City, City shall cause the same to be

discharged of record or bonded over to the satisfaction of School District within thirty (30) days from City's receipt of a copy of such lien.

City shall deliver to School District, promptly after City's receipt thereof, originals or, if originals are not available, copies of any and all of the following instruments and documents pertaining to any construction, repair, or replacement of improvements on the Licensed Facilities: (a) plans and specifications for the subject improvements; (b) test results, physical condition and environmental reports and assessments, inspections, and other due diligence materials related to the subject improvements; (c) permits, licenses, certificates of occupancy, and any and all other governmental approvals issued in connection with the subject improvements; (d) agreements and contracts with architects, engineers, and other design professionals executed with respect to the design of the subject improvements; (e) construction contracts and other agreements with consultants, construction managers, general and other contractors, and equipment suppliers pertaining to the construction, repair or replacement, as the case may be, of the subject improvements; and (f) all guaranties and warranties pertaining to the construction, repair or replacement, as the case may be, of the subject improvements.

Notwithstanding anything to the contrary stated or implied in this Agreement, City shall not take any action or give any approval that will result in a change in the zoning of the Licensed Facilities that will be binding on the Licensed Facilities or impact or affect School District after the expiration or earlier termination of this Agreement, or alter, eliminate or in any way modify any of the entitlements for the Licensed Facilities in any manner that will be binding on the Licensed Facilities or School District after the expiration or earlier termination of this Agreement, in each case without prior written consent of School District.

(n) Parking Lot Improvements. City agrees to perform maintenance on existing parking lots at the School Site as described in Exhibit B. A schedule for the crack sealing and slurry seal coating activities shall be prepared by mutual agreement of the parties within thirty (30) days of execution of this Agreement. Should School District desire to perform maintenance work described in Exhibit B sooner than the agreed upon schedule, School District may, at its sole option, perform the work and bill City for actual cost of work, for a total amount not to exceed the cost estimates stated in Exhibit B. Said estimates may be modified using the Engineering News Record Construction Cost Index applicable at the time the work is actually performed.

Section 6. Compliance with Law. City shall comply with all requirements, laws, ordinances, rules, and regulations applicable to the Licensed Facilities, enacted or promulgated by any public or governmental authority or agency, including without limitation School District, having jurisdiction over the Licensed Facilities, existing at the time this Agreement is executed by both Parties. City shall be responsible for obtaining and maintaining throughout the Term of the Agreement all permits, licenses, approvals from any local, state or federal agency necessary for the use of the Licensed Facilities by City or community recreation groups. City shall comply with requirements of State law regarding fingerprinting and background checks, as applicable for City or community recreation group programs.

Facilities Planning and Operations. The official representative for City shall be Marilyn J. Staats, its Deputy City Manager, or her designee.

Section 11. Employees/Independent Contractors. For purposes of this Agreement, all persons employed by City in the performance of services and functions with respect to this Agreement shall be deemed employees of City and no City employee shall be considered as an employee of School District under the jurisdiction of School District, nor shall such City employees have any School District pension, civil service, or other status while an employee of the City.

City shall have no authority to contract on behalf of School District. It is expressly understood and agreed by both Parties hereto that City, while engaged in carrying out and complying with any terms of this Agreement, is not acting as an agent, officer, or employee of School District.

Section 12. Attorneys' Fees; Litigation. In the event any action or suit is brought by a Party against another Party by reason of the breach of any of the covenants or agreements set forth in this Agreement, or any other dispute between the Parties concerning this Agreement, each Party shall be responsible for its own attorneys' fees and costs.

Section 13. Assignment/Subletting. City shall not assign or sublet this Agreement or any right or privilege City might have under this Agreement without the prior written consent of School District, which consent maybe withheld and/or conditioned at the discretion of School District. Notwithstanding the foregoing, City may allow third parties to use the Licensed Facilities for community recreation purposes as contemplated by this Agreement.

Section 14. Signs. City shall not have the right to place, construct, or maintain any sign, advertisement, awning, banner, or other external decorations on the improvements that are a part of the Licensed Facilities without School District's prior written consent, which consent shall not be unreasonably withheld.

Section 15. Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Agreement.

Section 16. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 17. Entire Agreement, Waivers and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to all or part of the subject matter thereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged. Any amendment or modification to this Agreement must be in writing and executed by City and School District.

Section 18. Authority. The person(s) executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound. In accordance with California Education Code section 17604, this Agreement is not a valid or enforceable obligation against School District until approved or ratified by motion of the Governing Board of the School District duly passed and adopted.

Section 19. Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the original or the same counterpart.

Section 20. Effect of Recitals. The Recitals above are deemed true and correct, are hereby incorporated into this Section as though fully set forth herein, and City and School District acknowledge and agree that they are each bound by the same.

Section 21. Exhibits. Exhibits A, B, and C attached to this Agreement are incorporated herein by this reference and made a part hereof.

Section 22. Conflicts of Interest. No director, officer, official, representative, agent or employee of either Party shall have any financial interest, direct or indirect, in this Agreement.

Section 23. Nondiscrimination. There shall be no discrimination by City or School District against any person on account of race, color, religion, sex, marital status, disability, gender, gender identity, gender expression, sexual orientation, ethnicity, national origin or nationality, or ancestry.

Section 24. Rights and Remedies are Cumulative. Except as may be otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of its right or remedies shall not preclude the exercise by it, at the same time or at different times, of any other rights or remedies for the same default or any other default by another Party.

Section 25. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction.

Section 26. Cooperation. School District and City acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to accomplish the objectives and requirements that are set out in this Agreement. Both School District and City hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to

complete this transaction in accordance with the intent of the Parties as evidenced in this Agreement and attached Exhibits hereto.

Section 27. Ambiguities not to be Construed against Drafting Party. The doctrine that any ambiguity contained in a contract shall be construed against the Party whose counsel has drafted the contract is expressly waived by each of the Parties hereto with respect to this Agreement.

Section 28. Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between School District and City. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm organization or corporation shall have any right or cause of action hereunder.

Section 29. Days/Holidays. All references to days herein shall refer to calendar days unless otherwise noted. When performance of an obligation or satisfaction of a condition set forth in this Agreement is required on or by a date that is a Saturday, Sunday, or legal holiday, such performance or satisfaction shall instead be required on or by the next business day following that Saturday, Sunday, or holiday, notwithstanding any other provisions of this Agreement.

Section 30. Nonliability of Officials. No officer, member, employee, agent, or representative of the Parties shall be personally liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon, shall be personally enforced against any such officer, official, member, employee, agent, or representative.

Section 31. No School District Affiliation/Endorsement. City shall not imply, indicate or otherwise suggest that City's use and/or any related activities are connected or affiliated with, or are endorsed, favored or supported by, or are opposed by School District. No signage, flyers or other material may reference School District, or any school name, logo or mascot without School District's written consent, except that City may indicate the location of City's activities.

31. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first above written.

Dated: _____ **ONTARIO-MONTCLAIR SCHOOL DISTRICT**

Dated: _____ **CITY OF MONTCLAIR**

Paul M. Eaton
Mayor

ATTEST:

Yvonne Smith
Deputy City Clerk

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney

Exhibit A (Page 1 of 2)

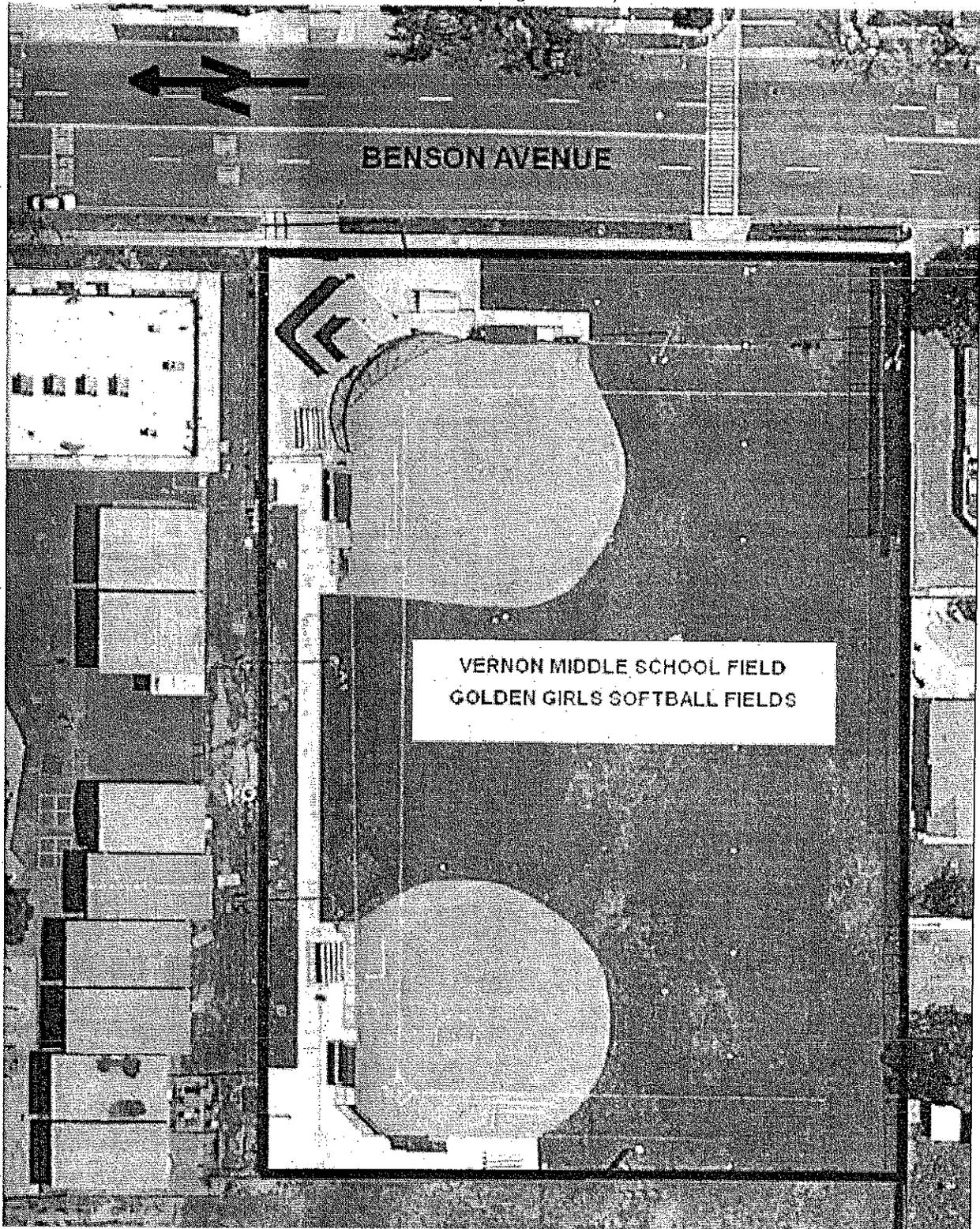
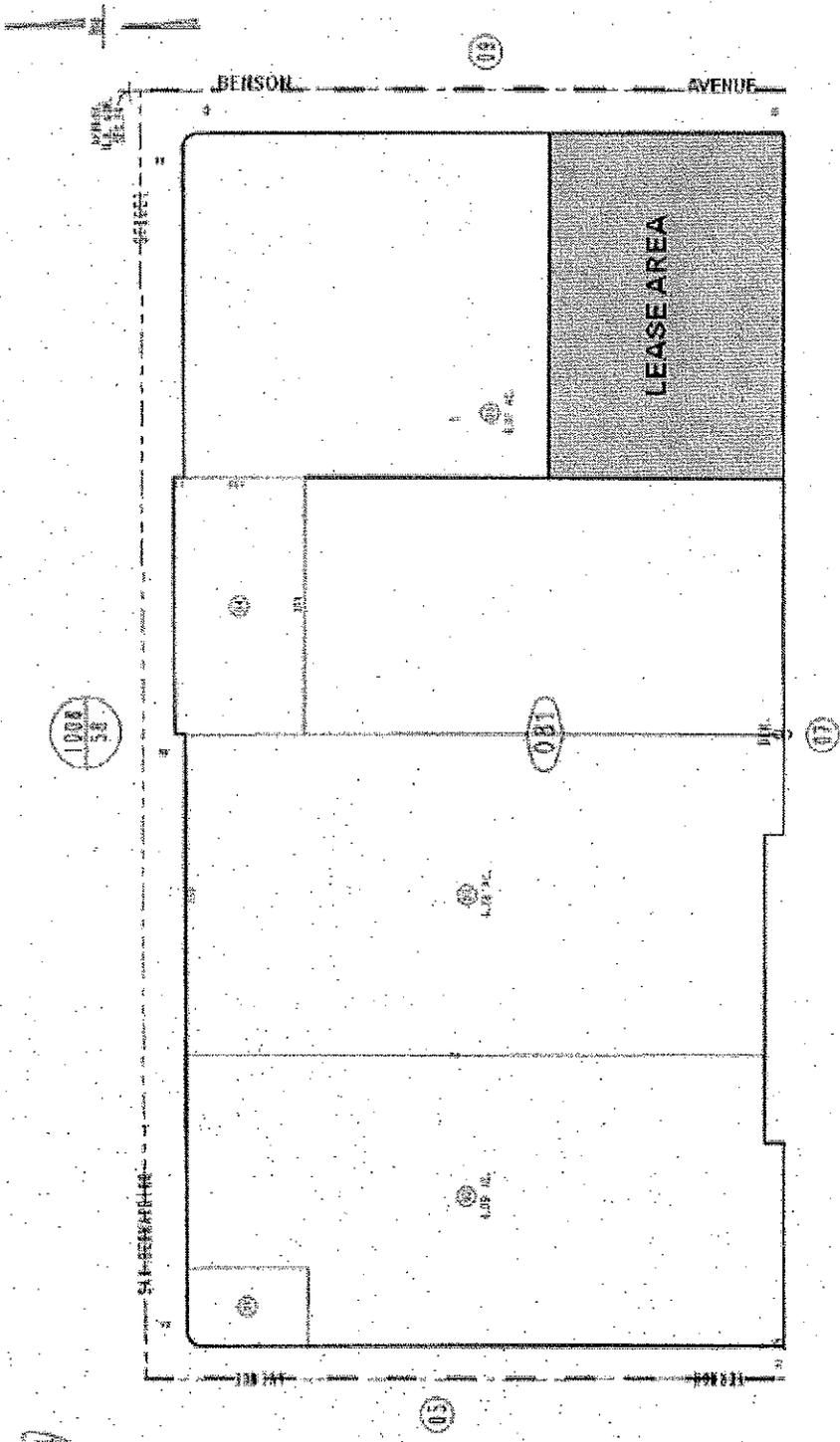


Exhibit A (Page 2 of 2)

City of Montclair
Tax Rate Area
1000 - 08

Pta. Monte Vista Tract, M.C. 11/34

THIS MAP IS FOR THE PURPOSE
OF RECORDING ENGINEERING DATA.



Assessor's Map
Book 1010 Page 08
San Bernardino County

Pta. N.E. 1/4, Sec. 23
T.15.S.8.W.

October 2004

EXHIBIT B

CITY IMPROVEMENT OBLIGATIONS

VERNON MIDDLE SCHOOL PARKING LOT

Scope of Work:

By the end of the second and seventh year of this agreement, one (1) asphalt crack repair and one (1) slurry seal coats shall be performed.

Crack Sealing

Clean out and prepare existing asphalt cracks $\frac{3}{4}$ " and smaller throughout parking lot for new hot rubberized crack fill. Supply and install City-specified hot rubberized crack fill to same treated area to prevent further water damage to subgrade.

Slurry Seal Coat

Area is to be prepared for new seal coating by removing foreign objects and dirt by cleaning and preparing existing parking lot using broom and blower. Apply slurry seal coating with latex additive to parking lot. After providing adequate drying time, repaint and restripe all existing stalls and pavement markings, including red and yellow curbs on newly applied slurry coating.

Quantity estimates:

Crack sealing-up to 300 lineal feet
Slurry seal-13,300 square feet

Estimated value of work-\$3,000

Estimate prepared December 2012

Engineering News Record Construction Cost Index December 2012 = 9412.25

EXHIBIT C

EXCEPTIONS TAKEN TO LICENSED FACILITIES BEING IN GOOD ORDER AND
CONDITION

No exceptions taken

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT
NO. 13-98 WITH GRAFFITI TRACKER INC.
FOR CONTINUED USE OF ITS DATABASE
TO TRACK AND ANALYZE GRAFFITI

DATE: December 16, 2013

SECTION: AGREEMENTS

ITEM NO.: 2

FILE I.D.: GRF050

DEPT.: POLICE

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 13-98 with Graffiti Tracker Inc. for continued use of its database to track and analyze graffiti.

A copy of proposed Agreement No. 13-98 is attached for the City Council's review and consideration.

BACKGROUND: Graffiti has long been one of the most common urban problems threatening the vitality and beauty of cities across the country. Graffiti continues to be a major concern for the City of Montclair.

Graffiti Tracker Inc. specializes in providing Police and City personnel with the tools needed to reduce graffiti vandalism. The company assisted the City in implementing a graffiti protocol that continues to provide a graffiti database, analyses, and tracking to further reduce the occurrence of graffiti vandalism. Graffiti Tracker utilizes cameras equipped with Global Positioning System technology. Photographs of graffiti are taken by the City's graffiti abatement crews and are sent to Graffiti Tracker, where they are analyzed and categorized for reference. The result of the analysis is then stored in a web-based Graffiti Tracker system. Police and City personnel are permitted unlimited searches of the organized database to determine patterns of graffiti incidents, such as most active vandals and/or gangs, rising tension between rival gangs, and frequently hit areas or "hot spots."

Since the program is web-based, there is no need for software installation or restrictions on the number of system users.

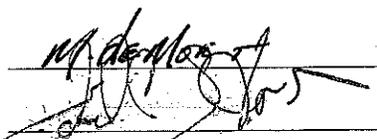
FISCAL IMPACT: The cost to contract with Graffiti Tracker Inc. for one year is \$6,000. Funds for this purpose are included in the Police Department Fiscal Year 2013-14 Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 13-98 with Graffiti Tracker Inc. for continued use of its database to track and analyze graffiti.

Prepared by:




Reviewed and
Approved by:



Proofed by:

Presented by:

PROFESSIONAL SERVICES AGREEMENT

(City of Montclair and Graffiti Tracker Inc.)

THIS PROFESSIONAL SERVICES AGREEMENT is made as of January 1, 2014 by and between the City of Montclair, ("Agency"), and Graffiti Tracker Inc. ("Contractor").

RECITALS

1. Agency has determined that it requires professional services from a Contractor to provide graffiti analysis and tracking services for the Agency.
2. Agency desires to retain Contractor, as an independent contractor to provide such services on an as needed basis.
3. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. Contractor's Services.

- a. **Scope and Level of Services.** The nature, scope, and level of the specific services to be performed by Contractor are as set forth in Exhibit A, attached to this Agreement and incorporated herein as though set forth in full. Agency is retaining Contractor pursuant to this Agreement on a non-exclusive basis and reserves the right to retain other professionals to perform similar service if Agency determines such services are needed.
 - b. **Time of Performance.** The services shall be performed in a timely manner and on a regular basis in accordance with the written instruction of the Contract Administrator. Time is of the essence in the performance of this Agreement.
2. **Standard of Care.** As a material inducement to Agency to enter into this Agreement, Contractor hereby represents and warrants that it has the professional expertise and experience necessary to undertake the services to be provided herein.
 3. **Compliance with Law.** All services rendered hereunder by Contractor shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of Agency and any federal, state or local governmental agency having jurisdiction in effect at the time

service is rendered.

4. **Term of Agreement.** This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect for a period of 12 months, unless earlier terminated pursuant to Section 14.
5. **Compensation.** Agency agrees to compensate Contractor for its services according to the fee and payment schedule set forth in Exhibit B, attached hereto and incorporated herein as though set forth in full. In no event shall the total compensation and costs payable to Contractor under this Agreement exceed the sum of \$6,000.00 unless specifically approved by the City Council. Agency agrees that services may not begin until first payment is received.
6. **Ownership of Work Product.** All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of Agency without restriction or limitation upon its use or dissemination by Agency.
7. **Representatives.**
 - a. **Project Manager.** The Project Manager for the services required under this Agreement is hereby designated as Timothy M. Kephart who shall be the representative of Contractor authorized to act in its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Project Manager were a substantial inducement for Agency to enter into this Agreement. Therefore, the foregoing Project Manager shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. Contractor may not change the foregoing Project Manager without the express written approval of Agency.
 - b. **Contract Administrator.** The Contract Administrator and Agency's representative shall be the Deputy City Manager/Office of Economic Development Executive Director, or in his/her absence, an individual designated in writing by the Contract Administrator. It shall be Contractor's responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the services, and Contractor shall refer any decisions that must be made by Agency to the Contract Administrator. Unless otherwise specified herein, any approval of Agency required hereunder shall mean the approval of the Contract Administrator.
8. **Standard of Performance.** Contractor shall perform all work to the highest professional standards and in a manner reasonably satisfactory to Agency. Contractor hereby covenants that it shall follow the highest professional standards in performing all services required hereunder.

- 9. Status as Independent Contractor.** Contractor is, and shall at all times remain as to Agency, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of Agency or otherwise act on behalf of Agency as an agent. Neither Agency nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner, employees of Agency. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Agreement, and to indemnify and hold Agency harmless from any and all taxes, assessments, penalties, and interest asserted against Agency by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor further agrees to indemnify and hold Agency harmless from any failure of Contractor to comply with applicable workers' compensation laws. Agency shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to Agency from Contractor as a result of Contractor's failure to promptly pay to Agency any reimbursement or indemnification arising under this section.
- 10. Confidentiality.** Agency agrees not to use any intellectual property or information related to the Graffiti Tracker system for purposes of development or competition of another Graffiti Tracker system. Upon request, all Agency data shall be returned to Agency upon the termination of this Agreement. Contractor's covenant under this section shall survive the termination of this Agreement.
- 11. Conflict of Interest.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Contractor under this Agreement, or which would conflict in any manner with the performance of its services hereunder.
- 12. Indemnification.** Contractor agrees to indemnify, hold harmless and defend Agency, and their respective officers, employees, volunteers, and agents serving as independent contractors in the role of Agency or Agency officials, (collectively, "Indemnities"), from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, resulting from willful misconduct, negligent acts, errors or omissions of Contractor or any of its officers, employees, or agents.
- a. Agency does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by Agency, or the deposit with Agency, of any insurance policy or certificate required pursuant to this Agreement.
 - b. This hold harmless, indemnification and defense provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim,

demand, damage, liability, loss, cost or expense. Contractor agrees that Contractor's covenant under this section shall survive the termination of this Agreement.

13. Cooperation. In the event any claim or action is brought against Agency relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation that Agency might require.

14. Termination.

- a. Agency shall have the right to terminate the services of Contractor at any time for any reason on sixty (60) calendar days written notice to Contractor. In the event this Agreement is terminated by Agency, Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect, and Contractor shall have no other claim against Agency by reason of such termination, including any claim for compensation.
- b. Contractor shall have the right to terminate this Agreement at any time for any reason on sixty (60) calendar days written notice to Agency, and Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect.

15. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

Agency:

City of Montclair
4870 Arrow Highway
Montclair, CA 91763

Contractor:

Graffiti Tracker Inc.
12165 West Center Rd, Suite 80
Omaha, NE 68130

- 16. Nondiscrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Contractor will take affirmative action to ensure that employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.
- 17. Assignability; Subcontracting.** Contractor shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Contractor's obligations hereunder, without the prior written consent of Agency, and any attempt by Contractor to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect.
- 18. Compliance with Laws/Licenses.** Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments. Contractor shall obtain and maintain all necessary professional licenses for providing the services outlined in this Agreement.
- 19. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Agency of any payment to Contractor constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default.
- 20. Attorney's Fees.** In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who drafted that portion of the Agreement.
- 21. Exhibits; Precedence.** All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provision of any Exhibit or document incorporated herein by reference, the provisions of this Agreement shall prevail.
- 22. Entire Agreement.** This Agreement, and any other documents incorporated herein by

specific reference, represents the entire and integrated agreement between Agency and Contractor. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“Agency”

ATTEST:

City of Montclair

By: _____
Deputy City Clerk

By: _____
Mayor

“Contractor”

By: _____
Timothy M. Kephart

EXHIBIT A

SCOPE OF SERVICES

Contractor shall perform the following services for the City of Montclair:

Responsibilities

1. Train designated personnel on how to use GPS cameras.
2. Establish graffiti tracking protocols.
3. Train personnel on how to upload graffiti data to the Graffiti Analysis Intelligence Tracking System (GAITS).
4. Provide access to GAITS to all designated personnel twenty-four hours a day, seven days a week until contract ends.
5. On a daily basis, graffiti data will be uploaded to the GAITS system from the City of Montclair's staff. Graffiti Tracker Inc. will be responsible for analyzing all of that data and making the results of that analysis available to the GAITS system.
6. Provide training to all designated personnel (Agency staff/law enforcement/District Attorney's Office) on how to utilize the GAITS system.

This contract constitutes a lease for access to the Graffiti Analysis Intelligence Tracking System (GAITS). Permission from the Contract Administrator will be required for anyone to have access to this system. Upon permission being granted for access to the system, a username and password will be given to those individuals and they will be granted an "Operator" level access to the GAITS system. This lease will be in effect for the duration of the contract.

EXHIBIT B

SCHEDULE OF FEES

Contractor will not be required to work on the following ten holidays:

1. January 1 (New Year's Day)
2. The third Monday in January (Dr. Martin Luther King Jr. Day)
3. The third Monday in February (President's Day)
4. March 31st (Cesar Chavez Day)
5. The last Monday in May (Memorial Day)
6. July 4 (Independence Day)
7. The first Monday in September (Labor Day)
8. November 11 (Veteran's Day)
9. The fourth Thursday in November (Thanksgiving Day)
10. December 25 (Christmas Day)

The total contract amount for the twelve-month time period commencing January 1, 2014 and ending December 31, 2014 will be an amount not to exceed \$6,000.00 based on the average number of incidents analyzed not to exceed 600 per month.

Effective upon the signing of this contract, an invoice for the full amount will be submitted by the Contractor to the Contract Administrator. Payment should be processed and received no later than 30 calendar days from the date invoice was submitted

It is recommended that each graffiti abatement crew be equipped with one (1) camera. Services will commence once equipment has been purchased and first invoice paid.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF TRACT MAP NO. 18728 LOCATED ON THE SOUTH SIDE OF BANDERA STREET WEST OF CENTRAL AVENUE

DATE: December 16, 2013

SECTION: AGREEMENTS

ITEM NO.: 3

CONSIDER AUTHORIZING TRACT MAP NO. 18728 TO BE RECORDED WITH THE OFFICE OF THE SAN BERNARDINO COUNTY RECORDER

FILE I.D.: LDU600

DEPT.: PUBLIC WORKS

CONSIDER APPROVAL OF AGREEMENT NO. 13-99 WITH AGS CONSTRUCTION, INC., A SUBDIVISION AGREEMENT FOR DEVELOPMENT OF TRACT NO. 18728

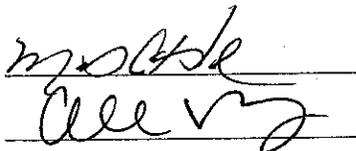
REASON FOR CONSIDERATION: Land subdivisions, including parcel maps and tract maps, are allowed by the Subdivision Map Act, subject to City Council approval. Subdivision agreements require City Council approval.

BACKGROUND: On February 9, 2009, the Planning Commission approved Tentative Tract No. 18728 and a Precise Plan of Design (PPD) to allow the development of five (5) condominium units and associated onsite improvements on a one-half-acre site. The new units are intended to tie into a previously completed 12-unit condominium complex located directly east of the subject property also owned in part by the applicant. This site was developed as Tract No. 16782. When this project is completed, the entire development will have 17 units total and would be managed by either a property management company or a properly established homeowners association.

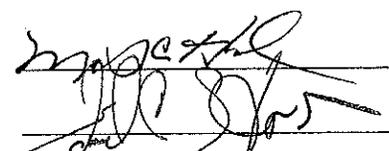
As a result of the severe downturn in the economy and housing market, construction of the five-unit project was not initiated before the one-year PPD approval timeframe that expired on February 9, 2010. Since the applicant did not request a time extension for the original PPD, the approval became null and void. In addition, the approved Tentative Tract Map would have expired on February 9, 2012, three years from the date of its approval. However, Assembly Bill 208 signed by the Governor on July 15, 2011, extended the expiration date of any approved tentative map by 24 months that had not expired as of the effective date of the bill. As such, the deadline for approval of Tract No. 18728 has been extended to February 9, 2014. A copy of Tract No. 18728 is included with this report.

Proposed Subdivision Agreement No. 13-99 with AGS Construction, Inc., and a performance bond are included with this tract map submittal. The proposed Agreement and bond cover work within the public right-of-way including installation of streetlights and construction of drive approaches and sidewalks.

Prepared by:

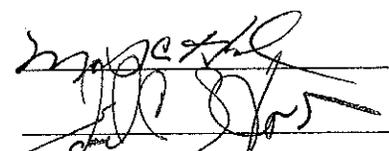


Reviewed and
Approved by:



Proofed by:

Presented by:



There are also conditions, covenants, and restrictions (CC&Rs) that are required as part of the map recordation. The CC&Rs have been reviewed by the City Attorney, and some corrections are necessary. There are also some minor corrections required to the tract map. It is likely that all these corrections can be addressed in a few days. Rather than delaying the approval process until after the first of next year, staff recommends approving the map now but delaying recordation of the map until map corrections have been made to the satisfaction of the City Engineer and CC&R corrections have been made to the satisfaction of the City Attorney.

FISCAL IMPACT: Approval of Tract Map No. 18728 is likely to create a positive fiscal impact when the property is developed.

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

1. Approve Tract Map No. 18728 located on the south side of Bandera Street west of Central Avenue.
2. Authorize Tract Map No. 18728 to be recorded with the Office of the San Bernardino County Recorder.
3. Approve Agreement No. 13-99 with AGS Construction, Inc., a Subdivision Agreement for development of Tract No. 18728.

LOT 1
0.49 ACRES

IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA

SHEET 1 OF 2 SHEETS

TRACT MAP NO. 18728 FOR CONDOMINIUM PURPOSES

BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP NO. 4368, RECORDED IN P.M.B. 41/33,

**LANDEVELOPMENT
ENGINEERING, INC.**

PABLO B. SANCHEZ
R.C.E. 29664

SEPTEMBER, 2013.

OWNER'S STATEMENT

CONSENT

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND INCLUDED WITHIN THE TRACT SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS CLEAR TITLE TO SAID LAND; THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS TRACT MAP AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

AGS CONSTRUCTION, INC., A CALIFORNIA CORPORATION.

PRESIDENT

NOTARY ACKNOWLEDGMENTS

STATE OF CALIFORNIA
COUNTY OF _____
ON _____ BEFORE ME,

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 OF NOTARY PUBLIC: _____ (seal)

MONTCLAIR PLANNING COMMISSION'S CERTIFICATE

A HEREBY CERTIFY THAT THE SUBDIVISION SHOWN ON THE ANNEXED MAP IS IN ACCORDANCE WITH THE TENTATIVE MAP APPROVED AT THE MEETING OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, HELD ON THE _____ DAY OF _____ 20____.

SECRETARY, MONTCLAIR PLANNING COMMISSION _____ DATE _____

SIGNATURE OMISSION NOTES

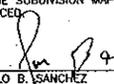
THE SIGNATURES OF THE PARTIES NAMED HEREINAFTER AS OWNERS OF THE INTEREST SET FORTH HAVE BEEN OMITTED UNDER THE PROVISIONS OF SECTION 66436 OF THE SUBDIVISION MAP ACT, AS THEIR INTEREST CANNOT RIPEN INTO A FEE. THEIR SIGNATURES ARE NOT REQUIRED BY LOCAL AGENCIES:

DEL MONTE IRRIGATION COMPANY, THE RECORD OWNERS OF AN EASEMENT FOR CONSTRUCTION AND MAINTENANCE ALL PIPES AND DITCHES FOR THE DISTRIBUTION OF WATER TO ALL LANDS, AS DISCLOSED BY A DOCUMENT RECORDED IN BOOK 147 PAGE 142 OF DEEDS. THE EXACT LOCATION AND/OR EXTENT OF SAID EASEMENT IS NOT DISCLOSED IN THE PUBLIC RECORDS.

POMONA LAND AND WATER COMPANY, THE RECORD OWNERS OF AN EASEMENT FOR THE RIGHT OF WATER DEVELOPMENT AND A RIGHT-OF-WAY, AS DISCLOSED BY A DOCUMENT RECORDED ON MAY 2, 1993 IN BOOK 180 PAGE 159 OF DEEDS. THE EXACT LOCATION AND/OR EXTENT OF SAID EASEMENT IS NOT DISCLOSED IN THE PUBLIC RECORDS.

ENGINEER'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUB DIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF AGS CONSTRUCTION, INC. ON SEPTEMBER 17, 2013. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP. ALL THE MONUMENTS SHOWN HEREON ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, IN COMPLIANCE WITH SECTIONS 66495 AND 66496 OF THE SUBDIVISION MAP ACT AND WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.


PABLO B. SANCHEZ R.C.E. No. 29664
EXPIRES: 3-31-15

11.2.13
DATE



CITY ENGINEER'S CERTIFICATE:

I, MICHAEL C. HUDSON, CITY ENGINEER OF THE CITY OF MONTCLAIR, CALIFORNIA DO HEREBY CERTIFY THAT I HAVE EXAMINED THE ANNEXED MAP, AND THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS, THERETO, AND THAT ALL PROVISION OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES HAVE BEEN COMPLIED WITH AND I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

DATE: _____
MICHAEL C. HUDSON
CITY ENGINEER, RCE #27955
CITY OF MONTCLAIR, CALIFORNIA



CERTIFICATE OF CITY COUNCIL

I HEREBY CERTIFY THAT THE MAJOR AND CITY COUNCIL OF THE CITY OF MONTCLAIR BY RESOLUTION ADOPTED ON THE _____ DAY OF _____ 20____, APPROVED THE ANNEXED MAP AND ACCEPTED AS PUBLIC ALL STREETS AND HIGHWAYS SHOWN ON THE ANNEXED MAP.

DATE: _____
DEPUTY CITY CLERK,
CITY OF MONTCLAIR, CALIFORNIA

BOARD OF SUPERVISOR'S CERTIFICATE

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ _____ HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, CONDITIONED UPON THE PAYMENT OF ALL TAXES, STATE, COUNTY, MUNICIPAL, OR LOCAL, AND ALL SPECIAL ASSESSMENTS, COLLECTED AS TAXES, WHICH AT THE TIME OF THE FILING OF THE ANNEXED MAP WITH THE COUNTY RECORDER ARE A LIEN AGAINST SAID PROPERTY, BUT NOT YET PAYABLE AND THAT THE SUBDIVIDER HAS FILED WITH ME A CERTIFICATE BY THE PROPER OFFICER GIVING HIS ESTIMATE OF THE AMOUNT OF SAID TAXES AND ASSESSMENTS, AND SAID BOND IS HEREBY ACCEPTED.

DATE: _____
LAURA H. WELCH
CLERK OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO

AUDITOR'S CERTIFICATE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE, AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE REAL PROPERTY UPON THE ANNEXED MAP FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES OR SPECIAL ASSESSMENTS NOT YET PAYABLE, ESTIMATED TO BE

\$ _____
DATED: _____
LARRY WALKER, AUDITOR-CONTROLLER/TREASURER/TAX COLLECTOR
COUNTY OF SAN BERNARDINO
BY: _____, DEPUTY

SAN BERNARDINO COUNTY RECORDERS CERTIFICATE

THIS MAP HAS BEEN FILED UNDER DOCUMENT NUMBER _____ THIS
DAY OF _____ 2013, AT _____ IN BOOK _____ OF
_____ AT PAGE _____ AT THE REQUEST OF AGS CONSTRUCTION, INC.,
IN THE AMOUNT OF \$ _____ A CALIFORNIA CORPORATION

DENNIS DRAEGER
ASSESSOR-RECORDER-CLERK
COUNTY OF SAN BERNARDINO

BY: _____
DEPUTY RECORDER

LOT 1
0.49 ACRES

IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA

SHEET 2 OF 2 SHEETS

TRACT MAP NO. 18728

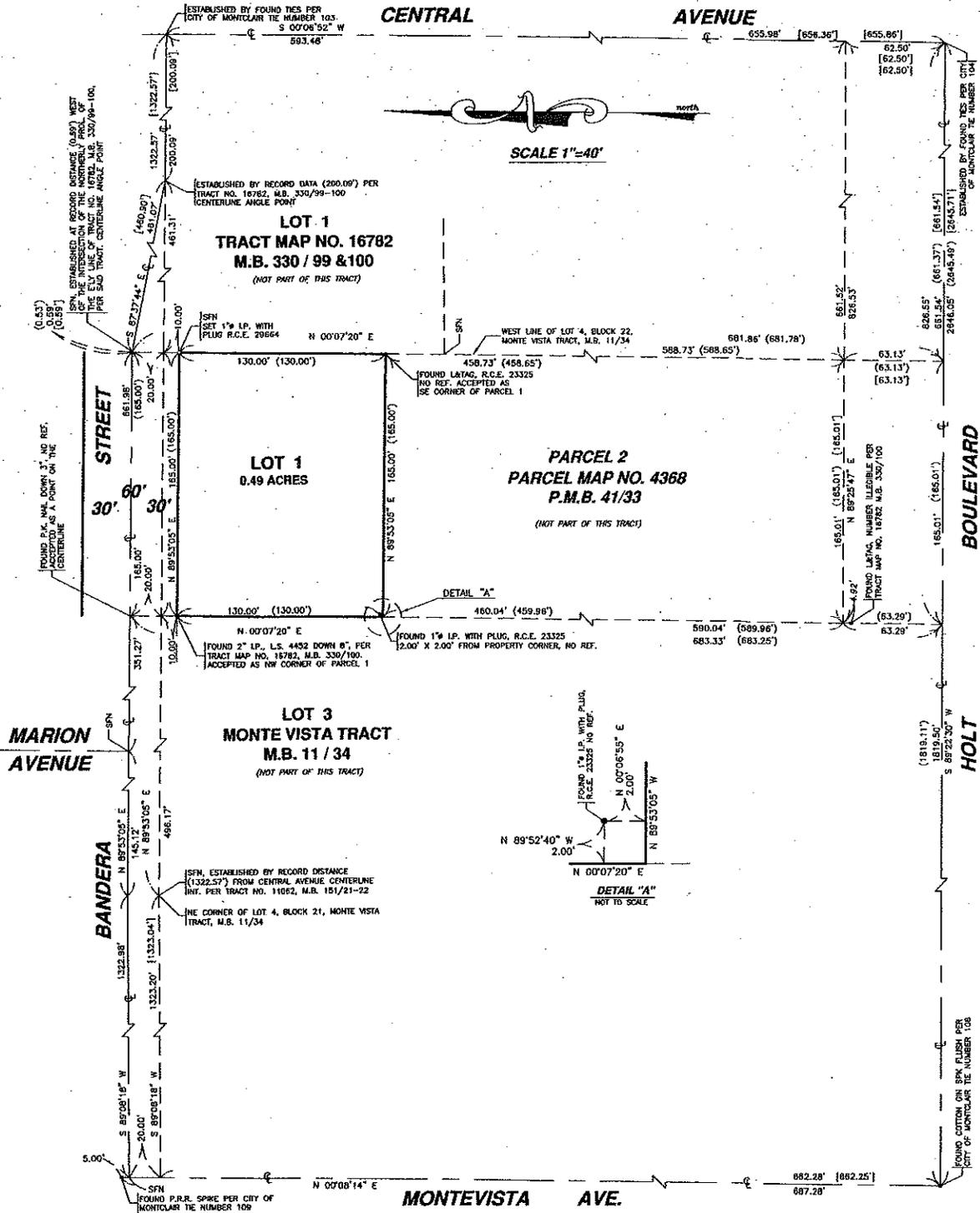
FOR CONDOMINIUM PURPOSES

BEING A SUBDIVISION OF PARCEL 1 OF PARCEL MAP NO. 4368, RECORDED IN P.M.B. 41/33,

LANDEVELOPMENT
ENGINEERING, INC.

PABLO B. SANCHEZ
R.C.E. 29664

SEPTEMBER, 2013



BASIS OF BEARINGS

THE BEARINGS SHOWN HEREON ARE BASED ON THE BEARING N 89° 22' 30" E FOR THE CENTERLINE OF HOLT BOULEVARD AS SHOWN ON THE MAP OF PARCEL MAP NO. 4368, AS PER MAP RECORDED IN BOOK 41, PAGE 33 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN BERNARDINO.

- LEGEND**
- () RECORD DATA PER PARCEL MAP 4368, P.M.B. 41/33
 - [] RECORD DATA PER TRACT MAP NO. 16782, M.B. 330/99-100
 - [] RECORD DATA PER TRACT MAP NO. 11062, M.B. 151/21-22
 - FOUND MONUMENT AS DESCRIBED
 - SET MONUMENT AS DESCRIBED
 - SFN SEARCHED, FOUND NOTHING

Make symbols
bigger (yo)

AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, _____, by and between

THE CITY OF MONTCLAIR, A MUNICIPAL CORPORATION, Party of the First Part, hereinafter sometimes called "**CITY**"

and

AGS CONSTRUCTION, INC.
Party of the Second Part, hereinafter sometimes called "**SUBDIVIDER**"

WITNESSETH:

That whereas, the Party of the Second Part has submitted to the City of Montclair a subdivision map for **Tract No. 18728** and has requested the City Council to approve said **Tract No. 18728** and said action has been taken by said City Council, and

Whereas, as condition to the approval of said subdivision map and the authorization for the recording thereof and the acceptance of the dedication of the streets, alleys, and other improvements in said subdivision, said Party of the Second Part is required to enter into an agreement with the City of Montclair to do and perform the work hereinafter specified and to pay for all labor and materials in connection therewith as required by Section 66499 of the Government Code of the State of California and by Chapter 3, Section 11.168.19 of the Municipal Code of the City of Montclair, and

Whereas, the Party of the Second Part has agreed to furnish or cause to be furnished and pay for all labor, materials and equipment, and perform or cause to be performed and pay for all connection charges, permits, fees, and other work to make and complete the following on-site and off-site improvements of said **Tract No. 18728** to wit: Install and lay out curbs, gutters and sidewalks; construct all streets, including excavations, paving, tree planting, etc.; install all street lights and street signs; lay and install all sewer mains and lines, including manholes, house connections and structures, any miscellaneous requirements of said **Tract No. 18728** and pay all costs of engineering necessary in connection therewith, all in accordance with the specifications of the City Engineer of the City of Montclair, said improvements to be completed on or before twelve (12) months from date hereof;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND PREMISES OF THE PARTIES HERETO, AND UPON THE EXPRESS TERMS AND CONDITIONS HEREINAFTER SET FORTH, IT IS AGREED BY AND BETWEEN THEM, EACH WITH THE OTHER, AS FOLLOWS:

1. Performance of Work. The Party of the Second Part agrees to furnish or cause to be furnished all labor, materials, and equipment and to perform or cause to be performed all work, and to make the improvements hereinabove specified and described in a good and workmanlike manner, all in accordance with the specifications of the City Engineer of the City of Montclair, and to pay for all connection fees, permits, and other fees, and for any materials, provisions, provender and other supplies and teams and equipment used in, upon, for or about the performance of said work or labor thereon of any kind, and for amounts due under the Unemployment Insurance Act with respect to such work or labor. Said improvement shall be completed on or before twelve (12) months from date hereof. Currently with the execution of this bond, the SUBDIVIDER shall post with CITY a surety bond a sum equal to 100 percent of the total estimated value of the improvement, securing payment to the contractor, his subcontractors and to persons renting equipment or furnishing labor and materials to them for the improvement. This improvement security securing the payment to the contractor, his subcontractors and to persons renting equipment or furnishing labor and materials may six (6) months after the completion and acceptance of the work be reduced to an amount not less than the total of all claims on which an action has been filed and notice thereof given in writing to the Governing Body, and if no actions are filed, the improvement security may be released in full.

2. Work: Places and Grades to be Fixed by Engineer. All of said work is done at the places, of the materials, and in the manner, and at the grades shown upon the plans and specifications therefor approved by the City Engineer and on file in the office of the City Engineer of said CITY, and to the satisfaction of said City Engineer.

3. Work: Commencement Notice For Contractors. At least fifteen (15) days prior to the commencement of work hereunder, SUBDIVIDER shall notify City Engineer in writing of the date fixed by it for commencement thereof and the names and addresses of the contractors who are to perform the work so that City Engineer shall be able to provide services of inspection thereof.

4. Repairs and Replacements. SUBDIVIDER shall replace, or have replaced or repair, or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repairs, of any and all property, damaged or destroyed by reason of any such work done, whether such property be owned by the United States or any agency thereof or the State of California, or any agency or political subdivision thereof, or by CITY or by any public or private corporation, or by any person whomsoever, or by any combination of such owners.

5. **Security. Option A.** **SUBDIVIDER** agrees to execute a bond to **CITY** on a form provided by **CITY**, in the principal amount of **\$38,000** to guarantee the performance of this Contract.

6. **Utility-Deposit-Statement.** **SUBDIVIDER** shall file with the City Engineer, prior to the commencement of any work to be performed within the areas described by said map, a written statement signed by **SUBDIVIDER**, and each public utility corporation involved, to the effect that **SUBDIVIDER** has made the deposit legally required by such public utility corporation for the connection of any and all public utility corporation for the connection of any and all public utilities to be supplied by such Corporation within such subdivision.

7. **Termination Of Agreement: Grounds.** If **SUBDIVIDER** refuses or fails to obtain prosecution of the work, or any severable part thereof with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the **SUBDIVIDER** should be adjudged a bankrupt, or it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed in the event of its insolvency, or if it, or any contractor employed by it, should violate any of the provisions of this agreement, the City Engineer of the City of Montclair may serve written notice upon it and its sureties of its intention to terminate this contract, such notice to contain the reasons for such intention to terminate this contract, and, unless within five (5) days after the serving of such notice, such violation shall have ceased and satisfactory arrangements for the correction thereof shall have been made, this agreement may, at the option of **CITY**, upon the expiration of said time, cease and terminate.

8. **Termination of Agreement: Performance By Sureties of CITY.** In the event of any such termination, **CITY** shall immediately serve written notice thereof upon **SUBDIVIDER** and upon its sureties, and the sureties shall have the right to take over and complete the work and the improvement herein specified; provided, however, that if the sureties within five days after the serving upon them of said notice of termination do not give **CITY** written notice of their intention to take over the performance of the contract, and do not commence performance thereof within five days after notice to **CITY** of said election, **CITY** may take over the work and prosecute the same to completion, by contract or by any other method it may deem advisable, for the account, and at the expense of **SUBDIVIDER**, and its sureties shall be liable to **CITY** for any excess cost or damages occasioned by **CITY** thereby; and, in such event, **CITY**, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to **SUBDIVIDER** as may be on the site of the work and necessary therefor.

9. **Notices.** Any notice herein required to be given by **SUBDIVIDER** or sureties to **CITY** shall be given to City Engineer of said **CITY**. Any notice to be given by **CITY** shall be signed by said City Engineer of said **CITY**, served personally upon **SUBDIVIDER** or its sureties, or deposited in the United States Post Office in the City of Montclair, registered mail and postage prepared, addressed as follows:

AGS CONSTRUCTION, INC.

19831 E. GOLDEN BOUGH

COVINA, CA 91724

or as said address may be changed by notice in writing to **CITY**.

10. Compliance with Requirements of City Engineer. It is herewith agreed by **SUBDIVIDER** that all improvements in **Tract No. 18728** shall comply with the specifications approved by the City Engineer of Montclair. It is herewith agreed by **SUBDIVIDER** that all improvements shall be completed within twelve (12) months from date of this agreement. Six months extension may be granted by **CITY** upon written request based on justifiable delays.

11. Completion. Within thirty-five (35) days after completion of all construction as certified by the City Engineer, the City Council may authorize payment to **SUBDIVIDER** of that portion of said deposit of money held as guarantee for faithful performance or the cancellation of the faithful performance bond. Within six months after completion of all construction as certified by the City Engineer that portion of said deposit held as guarantee for payment for labor and materials or the labor and materials bond may be released, providing that at the end of said six month-period there have been no liens or claims filed against this work. However, cash deposits may be withdrawn in 25 percent increments subject to the following provisions:

a. Partial refunds shall only be made upon written request when improvements which exceed the requested refund by at least 10 percent in cost have been approved and accepted by **CITY**. Also, a surety bond guaranteeing payment for all labor and materials will be required before any said refund will be approved.

b. Refunds will be made providing written request for same is filed with the City Engineer, 40 working hours before a regular Council meeting.

12. Forfeiture of Cash or Bond. It is herewith understood and agreed that if **SUBDIVIDER** fails, refuses, or neglects to make such improvements within the stated time, said bonds or deposits shall be decreed forfeited and such funds shall be used by **CITY** for the improvement of such subdivision in accordance with plans thereof.

13. Performance of the Work by CITY. In the event that **CITY**, after a 10-day written notice to **SUBDIVIDER**, finds it necessary, in the discretion of the City Engineer, to finish work to be done in pursuance of this agreement after the time for the accomplishment of the said work has expired, **CITY** shall be entitled to charge a flat fee of \$50.00 for the purpose of bringing the men and equipment to the site of the work of improvement together with actual amount for every man hour expended on the improvement and a reasonable rental charge for the equipment used by **CITY** in the improvement equivalent to that charged by firms and persons renting such equipment of like nature in the area of Montclair, California.

This charge shall be paid by **SUBDIVIDER** prior to the time when he is issued any further permits or certificates on such subdivision, and **CITY** shall be entitled to deduct the sum of the labor materials above-mentioned from any sums held by **CITY** on bond or otherwise which may be due to **SUBDIVIDER**. In any event, the sum herein mentioned shall be due from **SUBDIVIDER** to **CITY** immediately after performance of the work of improvement by **CITY**.

14. **Contract Security.** In the event that **SUBDIVIDER** elects to post bond, **SUBDIVIDER** shall, concurrently with the execution hereof, furnish: (1) a surety bond in an amount equal to at least 100 percent of the contract price as security for the faithful performance of this agreement; and (2) a separate surety bond in an amount equal to at least 100 percent of the contract price as security for the payment of all persons performing labor and furnishing materials in connection with this agreement. The surety of each of said bonds and the form thereof shall be satisfactory to the City Attorney.

15. **Inspection by CITY.** **SUBDIVIDER** shall at all times maintain proper facilities, and provide safe access for inspection by **CITY**, to all parts of the work, and to the shops wherein the work is in preparation.

16. **Hold Harmless Agreement.** **SUBDIVIDER** hereby agrees to, and shall, indemnify and hold **CITY**, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from **SUBDIVIDER's** or **SUBDIVIDER's** Contractors', Subcontractors', Agents' or Employees' operations under this agreement, whether such operations be by **SUBDIVIDER** or by any of **SUBDIVIDER's** contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, **SUBDIVIDER** or any of **SUBDIVIDER's** contractors or subcontractors. **SUBDIVIDER** agrees to, and shall, defend **CITY** and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

a. That **CITY** does not, and shall not, waive any rights against **SUBDIVIDER** which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by **CITY**, or the deposit with **CITY** by **SUBDIVIDER**, or any of the insurance policies described in paragraph 17 hereof.

b. That the aforesaid hold-harmless agreement by **SUBDIVIDER** shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not **CITY** has prepared, supplied or approved of, plans and/or specifications for the subdivisions, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

17. **SUBDIVIDER's Insurance.** **SUBDIVIDER** shall not commence work under this agreement until **SUBDIVIDER** shall have obtained all insurance required under this paragraph and such insurance shall have been approved by City Attorney as to form, amount and carrier, nor shall **SUBDIVIDER** allow any contractor or subcontractor to commence work on his contract or subcontract until all similar insurance required of the contractor or subcontractor shall have been so obtained and approved. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

a. **SUBDIVIDER** shall maintain, during the life of this agreement; Workers Compensation Insurance for all **SUBDIVIDER's** employees employed at the site improvement; and in case any work is sublet, **SUBDIVIDER** shall require any contractor or subcontractor similarly to provide Workers Compensation Insurance for all contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by **SUBDIVIDER**. In any case any class of employees engaged in work under this agreement at the site of the project is not protected under any Workers Compensation law, **SUBDIVIDER** shall provide, and shall cause each contractor and subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. **SUBDIVIDER** hereby indemnifies **CITY** for any damage resulting to it from failure of either **SUBDIVIDER** or any contractor or subcontractor to take out or maintain such insurance.

b. **SUBDIVIDER** shall take out and maintain during the life of this agreement such public liability and property damage insurance as shall insure **CITY**, its elective and appointive boards, commissions, officers, agents and employees, **SUBDIVIDER** and any contractor or subcontractor performing work covered by this agreement from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from **SUBDIVIDER's** or any contractor's or subcontractor's operations hereunder, whether such operations be by **SUBDIVIDER** or any contractor or subcontractor, or by anyone directly or indirectly employed by either **SUBDIVIDER** or any contractor or subcontractor, and the amounts of such insurance shall be as follows:

(1) **Public Liability Insurance**

In an amount not less than \$1,000,000.00 for injuries, including, but not limited to, death, to any one person and, subject to the same limit for each person, in an amount not less than \$2,000,000.00 on account of any one occurrence;

(2) **Property Damage Insurance**

In an amount of not less than \$1,000,000.00 for damage to the property of each person on account of any one occurrence.

18. **Evidence of Insurance.** **SUBDIVIDER** shall furnish **CITY** concurrently with the execution hereof, with satisfactory evidence of the insurance required, and evidence that each carrier is required to give **CITY** at least ten days' prior notice of the cancellation or reduction in coverage of any policy during the effective period of this agreement.

19. **Title to Improvements.** Title to, and ownership of, all improvements constructed hereunder by **SUBDIVIDER** shall vest absolutely in **CITY**, upon completion and acceptance of such improvements by **CITY**.

20. **Repair or Reconstruction of Defective Work.** If, within a period of one year after final acceptance of the work performed under this agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by **SUBDIVIDER**, or any of the work done under this agreement, fails to fulfill any of the requirements of this agreement or the specifications referred to herein, **SUBDIVIDER** shall without delay and without any cost to **CITY**, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should **SUBDIVIDER** fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before **SUBDIVIDER** can be notified, **CITY** may, at its option, make the necessary repairs or replacements or perform the necessary work and **SUBDIVIDER** shall pay to **CITY** the actual cost of such repairs plus fifteen (15) percent.

21. **SUBDIVIDER Independent Contractor-Not Agent of CITY.** The parties hereto agree that **SUBDIVIDER** and its employees, officers, and agents are independent contractors under this Agreement and shall not be construed for any purpose including, but not limited to eligibility under CalPERS/PERL or any other benefits, to be employees of **CITY**. Neither **SUBDIVIDER** nor any of **SUBDIVIDER**'s agents or contractors are or shall be considered to be agents of **CITY** in connection with the performance of **SUBDIVIDER**'s obligations under this agreement.

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

23. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

24. **Compliance with Laws.** **SUBDIVIDER** shall comply with all applicable laws in performing its obligation under this Agreement.

25. **Discrimination.** **SUBDIVIDER** agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national

origin. In this connection, **SUBDIVIDER** agrees to comply with all County, State, and Federal laws relating to equal employment opportunity rights.

26. **Attorneys' Fees.** In the event any legal proceeding is instituted to enforce any term or provision of this agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees, costs, and legal expenses from the opposing party in an amount determined by the court to be reasonable.

27. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to subject matter herein. Each party to this Agreement acknowledges that no representation by any party which is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing, signed by all parties.

28. **Rights and Remedies Cumulative.** The foregoing provisions are in addition to, and not in limitation of, any other rights or remedies available to **CITY**.

IN WITNESS WHEREOF, the parties have hereunto executed this agreement this day and year first hereinabove written.

SUBDIVIDER

AGS CONSTRUCTION, INC.

BY: *Sergio S. Silva*
Sergio S. Silva (President)
A California Corporation

CITY OF MONTCLAIR

A Municipal Corporation

BY: _____
MAYOR

ATTEST:

BY: _____
CITY CLERK

APPROVED as to form this
_____ day of _____
2014.

City Attorney

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On 12/01/2013, before me, Lourdes Maldonado, a Notary Public personally appeared Sergio S. Silva, 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 acknowledge 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]
Notary Public in and for
said County and State

STATE OF CALIFORNIA)
COUNTY OF) ss.

On _____, before me, _____, a Notary Public 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 acknowledge 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]
Notary Public in and for
said County and State

BOND FOR FAITHFUL PERFORMANCE

(SUBDIVISION AGREEMENT)

Whereas, the **CITY COUNCIL OF THE CITY OF MONTCLAIR**, State of California, and **AGS CONSTRUCTION, INC.** (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated December 1, 2013, and identified as Tract No. **18728**, is hereby referred to and made a part hereof; and

Whereas, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and WESTERN SURETY CO., as surety, are held and firmly bound unto the **CITY OF MONTCLAIR**, hereinafter called ("CITY"), in the penal sum of **(Thirty eight thousand)** (\$38,000.00) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless CITY, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on 18th day of October, 2013

SURETY _____

Western Surety Co.

SEE BAND

(SEAL)

PRINCIPAL _____

Joseph H. Silva

(SEAL)

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On 12/01/2013 , before me, Lourdes Maldonado , a
Notary Public personally appeared Sergio S. Silva ,
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 acknowledge 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]
Notary Public in and for
said County and State

STATE OF CALIFORNIA)
COUNTY OF) ss.

On _____ , before me, _____ , a
Notary Public 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 acknowledge 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.

See Bond
Notary Public in and for
said County and State



Western Surety Company

PERFORMANCE BOND

Bond Number: 71472931

KNOW ALL PERSONS BY THESE PRESENTS, That we AGS Construction, Inc.
 _____ of
19831 E. Golden Bough Dr., Covina, CA 91724, hereinafter
 referred to as the Principal, and Western Surety Company
 _____,
 as Surety, are held and firmly bound unto City of Montclair, Public Works Department
 of 511 Benito St., Montclair, CA 91763, hereinafter
 referred to as the Obligee, in the sum of Thirty-Eight Thousand and 00/100
 Dollars (\$ 38,000.00); for the payment of which we bind ourselves, our legal representatives, successors
 and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract with Obligee, dated the _____ day of _____,
 _____, for Construction 750 Sq. Ft. of Sidewalk, Curb and Gutter Per City
Specifications.

NOW, THEREFORE, if the Principal shall faithfully perform such contract or shall indemnify and save harmless
 the Obligee from all cost and damage by reason of Principal's failure so to do, then this obligation shall be null
 and void; otherwise it shall remain in full force and effect.

ANY PROCEEDING, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction
 in the location in which the work or part of the work is located and shall be instituted within two years after
 Contractor Default or within two years after the Contractor ceased working or within two years after the Surety
 refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this
 Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the
 jurisdiction of the suit shall be applicable.

NO RIGHT OF ACTION shall accrue on this Bond to or for the use of any person or corporation other than the
 Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

SIGNED, SEALED AND DATED this 18th day of October, 2013.

AGS Construction, Inc.

 (Principal)
 By *Meyon J. Salmer* (Seal)



Western Surety Company

 (Surety)
 By *Aleka Dawn Bridges* (Seal)
 Aleka Dawn Bridges Attorney-in-Fact



AGS Construction Inc.

*19831 E Golden Bough Dr.
Covina CA 91724*

Phone No. (626) 922-1092

Fax No. (626) 967-6841

License No. 960549

e-mail: agsconstructioninc@gmail.com

City of Montclair Address, 5111 Benito St. Montclair CA 91763.

Public Works Engineering Division.

Phone No. 909-626-9430

Fax No. 909-626-3691

Work to be performed under this Bond

Project Address, 5165 Bandera St. Montclair CA 91763.

Assessors Parcel No. 1010611230000

Owner: AGS Construction Inc.

*Construct 750 sqf. of side walk, curb and gutter per City
Specifications.*

*Construct 25 feet of driveway approach with curb and 625 sqf. of
driveway.*

*Install three street light poles to be done by Southern California
Edison Co. and pay by Us. (\$ 8,500.00)*

*Seymour S. Silber
PRESIDENT*

LABOR AND MATERIAL BOND
(SUBDIVISION AGREEMENT)

Whereas, **THE CITY COUNCIL OF THE CITY OF MONTCLAIR**, State of California, and **AGS CONSTRUCTION, INC.** (hereinafter designated as "principal") have entered into an agreement whereby principal agrees to install and complete certain designated public improvements which said agreement, dated December 1, 2013 and identified as Tract No. **18728**, is hereby referred to and made a part hereof; and

Whereas, under the terms of said agreement, principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Montclair to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now, therefore, said principal and the undersigned as corporate surety, are held firmly bound unto the **CITY OF MONTCLAIR** and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Code of Civil Procedure in the sum of **(Thirty eight thousand)(\$38,000.00)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by **CITY** in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this

bond, and it does hereby waive notice of any such change, extension, alteration or addition.

In witness whereof, this instrument has been duly executed by the principal surety above named, on 18th day of October, 2013

SURETY _____

WESTERN SURETY CO.

SEE BOARD

(SEAL)

PRINCIPAL _____

[Handwritten Signature]

(SEAL)

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On 12/01/2013, before me, Lourdes Maldonado, a Notary Public personally appeared Sergio S. Silva, 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 acknowledge 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.



[Handwritten Signature]

Notary Public in and for
said County and State

STATE OF CALIFORNIA)
COUNTY OF) ss.

On _____, before me, _____, a Notary Public 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 acknowledge 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.

SEE Book

Notary Public in and for
said County and State



Western Surety Company

PAYMENT BOND

Bond Number: 71472931

KNOW ALL PERSONS BY THESE PRESENTS, That we AGS Construction, Inc.
 _____ of
19831 E. Golden Rough Dr., Covina, CA 91724, hereinafter
 referred to as the Principal, and _____
Western Surety Company
 as Surety, are held and firmly bound unto City of Montclair, Public Works Department
 of 511 Benito St., Montclair, CA 91763, hereinafter
 referred to as the Oblige, in the sum of Thirty-Eight Thousand and 00/100
 Dollars (\$ 38,000.00), for the payment of which we bind ourselves, our legal representatives, successors
 and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract with Oblige, dated _____ day of _____,
 _____, for Construction 750 Sq. Ft. of Sidewalk, Curb and Gutter Per City
Specifications
 copy of which contract is by reference made a part hereof.

NOW, THEREFORE, if Principal shall, in accordance with applicable Statutes, promptly make payment to all
 persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all
 duly authorized modifications of said contract that may hereafter be made, notice of which modifications to Surety
 being waived, then this obligation to be void; otherwise to remain in full force and effect.

No suit or action shall be commenced hereunder

- (a) After the expiration of one (1) year following the date on which Principal ceased work on said contract it
 being understood, however, that if any limitation embodied in this bond is prohibited by any law
 controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to
 the minimum period of limitation permitted by such law.
- (b) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of
 the state in which the project, or any part thereof, is situated, or in the United States District Court for the
 district in which the project, or any part thereof, is situated, and not elsewhere.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith
 hereunder.

SIGNED, SEALED AND DATED this 18th day of October, 2013

AGS Construction, Inc.
 (Principal)

By [Signature] (Seal)

Western Surety Company
 (Surety)

By [Signature] (Seal)

Alcka Dawn Bridges Attorney-in-Fact



Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 71472931

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Aleka Dawn Bridges

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: AGS Construction, Inc.

Obligee: City of Montclair, Public Works Department

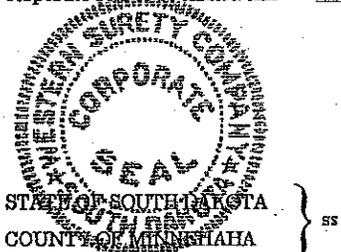
Amount: \$500,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Senior Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

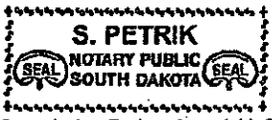
All authority hereby conferred shall expire and terminate, without notice, unless used before midnight of January 31, 2015, but until such time shall be irrevocable and in full force and effect.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Vice President, Paul T. Bruflat, and its corporate seal to be affixed this 18th day of October, 2013.



WESTERN SURETY COMPANY
Paul T. Bruflat
Paul T. Bruflat, Vice President

On this 18th day of October, in the year 2013, before me, a notary public, personally appeared Paul T. Bruflat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



S. Petrik
Notary Public - South Dakota

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 18th day of October, 2013.

WESTERN SURETY COMPANY
Paul T. Bruflat
Paul T. Bruflat, Vice President

Acknowledgment of Principal

Acknowledgment of Surety (Attorney-in-Fact)

STATE OF CALIFORNIA }
COUNTY OF Sacramento } ss

On 11/27/2013 before me, A. Pena, notary public
date here insert name and title of the officer

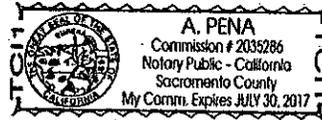
personally appeared Aleka Dawn Bridges
name(s) of signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hers/their authorized capacity(ies), and that by his/hers/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 *A. Pena* (Seal)



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AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 13-100 BETWEEN THE CITIES OF MONTCLAIR AND UPLAND FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL AGREEMENT TO VACATE SERVICE BOUNDARIES

DATE: December 16, 2014

SECTION: AGREEMENTS

ITEM NO.: 4

FILE I.D.: FRD060

DEPT.: CITY MGR.

CONSIDER AUTHORIZING CITY MANAGER TO EXECUTE DOCUMENTS IN RELATION TO IMPLEMENTATION OF AGREEMENT NO. 13-100

CONSIDER AUTHORIZING CITY MANAGER TO PROVIDE THE ONTARIO COMMUNICATION DIVISION NOTICE TO TERMINATE AGREEMENT NO. 01-102 FOR PROVISION OF FIRE SERVICE DISPATCH AND COMMUNICATION SERVICES

CONSIDER AUTHORIZING CITY MANAGER TO NEGOTIATE AN AGREEMENT WITH CONFIRE FOR DISPATCH AND COMMUNICATION SERVICES AND A \$14,320 ALLOCATION FOR STARTUP COSTS WITH CONFIRE

REASON FOR CONSIDERATION: At the February 2011 Strategic Planning Session, the City Council provided the City Manager with the following directives: maintain reductions in operating costs, restore fiscal health to the City's General Fund Reserve, identify and develop new revenue sources to fund local services and operations, identify alternative structures for delivering and enhancing City-provided service programs, implement an alternative strategy to replace the potential loss of Montclair's redevelopment agency, and restructure organizational operations to promote the best use of personnel and achieve greater effectiveness and cohesiveness between department components and lines of operation.

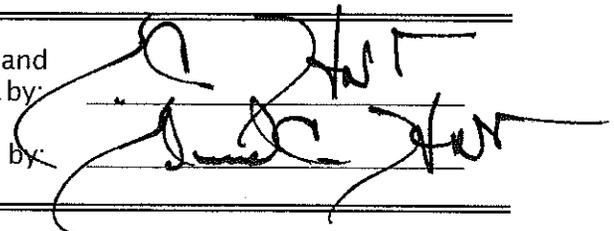
City Council direction was given in response to the following economic conditions:

1. The adverse economic impact of the Great Recession;
2. A stagnant to slow economic recovery;
3. Anticipated follow-through by Governor Brown and the Legislature to eliminate California's network of community redevelopment agencies;
4. Significant increases in the employer rate for public employee pensions; and

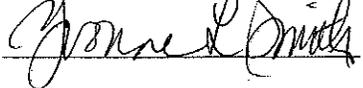
Prepared by:



Reviewed and Approved by:



Proofed by:



Presented by:

5. Massive growth in pension-related unfunded liabilities.

Integral to achieving City Council direction is the regionalization of fire protection-related services. The City Council determined that regionalization not only offers an economy of scale and enrichment of shared resources but makes imminent sense under the paradigm of a new local government economic model influenced heavily by the lessons of the Great Recession—a model that mandates local governments control costs and continue to provide quality services and maintain infrastructure with less revenue.

In order to achieve the objectives stated above, Montclair City staff developed Agreement No. 13-100, proposing to the City of Upland terms and conditions related to mutual sharing of fire resources, vacating service boundaries for the purpose of delivering fire protection and emergency medical services, sharing command staff, and sharing costs related to designated safety and nonsafety personnel. Pursuant to proposed terms and conditions, Montclair and Upland would provide fire protection and emergency medical services under the direction of a unified command structure, while concurrently maintaining separate and distinct identities of the Montclair and Upland Fire Departments.

Exhibit A: Montclair and Upland Fire Command Structure and *Exhibit B: Projected Cost Savings Under Shared Command and Shared Cost Positions* are attached for the City Council's review. A copy of proposed Agreement No. 13-100 is also attached for City Council's review and consideration.

BACKGROUND: Preceding the onset of the Great Recession in November 2007, the City of Montclair experienced a decline in General Fund Revenue related to the opening of a number of regional shopping malls in neighboring communities—shopping malls targeting the preeminent status of Montclair Plaza as the region's only major retail shopping center.

During the period of the Great Recession (November 2007 through June 2010), the City of Montclair experienced a second, major decline in General Fund Revenue. During this period, total General Fund Revenue dropped from pre-Great Recession earnings totaling approximately \$31 million down to approximately \$24.5 million by Fiscal Year 2010-11.

This extraordinary decline in revenue was exacerbated in February 2012, when the California State Legislature and Governor Edmund Brown oversaw dissolution of the state's vast and successful network of community redevelopment agencies, including the Montclair Redevelopment Agency.

The loss of redevelopment as a vital economic tool cost the City of Montclair approximately \$1.1 million in annual property tax increment revenue to bond and finance an array of public works projects. The unprecedented action by state leaders virtually eliminated more than \$5 billion in statewide economic activity, causing undetermined prolonged injury to the economy and virtually eliminating the capacity of local governments to reinvigorate their warren of residential neighborhoods, infrastructure, and commercial and industrial centers.

As a result of this extraordinary, prolonged, and substantial decline in economic capacity, Montclair City leaders determined to control expenditures and reduce staffing through attrition and ultimately by layoffs when the loss of redevelopment imposed on the City's

General Fund a requirement to pick up approximately \$2 million annually in new operating costs.

Based on outcomes of a February 2011 Strategic Planning Session, the City Council directed a comprehensive plan for reviving City revenues and placing Montclair on a well-defined path for economic recovery. It is acknowledged, however, that economic recovery within the larger regional economy remains slow, with many sectors of the local economy reporting lethargic or stagnant growth.

Montclair and Upland—Initial Cooperation to Regionalize Fire Protection Services

As early as August 2011, Montclair's City Manager made an inquiry with Upland's City Manager regarding joint contracting or consolidation of fire protection services. This initial conversation was followed by successive, joint and independent meetings with public and private vendors to determine the potential for Montclair to contract with alternative providers of fire protection and emergency medical services.

As part of their joint effort, the City Managers of Montclair and Upland separately submitted Requests For Proposals (RFP) to local fire service agencies, including the California Department of Forestry and Fire Protection (CAL FIRE) and San Bernardino County Fire Protection District (County Fire).

In March 2012 the Montclair, Upland, and Rancho Cucamonga City Managers met with fire service representatives from the Chino Valley Independent Fire District, Rancho Cucamonga Fire District, and Montclair and Upland Fire Departments to discuss consolidation of fire, emergency medical, and dispatch services. The meeting, however, failed to produce an equitable solution that would produce the economic savings necessary to support consolidation. Nonetheless, the City Managers of Montclair and Upland continued to express their mutual interest in a joint venture to regionalize local fire protection services. This commitment to regionalization reflects fifty-seven years of cooperation between the fire departments of both Montclair and Upland working closely together on emergency incidents, training programs, and mutual assistance—a cooperative relationship that has produced a number of other beneficial, interagency ventures.

As a result of this close compatibility between the two agencies, the Montclair and Upland Fire Departments developed similar organizational structures with compatible operational styles including 24/7 emergency response, EMT/Paramedic services, and professional personnel development.

By October 2012, personnel attrition in the Montclair and Upland Fire Departments provided a unique opportunity for both agencies to consider some form of shared fire protection service.

Table 1 on the following page identifies current comparisons between the City of Montclair Fire Department and the City of Upland Fire Department.

**Table 1
Montclair and Upland Fire Department Comparisons
Fiscal Year 2013-14**

	Montclair	Upland
Size of Department Safety Personnel	28	55
Number of Fire Stations	2	4
Annual Calls for Service	4,055	7,774
Fire Department Budget	\$5,268,856	\$9,546,050
City Population	36,664	73,732
Service Area	5.52 square miles	15.65 square miles
Frontline Fire Engines	2	3
Frontline EMS Squad	1	0
Frontline Trucks	0	1
Battalion Chief Vehicles	1	1
Fire Chief Vehicle	1	1
Inspector Vehicles	1	2
EMS Vehicle	0	1
Specialized Vehicles	2	4
Reserve Vehicles	5	7

Alternative Fire Provider—CAL FIRE and County Fire

In August 2012, under direction of the Montclair City Council, the City Manager prepared and submitted RFPs to CAL FIRE and County Fire for fire protection and emergency medical services.

Concurrent to the City Manger's direction to prepare and submit RFPs to CAL FIRE and County Fire, the Montclair and Upland City Managers continued to discuss the potential for consolidating fire department command staff functions and establishing a Joint Powers Authority (JPA) for delivery of fire protections services. The Upland City Manager also agreed to submit RFPs to County Fire and CAL FIRE—Upland also explored contracting

with other agencies for fire protection services. However, shortly after responses to RFPs were received, Upland withdrew from the process to consider fire protection services from an outside agency. The Upland City Manager reiterated his support to consolidate fire department command staff between Montclair and Upland.

With the withdrawal of Upland from the contracting process, the City of Montclair elected to continue separate efforts to contract out fire and emergency medical services. The City accepted and vetted proposals from CAL FIRE and County Fire, and a comprehensive presentation of both proposals was made to the City Council on February 12, 2013. Contracting with CAL FIRE would have produced approximately \$1 million to \$1.5 million in annual savings; contracting with County Fire would have produced approximately \$400,000 to \$600,000 in annual savings.

On February 13, 2013, CAL FIRE withdrew its proposal based on the following reasoning:

- ✓ The withdrawal of Upland no longer established close proximity to a State Responsibility Area (SRA). CAL FIRE's internal operating policy requires contiguous jurisdictional connection to an SRA before it is permitted to provide contract services to a municipal agency. The withdrawal of Upland from the process severed this contiguous connection and CAL FIRE was subsequently required to withdraw.

On February 13, 2014, Mayor Eaton, Mayor Pro Tem Ruh, Public Safety Director Jones, and City Manager Starr met with CAL FIRE Director Ken Pimlott, Deputy Director Andy McMurry, and Southern Region Chief Dale Hutchinson to discuss CAL FIRE's decision to withdraw. At the request of Director Pimlott, City Manager Starr prepared an argument for CAL FIRE to remain in the selection process. However, after discussion with Governor Brown's office, CAL FIRE was required to adhere to internal operating policy and stand by the decision to withdraw.

On March 4, 2013, San Bernardino County Fire Chief Mark Hartwig made a brief presentation to the City Council regarding the operational capacity of County Fire. After the presentation, the City Council directed the City Manager to continue exploring contracting with County Fire for fire protection services.

By mid-April 2013, Montclair suspended further contracting talks with County Fire for the following reason:

- ✓ The California Public Employees Retirement System (CalPERS) advised Montclair that the annual cost to pay off unfunded liabilities for fire safety personnel migrating to the administrative control of County Fire would be approximately \$980,000 annually for approximately 30 years. County Fire has a reciprocal agreement with CalPERS requiring contracting agencies to maintain fiscal responsibility for unfunded pension liabilities. Contracting with County Fire would produce no near-term fiscal savings for the City of Montclair, and would actually increase operating costs due to annual debt service on unfunded pension liabilities.

Accordingly, discussions ended regarding the contracting of fire and emergency medical services and the City Manager turned his attention to reexploring potential alternatives with the City of Upland.

Renewed Discussions Between Montclair and Upland

In April 2013, talks renewed between the City Managers of Montclair and Upland and Montclair Public Safety Director Jones regarding potential for sharing fire prevention services to achieve economies of scale and expansion of service capacity. Talks expanded further following the appointment of Rick Mayhew as Upland Fire Chief.

In July 2013, Montclair City Manager Starr drafted and submitted a memorandum of understanding between the two agencies spelling out criteria for command staff sharing and boundary dropping, defining procedures and policies, determining cost sharing components, and calling for studies to establish service call requirements. The Agreement also calls for a two-year pilot program beginning on or about January 1, 2014, to evaluate the effectiveness of the collaboration between Montclair and Upland.

Effectively, Montclair and Upland staff took the initiative to define two concepts related to regionalizing fire protection services between the two cities: Command Staff sharing and suspension of service boundaries/expansion of mutual aid. Terms of the proposed agreement avoided drastic structural changes to organizational operations within the respective fire department of both agencies, avoided the immediate need to form a JPA, and avoided any requirement to renegotiate memorandums of understanding with labor units.

Concurrently, the proposed agreement would maintain cooperative mutual aid and automatic aid agreements with neighboring jurisdictions and allow each agency to maintain the unique identity of their respective fire department.

Command Staff Sharing

Under the proposed command staff-sharing concept, the cities of Montclair and Upland would share designated fire command staff and administrative personnel as a means to reduce service costs while expanding resources and the quality of service. This process also eliminates duplication of administrative costs and duplicative requirements for specialized equipment. Effectively, command staff sharing would ultimately allow both agencies to share economic savings related to the reduction of management staffing between jointly operated fire services.

Table 2 on the following page identifies wage and benefit costs for each command staff position subject to cost-sharing provisions of proposed Agreement No. 13-100.

Table 2 includes the proportionate, distributive costs to Montclair and Upland pursuant to a predetermined formula. Montclair's cost for shared-cost positions is 33 percent; Upland's shared-cost responsibility is 67 percent. During the first year of Agreement No. 13-100, a transition team will evaluate other, nonsafety administrative positions that may appropriately be subject to cost-sharing provisions.

The Battalion Chief classification (currently classified as Division Chief in Montclair) is subject to cost-sharing provisions of Agreement No. 13-100. Montclair would pay for one of three positions, Upland would pay for one, and the third position would be subject to cost sharing. Under terms of the Agreement, Montclair would staff two of the three Battalion Chief positions. Further, during the first year of the pilot period, it

is recommended that Montclair fully pay for both positions; therefore, projected savings related to the third Battalion Chief position would not immediately accrue to Montclair.

**Table 2
Distributive Costs for Shared-Cost Command-Level Positions**

Position	Montclair Share	Montclair Cost	Upland Share	Upland Cost	Total
Fire Chief	33%	\$81,653	67%	\$165,780	\$247,434
Battalion Chief	33%	\$54,930	67%	\$111,526	\$166,457
Fire Marshal	33%	\$64,852	67%	\$131,669	\$196,522

Suspension of Service Boundaries/Expansion of Mutual Aid

Agreement No. 13-100 proposes the suspension of service boundaries between Montclair and Upland as a means to achieve and equilateral sharing of resources, improved service response, joint dispatching and communication services, expanded operating borders, an enhanced training environment, mutual cooperation, reduced operating costs, personnel development, and reduced requirements for personnel in specified service classifications. Under the suspension of service boundaries concept, or "boundary dropping," the cities of Montclair and Upland would effectively operate as one fire service entity, resulting in a significant expansion of automatic and mutual aid between the two cities.

The concept of mutual aid is practiced by most fire agencies throughout California, subject to the California Disaster and Civil Defense Master Mutual Aid Agreement. Typically, mutual aid agreements between neighboring agencies provide for two or more agencies to respond to formal requests for assistance under certain emergency conditions. A second type of mutual aid, called automatic assistance aid, occurs between two or more agencies whose dispatchers send the nearest available units automatically to an incident, regardless of whether a formal request is sent.

Boundary dropping represents a significant enhancement of automatic/mutual aid assistance. In its most extensive application, boundary dropping effectively ignores the political boundaries of participating agencies when dispatch assigns apparatus to respond to emergency incidents. Effectively, implementation of boundary dropping allows the fire services of participating agencies to operate as one entity when it comes to assigning apparatus to calls—the dispatch center would routinely assign the closest apparatus to a call, without regard for political boundaries.

Under existing automatic aid agreements, the Montclair and Upland Fire Departments mutually participate in automatic response with neighboring fire departments. However, automatic and mutual aid are typically triggered when the apparatus of one department is already assigned to a call, when an agency asks for automatic or mutual aid assistance, when contract specifications mandate automatic response based on the nature of a call, or when the nature of an emergency incident requires a multiagency response. Automatic/mutual response protocols are currently written into all West End fire agency response procedures, providing a tremendous asset to participating cities.

Clearly, expanding automatic assistance to incorporate boundary dropping will produce multiple benefits for participating agencies by expanding the capacity to provide superior quality fire and emergency medical services.

To various degrees, boundary dropping and/or command staff sharing are growing in application, and represent the precursor to a larger regionalization plan for fire protection services. In an effort similar to what is proposed between Montclair and Upland, the City of Davis recently entered into a boundary dropping agreement with the University of California Davis Fire Department. The cities of Brisbane, Daily City, Pacifica, Carlsbad, Foster City, Redwood City, Vista, Oceanside, Carlsbad, the City of Big Bear Lake, and other agencies are currently enjoying or exploring the benefits provided by boundary dropping, command staff sharing, and other service methodologies for delivery of fire protection services. Ultimately, many of these agencies may eventually consider formation of a JPA or fire district to oversee and regionalize the administration of fire protection services.

Cooperative Fire Service Agreement

As an outgrowth of two years of off-and-on discussions regarding consolidation of fire and emergency medical services, the cities of Montclair and Upland reached a proposed agreement related to consolidation of fire and emergency medical services. Pursuant to proposed Agreement No. 13-100, the cities would agree to combine their respective fire department command structures into a single shared administrative unit and suspend service boundaries.

To quantify the effectiveness of command staff sharing and boundary dropping, the Agreement calls for a two-year pilot program. The trial period would be used to evaluate the feasibility of long-term strategies related to consolidation of fire protection services and potential for integration of both fire departments into a JPA. Initial goals and objectives include the following:

- ✓ Maintaining local control and preservation of community identity and responsiveness;
- ✓ Developing a consistent and effective management structure;
- ✓ Creating a sustainable funding model that maximizes savings while being responsive to the needs of both communities;
- ✓ Continuing to develop and foster teamwork and camaraderie through mutual training;
- ✓ Maximizing the efficiency in the procurement of goods and services; and
- ✓ Increasing leverage during purchase negotiations for services and equipment and grant opportunities.

Shared Command Staff Between Montclair and Upland

Pursuant to proposed Agreement No. 13-100, the cities of Montclair and Upland would drop political/service boundaries to allow for effective operation of the Montclair and Upland Fire Departments under direction of a shared command staff unit consisting of the following positions:

- ✓ One (1) Fire Chief
- ✓ Two (2) Deputy Fire Chiefs—one Montclair Deputy Fire Chief of Operations and one Upland Deputy Fire Chief of Training
- ✓ One (1) Fire Marshal
- ✓ Three (3) Battalion Chiefs
- ✓ Nonsafety administrative positions to be determined

Employees occupying shared command positions shall continue as employees of the city in which they were employed prior to adoption of Agreement No. 13-100, and shall be subject to the personnel requirements of the employing agency.

In addition, Montclair and Upland will retain their respective wage and benefit packages for members of their respective labor units, command staff positions, and nonsafety positions.

Upon implementation of Agreement No. 13-100, Montclair will staff the command-level positions as identified in **Table 3**, below:

Table 3

Command-Level Positions Staffed by Montclair

Deputy Fire Chief Operations	One (1) position
Battalion Chief	Two (2) positions

Upland will staff the command-level positions as identified in **Table 4**, below:

Table 4

Command-Level Positions Staffed by Upland

Fire Chief	One (1) position
Deputy Fire Chief Training	One (1) position
Fire Marshal	One (1) position
Battalion Chief	One (1) position

Fire Chief. Under terms of Agreement No. 13-100, the City of Upland Fire Chief will serve as the Fire Chief of both agencies. The Fire Chief position is a shared-cost position; accordingly, subject to provisions of Agreement No. 13-100, Montclair will pay for 33 percent of wage and benefits costs, excluding those benefits identified in Agreement No. 13-100; and Upland will pay for 67 percent of wage and benefit costs, including all benefits otherwise excluded by Agreement No. 13-100. Montclair's annual cost-sharing contribution for the Fire Chief position is approximately \$81,653.

The Fire Chief, or designee, will attend meetings of the Montclair and Upland City Councils and City Managers and department-level staff meetings. The Fire Chief will be required to

maintain office hours in both cities sufficient to maintain adequate presence and connection to both fire departments and cities.

Fire Marshal. The Fire Marshal is Deputy Fire Chief-level classification in Upland. The position is designated to serve as Fire Marshal for Montclair and Upland, and will be subject to the cost-sharing provisions of Agreement No. 13-100. Montclair's annual cost-sharing contribution for the Fire Chief position is approximately \$64,852.

By mutual agreement, the Fire Marshal position shall be reclassified to nonsafety status upon promotion, retirement, termination, or demotion of the incumbent Fire Marshal.

The Fire Marshal will perform traditional fire marshal duties, supervise fire safety education and fire code programs, and free up other positions in both cities to perform other essential duties.

Deputy Fire Chief. Montclair currently has one Deputy Fire Chief position. The position will remain with Montclair and will be directly responsible to Montclair's Director of Public Safety and to the Fire Chief—Upland will also maintain a Deputy Fire Chief position. The Montclair Deputy Fire Chief will represent the Fire Chief at Montclair City Council meetings and other Montclair community events, as required.

Deputy Fire Chief positions in both Montclair and Upland are not subject to cost sharing; instead, each agency will be fully responsible for wage and benefit costs for their respective Deputy Fire Chief positions.

Each Deputy Fire Chief will be responsible for a functional area. The Montclair Deputy Fire Chief will oversee Operations for both agencies, and the Upland Deputy Fire Chief will oversee training for both agencies.

Division Chief/Battalion Chief. Effective upon implementation of Agreement No. 13-100, Montclair's Division Chief classification will be reclassified as Battalion Chief, without reduction in wages or benefits. Montclair currently has two employees assigned as Division Chief—both incumbents will transition to the Battalion Chief classification. Battalion Chiefs will be assigned to work shift duty, and a total of three Battalion Chiefs will be subject to command staff sharing.

It is the intent of Agreement No. 13-100 to encourage the cities of Montclair and Upland to each fully employ at least one Battalion Chief, with a third Battalion Chief subject to the cost-sharing provisions defined in Agreement No. 13-100. Initially, Montclair will employ and provide full wages and benefits for two of the three Battalion Chief positions as a means to incentivize Upland's participation in the terms and conditions defined in Agreement No. 13-100. Cost-sharing of the third Battalion Chief position would be reconsidered during the course of the two-year pilot period.

Functional Aspects of the Shared Fire Command Structure

Reorganize Command Structure. Pursuant to the terms and conditions of Agreement No. 13-100, Montclair and Upland will reorganize their respective Fire Departments to recognize the command structure as indicated in **Tables 3 and 4**, above.

Policy Authority Retained by City Councils. Pursuant to Agreement No. 13-100, the City Councils of Montclair and Upland will each retain policy-making authority over their respective fire department, including approval of the annual budget.

City Manager Committee/Management of Fire Services. A committee comprised of the City Managers of Montclair and Upland would be created to provide direction, supervision, and evaluation of, the Fire Chief and overall supervision of the joint command staff sharing and boundary drop process.

The Fire Chief and shared command staff will be required to provide direction and supervision to the Montclair and Upland Fire Departments. The command staff would be required to provide services to both cities, regardless of the city in which the position was hired into. Shared command positions will provide management supervision and direction to both sworn and nonsworn staff in their assigned area of responsibility for both the Montclair and Upland Fire Departments.

Minimum Deployment Requirements. Under terms and conditions of Agreement No. 13-100, minimum deployment to a fire or emergency medical call shall include one paramedic engine company and/or truck company defined and accredited by the local emergency medical authority and generally staffed by one Fire Captain, one Fire/Equipment Engineer or Paramedic Engineer, and one Firefighter or Paramedic Firefighter. Paramedic personnel shall be fully licensed and/or accredited by the responding area's medical authority.

Each fire station under control and operation of the Montclair and Upland Fire Departments shall be assigned a minimum of one paramedic engine company/truck company. Reserve and Office of Emergency Service (OES) engines/trucks will also be maintained to facilitate emergency response to local, regional, and statewide service calls.

Formula for Shared Cost Positions

Pursuant to terms and conditions of Agreement No. 13-100, Montclair and Upland will proportionately share the costs of wages and benefits (exclusive of benefit costs identified in Agreement No. 13-100) for positions subject to cost sharing provisions: Upland's proportionate share of costs will be sixty-seven percent (67 percent), and Montclair's proportionate share of costs will be thirty-three percent (33 percent).

Montclair and Upland shall pay their respective employees in shared command positions pursuant to each city's normal payroll process.

Joint Dispatch Services

Pursuant to terms and conditions of Agreement No. 13-100, Montclair and Upland mutually agree to evaluate current dispatch services to achieve seamless transition for the purpose of fully implementing the boundary drop concept. To achieve this objective, Montclair and Upland are evaluating alternative approaches to providing dispatch services by considering and evaluating implementation of a jointly shared dispatch center or utilizing dispatch services provided through the Consolidated Fire Agencies of San Bernardino County (CONFIRE) or other available dispatch agencies capable of satisfactorily meeting dispatch service requirements.

Montclair and Upland currently contract with the Ontario Communication Division for dispatch and communication services. Montclair has contracted with the City of Ontario for dispatch and communication services since 1965. The Ontario Communication Division currently provides public safety dispatch services and communications to the Ontario Police Department, the Chino Valley Independent Fire District, and to the fire departments of the cities of Montclair, Ontario, and Upland. The Rancho Cucamonga Fire District recently terminated its contract with the Ontario Communication Division to contract with CONFIRE. The City of Montclair annually budgets approximately \$182,961 to contract for fire dispatch services provided by the Ontario Communication Division.

In order to fully achieve the terms and conditions of Agreement No. 13-100, the City Managers of Montclair and Upland jointly propose terminating dispatch services with Ontario Communication Division and transitioning to CONFIRE for dispatch services.

CONFIRE

CONFIRE is a multiagency Fire, EMS, and local government dispatch center physically located in the City of Rialto. CONFIRE presently provides dispatch services to Apple Valley Fire Protection District, Baker Ambulance, Barstow Fire Protection District, Big Bear City Fire Department, Big Bear Lake Fire Protection Department, Colton Fire Department, Redlands Fire Department, Rialto Fire Department, Running Springs Fire Department, Rancho Cucamonga Fire Protection District, Twentynine Palms Fire Department, San Bernardino County Fire, and San Bernardino County Transportation/Flood Control Department.

CONFIRE Technology. CONFIRE utilizes state-of-the-art computer systems running TriTech CAD with ProQA for emergency medical dispatching, Automatic Vehicle Location (AVL) software, integrated telephone systems running VESTA, and radio systems consisting of VHF and Motorola 800 MHz trunked Smartnet Systems. One of the main advantages, apart from larger economies of scale, provided by contracting with CONFIRE is the use of AVL software.

AVL software allows dispatchers to know where fire units are located in real time via a satellite surveillance system. This system allows for the closest fire unit available to be dispatched to an emergency regardless of jurisdictional geography. As part of the proposed boundary drop concept, the use of AVL would fully allow the cities of Montclair and Upland to achieve reduced response times and allow the closest fire unit available, regardless of jurisdiction, to respond to a fire or medical emergency—a main component of the proposed boundary drop concept.

Cost to Migrate to CONFIRE. The proposed annual cost for Montclair to contract with CONFIRE as a single agency would be approximately \$175,287 plus startup costs of \$14,320, for both Montclair and Upland to contract as a joint agency, the annual cost is \$166,491 plus startup costs.

Notice Required to Ontario Communication Division. If the City Councils of Montclair and Upland agree to transition dispatch services to CONFIRE, each agency would be required to provide the Ontario Communication Division a notice of termination at least 180 days (six months) prior to any change in service. Consolidating dispatch services under a joint command facilitates the concept of boundary dropping.

Phasing in Boundary Dropping. Until a transition to CONFIRE can be completed by both Montclair and Upland, the boundary drop concept cannot be fully implemented. Accordingly, implementation of boundary dropping pursuant to Agreement No. 13-100 would be phased in approximately six months after notice is provided to the Ontario Communication Division of intent to terminate. City staff anticipates notice of termination to the Ontario Communication Division would be issued on or about January 1, 2014, delaying full implementation of Agreement No. 13-100 until July 1, 2014.

It is noted that the Chino Valley Independent Fire District is considering a switch to CONFIRE for fire dispatch services.

Implementation Processes

No Layoffs/Demotions/Reductions in Pay. Implementation of the shared command and administrative structures, consolidation of fire and emergency medical dispatching, and boundary dropping is designed to be accomplished, to the extent possible, without any layoffs, demotions, or loss of pay to affected employees of the Montclair and Upland fire departments. **The City Managers of Montclair and Upland anticipate there will be no layoffs or demotions of personnel in either of the two Fire Departments.**

In the event an employee is subject to layoff, demotion, or reduction in pay, both Montclair and Upland will follow procedures as mandated by their respective and relevant memorandums of understanding and/or employment policies and practices. In addition, each agency will, to the extent possible, make an offer of employment to any employee of the partner fire department who may be subject to layoff.

Transition Team. Montclair and Upland will work to achieve full implementation by appointing transition teams from each city, with representation from the City Manager's office and public safety, and any other stakeholders with interest in ensuring an effective and seamless transition towards the objectives outlined in the agreement.

Boundary Drop Policy. Prior to full implementation of Agreement No. 13-100, Montclair and Upland agree to meet to develop a comprehensive boundary drop policy that effectively addresses and resolves potential boundary drop area (BDA) implementation issues including, but not limited to:

- ✓ Command responsibility
- ✓ Communications
- ✓ Apparatus compatibility and standardization
- ✓ Joint dispatching
- ✓ Fire ground strategies and procedures

During the transition period, Montclair and Upland will work cooperatively to achieve implementation of the boundary drop concept by July 1, 2014. If a transition to CONFIRE is to occur as part of the boundary drop concept, notification to the Ontario Communication Division must occur on or about January 1, 2014, in order to meet requirements for termination pursuant to Agreement No. 01-102.

Distance Study—Response Times. Montclair and Upland agree to conduct a distance study to determine potential response times to incidents from fire stations within the BDA. The objective of the distance study is to determine the closest apparatus to an incident without regard to administrative/political jurisdiction and to map out a workable standard for response times within the BDA.

Medic Engine Study/Limited Term Firefighters. During the first six months following implementation of Agreement No. 13-100, a study will be conducted to determine the impact on service calls and response times related to the parking of Montclair's Medic Engine 151. The study will examine the number of service calls and response times of responding Paramedic Engine Companies. A similar study conducted in 2011 when Medic Engine 151 was parked approximately 84 percent of the service year indicated there was minimal impact on service calls including automatic/mutual aid support to neighboring communities.

In the event it is determined Medic Engine 151 should be placed back in service at a future point, the City Council would be asked to consider the use and employment of up to six Limited Term Firefighter/Paramedics (LTFPs) for staffing. Limited Term Firefighter Paramedics are fully qualified and certified Firefighters with training as paramedics. However, unlike their full-time counterparts, LTFPs can be hired for up to four years without full-time wages and benefits. Prior to or at the conclusion of the four-year employment period, LTFPs must be hired into full-time positions or transitioned out of the organization and replaced with new LTFP hires.

Shared Command/Cost Positions. As part of the implementation process, the Montclair and Upland transition teams shall meet to determine additional positions that may become subject to the shared command/shared cost provisions of Agreement No. 13-100. To the extent possible, Montclair and Upland anticipate implementing the shared command and administrative structure on or about January 1, 2014, with full implementation prior to January 1, 2015.

It is recognized that certain designated command and/or administrative positions within the Montclair or Upland Fire Departments may be subject to the cost-sharing provisions of Agreement No. 13-100; however, prevailing factors, including incumbency, may limit immediate application of the cost-sharing provisions of the Agreement. Such position(s) would become subject to cost-sharing provisions upon promotion, demotion, retirement, termination of the incumbent(s), or other changes to prevailing factors that allow for implementation of cost sharing.

48/96 Work Schedule. Fire safety shift personnel assigned to the Montclair Fire Department would be required to adopt the 48/96 work schedule, as deployed in the Upland Fire Department. Under a 48/96 work schedule, each crew works two consecutive 24-hour shifts for a total of 48 hours on duty, followed by 96 hours off before repeating the 48/96 deployment pattern.

Position of Montclair Firefighters Association and Upland Firefighters Association. Management staff representing Montclair and Upland met separately with members of the Montclair Fire Fighters Association (MFFA) and Upland Firefighters Association (UFFA) to discuss terms and conditions of Agreement No. 13-100—the presidents of MFFA and UFFA received advance copies of the Agreement for review prior to meet and discussions.

Representatives from MFFA and UFFA had relatively few concerns with proposed terms and conditions, and were supportive of the transition.

MFFA representatives were not opposed to removing Medic Engine 151 from service nor were representatives opposed to the concept and use of limited term firefighter paramedics, particularly when the use of LTFPs would be used to support any decision to return Medic Engine 151 to service.

MFFA and UFFA representatives were appreciative of Montclair and Upland's inclusionary approach to meeting and discussing terms and conditions of Agreement No. 13-100.

Upland City Council Action

At the November 25, 2013, meeting of the Upland City Council, the following direction was given to Upland's City Manager and Fire Chief:

- Move forward with an MOU between the cities of Montclair and Upland for joint sharing of fire department command staff and expansion of automatic and mutual aid through mutual agreement to vacate service boundaries, with commencement to occur on or about January 1, 2014.
- Provide the Ontario Communications Division a 180-day notice to terminate dispatch and communication services, with effective date on or about July 1, 2014.
- Negotiate an agreement with CONFIRE for dispatch and communication services to commence on or about July 1, 2014.

FISCAL IMPACT: Proposed Agreement No. 13-100 promotes fiscal and operational efficiencies with the fire service, improves access to service resources, and maintains and increases the quality of fire protection and emergency medical services offered by the cities of Montclair and Upland.

For Fiscal Year 2013-14, the Montclair City Council allocated approximately \$4,582,117 for Fire Department operations, including \$4,156,541 for wages and benefits.

To project annual personnel-related savings related to provisions of Agreement No. 13-100, a cost benefit analysis was conducted for affected Montclair classifications. Wage and benefit costs were calculated using current E-Step estimates in order to calculate maximum potential savings related to implementation of Agreement No. 13-100. However, positions subject to shared costs were calculated based on current actual wage and benefit costs, with costs proportionately distributed based on the formula in Agreement No. 13-100—Montclair is liable for 33 percent of shared costs, and Upland is liable for 67 percent of shared costs. Under cost-sharing provisions, liability extends only to wages, retirement, health, and insurance plans.

Following are -related benefits to Montclair related to approval of proposed Agreement No. 13-100:

- ✓ **Defunding Six Vacant Firefighter Positions.** Defunding of vacant Firefighter positions would be made possible by redeploying Montclair's apparatus and personnel to emulate current deployment patterns in the Upland Fire Department—

Agreement No. 13-100 requires Montclair to reflect Upland's apparatus and personnel deployment patterns.

- Upland maintains one Paramedic Engine/Truck Company at each City-operated fire station—Upland does not operate a Medic Squad.
- Personnel assigned to each Paramedic Engine/Truck Company include one Fire Captain, one Fire Engineer or Paramedic Engineer, and one Firefighter or Firefighter/Paramedic.

By emulating Upland's apparatus and personnel deployment pattern, it is practical for Montclair to remove Medic Unit 151 from regular service—an action that would allow for defunding six vacant Firefighter positions from the annual City Operating Budget. Staffing Medic Unit 151 requires two personnel per shift, across three shifts. Montclair is currently maintaining six vacant Firefighter positions in anticipation of transition to a Memorandum of Understanding with Upland—each position became vacant through the normal attrition process. Defunding these positions would reduce annual budgeted expenditures in the Montclair Fire Department by approximately \$513,605.

- ✓ **Overtime.** Implementation of Agreement No. 13-100 has potential to decrease Fire Department overtime expenditures. For the current fiscal year, overtime expenditures for the July through October period total approximately \$400,000—equivalent to the budgeted allocation for Fiscal Year 2013-14. Fire Department overtime costs for Fiscal Years 2012-13 and 2013-14 are directly related to vacancies in six Fire Department safety positions and a number of temporary off duty orders for service-related injuries. As a reminder, vacancies in the Firefighter positions are intentional, and related to the City's current and past efforts to seek alternatives for providing fire and emergency medical services.

To avoid incorporating the overtime anomalies of Fiscal Years 2012-13 and 2013-14 into calculating estimated overtime savings, City staff calculated an approximate, annual overtime average of \$635,000 for Fiscal Years 2009-10 through 2011-12. This average was used to determine projected savings in overtime related to implementation of Agreement No. 13-100. Based on this analysis, the Finance Department projects annual Fire Department overtime in future years should decrease by approximately \$120,000—this calculation is based on average annual overtime earnings for six Fire Fighter positions.

- ✓ **Fire Chief.** Pursuant to Agreement No. 13-100, Montclair would pay for 33 percent of the wage and benefit costs for the Upland Fire Chief. Montclair's annual cost component is \$81,653.
- ✓ **Fire Marshal.** Pursuant to Agreement No. 13-100, Montclair would pay for 33 percent of the wage and benefit costs for the Upland Fire Marshal. Montclair's annual cost component is \$64,852.
- ✓ **Battalion Chief.** It is the intent of Agreement No. 13-100 to encourage the cities of Montclair and Upland to each employ at least one Battalion Chief, with a third Battalion Chief subject to cost-sharing provisions. Upon implementation of the Agreement, Montclair anticipates fully covering the cost of two Battalion Chiefs for the first 12 to 18 months of the pilot period—the cost for both positions is included in the Fiscal Year 2013-14 Budget.

During the pilot period, one of the two Montclair Battalion Chief positions is projected to transition to a shared cost position—the incumbent would remain an employee of Montclair. Transitioning the Battalion Chief to a shared-cost position would eventually result in additional savings of approximately \$111,527 to Montclair. The purpose of this delay in transitioning one of three Battalion Chiefs to a shared-cost position is to provide Upland with additional economic incentive to approve similar terms and conditions as contained in Agreement No. 13-100.

- ✓ **CONFIRE.** Subject to the terms and conditions of Agreement No. 13-100, and in order to fully implement the boundary drop concept, the Montclair and Upland City Managers recommend contracting with CONFIRE for dispatch and communication services. Currently, the City of Montclair annually allocates approximately \$182,961 to contract with the City of Ontario Communications Division for dispatch and communication services. The proposed annual cost to migrate to CONFIRE for dispatch and communication services would be \$178,661 for the City of Montclair contracting as a single agency, and \$174,608 for Montclair and Upland to contract as a joint agency. Contracting with CONFIRE represents a cost savings to Montclair of \$4,299 annually contracting as a single agency, and \$8,352 contracting as a joint agency. Montclair and Upland would also be responsible for a first-year start up cost to migrate to CONFIRE. Montclair's share of the startup cost would be \$14,320.

During the two-year pilot period, implementation of additional shared-cost positions would introduce new fiscal impacts. These potential costs/savings cannot be calculated at this time and are, therefore, excluded from analysis.

Based on the above analysis, Montclair has the **POTENTIAL** to reduce annual Fire Department operating costs by approximately \$716,049 if projected costs savings for each component come to fruition. However, Montclair would also be responsible for \$201,436 in shared-cost distributions for the Upland Fire Chief and Fire Marshal, thereby reducing annual Montclair Fire Department operating costs by approximately \$587,697.

IN THE NEAR TERM, approval of Agreement No. 13-100 would produce approximately \$604,522 in first-year operating cost reductions. However, Montclair would also be responsible for \$146,505 in shared-cost distributions for the Upland Fire Chief and Fire Marshal, reducing annual Montclair Fire Department operating costs by approximately \$476,170.

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

1. Approve Agreement No. 13-100 between the cities of Montclair and Upland for the joint sharing of command staff and expansion of automatic and mutual aid through mutual agreement to vacate service boundaries.
2. Authorize the City Manager to execute all documents on behalf of the City of Montclair in relation to implementation of Agreement No. 13-100.
3. Authorize the City Manager to provide the Ontario Communications Division a 180-day notice to terminate Agreement No. 01-102 between the City of Montclair and the City of Ontario for the provision of fire service dispatching and communication services—such notice to be issued on or about January 1, 2014.
4. Authorize the City Manger to negotiate an agreement with CONFIRE for dispatch and communication services commencing on or about July 1, 2014, and a \$14,320 allocation for startup costs with CONFIRE.

Exhibit A: Cities of Montclair and Upland Fire Command Structure
Current Command Staff

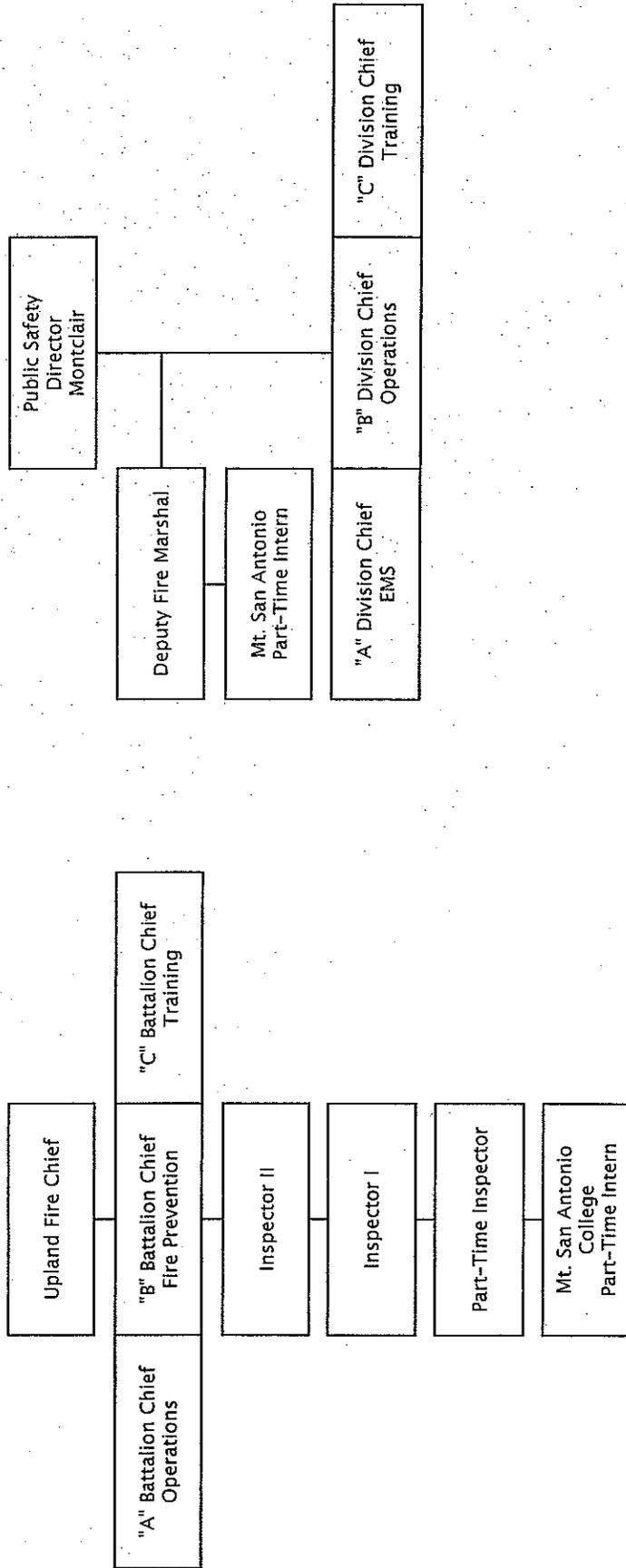


Exhibit A: Cities of Montclair and Upland Fire Command Structure
Proposed Command Staff Sharing

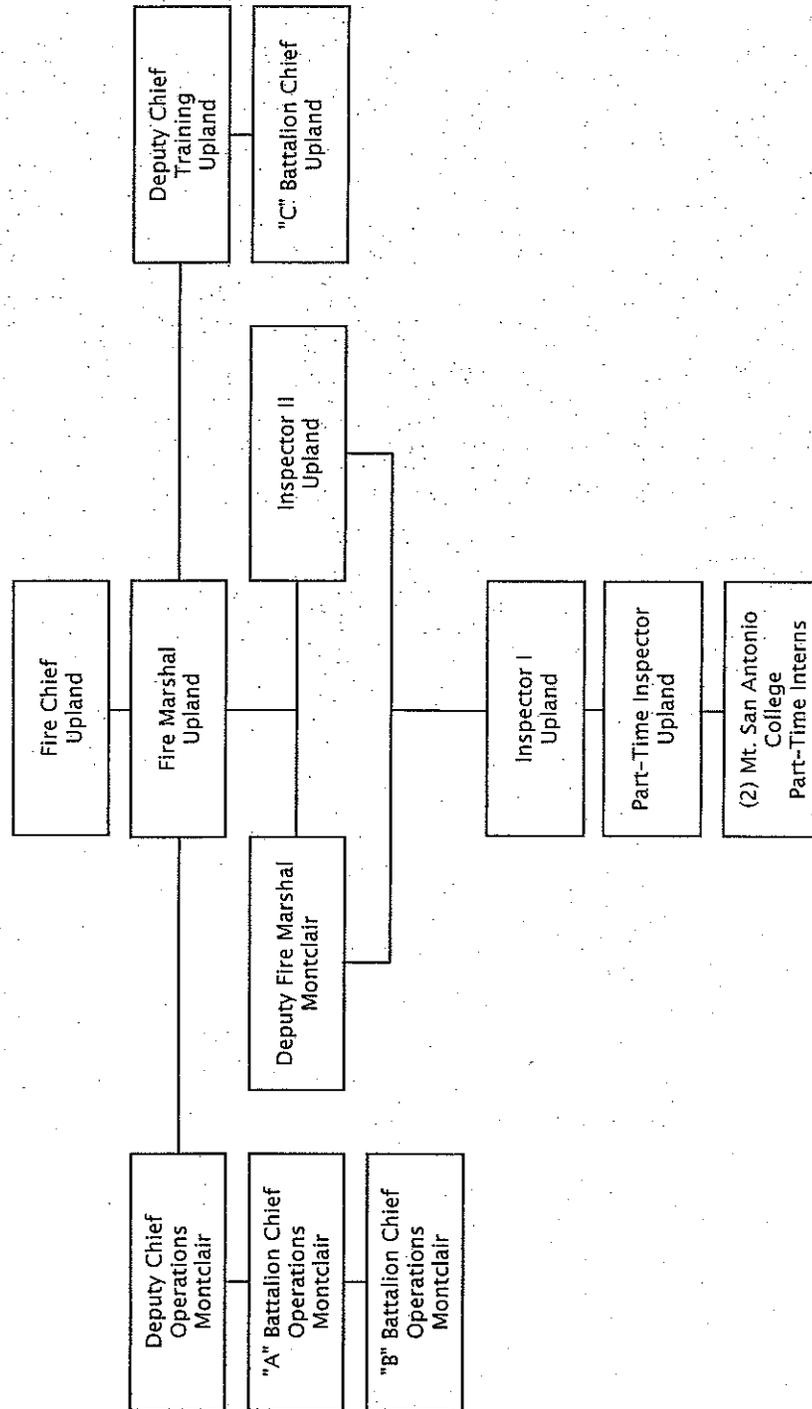


Exhibit A: City of Montclair Fire Command Structure
Current Fire Structure

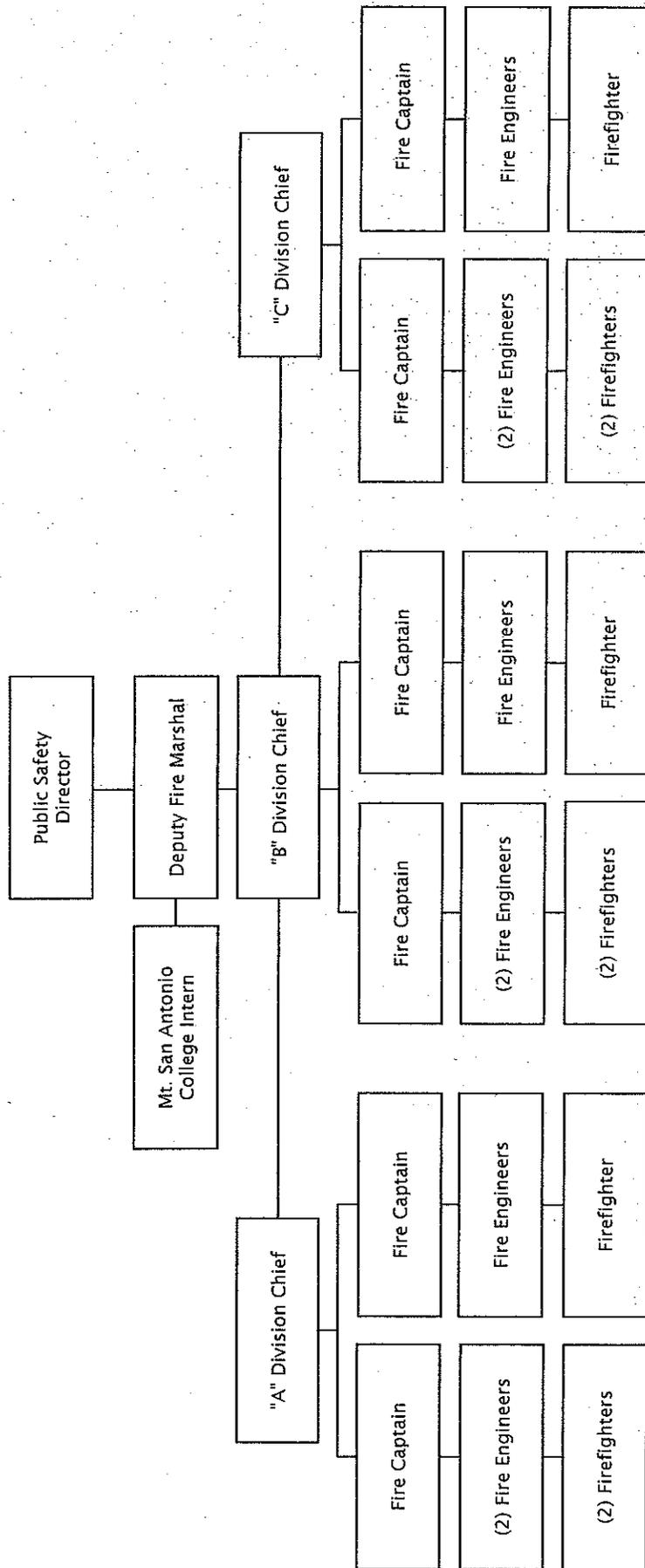


Exhibit A: City of Montclair Fire Command Structure
Proposed Fire Structure With Shared Command Staff

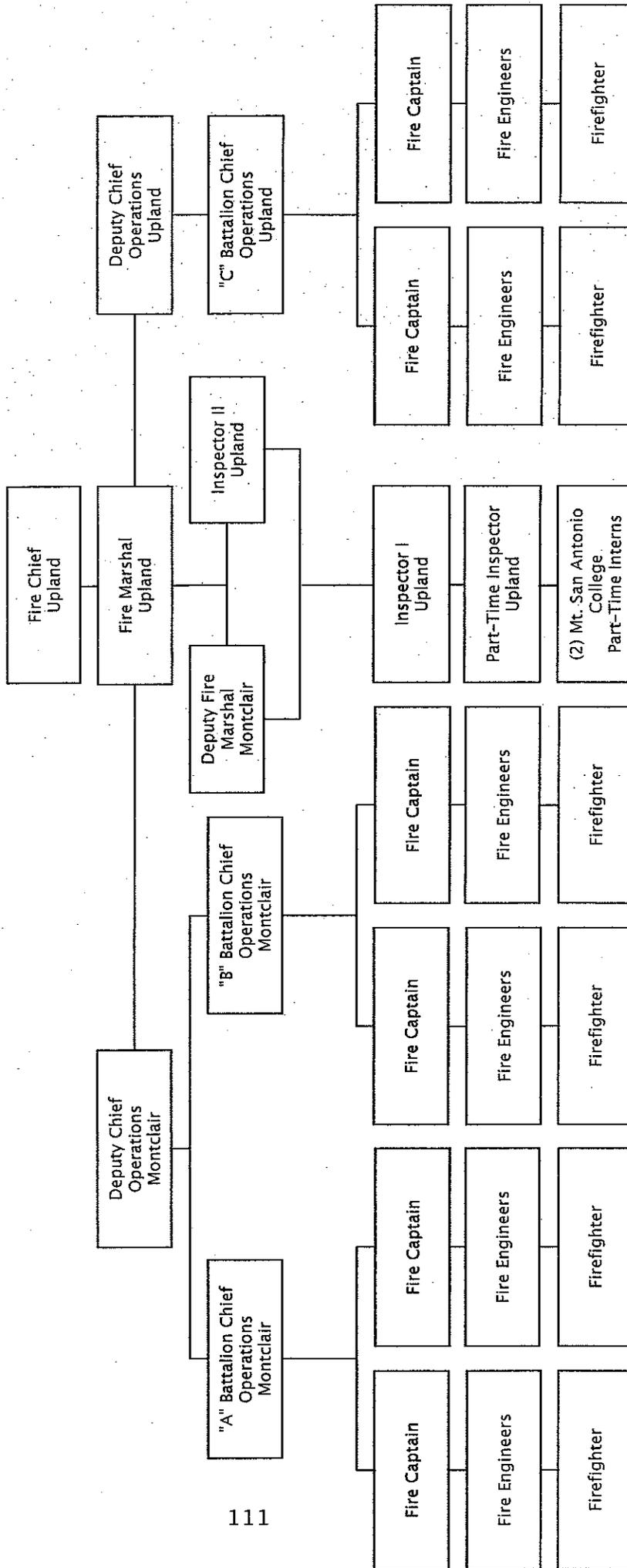


Exhibit B: Projected Cost Savings Under Shared Command and Shared Cost Positions

Current Budgeted Fire Staff Costs With Benefits		
	Montclair	Position
Fire Chief	-0-	0
Deputy Fire Chief	\$ 216,862	1
Battalion Chief	332,915	2
Fire Captain	798,347	6
Deputy Fire Marshal	109,071	1
Fire Engineer	586,913	6
Firefighter	1,027,210	12
Total	\$3,071,317	28

Projected Fire Staff Costs With No Shared-Cost Battalion Chief		
	Montclair	Position
Fire Chief	\$ 81,653	0.5
Deputy Fire Chief	216,862	1
Battalion Chief	332,915	2
Fire Captain	798,347	6
Fire Marshal	64,852	0.5
Fire Engineer	586,913	6
Firefighter	513,605	6
Total	\$2,585,996	22

Difference	\$ 476,170	6
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*Costs are based on E-Step Wages and Benefits

Exhibit B: Projected Cost Savings Under Shared Command and Shared Cost Positions

Current Budgeted Fire Staff Costs With Benefits		
	Montclair	Position
Fire Chief	-0-	0
Deputy Fire Chief	\$ 216,862	1
Battalion Chief	332,915	2
Fire Captain	798,347	6
Deputy Fire Marshal	109,071	1
Fire Engineer	586,913	6
Firefighter	1,027,210	12
Total	\$3,071,317	28

Projected Fire Staff Costs With One Shared-Cost Battalion Chief		
	Montclair	Position
Fire Chief	\$ 81,653	0.5
Deputy Fire Chief	216,862	1
Battalion Chief	221,389	1.5
Fire Captain	798,347	6
Fire Marshal	64,852	0.5
Fire Engineer	586,913	6
Firefighter	513,605	6
Total	\$2,483,620	21.5

Difference	\$ 587,697	6.5
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*Costs are based on E-Step Wages and Benefits

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITIES OF MONTCLAIR AND UPLAND
FOR JOINT SHARING OF FIRE DEPARTMENT COMMAND STAFF
AND EXPANSION OF AUTOMATIC AND MUTUAL AID THROUGH MUTUAL
AGREEMENT TO VACATE SERVICE BOUNDARIES**

THIS AGREEMENT is made and entered into this 1st day of January, 2014, by and between the CITY OF MONTCLAIR, a municipal corporation, hereinafter referred to as "Montclair," and the CITY OF UPLAND, a municipal corporation, hereinafter referred to as "Upland." Montclair and Upland may be referred to in this Agreement individually as "Montclair" or "Upland" and jointly as "Cities" or "Parties."

WITNESSETH:

WHEREAS, Montclair and Upland each maintain their own all-risk municipal fire departments; and

WHEREAS, Montclair and Upland have been discussing (1) the feasibility and practicality of combining their respective fire department command structures and designated administrative functions into a single shared command and administrative unit under direction of a jointly designated Fire Chief; (2) jointly integrating fire dispatch services under a third party centralized dispatch command center; and (3) vacating or dropping service boundaries in order to take advantage of fiscal and operational efficiencies, personnel and resource sharing, and service enrichment—while concurrently maintaining separate salary and benefit structures, conditions of employment, and memorandums of understanding with employee bargaining groups as they currently exist and/or are modified by and for each respective City; and

WHEREAS, Montclair and Upland elect to (1) initiate a two-year pilot program to combine their respective fire department command structures and designated administrative functions into a single and shared command and administrative unit; (2) explore the functional capabilities of consolidated fire dispatch services and, if practical, implement fire dispatch services under a jointly operated or other centralized dispatch command center; and (3) vacate service boundaries, hereafter referred to as "boundary dropping," for the purpose of delivering fire protection and emergency medical service response to each City through a mutually agreed expansion of automatic and mutual aid service; and

WHEREAS, the primary purpose of the pilot program is to evaluate the practicality, performance, and seamless functionality of such consolidation and boundary dropping for potential long-term implementation for the purpose of maintaining fiscal and operational efficiencies, conservation of resources, expansion of service capacity, and potential integration of Montclair and Upland fire departments into one regional fire department; and

WHEREAS, Montclair and Upland mutually agree to proportion the cost of command staff sharing on a pro-rata basis, as determined by the number of fire stations and designated fire apparatus staffed and operated by each respective City. This proportionate sharing of command staff costs is to be based on a 4:2 ratio—such ratio is based on the current status of apparatus for both Cities as follows: four (4) fire stations and four (4) engine and/or truck companies for Upland; and two (2) fire stations and two (2) engine and/or truck companies for Montclair; and

WHEREAS, Montclair and Upland may also agree to meet and confer regarding the potential to mutually operate, maintain and proportionately distribute the cost of operating and maintaining emergency medical service rescue squads for the exclusive

purpose of responding to calls for emergency medical services within both Cities— such cost sharing is to be determined based on mutual agreement and in compliance with the terms and conditions of this Agreement, specifically Section III(R)(1); and

WHEREAS, during the two-year pilot program, the San Bernardino County Board of Supervisors, County of San Bernardino Fire Department, and San Bernardino County Department of Health may elect to provide ambulance services within existing exclusive operating areas, requiring municipal agencies to reexamine the provision of existing medical emergency services and transport services; therefore, Montclair and Upland agree to meet to discuss the impact of any decision by the County of San Bernardino Fire Department to provide ambulance transport services within each jurisdiction; and

WHEREAS, the number and types of call for fire protection and emergency medical services for Montclair and Upland may vary significantly by City from year to year, impacting automatic aid response demand and operational costs throughout the boundary drop areas as defined herein; therefore, Montclair and Upland, at conclusion of the two-year pilot program, shall mutually examine the number and types of call responses for fire protection and emergency medical services within the jurisdictional boundaries of each City to determine if total calls for service within each City shall be a weighted component for determining future pro-rata distribution of cost sharing components, including command staff sharing, centralized dispatch services, and the delivery of fire protection and emergency medical services to each City; and

WHEREAS, exclusive of provisions contained in this agreement related to proportionately distributing the cost of a shared command staff structure and designated administrative staff positions working in either safety or nonsafety capacity and other cost sharing components that may be provided for in this agreement or

provided for by separate agreement between the Cities, Montclair and Upland hereby agree to respectively and individually retain, administer, abide by, and negotiate terms and conditions of employment through separate memorandums of understanding with fire protection safety employees and miscellaneous employees hired and engaged by each respective City to provide fire protection-related services, including but not limited to emergency medical services (including paramedic and EMT-level services), disaster preparedness coordination, fire inspections, fire investigations, fire suppression, training, fire code administration, personnel administration, information technology services, and any other service deemed essential and inherent to the operational integrity of fire protection services. Furthermore, each City agrees to respectively manage, distribute, maintain, and account for all equipment, specialized equipment, materials and supplies (including fire suppression and emergency medical-related materials and supplies), facilities, real property, vehicles (including specialized service vehicles), fire suppression apparatus, and other essential requirements for operation and maintenance of fire stations within each City's jurisdictional boundaries; and

WHEREAS, exclusive of any agreement related to proportionately distributing the cost of a shared command staff structure and designated administrative staff working in either safety or nonsafety capacity and other cost sharing components that may be provided for in this agreement or provided for by separate agreement between the Cities, Montclair and Upland hereby agree to respectively provide for fiscal funding, budgeting, maintenance, and management of their respective fire protection safety employees and miscellaneous employees hired and engaged by each respective City to provide fire protection-related services, including but not limited to emergency medical services (including ALS paramedic and EMT-level services), disaster

preparedness coordination, fire inspections, fire investigations, fire suppression, training, fire code administration, personnel administration, information technology services, and any other service deemed essential and inherent to the operational integrity of the fire service; furthermore, each City agrees to separately acquire, purchase, and provide for all equipment, specialized equipment, materials and supplies (including fire suppression and emergency medical-related materials and supplies), capital outlay requirement for equipment and facilities, vehicles (including specialized service vehicles), fire suppression apparatus, and other essential budgetary requirements for operation and maintenance of fire stations within each City's jurisdictional boundaries; and

WHEREAS, Montclair and Upland, in conjunction with the implementation of a two-year pilot program to combine their respective fire department command structures and except as otherwise restricted or prohibited by separate agreement and/or policy, elect to vacate and drop existing service boundaries for fire protection and emergency medical services and cooperatively extend automatic and mutual aid agreements to fully recognize and achieve transparent service support between the Cities, to the extent possible, for the provision of fire protection and emergency medical services, training, duty command response and oversight, disaster preparedness, fire marshal services, fire investigation services, fire code administration, fire and emergency medical dispatch services, and any other services deemed subject to the joint sharing of command staff services and boundary dropping in order to effectively evaluate the feasibility of command staff sharing and boundary dropping as a long-term strategy that may lead to eventual integration of both departments into one regional fire department.

NOW, THEREFORE, Montclair and Upland agree as follows:

Section I. Term.

This agreement shall be effective commencing on January 1, 2014, and shall expire on December 31, 2015, unless mutually extended or sooner terminated as provided herein.

- A. **Termination Without Cause.** Either Party may terminate this Agreement without cause by providing not less than six (6) months prior written notice of its intent to terminate.
- B. **Termination for Cause.** Either City may terminate this Agreement for cause upon personally serving a written Notice to Cure Default, therein specifying the acts or omissions constituting the alleged default, and demanding that the default be cured within thirty (30) days. If the default remains uncured, termination shall be effective at the end of the default cure period.

Termination for cause shall include any of the following:

- 1. Failure by either City to meet any of its obligations provided for in this Agreement following receipt of a Notice to Cure Default; or
 - 2. Any act of gross negligence committed by a respective City employee, official, or agent during the course of delivering service under the terms of this Agreement.
- C. **Temporary Suspension.** In the event of an unforeseeable financial shortfall occurring to either Party that prevents its full compliance with this Agreement, such occurrence shall be deemed to be a Force Majeure event, as defined under Section III(X)(4) of this Agreement. Should such an event occur, the City Managers of Montclair and Upland shall promptly meet and confer during which time both Parties shall be temporarily excused from having to pay shared costs as required by this Agreement provided, however, that any

required payment shall be deferred, not excused, for the affected period of time. If such period shall extend beyond thirty (30) days, or such other period as agreed upon in writing, then either Party may terminate this Agreement provided, however, any and all amounts due and payable by either Party at the time of termination shall either be paid, or shall become a debt on a written contract owed to the other.

D. Extension of Agreement. At any time during the two-year pilot program and at least six (6) months prior to its conclusion, Montclair and Upland, by mutual agreement of their respective City Councils, may exit the pilot program and extend the terms of this agreement for a three-year period, with provision for successive two-year extensions thereafter. Notice of desire to exit the pilot program and extend or modify the terms of this agreement shall be issued not less than six (6) months prior to the end of the fiscal year in which the agreement is due to expire. Notice of desire to exit the pilot program and extend this agreement shall be issued by the City Manager of either Montclair or Upland to the City Manager of the other City. The purpose of early notification prior to the end of the fiscal year in which the agreement is due to expire is to provide each agency the opportunity to negotiate terms and conditions of extension and budget for any required changes to their respective appropriation budgets for fire protection services.

E. Extension of Agreement. At any time during the two-year pilot program and at least six (6) months prior to its conclusion, Montclair and Upland, by mutual agreement of their respective City Councils, may exit the pilot program and extend the terms of this agreement for a three-year period, with provision for successive two-year extensions thereafter. Notice of desire to exit the pilot

program and extend or modify the terms of this agreement shall be issued not less than six (6) months prior to the end of the fiscal year in which the agreement is due to expire. Notice of desire to exit the pilot program and extend this agreement shall be issued by the City Manager of either Montclair or Upland to the City Manager of the other City. The purpose of early notification prior to the end of the fiscal year in which the agreement is due to expire is to provide each agency the opportunity to negotiate terms and conditions of extension and budget for any required changes to their respective appropriation budgets for fire protection services.

- F. **Failure to Extend.** Failure to extend, alter, or otherwise modify the terms and conditions of this Agreement as required herein so that it continues beyond the two-year pilot program shall be evidence that both Montclair and Upland agree to terminate the pilot program, restore service boundaries, and eliminate jointly shared command staffing.

Section II. Implementation Timeline

To the extent possible, Cities desire to accomplish implementation of the shared command and administrative structures, consolidation of fire and emergency medical dispatching, and boundary dropping no later than January 1, 2014. Cities will cooperatively work to achieve implementation by appointing transition teams from each City, with representation from the City Manager's office and public safety, and any other stakeholder groups with interest in ensuring an effective and seamless transition toward the objectives outlined herein.

Section III. Implementation Strategy

- A. **Layoffs, Demotions, Reduction in Pay.** To the extent possible, Cities desire to accomplish the implementation of the shared command and administrative

structures, consolidation of fire and emergency medical dispatching, and boundary dropping without any layoffs, demotions, or reduction in pay to affected employees of Montclair and Upland. However, in the event an employee is subject to layoff, demotion, or reduction in pay, Montclair and Upland will follow procedures as mandated in their respective and relevant memorandums of understanding and/or employment policies and practices.

- B. Positions Not Subject to Agreement.** In the event that certain command staff, dispatch, and/or administrative positions within either City's respective fire department's are not subject to, or compatible with, the intent of this Agreement to share in the function and cost of such positions, such positions will not be shared between the Cities. Montclair and Upland shall meet to determine which positions in each respective Fire Department shall not be subject to the intent of this Agreement. It is also recognized that certain designated command and/or administrative positions within either City's respective fire departments may be subject to cost-sharing provisions and may be currently occupied and that the cost of such positions may not be shared until a current incumbent leaves the position.
- C. Fire Chief.** Montclair and Upland mutually agree to retain and share one (1) Fire Chief to oversee, manage, and administer operations and functions of both fire departments and to ensure the delivery of quality fire and emergency medical services to both Cities. The Montclair Fire Chief position is currently vacant; and Montclair agrees to retain the position as vacant during the term of this Agreement, except that upon notification by either City that this Agreement will not be extended, for whatever reason, or is otherwise suspended, Montclair, at its discretion, may seek to employ a Fire Chief.

The Upland Fire Chief position is currently filled and it is agreed between the Cities that the incumbent will assume command of the Montclair and Upland fire departments upon the effective date of the Agreement. Costs for the Upland Fire Chief will be based on wages and benefits provided by the City of Upland as approved by action of the Upland City Council. Except as otherwise provided for herein, any increases to the wage and benefits structure provided to the Upland Fire Chief shall be mutually agreed upon between the Cities.

1. Fire Chief Cost Distribution. The Fire Chief is an employee of the City of Upland; accordingly, Upland's terms and conditions of employment for the Fire Chief will apply. Employment-related costs for wages and benefits shall be shared between Montclair and Upland, with sixty-seven percent (67%) of employment costs assigned to Upland and thirty-three percent (33%) of employment costs assigned to Montclair as stipulated in Section III(R)(1) of this Agreement. Upland will be responsible for administering all wages and benefits provided to the Fire Chief including the provision of any take-home vehicle, fuel, and insurance. Montclair will reimburse Upland as specified in Section III(R)(4) of this Agreement for its share of costs related to employment of the Upland Fire Chief.

(a) Reporting/Supervision. In the City of Upland, the Fire Chief will report to the City Manager or designee; in the City of Montclair, the Fire Chief will report to the City Manager and/or Executive Director, Office of Public Safety. The City Managers of Upland and Montclair and/or their designees will meet at least once annually to review the performance of the Fire Chief.

- (b) **Wage and Benefit Enhancements.** Wage and benefit enhancements for the Fire Chief will require approval of the City Councils of Upland and Montclair. If one City elects to improve wage and benefit enhancements for the Fire Chief and the other City does not, the City approving wage and benefit enhancements will be solely and fully responsible for increased costs including, but not limited to, employer and employee increases in California Public Employee Retirement System (CalPERS) costs relating to the enhancement. This Section III(C)(1)(b) shall not be controlling on mandated employer rate increases imposed by CalPERS, which shall be shared pursuant to the cost distribution formula in Section III(R)(1) of this Agreement.
- (c) **Automobile.** Automobile acquisition, insurance, privileges, and fuel and maintenance requirements shall be provided and determined by Upland and shall be fully funded by Upland and not subject to the cost distribution formula in Section III(R)(1) of this Agreement.
- (d) **Travel, Meetings, and Conference Attendance.** Travel, meetings, and conference attendance related exclusively to the employee's position as Fire Chief shall be provided for jointly between Montclair and Upland pursuant to the cost distribution formula in Section III(R)(1)" of this Agreement. The City Managers of Montclair and Upland will meet annually to consider and recommend for consideration and approval by the Upland City Council the travel, meetings, and conference budget for the Fire Chief for the succeeding fiscal year. Upland will be responsible for administering

the travel, meetings, and conference budget for the Fire Chief.

Montclair will reimburse Upland as specified in Section III(R)(4) of this Agreement for its share of costs related to employment of the Fire Chief.

(e) **Premium benefits and wages.** The provision of any premium benefits, stipends, wages, awards and other privileges that are not considered base wages and standard benefits, and are not covered under Section III(R)(5) of this Agreement shall not be components of this cost-sharing Agreement, and shall not be reimbursed or shared in cost by Montclair pursuant to Section III(R)(1) of this Agreement.

2. **Termination.** In the event the Fire Chief's employment terminates from the City of Upland, for whatever reason, the Cities shall consider naming an interim Fire Chief and jointly conduct a recruitment/selection process for the purpose of identifying and hiring a successor to the Fire Chief position. Upland shall hire the Fire Chief pursuant to its recruitment practices and employment rules and regulations. No successor to the Fire Chief position shall be hired without recommendation of the City Managers of Montclair and Upland and submittal of any such recommendation to their respective City Councils for consideration and approval.
3. **Discipline.** In the event the Fire Chief is subject to discipline for performance or other work-related deficiencies, integrity issues, violations of terms and conditions of employment, or any actions that call into question the Fire Chief's fitness to continue serving as Fire Chief or otherwise warrant disciplinary action, City of Upland employment rules and regulations shall govern.

4. **Performance Evaluation.** The Fire Chief's performance shall be evaluated annually and jointly by the City Managers of Montclair and Upland. The City Manager of Upland shall prepare the performance evaluation and submit it for review by the Upland governing board subject to Upland's personnel rules and practices.
5. **Daily Work Location.** The Fire Chief shall maintain an executive office at an Upland Fire Station, to be determined by Upland. The Cities will jointly evaluate and determine any need for the Fire Chief to maintain a secondary office at a Montclair Fire station.
6. **Communications with City Officials.** The Fire Chief shall conduct regular staff meetings with fire management personnel from Montclair and Upland. The Fire Chief shall conduct periodic commander's call and/or reviews of line personnel in the Montclair and Upland Fire Departments. The Fire Chief shall report at least twice monthly to the City Managers of Upland and Montclair to review and discuss issues, activities, deployment, services, and other matters related to the conduct and delivery of fire protections services.
7. **Representation.** The Fire Chief, Montclair Deputy Fire Chief, and/or City Managers of Montclair and Upland, or their designees, may represent Montclair and Upland on local, regional, and statewide bodies related to fire protection and fire service delivery.
8. **Attendance at City Council Meetings and Other Meetings.** The Fire Chief, or designee, shall attend each regular meeting of the Montclair and Upland City Councils, budget meetings, special workshops, and any other

meetings required either jointly or separately by the City Managers of Montclair and Upland.

- D. Deputy Fire Chief/Training.** Upland maintains or shall establish one (1) Deputy Fire Chief position. If, at the time this Agreement is executed, the Deputy Fire Chief/position is vacant, Upland shall conduct an in-house promotional process to fill the vacant position and reclassify the title to Deputy Fire Chief/Training. Upland currently maintains three (3) Battalion Chief positions. Through an in-house promotional process, Upland shall promote one of three (3) Battalion Chiefs to the Deputy Fire Chief/Training position prior to or concurrent with the effective date of this Agreement. In order to achieve the objectives of this Agreement, the vacated Battalion Chief position shall remain unfilled upon successful promotion of the incumbent to the position of Deputy Fire Chief/Training. Upland will be fully responsible for all labor-related costs associated with employing the Deputy Fire Chief/Training. Costs for the Upland Deputy Fire Chief will be based on wages and benefits provided by the City of Upland, as approved by action of the Upland City Council. The Deputy Fire Chief will remain an employee of Upland, and Upland employment rules and regulations shall govern. Upland shall separately maintain an office for the Upland Deputy Fire Chief.
- E. Fire Marshal.** Upland maintains or shall establish one (1) Fire Marshal position. If, at the time this Agreement is executed, the Fire Marshal position is vacant, Upland shall conduct an in-house promotional process among current Battalion Chief positions to fill the vacant Fire Marshal position. The Fire Marshal position shall be equivalent in wages and benefits to Upland's Deputy Fire Chief classification; however, upon promotion, retirement, or

termination of the incumbent from the Fire Marshal position, the Fire Marshal classification shall be reclassified as a nonsafety position, with wages and benefits to be determined based upon a classification study conducted jointly between Montclair and Upland. Upland currently maintains three (3) Battalion Chief positions. Through an in-house promotional process, Upland shall promote one of three Battalion Chiefs to the Fire Marshal position prior to or concurrent with the effective date of this Agreement. In order to achieve the objectives of this Agreement, the vacated Battalion Chief position shall remain unfilled upon successful promotion of the incumbent to the position of Fire Marshal. Upland will be fully responsible for all labor-related costs associated with employing the Fire Marshal; provided, however, if it is determined and mutually agreed between the Parties that the Fire Marshal shall provide services to Upland and Montclair pursuant to the terms, conditions and objectives contained herein the position shall be subject to cost-sharing and provisions of Section III(R)(1) and other relevant provisions shall apply. Costs for the Fire Marshal will be based on wages and benefits provided by the City of Upland, as approved by action of the Upland City Council. The Fire Marshal will remain an employee of Upland, and Upland employment rules and regulations shall govern. Upland shall separately maintain an office for the Fire Marshal.

- F. Deputy Fire Chief/Operations.** Montclair maintains or shall establish one (1) Deputy Fire Chief position. If, at the time this Agreement is executed, the Deputy Fire Chief position is vacant, Montclair shall conduct an in-house promotional process to fill the vacant position and reclassify the title to Deputy Fire Chief/Operations. Montclair currently maintains three (3) Division

Chief positions. Through an in-house promotional process, Montclair shall promote one of three Division Chiefs to the Deputy Fire Chief/Operations position prior to or concurrent with the effective date of this Agreement. In order to achieve the objectives of this Agreement, the vacated Division Chief position shall remain unfilled upon successful promotion of the incumbent to the position of Deputy Fire Chief/Operations. Montclair will be fully responsible for all labor-related costs associated with employing the Deputy Fire Chief/Operations. Costs for the Montclair Deputy Fire Chief will be based on wages and benefits provided by the City of Montclair, as approved by action of the Montclair City Council. The Deputy Fire Chief will remain an employee of Montclair, and Montclair employment rules and regulations shall govern. Montclair shall separately maintain an office for the Montclair Deputy Fire Chief.

- G. Upland Battalion Chiefs.** Upland currently maintains three (3) Battalion Chief positions. Unless the Upland Deputy Fire Chief/Training and Fire Marshal positions are otherwise filled with incumbents, one of Upland's three (3) Battalion Chiefs shall be promoted to Deputy Fire Chief/Training and one of Upland's three (3) Battalion Chiefs shall be promoted to Fire Marshal prior to or concurrent with implementation of this Agreement. In order to achieve the objectives of this Agreement for the Parties to mutually provide for three (3) Battalion Chief positions, the two Upland Battalion Chief positions vacated by promotion to Deputy Fire Chief/Training and Fire Marshal shall remain vacant, the remaining Upland Battalion Chief position shall remain occupied by an Upland Battalion Chief, and Montclair shall provide for the remaining two Battalion Chief positions. In keeping with the cost-sharing objectives of this

Agreement, at any time on or after the effective date of this Agreement Upland and Montclair jointly agree that one of Montclair's two Battalion Chief positions shall be transitioned to a Shared-Cost position; however, preference will go to Montclair as to when such transition to a shared-cost position shall occur. The objective of this Section III(G) and Section III(H), when taken together, is to encourage that Montclair and Upland each employ at least one Battalion Chief, with a third Battalion Chief transitioning to a cost-sharing position pursuant to the provisions of Section III(R)(1) of this Agreement and as stipulated in Section III(I) of this Agreement. Battalion Chief position(s) assigned to Upland will be maintained by Upland, and one hundred percent (100%) of wages and benefits accruing to and earned by the incumbent(s) shall be provided by Upland. Provisions of this Section III(G) shall be subject to provisions of Section III(D) of this Agreement.

H. Montclair Battalion Chiefs. Montclair currently maintains three (3) Division Chief positions. Unless the Montclair Deputy Fire Chief/Operations position is otherwise filled with an incumbent, one of Montclair's three (3) Division Chiefs shall be promoted to Deputy Fire Chief/Operations. In order to achieve the objectives of this Agreement, the Montclair Division Chief position vacated by promotion to Deputy Fire Chief/Operations shall remain vacant; and the remaining two Montclair Division Chief positions shall remain occupied by employees of the Montclair Fire Department. If, at, or prior to the time this Agreement goes into effect one of the remaining two Montclair Division Chief positions is vacant, Montclair shall conduct a recruitment to fill the position; and Upland and Montclair will jointly determine when one of Montclair's two Division Chief positions shall become a Shared-Cost Battalion Chief position. Preference

will, however, go to Montclair as to when such transition to a shared-cost position shall occur. The objective of Section III(G) and this Section III(H), when taken together, is to encourage that Montclair and Upland each employ at least one Battalion Chief, with a third Battalion Chief transitioning to a cost-sharing position pursuant to the provisions of Section III(R)(1) of this Agreement and as stipulated in Section III(I) of this Agreement. Upon execution of this Agreement, Montclair's Division Chief classification shall be reclassified as Battalion Chief with no gain or loss of pay or benefits to incumbents. Battalion Chief positions assigned to Montclair will be maintained by Montclair, and one hundred percent (100%) of wages and benefits accruing to and earned by one of the two incumbents shall be provided by Montclair. Wages and benefits accruing to and earned by the second Montclair Battalion Chief incumbent shall be subject to the cost-sharing provisions of this Agreement as provided for in Section III(R)(1). Provisions of this subsection (H) shall be subject to the provisions of Section III(D) of this Agreement.

- I. **Montclair and Upland Shared Battalion Chief.** If, at the time this Agreement is executed, Montclair and Upland are each maintaining one filled Battalion Chief/ Division Chief position (the Montclair position to be reclassified as Battalion Chief) and one vacant Battalion Chief/Division Chief position, the City Managers of both Cities will meet to agree as to which City will promote a Fire Department employee to fill the vacant, third Battalion Chief position and administer the wages and benefits for the position; however, preference will go to Montclair in transitioning a current Montclair Division Chief to the third, Shared-Cost Battalion Chief position. This preference recognizes the promotion and positioning of two Upland Battalion Chiefs into Deputy Fire

Chief-level classifications, including one Deputy Fire Chief/Training, and one Fire Marshal. Under provisions of this Section III(I), Cities will be jointly responsible for the cost of the third Battalion Chief position pursuant to provisions in Section III(R)(1) of this Agreement. In the event that either/or both Montclair and Upland has two or more Battalion Chief positions that are filled at the time this Agreement is executed, the City Managers of each City shall meet to discuss means to address and resolve any potential excess number of Battalion Chiefs employed between the two Cities. Each City will separately maintain an office and sleeping quarters for Battalion Chiefs.

J. Employment Status Not Altered. Except as otherwise provided for in this Agreement, this Agreement shall not alter the employment status of those employees serving in the shared command structure, in that employees of Montclair shall remain solely employed by Montclair and shall not be deemed employees of Upland; and employees of Upland shall remain solely employed by Upland, and shall not be deemed employees of Montclair. Thereafter, as future internal appointments are made to vacant positions, employees promoted into cost-sharing positions shall remain employees of the City in which they were employed immediately prior to their promotion; and employees newly hired into Montclair or Upland shall be employees of the City into which the employee is hired.

K. Nonsworn Administrative Positions. Montclair and Upland mutually agree that during the first six months of the trial period of this Agreement as defined in Section I – Term, the Parties shall fully evaluate which nonsworn administrative positions are subject to cost-sharing provisions of this Agreement, including Section III(R)(1). Cost-sharing provisions contained

herein shall be implemented by mutual agreement and/or when any one position subject to the terms and conditions of this Agreement is actively and regularly providing services to the Party of which the position is not regularly employed by. Provided, however, Parties may agree that cost-sharing between designated nonsworn administrative positions shall not be implemented provided that Parties mutually agree that each Party proportionately enjoys and benefits from the mutual sharing of services of nonsworn administrative personnel based on proportional distribution of costs and services commensurate with agency size, and that each Party proportionately participates in the provision of nonsworn administrative positions to the other Party. For purposes of this Agreement, proportional participation and/or proportional distribution shall be based on percentage distributions as defined in Section III(R)(1) of this Agreement.

- L. Other Cost-Sharing Positions Permitted.** Nothing in this Agreement shall prohibit Montclair and Upland from agreeing to include other employment positions in each City's Fire Department into the cost-sharing provisions of this Agreement. Any failure by any Party to this Agreement to timely designate a position in the agency as a cost-sharing position funded by both Parties, subject to Section III(R)(1) and other relevant provisions of this Agreement, shall not deprive that agency of the privilege to so designate the position as a cost-sharing position. Parties recognize that any delay in designating a position as subject to the cost-sharing provisions of this Agreement may be based on the needs and requirements including, but not limited to, the economic needs, job-related needs, and/or agency-related needs, of one Party or the other to this Agreement.

M. Vacancy in Cost-Sharing Positions. In the event a cost-sharing position becomes vacant during the term of this Agreement, Montclair and Upland City Managers will jointly determine which City will conduct the recruitment process, including an in-house recruitment process from the existing pool of employees in Montclair and Upland, or by open recruitment of outside candidates. As a general rule, the City that employed the former incumbent of the vacated shared-cost position shall be the agency responsible for conducting the recruitment, employing the successful candidate, and applying its employment rules and wage and benefit schedule. Fire Department employees in Montclair and Upland meeting minimum qualifications for a vacant shared-cost position may be eligible to compete for promotional advancement to the position on an equal basis. An existing employee selected for a shared-cost position shall remain an employee of the agency conducting the recruitment and in which the vacant position first occurred. Similarly, a new hire from an open recruitment shall become an employee of the agency conducting the recruitment. The Fire Chief, in consultation with the City Managers of both Cities, may be granted discretion to make appointments to vacant subordinate shared positions from those qualified through the agreed selection process.

N. Boundary Drop.

I. Definition of Terms:

- (a) **Boundary Drop and Boundary Drop Area (BDA).** Boundary Drop refers to the procedure of dispatching the closest fire apparatus to an incident, regardless of the jurisdiction in which the incident occurs. Under the Boundary Drop Area (BDA) concept, the fire department

of one administrative/political jurisdiction may respond to an emergency incident in another administrative/political jurisdiction and return back to its own (home) jurisdiction without participation or response from the fire department of the administrative political jurisdiction where the incident occurs. Effectively, under revised automatic aid agreements, Parties to the BDA acquire a geographical area of responsibility that incorporates territory outside the administrative/political jurisdiction to which the home fire department belongs.

- (b) **Automatic Aid.** Under automatic aid protocols, assistance is rendered by the fire department of one jurisdiction to a separate jurisdiction by prior arrangement of the Parties involved; however, automatic aid protocols typically require the fire department of the home jurisdiction (the City in which the incident occurs) to also be dispatched to the incident. Dispatch of designated emergency apparatus is automatically provided under an automatic aid agreement. When implemented effectively, the automatic aid agreement provides a methodology for standardization of operating procedures in designated response areas. Under the BDA concept, automatic aid protocols are revised to allow the fire departments from each City to dispatch apparatus to an incident within the administrative/political jurisdiction of the other City without required participation of apparatus and personnel from the home jurisdiction.

(c) **Mutual Aid.** Under mutual aid protocols, emergency assistance is rendered from one agency to another. The aid must be requested before assistance is dispatched. The home jurisdiction responds first and requests additional assistance, if required, after arrival.

2. **Boundary Drop Area (BDA).** Montclair and Upland share common boundaries. Together, both Cities seek to improve fire protection services and response time to incidents without adding additional personnel, stations, or apparatus and equipment. The objective of establishing a common BDA between the Cities is to ignore common administrative/political boundaries when assigning apparatus to respond to fire protection and emergency medical incidents. Agreement to drop service boundaries and respond with the closest apparatus without regard to administrative/political jurisdiction is deemed to benefit both agencies equally.

(a) **Cities Agree to Drop Boundaries.** Montclair and Upland agree that for purposes of automatic and mutual aid response for delivering fire protection and emergency medical services, the Cities shall drop administrative/political boundaries to allow the effective operation of the Montclair and Upland Fire Departments under direction of a shared command staff unit including one (1) Fire Chief, two (2) Deputy Fire Chiefs, one (1) Fire Marshal, and three (3) Battalion Chiefs.

(b) **Purpose of BDA.** Montclair and Upland agree that a successfully implemented BDA would achieve the following benefits for the public health, safety, and welfare:

- (1) Potential for reductions in response times;
- (2) Provide for standardization of procedures and equipment thereby contributing to an enhanced capacity for automatic aid support;
- (3) Reduce duplicative equipment/apparatus from inventory;
- (4) Reduce operating costs;
- (5) Promote operational efficiencies;
- (6) Provide for enhanced resource response;
- (7) Achieve improved insurance ratings and lower insurance rates;
- (8) Establish compatible and standardized training and operating procedures/protocols to enhance automatic and mutual aid response;
- (9) Establish compatibility between equipment and apparatus inventories;
- (10) Establish full compatibility between bands and frequencies of radio communication equipment; and
- (11) Provide for a review of dispatch services to achieve coordinated and cost-effective joint dispatch services.

(c) Emergency Response from Closest Appropriate Resources.

Under the BDA concept, automatic and mutual aid for emergency services shall be based on closest appropriate resources, as directed through a joint dispatch center. Automatic and mutual aid for emergency services shall also support nonproximate calls for emergency services when the closest, proximate fire apparatus is unable to respond.

- (d) **Coordination with Joint Dispatch Command Center.** Policies related to implementation of boundary drop and automatic and mutual aid protocols shall be coordinated with dispatch protocols for the joint dispatch command center.
3. **Request for Assistance.** The Commanding Officer or Incident Commander at the scene of an emergency is authorized to request additional mutual aid assistance from the other agency when confronted with an emergency situation requiring additional resources in excess of what can be provided by the fire station in nearest proximity.
 4. **Response to Request.** Upon receipt of a request for resources from the joint dispatch center dispatching the incident, the Chief or designated Duty Officer shall satisfy the request by dispatching available equipment and personnel from the fire station closest in proximity to the scene of the emergency. In the event requested equipment and/or personnel are not immediately available from the closest proximate fire station, the Chief or designated Duty Officer shall immediately advise the dispatch center to dispatch equipment and personnel from the next closest fire station in proximity to the emergency.
 5. **Minimum Response Standards.** Personnel and equipment responding to a fire request shall include at a minimum one paramedic engine company and/or truck company defined and accredited by the local emergency medical authority and generally staffed by one Fire Captain, one Fire/Equipment Engineer or Paramedic Engineer, and one Firefighter or Paramedic Firefighter. Paramedic personnel shall be fully licensed and/or accredited by the responding area's medical authority.

- 6. Development of Boundary Drop Policy.** Prior to implementation of Boundary Dropping, Montclair and Upland agree to meet to develop a comprehensive Boundary Drop Policy that effectively addresses and resolves potential BDA implementation issues including command responsibility, communications, equipment (including hydrant, hose, and adaptor compatibility), and apparatus compatibility and standardization; equipment and apparatus acquisition standards and requirements; radio communications terminology; 911 technology and call routing; joint dispatch service; foreground strategies and procedures; tactical response; strike team response; joint training; jurisdictional restrictions; response times; insurance coverage; implementation of an automatic aid plan that incorporates provisions of the Boundary Drop Policy; and legal constraints. The Boundary Drop Policy shall be submitted to the governing bodies of Montclair and Upland for consideration and approval.
- 7. Distance Study/Response Time.** Prior to implementation of Boundary Dropping, but no later than June 1, 2014, Montclair and Upland agree to conduct a distance study to determine potential response times to incidents from fire stations within the BDA. The objective of the Distance Study is to determine the closest apparatus to an incident without regard to administrative/political jurisdiction and to map out a workable standard for response times within the BDA. Montclair and Upland recognize that various studies identify "ideal" response times for emergency calls. However, objective standards including performance measurement methodologies, call volume frequency, and proximity of apparatus to incident call points must be considered in developing

practical response time standards. Montclair and Upland agree to meet to arrive at a mutually recognized response time standard that will allow for the delivery of first (1st) advanced life support response (ALS) to critical medical patients within an acceptable response period ninety percent (90%) of the time.

The conduct of a distance study may demonstrate that sections of the BDA service area share overlapping coverage between fire stations.

8. **Dispatch Study.** Prior to implementation of boundary dropping, Montclair and Upland agree to evaluate current dispatch services to achieve seamless transition and implementation of the BDA concept. During the pilot period of this Agreement, Cities agree to consider and evaluate alternative approaches to providing dispatch services by considering and evaluating implementation of a jointly shared dispatch center or utilizing dispatch services provided through the County of San Bernardino or other available dispatch agencies capable of satisfactorily meeting dispatch service requirements.

The conduct of a study to evaluate alternative dispatch services may demonstrate a need to migrate away from the current provider of dispatch services; therefore, Montclair and Upland City Managers agree to meet and discuss any proposal to migrate to an alternative joint dispatch service and submit any such recommendation to their respective City Councils for consideration and action. It is unlikely that any decision to migrate to an alternative joint dispatch service would impact the cost distribution provisions of Section III(R)(1) of this Agreement or be in conflict with the provisions of Section III(A) of this Agreement.

Nonetheless, the City Managers of Montclair and Upland mutually agree to meet to consider and recommend to their respective City Councils any changes to the cost distribution provisions contained in Section III(R(1) of this Agreement.

O. Governance.

- 1. Governing Boards Retain Authority.** The Montclair and Upland City Councils will retain all policy-making authority for their respective Cities including approval of the annual budget for their fire departments.
- 2. Fire Chief Reports to City Managers.** The Fire Chief shall report to a committee comprised of the Montclair and Upland City Managers, or designees, who shall communicate with each other and meet, as necessary, to provide direction to, and supervision and evaluation of, the Fire Chief.
- 3. Fire Chief Directs Fire Departments.** The Fire Chief and shared command staff shall provide direction and supervision for the Montclair and Upland Fire Departments.
- 4. Direction to Respective City Staff.** The shared command positions described in this Agreement shall provide direction and supervision of sworn and nonsworn staff in their particular area of responsibility for both the Montclair and Upland Fire Departments, subject to the implementation strategy and time line described in this Agreement.
- 5. Fire Chief to Evaluate Performance of Subordinate Shared Positions.** The Fire Chief shall have sole authority for evaluating performance of all employees of the Upland Fire Department in subordinate shared positions under this Agreement. The Fire Chief, in consultation with the Montclair

City Manager, or designee, shall have authority for evaluating the performance of command staff positions in the Montclair Fire Department, and shall cooperatively work with the Montclair Deputy Fire Chief to evaluate the performance of all other Montclair Fire Department subordinate shared positions under this Agreement.

P. Policies and Procedures.

- 1. Retention of Personnel.** Montclair and Upland Fire Departments shall, to the extent possible, retain current personnel and operational policies and procedures contained in their respective Department policy manuals, Memorandums of Understanding (MOU's), and City personnel rules. Cities will cooperate in the consolidation of policies, where feasible.
- 2. Discretion Over Deployment Retained by Cities, Rights Reserved.** Montclair and Upland fire departments, under general direction of the Fire Chief, shall retain discretion over their station and company configurations and deployment strategies. However, both agencies shall, to the extent possible, work to achieve operational transparency and seamless integration in support of the terms and conditions of this Agreement. The Fire Chief may recommend operational modifications to each City. Montclair and Upland reserve the right to make respective budget, operational, and deployment decisions during the term of this Agreement. These decisions may include, but are not limited to, equipment replacement, deployment of personnel, and overtime. Montclair and Upland are, at all times, cognizant that implementation of certain decisions related to working conditions may require negotiations with respective employee bargaining groups.

- 3. Current Dispatch Service Retained.** Montclair and Upland mutually agree to retain the current Dispatch provider who shall continue to dispatch respective fire apparatus units using existing and/or modified policies and protocols that can best achieve an expansion of automatic and mutual aid services related to full implementation of boundary dropping to enhance service delivery between Montclair and Upland. However, nothing in this Agreement prohibits Cities from mutually exploring, selecting, and recommending to their respective City Councils the contracting with a different provider of Dispatch services to achieve economy of scale, greater efficiency, improved performance, and other qualifying reasons.
- 4. CAD to CAD Interface Essential.** Montclair and Upland agree to take the necessary actions to accelerate the installation of any CAD to CAD interface in order to increase the efficiency of communications between the two fire departments.
- 5. Information Technology Services.** Montclair and Upland agree to integrate and maintain, to the extent possible, required information technology services in support of fire protection services. Information technology services may be maintained separately, or either City may provide information technology services to the other City based upon an agreed rate for service support. Each City will be responsible for the cost of hardware and software acquisition installed in their respective Cities. Costs for data line services, voice, internet, fax, video, and other commonly shared communication services necessary to achieve the intent

and purpose of this Agreement shall be subject to cost-sharing provisions as defined in Section III(R)(1) of this Agreement.

6. **Policies and Procedures to be Complied With.** The Fire Chief and all shared command staff shall become familiar with, and comply with, all policies and procedures for both fire departments under their command.
7. **Joint Operational Patch.** The Fire Chief, command staff, and other personnel may be required to wear a new patch that contains the names of both fire departments as part of its design. The design of any new patch shall be subject to approval of the Montclair and Upland City Councils. Cities may also agree to incorporate identifying marking on equipment and apparatus that demonstrates the intent, purpose, and objectives of this Agreement.
8. **Discipline.** The final authority for discipline of respective employees engaged in the shared services, including command staff, and other employee relation matters incident to the performance of such services, shall remain with the employing City.
9. **Property Remains Possession of Each City.** Any and all property acquired under and pursuant to this Agreement by either City, whether by government grant funds or otherwise, shall be and at all times remain the property of that City without any division or distribution thereof upon termination of this Agreement, except as otherwise agreed upon in writing. However, in the event provisions of AB 678 apply, and Cities become eligible for Medi-Cal reimbursement funding administered and dispersed under provisions of the Affordable Health Care Act for America Act (H.R. 3962), the City Managers for Montclair and Upland shall meet to

discuss the impact of such reimbursement and whether it shall be subject to the terms and conditions of this Agreement or shall be applied individually and separately by each City without consideration of the terms and conditions of this Agreement.

- 10. Office Hours in Each City Staff Meetings.** To the extent practical, the Fire Chief and all other shared command staff shall establish and maintain office hours in both Cities sufficient to maintain an adequate presence and connection to both fire departments and agencies, as well as to maintain proper communication with, and supervision of, each City's sworn and nonsworn staff. The Fire Chief and shared command staff, in pursuit of implementing and effectively maintaining the provisions of this Agreement, shall conduct regular staff meetings to ensure adherence to, and satisfactory implementation of, the provisions herein, each and every one.
- 11. Fire Chief's Attendance at City Council Meetings.** The Fire Chief or his designee may be required to attend the City Council meetings of both Cities. In the event that the Montclair and Upland meeting dates conflict, the Fire Chief may be required to rotate his attendance between Cities, and shall assign a Chief Officer to provide representation at the City Council meeting he is not attending.
- 12. Fire Chief Attendance at Other Meetings.** The Fire Chief or designee may be required to attend and participate in the regular staff meetings, and other management staff functions of both Cities. In the event of meeting conflicts, the Fire Chief may be required to rotate his attendance

between Cities and shall assign a Chief Officer to attend any meeting he is not attending.

13. **Implement Procedures for Operational Readiness.** The Fire Chief, in conjunction with the City Managers and designated staff of Montclair and Upland, shall meet to coordinate, provide for, and implement procedures related to separate or joint sharing of operational, emergency, and community services, including, but not limited to disaster preparedness, swift water rescue, enclosed space rescue, emergency medical services, hazardous materials response, training, dispatch services, fire investigations, fire code inspections, public relations, automatic and mutual aid to neighboring communities, strike team response, mutual deployment coverage, and any and all services and programs related to the provision of fire protections services to the Montclair and Upland communities.

Q. Wages and Benefits.

1. **Different Wage and Benefit Structures Maintained.** Montclair and Upland recognize that the wages and benefits for the shared command positions differ between the two fire departments. Cities agree to retain sole discretion over the wage and benefit schedules for their respective employees during the term of this Agreement.
2. **Options to Ameliorate Differences Not Prohibited.** Nothing in this Agreement shall prohibit Montclair and Upland from considering options to address any differences in wage and benefit schedules in shared command positions. However, any action to address differences shall only occur in the event Montclair and Upland agree to extend this

Agreement beyond the two-year pilot period, and shall only occur upon consideration and action of the employing agency to address any difference, and by action by the respective City Council to approve a recommendation to resolve any such difference.

R. Shared Costs of Services.

1. **Proportionate Formula for Shared Services.** Montclair and Upland shall proportionately divide the mutually agreed upon shared costs for those employment positions defined and designated as shared command positions, shared administrative positions, and other positions mutually agreed to be shared between Montclair and Upland, subject to the cost-sharing provisions contained herein. For the purpose of this Agreement, Upland's proportionate share of costs shall be sixty-seven percent (67%) for all shared costs, and Montclair's proportionate share of costs shall be thirty-three percent (33%) for all shared costs. Personnel-related cost-sharing shall be subject to the provisions of Section III(R)(5) and Section III(R)(6) of this Agreement.
2. **Cities Responsible for Respective Employee Costs.** Montclair and Upland shall pay their respective employees in shared command positions through their respective and normal payroll process. Additionally, Montclair and Upland shall each provide benefits and training to their own employees in shared command positions and other positions through their respective and normal budgeting process.
3. **Shared Command and Administrative Positions Subject to Shared Costs.** Except as otherwise provided for by mutual agreement between Montclair and Upland, only those costs related to positions considered to

be part of the shared command structure and designated administrative positions, as set forth in this Agreement shall be considered subject to cost-sharing under this Agreement. However, nothing in this agreement shall prohibit Montclair and Upland from agreeing to share the cost of studies, joint training, shared equipment, dispatch services, and any other services, including professional services, related to successful implementation and performance of the terms and conditions of this Agreement and its successor agreements, and subject to the provisions of Section III(R)(1) of this Agreement.

4. **Quarterly Billing and Payment Cycle for Shared Costs.** Within 30 calendar days of March 31, June 30, September 30, and December 31 of each year this Agreement is in effect, Montclair and Upland shall each itemize its shared costs as defined herein and provide to the other City such itemization and invoice for the appropriate proportionate share of the shared costs of services. Each City shall provide payment of the invoiced amount within thirty (30) calendar days of receipt of the invoice.
5. **Components of Shared Costs for Services.** Shared costs of services shall include the following:
 - (a) **Wages.** Wage costs including straight time and overtime earned by employees in the shared command positions during the quarter.
 - (b) **CalPERS.** Payment to CalPERS for service time provided by employees in the shared command position during the quarter.
 - (c) **Insurance.** City contributions for medical insurance, dental insurance, vision insurance, long-term disability insurance, life

insurance, and employee assistance coverage afforded to employees in the shared command positions during the quarter.

(d) **Training.** City costs for training of employees in the shared command positions.

6. **Exclusions from Shared Costs.** The shared costs of services shall exclude:

(a) **Leave.** Conversion of accrued compensatory time, vacation, holiday, and sick leave to cash.

(b) **Workers' Compensation.** Workers' Compensation payments.

(c) **4850 Leave.** Employees receiving state 4850 wage and leave benefits shall be excluded from shared costs.

(d) **Deferred Compensation.** City contributions to deferred compensation plans.

(e) **Health Savings Plans.** City contributions to retirement health savings plans and wellness programs.

(f) **Severance.** Severance pay.

(g) **Retirement Benefits.** Retirement-related pay and benefits, including leave time conversions.

(h) **Settlements.** Settlement payments related to any and all employee claims, awards, and arbitrator and court decisions.

(i) **Industrial Disability.** Industrial Disability Retirement and Disability Retirement related pays.

(j) **Long-Term Disability.** Long-term disability payments.

- (k) **Attorney Costs.** Attorney's fees, arbitrator costs, and any cost components related to employee claims, filings, lawsuits, and other legal and extra-legal actions against the employer.
 - (l) **Investigations.** Costs related to hiring investigators.
 - (m) **Education.** Payments made to employees to reimburse education or tuition expenses and education incentive pay.
 - (n) **Longevity.** Longevity and service award pay.
 - (o) **Vehicle Allowance.** Payments made to employees as monthly vehicle allowances and mileage reimbursement.
 - (p) **Travel.** Costs related to travel, including mileage, hotels, meals, communications, vehicle rental, fuel, insurance, transportation, and miscellaneous.
 - (q) **Uniform Allowances.** Payments made to employees as uniform allowances.
 - (r) **Special/Premium Pays.** Any and all special and premium pays beyond base wages.
 - (s) **City Vehicles.** Vehicle maintenance, insurance, registration, fuel, and operation costs for City-owned vehicles utilized by employees in the shared command positions.
 - (t) **Grant Match.** Local match on grants.
 - (u) **Other.** All other forms of compensation and payment for services not included in Section III(R)(5), above.
7. **Sharing of Reimbursed Costs.** If any shared costs of services are reimbursed from another source, such reimbursement shall be divided

between Montclair and Upland based on the agreed proportionate shares set forth in Section III(R)(1) of this Agreement.

8. **Audit.** Either City may request a comprehensive year-end audit process that would serve to verify the validity of all billings for services to be shared by the Cities. The cost for the audit shall be shared equally between Montclair and Upland, with each City paying fifty percent (50%) of auditing costs.

S. Liability and Insurance Provisions.

1. **Workers' Compensation Insurance.** Each City shall obtain and maintain Workers' Compensation coverage for all employees who may provide any services to the other City for the duration of this Agreement. Such coverage shall encompass the entire scope of duties of each employee to be performed hereunder, including shared services to be performed by any employee, as required by this Agreement. It is the intent of the Parties that both Cities be considered to have secured Workers' Compensation coverage pursuant to Labor Code Section 3602(d). Each City may self-insure to these limits of coverage. Notwithstanding the provisions of Section III(T)(1) and (2) of this Agreement, each Party shall indemnify, defend, and hold harmless the other Party regarding any claims or suits by employees of either Party for injuries arising from the performance of services under this Agreement.
2. **Apparatus/Equipment Insurance.** Each City shall obtain and maintain insurance coverage to replace or repair its own fire department equipment and facilities. Such insurance coverage shall be maintained in accordance with each City's own policies and procedures, and each City

shall not be responsible for any property loss of the other City. Each City may self-insure to satisfy the requirements of this subsection.

3. **Liability Insurance/Additional Insured.** At all times during the term of this Agreement or any extension thereof, each City shall maintain automobile liability coverage and comprehensive general liability insurance, including employment practices coverage, in a mutually acceptable form covering all services provided pursuant to this Agreement with applicable single limits of at least \$20,000,000 per occurrence, which policy(ies) shall name the other City, its elected officials, officers, employees, and volunteers as additional insured. 4.

Proof of Coverage. Upon request, each City shall provide the other with evidence of coverage to fulfill its insurance obligations under this Agreement, and shall promptly notify each other of any change of coverage, terms, limits, or providers. Each City waives the right of subrogation against the other. Each City may self-insure to satisfy the requirement of this subsection.

T. Mutual Indemnification.

1. **Montclair to Indemnify Upland.** To the maximum extent permitted by law, Montclair shall defend, indemnify, and hold harmless Upland, its elected officials, officers, employees, and volunteers, with respect to any and all losses, liabilities, damages, including property damages and damages for bodily injury or death, costs and expenses, and payment of reasonable attorneys' and experts' fees and costs, actually or allegedly arising out of the acts or omissions of Montclair or those of any of its elected officials, officers, employees, or volunteers, in performance of

this Agreement. However, if an act or omission is actually or allegedly attributable to a Montclair employee in a shared command position or other shared position in the course of performing services for the Upland Fire Department, then Upland shall have the duty to defend, indemnify, and hold harmless Montclair, and its elected officials, officers, employees, and volunteers. A Montclair employee in a shared command position or other shared position shall be deemed to have been in the course of performing services for the Upland Fire Department if, absent this Agreement, those services would have been performed by Upland Fire Department command staff or other shared position.

2. **Upland to Indemnify Montclair.** To the maximum extent permitted by law, Upland shall defend, indemnify, and hold harmless Montclair, its elected officials, officers, employees, and volunteers, with respect to any and all losses, liabilities, damages, including property damages and damages for bodily injury or death, costs and expenses, and payment of reasonable attorneys' and experts' fees and costs, actually or allegedly arising out of the acts or omissions of Upland or those of any of its elected officials, officers, employees, or volunteers, in performance of this Agreement. However, if an act or omission is actually or allegedly attributable to an Upland employee in a shared command position or other shared position in the course of performing services for the Montclair Fire Department, then Montclair shall have the duty to defend, indemnify, and hold harmless Upland, and its elected officials, officers, employees, and volunteers. An Upland employee in a shared command position or other shared position shall be deemed to have been in the

course of performing services for the Montclair Fire Department if, absent this Agreement, those services would have been performed by Montclair Fire Department command staff or other shared position.

3. **Party to Provide Defense.** In the event either party is required by this subsection to provide a defense, then the party to whom a defense is being provided shall be represented by legal counsel of its choice.
4. **Notification by Party Seeking Indemnification.** Each City shall promptly notify the other of any and all claims or actions for which it seeks indemnification, defense and/or liability insurance coverage pursuant to this Agreement. The provisions of this Section III(T)(1) and Section III(T)(2) of this Agreement shall survive the termination or expiration of this Agreement.

U. Dispute Resolution.

Any disputes concerning the interpretation or application of this Agreement and any claim arising out of this Agreement shall be resolved as follows:

1. **Administrative Remedies.** Disputes regarding the interpretation or application of this Agreement shall first be submitted to the City Manager of each City for investigation and resolution. The City Managers will make a good faith and reasonable effort to reach an agreeable resolution. Any disputes that cannot be resolved in that manner shall be submitted to nonbinding arbitration as set forth below.
2. **Formal Remedies.** In the event the administrative remedy does not resolve the dispute, the injured City may, but is not required to as a condition of pursuing any legal remedies, serve a demand for arbitration on the City claimed to be in default ("Defaulting City"). The Cities will

continue to perform obligations under this Agreement so long as the Defaulting City diligently commences to cure the alleged default. In the event there is imminent danger to the public health, safety, or general welfare resulting from the default, the Defaulting City shall take immediate action to cure the immediate threat.

3. **Nonbinding Arbitration.** Within ten (10) business days of receipt of the demand and provided the default remains uncured, the matter shall be submitted to nonbinding arbitration. The Cities shall make reasonable efforts to jointly select an arbitrator using any reasonable method including selection by chance. The arbitration shall be conducted in accordance with the California Arbitration Act (Code of Civil Procedure Section 1280 *et seq.*). The arbitrator shall render a decision with written findings. The costs of arbitration (excluding each City's own costs) shall be borne by the Cities equally. Either City that is not satisfied with the arbitrator's decision shall be entitled to pursue all remedies available in a court of law or equity.

V. Representatives' Authority; Notices.

1. **Representative for Administration of Agreement.** Each City's representative for purpose of administration of this Agreement, including provision of consent or approval where permitted or required, shall be each City's City Manager and/or designee thereof. The Cities recognize that to maximize the effectiveness of this pilot program, it may, from time to time, be necessary to amend the operational specifics set forth herein, or any other provision of this Agreement for the benefit of the Cities. The provisions of this Agreement may be amended in writing

executed on behalf of both Cities by each of their City Councils.

However, at the discretion of the City Councils of Montclair and Upland, authority to amend the operational specifics as set forth herein may be delegated to the respective City Managers of Montclair and Upland; provided, however, nothing in this Agreement shall authorize either City Manager to agree to any modification of this Agreement that would result in a change to the division of shared costs set forth in Section III(Q)(1) and R(1) without the approval of the City Council of each City.

2. **Notice to be Given.** Any notice required or permitted to be given or served pursuant to this Agreement shall be effected by personal delivery of the same as follows:

To Montclair:

City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763

To Upland:

City Manager
City of Upland
460 North Euclid Avenue
Upland, CA 91786

Service of the notice shall be effective immediately upon delivery during normal business hours. The foregoing addresses for notice may be modified by either City giving written notice of such modification to the other City and calling specific attention to this Agreement.

W. Independent Contractor.

No officer or employee of either City shall for any purpose be deemed to be an employee or employee of the other, and no officer or employee of either City

shall be entitled to participate in any insurance, medical care, vacation, sick leave or other benefits provided to the other City's officers or employees. No officer or employee of either City shall have any power to incur any debt, obligation, or liability on behalf of the other City or otherwise act on behalf of the other City as an agent, except to the extent expressly provided herein. No officer or employee of either City shall, at any time or in any manner, represent that he or she is in any manner an agent or employee of the other City, except to the extent expressly provided herein.

X. General Provisions.

1. **No Waiver.** No delay or omission in exercising any right or remedy pursuant to this Agreement shall impair such right or remedy or be construed as a waiver thereof. All rights and remedies pursuant to this Agreement shall be cumulative, except with respect to any right or remedy expressly stated to be exclusive.
2. **Compliance with All Laws.** Both Cities shall comply with all applicable local Ordinances, and state and federal statutes, laws, and regulations including, but not limited to, laws governing conflicts at all times during the performance of this Agreement.
3. **No Third Party Beneficiary.** It is each City's intent that nothing in this Agreement shall create any third-party beneficiary rights.
4. **Force Majeure.** Neither City shall be considered to be in default in the performance of any material obligation under this Agreement when a failure or performance shall be the result of a Force Majeure event. A Force Majeure event shall mean any cause beyond the reasonable control of the affected City and which by the exercise of due diligence such City

could not reasonably have been expected to avoid and which it has been unable to overcome. Neither City shall be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to matters under its control which it fails to remedy within a reasonable time period. Either City rendered unable to fulfill any of its obligations under this Agreement by reason of a Force Majeure event shall give prompt written notice of such fact to the other City. During such period, both Cities shall cooperate to ensure that critical services are maintained, while the affected City shall diligently work to restore its services required by this Agreement.

5. **Severability.** In the event that any clause or provision of this Agreement or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Agreement shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either City hereunder.
6. **Integrated Agreement.** This Agreement, which includes the recitals and all exhibits and attachments, constitutes the entire understanding of both Cities with respect to the subject matter herein. No representation, express or implied, that is not set forth herein shall be binding or have any force or effect.
7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be original, and all of which together shall constitute one and the same Agreement. A

signature delivered by facsimile shall be deemed to be an original signature and shall be effective upon receipt thereof by the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

CITY OF UPLAND

Dated: _____

By: _____

Ray Musser
Mayor

Attest:

Dated: _____

By: _____

Stephanie A. Mendenhall
City Clerk

Approved as to Form:

Dated: _____

By: _____

Kimberly Hall
City Attorney

CITY OF MONTCLAIR

Dated: _____

By: _____

Paul M. Eaton
Mayor

Attest:

Dated: _____

By: _____

Yvonne L. Smith
Deputy City Clerk

Approved as to Form:

Dated: _____

By: _____

Diane E. Robbins
City Attorney

**MINUTES OF THE REGULAR MEETING OF THE
PUBLIC WORKS COMMITTEE HELD ON THURSDAY,
NOVEMBER 21, 2013, AT 2:00 P.M. IN THE CITY
HALL CONFERENCE ROOM, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Chair Paulitz called the meeting to order at 2:00 p.m.

II. ROLL CALL

Present: Chair Paulitz; Committee Member Eaton; Public Works Director/City Engineer Hudson; Public Works Superintendent Mendez; Facilities and Grounds Superintendent McGehee; Office of Public Safety/Police Chief deMoet

Absent: Deputy City Manager/Director of Economic Development Staats; Director of Community Development Lustro

Also Present: Resident Guillermo Ortęga

III. APPROVAL OF MINUTES

A. Minutes of the Public Works Committee Meeting of August 15, 2013

Chair Paulitz had a question on the minutes.

A. Item X. F – Central Avenue/UPRR Grade Separation Reconstruction

He was curious on how there could be a difference of opinion on something that could be objectively determined. Public Works Director/City Engineer Hudson said Caltrans feels the deck can be replaced on top of the existing columns and that it is without any benefit of structural analysis. Caltrans feels the deck could just be replaced and the columns kept the way they are. The structural engineer that was hired by the City said the columns are problematic so the deck cannot simply be replaced. There are structural issues with the columns. The structural engineer submitted a back-up application to Caltrans for review. There was more discussion on this item as part of Item X. G.

The Public Works Committee approved the minutes of the Public Works Committee meeting of August 15, 2013.

IV. PUBLIC COMMENT

Guillermo Ortega, a resident of Montclair was in attendance to discuss his previous speed hump request. The discussion took place under Item V.A. below.

V. TRAFFIC SAFETY/CIRCULATION ISSUES

A. Signal Timing (added item)

Committee Member Eaton asked when the last time the timing of signals was changed. Public Works Director/City Engineer Hudson advised the Committee that no signal timing changes have been made in a couple of years. The last change was made at Palo Verde Street and Central Avenue. An overall timing change has not happened in many years. Committee Member Eaton's biggest complaint is at the signal at San Bernardino Street and Central Avenue; he feels he is sitting there for quite a while before the light changes. Staff has applied for grant funds for this intersection. The request is to put in protective left turns in all directions. [Note: Subsequent to this meeting, the City was advised that its request for federal funds for highway safety improvements had been approved. Design of the improvements discussed herein has already been completed, but will need to be updated by the City's Traffic Engineer.]

Chair Paulitz asked about the timing for pedestrians walking across the street. He said that there is enough time to cross the street, but that there is generally only about five seconds of "WALK." Public Works Director/City Engineer Hudson said that typically there is approximately five seconds of the "WALK" time, followed by the flashing "DON'T WALK." The amount of time for the flashing "DON'T WALK" is dependent upon the street width and the average walking speed (4.0 feet per second). As soon as the traffic light turns yellow, the flashing "DON'T WALK" will change to a solid "DON'T WALK" and there is still 3-4 seconds during that yellow light to continue across the street. There is some talk about the pedestrian speed being reduced to 3.5 feet per second. If it is reduced then all of the signal timing throughout the city will have to be changed. The last time it was changed there was a cost of approximately \$25,000 to analyze all of the intersections and implement the timing changes.

B. Crossing Guard Request Vernon Avenue and Benito Street (added item)

At Vernon Avenue and Benito Street a request came in from a resident for an evaluation for a crossing guard. The problem is the kids; they will keep walking and make the cars wait. Crossing guards are not typically used for middle schools but if it is causing an issue then there is nothing that says crossing guards cannot be placed there. The pedestrian traffic is associated with Vernon

Middle School mainly at the time they get out of school. Between 2:00 p.m. and 2:30 p.m. there is a stream of kids coming from the middle school. They are mainly on the east side of Vernon crossing at Benito Street. It is a four-way stop sign with a crosswalk. Officer Graziano, the school resource officer, did an informal traffic count a few days ago and within a 30-minute period he counted 400 kids. The warrant at a controlled intersection requires 40 kids and 500 vehicles within a two-hour period. Public Works Director/City Engineer Hudson will go ahead and do a warrant on the intersection.

VI. POLICE DEPARTMENT UPDATES/ITEMS

A. Traffic Enforcement (added item)

Currently there is not a dedicated traffic enforcement team so Office of Public Safety/Police Chief deMoet is trying to bring it back to the Police Department. They have been waiting for the Office of Traffic Safety (OTS) to open up the grant period. They are going to request funds for a motor program and maybe some additional funds for training, public awareness, and public education. If grant funds cannot be obtained through OTS then motorcycles will be budgeted in the next fiscal year. The Police Department is almost fully staffed so once they are they should be able to get a motorcycle officer for enforcement. At one time the department was down 12 officers for patrol so 1/3 of the patrol force was either out on injury or vacancy. There are six officers who are out on administrative leave or long term injuries. There are five officers currently in training. In the next six months there will be 50 officers for patrol. They would go under Community Relations Divisions so they will deal with school education, pedestrian bicycle safety programs, DUI checkpoints and things of that nature. There will be a public awareness and public education concept.

VII. COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS

Committee Member Eaton asked about the development going on, at Arrow Highway just east of Central Avenue. Public Works Director/City Engineer Hudson reported that it is a warehouse originally being built on spec but now it has been sold.

VIII. PUBLIC WORKS DEPT.-MAINTENANCE ACTIVITIES UPDATES/ITEMS

A. Maintenance Reports

Everything is going good.

B. Discuss City Wide Carwash Contract with House of Carwash

Vaskin, the owner of House of Carwash at 5064 Holt Boulevard, is requesting a price increase. There is currently no written agreement between the City and House of Carwash. Currently the City pays \$699 per month for unlimited washes of all City vehicles. Vaskin cannot afford to continue to wash the vehicles at that price. There is

an average of 120 vehicles per month being washed which works out to be about \$5.83 per vehicle. Sometimes the driver of the vehicle gives the person who cleans the vehicle a tip, but 80 percent of the vehicles that go to the carwash are from the Police Department. Cadets take the vehicles 70 percent of the time and they are not able to tip out of their own pockets every time they go. Vaskin is requesting a flat fee per vehicle of \$10.00. \$1.00 out of the \$10.00 fee would go towards the tip for the person drying the vehicle. There would be a carbon copy receipt with three parts to it so when a car comes in the unit number and the drivers name will go on the receipt and then the person will sign it. The receipts will then go to the supervisor and at the end of the month the supervisor will send them to Public Works Superintendent Mendez and he will pay the bill

As an alternate Public Works Superintendent Mendez went to Metro Express Car Wash at Metro Honda. It is \$6.00 for a carwash but the problem is if there is any exterior lighting on the outside of the vehicle or any antennas that cannot easily be taken off they cannot go through the carwash. Most of the police vehicles and a few of the public works vehicles have lighting and antennas that cannot be removed. They have vacuums in the back so each person would have to vacuum their own vehicle. The inside of the windows are not getting cleaned, the interior is not getting wiped down, and it is not getting vacuumed unless the person in the vehicle does it. The Committee doesn't see a problem with a pay increase for House of Carwash. The fiscal impact would be a \$500 a month increase.

C Metal Theft around the City (added item)

Facilities and Grounds Superintendent McGehee reported on continuing metal theft issues in the City.

On the Central Avenue overpass south of Holt Boulevard the wires have been stolen twice from the light poles and pull boxes. The wires have been replaced once before and it cost \$1,500. It now has to be replaced a second time and will cost an additional \$1,500. Thieves are opening the pull boxes and pulling the wires out. These lights are owned by the City instead of Southern California Edison, so when the wire is stolen it is the City's responsibility to replace the wires. Staff is considering installing a cover that has special security screws and keys cannot be made or bought to fit. The cover is also reinforced so it cannot be broken off. The pull box drops a stainless steel plate inside.

A second item reported on was the vandalism of double detector check assemblies (DDCAs). Although the City has not been hit with this type of vandalism, various businesses in the City have. It is likely only a matter of time before the City is hit. A DDCA is part of the fire sprinkler system for a building. The DDCA typically includes a large threaded brass stem that sticks out the front or top of the

DDCA. Metal thieves can cut off the brass stem and sell it. In order to replace it, it costs between \$500 and \$800. There is a company that makes a cover for the brass stem. The cover is made of steel with a cable that wraps tightly around the back side of the operating valve. It has a lock on top that is hard to cut off. To protect everything, it costs approximately \$500 per device. To cover all seven of the City's DDCA's it will cost \$3,500.

To purchase and install tamper resistant covers for the Central Avenue lighting system, replace the wire that was previously stolen, and to purchase and install the DDCA protective covers, the cost is approximately \$10,000. The Public Works Committee recommended that the City Council appropriate \$10,000 from Contingency Fund for these items.

IX. PUBLIC WORKS DEPT. ENGINEERING DIVISION UPDATES/ITEMS

A. Speed Humps on Ramona Avenue between Moreno Street and San José Street - Update

Staff has been dealing with this issue for a few months now. Traffic counts and speeds were originally taken on Ramona Avenue between San José Street and Moreno Street. It was determined that there was a speeding problem. The results were very marginal in meeting the City's speed hump criteria. The 85th percentile speed was just under the 30 mph threshold. The total daily traffic volume was approximately 970-980, which is just under the 1,000 threshold. Staff looked at it more thoroughly and in looking at the intersection staff felt that there was a blind spot. Initially one stop sign was installed for Alessandro Street at its intersection with Ramona Avenue, and with City Council authorization additional stop signs were installed on Ramona Avenue at this same location. After the stop signs were installed, traffic counts and speeds were again analyzed. The traffic volumes are well under 1,000 vehicles per day. The stop sign has deterred some vehicles from driving on Ramona Avenue. Two different surveys were done on the speed. One survey showed that the speed had gone up a small amount while the second showed that it had decreased slightly. Public Works Director/City Engineer Hudson stated that because the volume warrant was now nowhere close to meeting the minimum threshold, his recommendation to the Committee is not to install speed humps. The issue would better addressed with increased enforcement.

Mr. Guillermo Ortega said when the counters were placed the second time vehicles would slow down because they thought there were cameras attached to the counters. He also advised that people are still not stopping at the stop signs. The residents have called the Police Department and officers will come by to patrol the area. Officers have cited people for speeding or not stopping at the stop signs. After the stop signs were installed officers were there to write

tickets for failing to stop at the stop signs. It is the worst between 6:30a.m. - 7:30a.m. and 4:00p.m. - 5:30p.m.

Director of Office of Public Safety/Police Chief deMoet suggested setting up the radar trailer or leaving an empty police vehicle parked there to deter people from speeding or running the stop signs. The first course of action is to put somebody there in an unmarked police vehicle to get an observation of what is going on. Generally the speed is at or below 30 mph but during the morning hours (7:00 a.m.-9:00a.m.) it peaks at 33-34 mph. The speed limit is painted on the street. Public Works Director/City Engineer Hudson suggested that the police keep track of the citations that are written for speeding and for failure to stop at the stop sign, and staff will put the traffic counters out periodically between now and March 2014 to monitor the traffic volumes and speeds. All the information can be presented in March 2014. The Committee recommends trying police enforcement for a few months to see if it deters people and bring the item back to the Committee in March to see if the problem is still happening.

B. Speed Humps on Bandera Street between Monte Vista Avenue and Central Avenue – Request

Traffic counters have been placed on Bandera Street. The volume is in excess of 1,200 vehicles per day which exceeds the threshold. The street width is 36 feet and it meets the criteria since it is less than 40 feet. The speeds are extremely high. The 85th percentile speed is in excess of 30 mph. Director Office of Public Safety/Police Chief deMoet suggested installing stop signs at a few of the intersections along Bandera Street between Monte Vista Avenue and Central Avenue. The stop signs will probably not meet the warrants based on traffic volume and they are not generally used as speed control. A lot of cities do use them for speed control and they have proved effective in getting people to use alternative routes or at least slow down. The resident making the request has requested either stop signs or speed humps. Public Works Director/City Engineer Hudson would prefer to use stop signs rather than speed humps. If the Committee concurs, he would like to bring it to the City Council with a recommendation to install the stop signs at Fremont Avenue and Bandera, and to continue monitoring the speeds to see if there is a reduction in volume and speed. If the stop signs do not work then speed humps will be looked at.

C. WQMP Permit – Animal Waste

The municipal storm water permit that is in place now mandates that all permittees have ordinances that deal with animal waste within their jurisdiction. It is due to the pathogens and bacteria which impair water quality. The San Bernardino County Flood Control District as the permittee conducted a survey of all the co-permittees and most of them did have an ordinance dealing with

animal waste. Montclair is one of the few cities that does not have an ordinance. In order to comply with the municipal storm water permit there needs to be an ordinance to regulate animal waste and it would require the owner or the handler of the animals to pick up after their animals on public or private property. Not having this ordinance would put Montclair in non-compliance with the permit which could result in enforcement actions from the Regional Water Quality Control Board. An ordinance will be drafted and will be submitted to the Committee first before it goes to City Council for the public hearing process.

X. CAPITAL PROJECT UPDATES

City Engineer Hudson reported the status of the following capital improvement projects:

A. MONTE VISTA AVENUE/UPRR GRADE SEPARATION PROJECT

Public Works Director/City Engineer Hudson went over a drawing showing the existing layout of the Monte Vista Grade Separation and the possible changes Union Pacific Railroad (UPRR) and Caltrans are requesting.

There was an agreement with UPRR that was signed in 2002 and it said the agreement would be null and void if the construction did not start within two years. In 2003 the State withdrew the funding for this project so it was not possible for the project to start within the two year period. Consequently the agreement is null and void so another agreement needs to be done with UPRR. Now UPRR would like the City to construct a clear span structure. Referring to the drawing, Mr. Hudson said that there are no supporting piers anywhere within the railroad right-of-way, resulting in a very lengthy span and tall structure. Since there is no room to put a pier or abutment in State Street, the City would have to span all the way to the south line at State Street which is a distance of 290 feet. It is possible to construct it but instead of going with a section that is about five feet thick it would be about 16 feet thick. Since there has to be clearance off the railroad track of about 24 feet, the bridge soffit can't be lowered, the bridge deck has to be raised. The approaches will daylight north of the Holt Boulevard intersection and south of the Mission Boulevard intersection.

The construction will now exceed the environmental clearance limits so the NEPA and CEQA process would have to be redone. Under both NEPA and CEQA the project was a categorical exclusion and categorically exempt which means there really was not much mitigation that had to be done. The fact that the City did not have to go beyond Holt Boulevard and Mission Boulevard made the environmental clearance a little bit clearer and easier for the City. If the City has to go from north of Holt Boulevard to south of Mission Boulevard, the City may not have the categorical exemption or the

exclusion; it could instead be looking at an environmental impact statement under the NEPA process and an environmental impact report under the CEQA process.

Staff had a meeting with UPRR a week ago after its response to the bridge selection report said it had to be a clear span structure. A clear span structure cannot be done because the cost is going to be considerable. It would take about three years to get through the environmental and another couple of years for design; so the earliest construction could start would be approximately five years. In the meeting last week staff suggested another alternative which Public Works Director/City Engineer Hudson went over on the board. It has a single column and it is more or less centered between abutments. The bridge section will be thicker. UPRR said if the City wanted to go with a two-span structure they would take a look at it.

After the meeting UPRR informed the City's consultant that they might be willing to consider this location more or less center. It gives a balanced design and each span is about the same length so each thickness will be about the same. Staff is amending the bridge selection report to go with a two-span structure with the span in the center with an alternative for it being against the storm drain channel. Public Works Director/City Engineer Hudson would like to increase the slope on the approach slab. Instead of the current six percent design he would like to increase it to 7.5 percent and try to daylight at the same point. As long as it can daylight at the same point on both ends, then it is consistent with the environmental approval for both CEQA and NEPA then there should be no problems getting it through Caltrans plan checking. UPRR would like to expand its tracks in the future. Assuming that UPRR accepts the two-span structure and the City can design it accordingly, it is a project that will cost a little bit more. Hopefully, there will be enough funds from SANBAG through the projects of national and regional significance under the Federal Transportation Program.

The City does not have a standard for maximum slopes because it has never been a problem, most slopes in the city do not exceed a three percent slope with exception to approaches over railroad tracks. The approach on the Central Avenue overhead is 7.5 percent and there have not been any complaints about that.

One last issue with the railroad was discussed. Up wrote the City saying that if the City were willing to forgo the UP contribution to the project, then UP might be willing to reconsider the three-span alternative. The City cannot forgo the UP contribution because the City is receiving Section 190 funds which is the CPUC Grade Separation Program; it requires a UPRR contribution of ten percent or five percent if there are federal funds involved. Without federal funds the bridge would not be able to be built.

The project will be extended two years because the design has to be completely re-done none of the current design can be used. This issue developed in the last two months when UPRR wanted a clear span structure. When staff met with UPRR two months ago they did say that if it was impractical or infeasible for the City then they would reconsider. The City did show how it was impractical and that was based on time and cost neither of which was a concern to UPRR.

Another issue affecting the project is the completion of the design. For the last three months Public Works Director/City Engineer Hudson has been trying to get Caltrans to allow the City to continue using AECOM as the design engineer. The City went through a consultant selection process in 2001 in accordance with Caltrans Local Procedure Manual (LAPM). After interviewing and evaluating several proposals and consultants LAN Engineering Corporation was chosen. They have done all of the work to date, but in 2009 LAN Engineering Corporation was bought out by AECOM. It is the same engineering company and up until recently it was the same principal in charge for this project. Caltrans has asked for a lot of different information regarding the original selection process which staff has provided. The most recent request is something that will be impossible to provide or comply with. They want to know what the Disadvantaged Business Enterprise (DBE) Goal was and whether or not the consultant met the DBE goal when the consultant was originally selected.

DBE goals are only required when there is federal funding and this project had no federal funding so there was no goal; LAN Engineering did not have any DBEs as part of its project team. It is impossible to comply with and now has created a problem between the City and Caltrans. Public Works Director/City Engineer Hudson replied to Caltrans about what he thought about their Local Assistance Program and how it was creating road blocks for the City.

The City may have to start this project from scratch. Another RFQ or RFP may be required to select a consultant and meet the DBE goal. It can be put in a RFP process now and a consultant can be selected and it may be AECOM. Public Works Director/City Engineer Hudson's recommendation is to select a new consultant due to the problems with Caltrans and UPRR and start the project from the beginning.

B. MONTE VISTA AVENUE WIDENING PROJECT - MISSION BOULEVARD TO HOWARD STREET

This project will widen Monte Vista Avenue on the east side between Mission Boulevard and Howard Street. The design is complete and the authorization to advertise was approved at the previous City Council Meeting. Staff is waiting on Southern California Edison and then the project will be ready to advertise.

C. RAMONA AVENUE PAVEMENT REHABILITATION-MISSION BOULEVARD TO PHILLIPS BOULEVARD

This project resurfaced a portion of Ramona Avenue south of Mission Boulevard to Phillips Boulevard. The project is complete and a Notice of Completion will be presented at the next City Council Meeting.

D. NORTHEAST MONTCLAIR PAVING PROJECT

Work included removal and replacement of curb, gutter, and sidewalk; construction of new pedestrian ramps; pavement grinding; installation of new asphalt concrete pavement; and replacement of traffic striping. Project limits were from San Bernardino Street on the south, Rose Avenue on the west, San Jose Street on the north, and Benson Avenue on the east. The project is now complete and staff received a lot of compliments regarding this project.

E. COMMUNITY CENTER RESTROOMS

In the Community Center the restrooms were not ADA compliant and were inadequate for the size of the building. New restrooms were built and have been in service for a couple of months. The old restrooms will eventually be converted to storage closets. There were some quality issues that needed to be addressed and some of the items have been accepted the way they are. The Building Division does have a few issues as well such as the exit signs being relocated. This work was not originally part of the restroom project so staff is not going to have this contractor do the work. It will be done as part of the recreation building remodel. A Notice of Completion should be presented at the next City Council meeting.

F. RECREATION BUILDING REMODEL

This project will update some of the facilities in the Recreation Building. The restrooms and showers will be updated; installation of an employee restroom; install sink and plumbing in employee break room. The project is funded by Community Development Block Grant (CDBG) funds. Most of the funds will be from this fiscal year but the City will have to rely on funds from the next fiscal year as well. The design can be completed in less than six months but staff is going to drag it out to ensure the City receives the funding from CDBG next year.

G. CENTRAL AVENUE/UPRR GRADE SEPARATION RECONSTRUCTION

This reconstruction will have the same problem the Monte Vista Avenue Bridge is having. The Central Avenue Bridge is a six span structure and it has five sets of piers that support the deck. When it comes time to do the agreement with Union Pacific Railroad (UPRR) they are going to start with a clear span structure and the right-of-

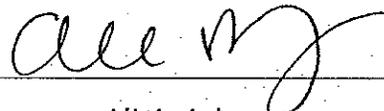
way is over 400 feet. It is going to be a lot more expensive than the current \$18 million budget. UPRR will probably not approve six spans across their right-of-way. Staff is working with Caltrans to approve the concept of replacing the entire structure rather than just replacing the deck. If UPRR does not allow five piers across their right-of-way and if piers have to be eliminated then replacing the deck cannot be an alternative.

XII. ADJOURNMENT

The next Public Works Committee Meeting has been cancelled. The next meeting of the Public Works Committee will be at 2:00 p.m. on January 16, 2014.

At 3:40 p.m., Chair Paulitz adjourned the meeting.

Submitted for Public Works Committee approval,

A handwritten signature in cursive script, appearing to read "Alicia Johnson", written over a horizontal line.

Alicia Johnson
Transcribing Secretary

MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
DECEMBER 2, 2013, AT 7:45 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor Pro Tem Ruh called the meeting to order at 7:45 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Ruh; Council Member Raft; and City
Manager Starr

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of
November 17, 2013.

Moved by City Manager Starr, seconded by Council Member Raft,
and carried unanimously to approve the minutes of the Personnel
Committee meeting of November 17, 2013.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

At 7:46 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 8:03 p.m., the Personnel Committee returned from Closed Session.
Mayor Pro Tem Ruh stated that no announcements would be made at
this time.

VI. ADJOURNMENT

At 8:03 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager



MINUTES OF THE REGULAR JOINT MEETING OF THE
MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY
AND MONTCLAIR HOUSING CORPORATION BOARDS,
AND MONTCLAIR HOUSING AUTHORITY COMMISSION
HELD ON MONDAY, DECEMBER 2, 2013, AT 7:00 P.M.
IN THE CITY COUNCIL CHAMBERS, 5111 BENITO
STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chairman Eaton called the meeting to order at 7:00 p.m. and asked that everyone please silence their electronic devices as a courtesy to others while the meeting is in session.

II. INVOCATION

Pastor Josh Matlock, Bethany Baptist Church, gave the Invocation.

III. PLEDGE OF ALLEGIANCE

Council Member/Director Raft led those assembled in the Pledge.

IV. ROLL CALL

Present: Mayor/Chairman Eaton; Mayor Pro Tem/Vice Chairman Ruh; Council Member/Director Raft; City Manager Executive Director Starr; Deputy City Manager/Economic Development Executive Director Staats; Director of Community Development Lustro; Director of Public Works Hudson; Director of Finance Parker; City Attorney Robbins; Deputy City Clerk Smith

Absent: Council Member/Director Paulitz (excused); Council Member/Director Dutrey (excused)

V. PRESENTATIONS - None

VI. PUBLIC COMMENT - None

VII. PUBLIC HEARINGS

A. **Second Reading - Consider Adoption of Ordinance No. 13-938 Amending Specific Chapters of Title 10 of the Montclair Municipal Code Related to Adoption of Building Codes to Regulate Construction in the City of Montclair and to Establish January 1, 2014, as the Effective Date of the Codes**

Mayor Eaton declared it the time and place for a public hearing related to adoption of Ordinance No. 13-938 amending specific

chapters of Title 10 of the Montclair Municipal Code related to adoption of building codes to regulate construction in the City of Montclair and to establish January 1, 2014, as the effective date of the codes and invited comments from the public.

There being no one in the audience wishing to speak, Mayor Eaton closed the public hearing and returned the matter to the City Council for its consideration.

Moved by Mayor Pro Tem Ruh and seconded by Council Member Raft that Ordinance No. 13-938, entitled, **"An Ordinance of the City Council of the City of Montclair Amending Specific Chapters of Title 10 of the Montclair Municipal Code and Adopting by Reference the 2013 Edition of the California Building Code, Volumes 1 and 2, Including Appendix Chapters "C," "F," "I," and "J"; the 2013 Edition of the California Residential Code; the 2013 Edition of the California Plumbing Code; the 2013 Edition of the California Electrical Code; the 2013 Edition of the California Mechanical Code; and the 2013 Edition of the California Green Building Standards Code, Together With Certain Amendments, Additions, Deletions, and Exceptions Including Fees and Penalties,"** be read by number and title only, further reading be waived, and this be declared its second reading.

The City Council waived the reading of the Ordinance.

Second Reading of Ordinance No. 13-938 was adopted by the following ROLL CALL vote:

AYES: Raft, Ruh, Eaton
NOES: None
ABSTAIN: None
ABSENT: Dutrey, Paulitz

VIII. CONSENT CALENDAR

Moved by Council Member/Director Raft, seconded by Mayor Pro Tem/Vice Chairman Ruh, and carried to approve the following Consent Items as presented:

A. Approval of Minutes

1. Minutes of the Regular Joint Council/Successor Agency Board/MHC Board/MHA Commission Meeting of November 18, 2013

The City Council, City Council acting as successor to the Redevelopment Agency Board of Directors, Montclair Housing Corporation Board of Directors, and Montclair Housing

Authority Commissioners approved the minutes of the November 18, 2013 regular joint meeting.

B. Administrative Reports

- 1. Setting a Public Hearing to Consider Ordinance No. 13-939 Amending Specific Chapters of Title 10 of the Montclair Municipal Code Related to Adoption of the 2013 Edition of the California Fire Code and to Establish February 5, 2014, as the Effective Date of the Codes**

The City Council set a public hearing for Monday, December 16, 2013, at 7:00 p.m. in the City Council Chambers to consider Ordinance No. 13-939 amending specific chapters of Title 10 of the Montclair Municipal Code related to adoption of the 2013 Edition of the California Fire Code and to establish February 5, 2014, as the effective date of the codes.

- 2. Setting a Public Hearing to Consider Ordinance No. 13-940 Amending Section 4.04.100 of the Montclair Municipal Code to Include Exemption of Business License Requirements for City Services, City Suppliers, and Common Carriers and Establishing March 1, 2014, as the Effective Date of the Amendment**

The City Council set a public hearing for Monday, December 16, 2013, at 7:00 p.m. in the City Council Chambers to consider Ordinance No. 13-940 amending Section 4.04.100 of the Montclair Municipal Code to include exemption of business license requirements for City services, City suppliers, and common carriers and establishing March 1, 2014, as the effective date of the amendment.

- 3. Authorization of a \$10,000 Appropriation From the General Fund Contingency Account to Purchase Various Items for the Purpose of Preventing Metal Theft at City Facilities**

The City Council authorized a \$10,000 appropriation from the General Fund Contingency Account to purchase various items for the purpose of preventing metal theft at City facilities.

- 4. Authorization of an Additional \$10,460 Appropriation From the General Fund - Reserve Technology Fund for Additional Services Related to Upgrading the City's Springbrook Software Suite From Version 6.5 to Version 7**

Authorization of an Additional \$1,275 Appropriation From the Sewer Maintenance Fund for Its Proportionate Share of the Costs for Additional Services Related to Upgrading

the City's Springbrook Software Suite From Version 6.5 to Version 7

The City Council authorized the following related to upgrading the City's Springbrook software suite from Version 6.5 to Version 7:

- (a) An additional \$10,460 appropriation from the General Fund – Reserve Technology Fund for additional services.
- (b) An additional \$1,275 appropriation from the Sewer Maintenance Fund for its proportionate share of the costs for additional services.

5. Approval of the Filing of a *Notice of Completion*, Reduction of *Faithful Performance Bond* to 10 Percent, and Retention of *Payment Bond* for Six Months for the Northeast Montclair Street Rehabilitation Project

Release of Retention 30 Days After Recordation of *Notice of Completion*

The City Council took the following actions related to completion of the Northeast Montclair Street Rehabilitation Project:

- (a) Approved the filing of a *Notice of Completion* with the Office of the San Bernardino County Recorder.
- (b) Authorized reduction of *Faithful Performance Bond* to 10 percent.
- (c) Authorized retention of *Payment Bond* for six months.
- (d) Authorized release of retention 30 days after recordation of *Notice of Completion*.

6. Approval of the Filing of a *Notice of Completion*, Reduction of *Faithful Performance Bond* to 10 Percent, and Retention of *Payment Bond* for Six Months for the Community Center Restroom and Tenant Improvement Project

Release of Retention 30 Days After Recordation of *Notice of Completion*

Authorization of an Additional \$10,336.91 Construction Contingency for Costs Related to the Community Center Restroom and Tenant Improvement Project

The City Council took the following actions related to completion of the Community Center Restroom and Tenant Improvement Project:

- (a) Approved the filing of a *Notice of Completion* with the Office of the San Bernardino County Recorder.
- (b) Authorized reduction of *Faithful Performance Bond* to 10 percent.
- (c) Authorized retention of *Payment Bond* for six months.
- (d) Authorized release of retention 30 days after recordation of *Notice of Completion*.
- (e) Authorized an additional \$10,336.91 construction contingency for related costs.

7. Montclair Housing Authority Commissioners' Review and Acceptance of Annual Report for Fiscal Year 2012-13

The Montclair Housing Authority Commissioners accepted the Montclair Housing Authority Annual Report for Fiscal Year 2012-13.

8. Approval of City Warrant Register and Payroll Documentations

The City Council approved the City Warrant Register dated December 28, 2013, totaling \$948,012.64; the Payroll Documentation dated October 20, 2013, amounting to \$560,742.21, with \$381,089.77 being the total cash disbursement; and the Payroll Documentation dated November 3, 2013, amounting to \$582,455.27, with \$397,033.85 being the total cash disbursement.

C. Agreements

1. Approval of Agreement No. 13-93 With Southern California Transcription Services

The City Council approved *Agreement No. 13-93* with Southern California Transcription Services for transcription of audio recorded material including employee interviews and meetings, dispatch recordings, and Officer belt recordings.

2. Approval of Agreement No. 13-94 With Construction Testing and Engineering, Inc., for \$30,000 for On-Call Testing and Inspection Services

The City Council approved *Agreement No. 13-94* with Construction Testing and Engineering, Inc., for \$30,000 for on-call testing and inspection services for miscellaneous City projects.

3. Approval of Agreement No. 13-95 With Albert Grover & Associates for Traffic Engineering Services

The City Council approved *Agreement No. 13-95* with Albert Grover & Associates for traffic engineering services.

4. Approval of Agreement No. 13-96 With the San Bernardino County Fire Protection District Office of Emergency Services to Receive Approximately \$11,122 From the FY2013 Homeland Security Grant Program

The City Council approved *Agreement No. 13-96* with the San Bernardino County Fire Protection District Office of Emergency Services to receive approximately \$11,122 from the FY2013 Homeland Security Grant Program.

D. Resolutions - None

IX. PULLED CONSENT CALENDAR ITEMS - None

X. RESPONSE - None

XI. COMMUNICATIONS

A. City Attorney

1. Closed Session Pursuant to Section 54956.9(d)(1) of the Government Code Regarding Significant Exposure to Litigation

Kenneth Pollich v. Montclair

2. Closed Session Pursuant to Section 54956.9(d)(1) of the Government Code Regarding Significant Exposure to Litigation

Laura Hale v. Montclair

3. Closed Session Pursuant to Section 54956.9(d)(1) of the Government Code Regarding Significant Exposure to Litigation

Megan Stafford v. Montclair

4. Closed Session Pursuant to Section 54956.9(d)(1) of the Government Code Regarding Significant Exposure to Litigation

Tom Stoudt v. Montclair

City Attorney Robbins requested a Closed Session on Items 1, 2, and 4 and withdrew Item 3 from City Council consideration.

B. City Manager/Executive Director

1. City Manager/Executive Director Starr noted Police Chief/Public Safety Executive Director deMoet gave an excellent update on the Community Relations Division at a workshop earlier this evening, which reminded him that "as an organization, we are all, in fact, a team." With regard to Chief deMoet's comment that a large number of different activities and events interspersed throughout the year attended by members of the Police and Fire Departments, he stated that he would like to remind the Council that "members of other City departments also attend these events; in fact, many of these events are put on by other departments in the organization. Human Services Department is directly responsible for the majority of events that this community annually celebrates. Members of the Public Works Department are responsible for setting up a number of these events and making certain that the community is able to attend them. As Chief deMoet indicated, the Information Technology Division is responsible for the technology-related programs. Administration and Community Development are also intricately involved in a number of these programs as well.

"The reason I bring this up is I want to point out to the City Council that there have been recent media reports in the various news outlets indicating that the **City of Upland** is taking action on approving the merger of our two Fire Departments. To read the reports that are being written about in the various media, it would suggest that Montclair is a tagalong in this process. I want to make it perfectly clear that Montclair is anything but a tagalong. Montclair is the catalyst for this process. Montclair initiated this from the very beginning, not only in relation to looking at contracting out our fire services, perhaps with the **California Department of Forestry and Fire Protection** or the **San Bernardino County Fire Protection District**. Council will recall we went through a rather elaborate process in relation to that. Unfortunately, or fortunately, depending upon your perspective, the contracting did not occur.

"In relation to that, the City of Montclair did follow up with the **City of Upland** on pursuing discussions related to the potential for command staff sharing as well as for dropping our service boundaries so we could form a relationship that would better enhance services to both of our respective communities. Montclair engaged the **City of Upland** on a number of occasions in relation to pursuing these discussions.

Montclair was adamant that these discussions were important to improving the quality of fire services to both of our communities. Montclair took the initiative to prepare and draft the agreement that both agencies are now considering. I want to emphasize that this is a team approach. Upland was very much a major part of these discussions; but without Upland, obviously we would not be going forward with this effort. I want to clarify and correct the perception that the media reports are presenting to the public that this was an effort that was pushed forward by the **City of Upland**, and Montclair was a lesser part of this. We were a team the entire way. We will continue to be a team. We need to emphasize the team aspect of it as we go forward, particularly since we will be sharing our command structure together and we will be dropping our service boundaries should the respective City Councils approve this action that comes before them. The item will be presented to our City Council at the December 16, 2013 regular joint meeting for your consideration. Staff has put a lot of work and effort into preparing the agenda report for you to consider as well as the agreement. We thank our partners in Upland for participating with us in this venture. As I indicated, we could not do this without their involvement. I certainly want to again emphasize that the merger was a two-way street, and Montclair was every bit an equal partner in this venture. As we go forward, I expect that will continue."

Mayor Eaton thanked City Manager Starr for clarifying the merger proposal for the public.

C. Mayor/Chairman

1. Mayor/Chairman Eaton commented as follows:
 - (a) He noted his attendance on November 19, 2013 at the **Montclair Chamber of Commerce** Annual Firefighters Recognition Breakfast.
 - (b) He noted his attendance at the 2013 *Por La Vida* Graduation ceremony honoring 15 graduates on November 20, 2013.
 - (c) He noted he very much enjoyed the Montclair City Employees Association Holiday Party on November 22, 2013.

D. City Council/Successor Agency Board/MHC Board/MHA Board

1. Council Member/Director Raft commented as follows:
 - (a) She congratulated Fire Captain David Pohl for being honored as 2012 Fire Department Employee of the Year

and Firefighter Brian Ciszek for being named 2012 Firefighter of the Year at the Annual Firefighters Recognition Breakfast. She noted Engineer Derek Holloway and Firefighter/Paramedic Narak Babayan were recognized for their quick response in rescuing **Mr. Nigel Bailey**, who attended the breakfast, from full cardiac arrest brought on by an asthma attack. She stated, "If I am in Montclair and something happens to me, I am pleased to know that I would be in very capable hands. I would hope I would be as lucky if something similar happens to me." She commended Engineer Holloway and Firefighter/Paramedic Babayan for their quick assessment of **Mr. Bailey's** ailment and thanked them for saving his life.

- (b) She announced the City's Annual Christmas Tree Lighting ceremony and Visit with Santa and Mrs. Claus would be held this Thursday, December 2, 2013, at 6:00 p.m. at the Youth Center, expressing her hope that as many families attend as last year. She recognized the Human Services and Public Works departments and Information Technology Division staff for all their hard work in putting on this event.
- (c) She announced that Dashing Through Montclair would be held this Saturday, December 7, 2013, noting Santa's sleigh would leave Police headquarters at 11:00 a.m. and dash along City streets, making stops at **Lehigh Elementary School** and Essex, Saratoga, Alma Hofman, and MacArthur parks to collect toys for needy Montclair children. She stated the sleigh ride would end at the Police Department at 6:00 p.m., noting she would be attending for a holiday sing-along at that time.
- (d) She noted Montclair Police Officers John Minook and Eric Ruziecki were honored for having the most driving under the influence (DUI) arrests in San Bernardino County during 2013 by **Mothers Against Drunk Driving**, the **California Office of Traffic Safety**, and the **San Bernardino County AVOID Coalition** at the *Law Enforcement Recognition & DUI Seminar* at the **National Orange Show**, San Bernardino, on November 20, 2013. She stated that she congratulated Officers Ruziecki and Minook for each having the most DUI arrests during the last three and two years, respectively, and stated, "Please keep up the good work because we do not want drunken drivers on our streets."
- (e) She noted Officer Ashlee Westall was the runner-up and Property Custody Clerk Haidee Reyes the recipient of the 2013 Achievement Award, Crime Suppression Unit Officer Ruziecki was presented a commendation for organizing

a **San Bernardino Movement Against Street Hoodlums** operation last month, and Officer Javier Aguilar was sworn into duty at a November 19, 2013 Police Department general assembly. She stated, "It is nice to know we have a lot of good people working for the City—some good volunteers and good employees—we are very lucky here in Montclair." She asked that Police Chief/Public Safety Executive Director deMoet please relay her congratulations to Officers Westall, Ruziecki, and Aguilar and Property Custody Clerk Reyes.

Mayor Eaton thanked Council Member Raft "for recognizing these fine individuals."

2. Mayor Pro Tem/Vice Chairman Ruh commented as follows:

- (a) He seconded Council Member Raft's sentiments regarding the Fire and Police Department employees mentioned this evening, stating, "It is good to see so many people commended for their good work."
- (b) He congratulated Sergeant Byron Kelly, Officer Eric Rivera, Officer Westall, Detective Mike Zerr, Officer Andy Graziano, and Sergeant Kelly and Officer Minook for their respective appointments as President, Vice President, Secretary, Treasurer, Sergeant at Arms, and negotiators of the Montclair Police Officers Association. He noted we congratulate these officers for the faith and confidence instilled in them by their colleagues on the force, which is very much appreciated.
- (c) He noted Police Chief/Public Safety Executive Director deMoet and he attended the swearing-in ceremony for new **52nd District Assembly Member Freddie Rodriguez** on November 23, 2013, at **Assembly Member Rodriguez's** District office. He noted it was a positive for Montclair that **Assembly Member Rodriguez** noticed Police Chief/Public Safety Executive Director deMoet's attendance at the event.
- (d) He noted City Manager Starr, Deputy City Manager/Economic Development Executive Director Staats, Director of Community Development Lustro, and he gave **Assembly Member Rodriguez** a tour of the Vista Del Cielo and San Marino projects in the San Antonio Gateway area of South Montclair. He noted **Assembly Member Rodriguez** was very impressed by the family projects as well as the programs and services we offer for such a small City. He stated, "There is something for everybody: Every lifestyle and every range can avail themselves of a program that will fit them. That is a positive for our community."

- (e) He reminded the public that **U.S. Representative Gloria Negrete McLeod** will be hosting a Home Rescue Fair for homeowners needing assistance with their mortgages on Saturday, December 14, 2013, from 10:00 a.m. to 2:00 p.m. at the Montclair Civic Center.

E. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of November 18, 2013

The City Council received and filed the Personnel Committee meeting minutes of November 18, 2013, for informational purposes.

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

At 7:17 p.m., Chairman Eaton adjourned the Successor Agency and Montclair Housing Corporation Boards of Directors and the Montclair Housing Authority Commissioners.

At 7:17 p.m., the City Council went into Closed Session regarding pending litigation pursuant to Government Code Section 5495.9(d)(1).

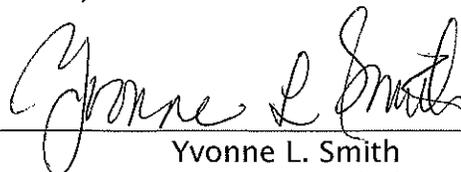
XIII. CLOSED SESSION ANNOUNCEMENTS

At 7:43 p.m., the City Council returned from Closed Session. Mayor Eaton announced the City Council met in Closed Session regarding pending litigation, information was received and direction given to staff, and no further announcements would be made at this time.

XIV. ADJOURNMENT

At 7:44 p.m., Mayor Eaton adjourned the City Council.

Submitted for City Council/Successor Agency Board/ Montclair Housing Corporation Board/ Montclair Housing Authority Commissioners approval,



Yvonne L. Smith
Deputy City Clerk