

**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 2, 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](http://www.ci.montclair.ca.us) and can be accessed the day following the meeting after 10:00 a.m.*

Page No.

**I. CALL TO ORDER** - City Council, Successor Agency and Montclair Housing Corporation Boards of Directors, and 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** - None

**VI. PUBLIC COMMENT**

*This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded five minutes to address the City Council Members, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, and Montclair Housing Authority 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. Second Reading – Consider Adoption of Ordinance No. 13-938 Amending Specific Chapters in 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 [CC] 5

**VIII. CONSENT CALENDAR**

A. Approval of Minutes

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

B. Administrative Reports

- 1. Consider 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 [CC] 20
- 2. Consider Setting a Public Hearing to Consider Ordinance No. 13-940 Amending Specific Chapters of Title 4 of the Montclair Municipal Code Related to Business License Exemptions and Establish March 1, 2014, as the Effective Date of the Amendment [CC] 36
- 3. Consider 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 [CC] 40
- 4. Consider 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 [CC]
- Consider 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 [CC] 41
- 5. Consider 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 [CC]
- Consider Release of Retention 30 Days After Recordation of Notice of Completion [CC] 43
- 6. Consider 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 [CC]

Consider Release of Retention 30 Days After Recordation of Notice of Completion [CC]

Consider Authorizing an Additional Construction Contingency of \$10,336.91 for Costs Related to the Community Center Restroom and Tenant Improvement Project [CC] 45

7. Consider Montclair Housing Authority Commissioners' Review and Acceptance of the Annual Report for Fiscal Year 2013-13 [MHA] 48

8. Consider Approval of Warrant Register and Payroll Documentations [CC] 52

C. Agreements

1. Consider Approval of Agreement No. 13-93 With Southern California Transcription Services [CC] 53

2. Consider Approval of Agreement No. 13-94 With Construction Testing and Engineering, Inc., for \$30,000 for On-Call Testing and Inspection Services for Miscellaneous City Projects [CC] 63

3. Consider Approval of Agreement No. 13-95 With Albert Grover & Associates for Traffic Engineering Services [CC] 79

4. Consider 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 FY 2013 Homeland Security Grant Program [CC] 90

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

Ken Pollich v. Montclair

2. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation

Laura Hale v. Montclair

3. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation

Megan Stafford v. Montclair

4. Closed Session Pursuant to Government Code Section 54956.9(d)(1)  
Regarding Significant Exposure to Litigation

Tom Stoudt v. Montclair

- B. City Manager/Executive Director
- C. Mayor/Chairman
- D. Council/SA/MHC/MHA Board
- E. Committee Meeting Minutes *(for informational purposes only)*
  1. Minutes of the Personnel Committee Meeting of November 18, 2013

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**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, December 16, 2013, at 7:00 p.m. in the Council Chambers.*

*Reports, backup materials, and additional materials related to any item on this Agenda distributed to the City Council, Successor Agency Board, Montclair Housing Corporation Board, 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, Andrea M. Phillips, Acting 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 November 27, 2013.*

## AGENDA REPORT

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<b>SUBJECT:</b> 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	<b>DATE:</b> December 2, 2013 <b>SECTION:</b> PUBLIC HEARINGS <b>ITEM NO.:</b> A <b>FILE I.D.:</b> CDV100 <b>DEPT.:</b> COMMUNITY DEV.
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SECOND READING

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**REASON FOR CONSIDERATION:** Amendments to the Montclair Municipal Code require public hearing review and approval by the City Council.

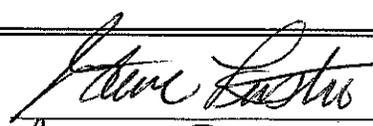
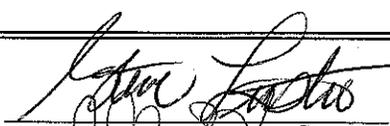
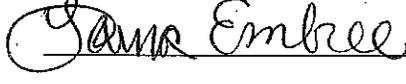
**BACKGROUND:** The California Health and Safety Code establishes a Building Standards Commission, whose duties include approval, codification, and publication of building standards in a triennial edition of the California Building Standards Code. These codes, commonly called Title 24, incorporate the latest editions of the model codes that apply in all parts of California. The Commission also establishes a date that these codes become effective throughout the State; the date for this triennial edition is January 1, 2014. Adoption of these codes would regulate the fabrication, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area, or other improvements to real property; maintenance of all buildings or structures in the City of Montclair; and providing for issuance of permits and collection of fees therefore.

The Building Standards Code does *not* include adoption of procedural ordinances by a city or other agency related to civil, administrative, or criminal procedures and remedies available for enforcing code violations.

**FISCAL IMPACT:** There would be no fiscal impact to the City's General Fund associated with the City Council's adoption of proposed Ordinance No. 13-938.

**RECOMMENDATION:** Staff recommends the City Council adopt Ordinance No. 13-938 amending various chapters in 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.

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

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ORDINANCE NO. 13-938

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

WHEREAS, the California Health and Safety Code establishes a Building Standards Commission whose duties include approval, codification, and publication of building standards in a triennial edition of the California Building Standards Code, commonly called Title 24; and

WHEREAS, the Building Standards Commission also establishes a date that these codes become effective throughout the state; and

WHEREAS, the effective date for this triennial edition is January 1, 2014; and

WHEREAS, adoption of these codes would regulate the fabrication, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area, or other improvements to real property; maintenance of all buildings or structures in the City of Montclair; and provision for issuance of permits and collection of fees therefor; and

WHEREAS, the Building Standards Code does *not* include adoption of procedural ordinances by a city or other agency related to civil, administrative, or criminal procedures and remedies available for enforcing code violations.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES HEREBY ORDAIN AS FOLLOWS:**

**Section I.** Section 10.08.010 of the Montclair Municipal Code is hereby amended as follows:

**10.08.010 Adoption.**

Except as provided in this Chapter, those certain building codes known and designated as the California Building Code, ~~2010~~2013 Edition, Volumes 1 and 2, including Appendix Chapters "C," "F," "I," and "J," based on the ~~2009~~2012 International Building Code as published by the International Code Council, shall be and become the Building Codes of the City of Montclair for regulating the

construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building and/or structure or any appurtenances connected or attached to such buildings or structures throughout the City. The California Building Code and its appendix chapters will be on file for public examination in the office of the Building Official.

**Section II.** Section 10.08.020 of the Montclair Municipal Code is hereby deleted in its entirety and replaced as follows:

**10.08.020 Building Code amendments.**

The following Section of Chapter 1, "Scope and Administration, Division I, California Administration," is hereby amended as follows:

1.8.8 Appeals Board. Subsection 1.8.8 is hereby deleted in its entirety.

The following portions and sections of Chapter 1, "Scope and Administration, Division II, Scope and Administration," are hereby amended as follows:

The following language shall be added to Subsection 101.2, "Scope":

In order to properly maintain and safeguard healthful living conditions and comply with all provisions of the Building Codes, it is hereby declared unlawful to use any streetcars, boxcars, house cars, motor bus bodies, or similar means of conveyance or structures of similar nature of construction, for places of habitation, residence, or place of business in this City. However, nothing contained herein shall prohibit the use of any house trailer or mobile home for places of abode or habitation in an approved mobile home park, provided such structures comply with all other conditions and requirements of this Code.

The following language shall be added to Subsection 102.1, "General":

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Code or any part thereof is in conflict with the Fire Code, the most restrictive shall be applicable.

Subsection 104.1, "General," of Section 104; "Duties and Powers of Building Official," is hereby deleted in its entirety and replaced as follows:

104.1 General. The Building Official is hereby authorized and directed to enforce all the provisions of this Code and referenced technical codes. For such purposes, the Building Official shall have the powers of a law enforcement officer. The Building Official shall have the power to render interpretations of this Code and the referenced technical codes, and to adopt and enforce rules and regulations supplemental to this Code as may be deemed necessary to clarify the application of the provisions of this Code. Such interpretations, rules, and regulations shall be in conformity with the intent and purpose of this Code.

Subsection 104.12, "Cooperation of Other Officials and Officers," shall be added as follows:

104.12 Cooperation of Other Officials and Officers. The Building Official may request and shall receive the assistance and cooperation of other officials of this jurisdiction so far as is required in the discharge of the duties required by this Code or other pertinent laws or ordinances.

Subsection 105.2, "Work exempt from permit," is hereby amended as follows:

Item 1 under "Building" is hereby amended as follows:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet or measures over 8 feet in height to the highest point of the roof.

Item 2 under "Building" is hereby deleted in its entirety.

Item 4 under "Building" is hereby deleted in its entirety and replaced as follows:

4. Retaining walls that are not over three (3) feet in height as measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II, or IIIA liquids.

Item 9 under "Building" is hereby deleted in its entirety.

Subsection 105.3.2, "Time limitation of application," is hereby adopted and amended to read as follows:

Applications for which no permit is issued within 180 days following the date of application shall expire by limitation. Plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Building Official. The Building Official may extend the time for action by the applicant for a period not exceeding 180 days on written request by the applicant showing the circumstances beyond the control of the applicant having prevented action from being taken. An application shall not be extended more than once. An application shall not be extended if this Code or any other pertinent laws or ordinances have been amended subsequent to the date of application. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee. All plans submitted for review prior to the effective date of this ordinance shall expire by limitation within 180 days of application with no extensions.

Subsection 105.5, "Expiration," is hereby adopted and amended to read as follows:

Every permit issued by the Building Official under the provisions of the technical codes shall expire by limitation and become null and void, if the

building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further, that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

A permittee holding an unexpired permit may apply for an extension of the time within which work may commence under the permit when the permittee is unable to commence work within the time required by this Section for good and satisfactory reasons. The Building Official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. Permits shall not be extended more than once.

Section 107, "Submittal Documents," is hereby adopted and amended as follows:

Subsection 107.5, "Retention of construction documents," is hereby amended by adding the following language:

Before final inspection, electronic images of all plans, engineering calculations, and records that are submitted for the purpose of obtaining a building permit shall be submitted to the Building Official. Electronic images shall be based on the Building Division's Electronic Archiving Policy.

Section 109, "Fees," is hereby adopted and amended as follows:

Subsection 109.2, "Schedule of permit fees," is hereby amended by adding the following language:

When submittal documents are required by Section 109, a plan review fee shall be paid at the time of submittal of documents for plan review. Fees shall be assessed in accordance with the Development Review Fee Schedule established by resolution of the City Council. When the City retains a private entity or person to perform plan review, the plan review fee shall be in an amount sufficient to defray the cost of such services, plus a 15 percent fee to cover the cost of administration, but in no case shall the plan review fee be less than the amount specified in this Section.

Subsection 109.4, "Work commencing before permit issuance," is hereby deleted in its entirety and replaced as follows:

109.4 Work Commencing before permit issuance. Whenever work for which a permit is required by this Code has been commenced without

first obtaining a permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be required in accordance with the schedule as established by the applicable governing authority. The minimum investigation fee shall be the same as the minimum fee set forth in accordance with the schedule as established by the applicable governing authority. The payment of such investigation fee shall not exempt an applicant from compliance with all other provisions of either this Code or the technical codes, nor from the penalty prescribed by law. Whenever the same person or entity is found to have performed work for which a permit is required without first obtaining said permit four or more times, said investigation fee shall be ten times the fee amount set forth in accordance with the schedule as established by the applicable governing authority.

Subsection 109.6, "Refunds," is hereby deleted in its entirety and replaced as follows:

109.6 Refunds. The Building Official may authorize refunding of a fee paid hereunder that was erroneously paid or collected. The Building Official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this Code. The Building Official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any examination time has been expended. The Building Official shall not authorize the refunding of any fee paid except upon written request filed by the original permittee not later than 180 days after the date of payment.

Section 110, "Inspections," is adopted and amended by adding the following subsection:

110.1.1 Workmanship. It is the intention of the City that all construction carried on under the review of the Building Division is of good quality. The Building Official shall be empowered to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well fit and of a durable nature. Paint in all cases shall not be below normal standard for the use applied. The proper grading of walks, drives and yards shall be required when being installed with the work requiring a building permit. A minimum thickness of 3½ inches for flat concrete work and 2 inches for asphalt paving shall be required. All exterior flat concrete work shall include such breaks for expansion as deemed necessary by the Building Official.

Subsection 110.3.4, "Frame inspection," is hereby amended by adding the following language:

The structure shall have lath paper completely installed at the time of framing inspection.

Subsection 110.3.5, "Lath and gypsum," is hereby amended by deleting the "exception" in its entirety.

Subsection 110.3.8, "Other inspections," is hereby amended by adding the following language:

A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when corrections called for are not made. This Section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of the technical codes but as controlling the practice of calling for inspections before the job is ready for such inspection or reinspection. Reinspection fees may be assessed when the inspection record card is not posted or otherwise available on the work site, the approved plans are not readily available to the inspector, for failure to provide access on the date for which inspection is requested, or deviation from plans requiring the approval of the Building Official. To obtain a reinspection, the applicant shall file an application therefor in writing upon a form furnished for that purpose and pay the reinspection fee in accordance with a fee schedule adopted by this jurisdiction. In instances where reinspection fees have been assessed, additional inspection of the work will not be performed until the required fees have been paid.

Subsection 110.5, "Inspection requests," is hereby deleted in its entirety and replaced as follows:

110.5 Inspection requests. It shall be the duty of the person doing the work authorized by the permit to notify the Building Official that such work is ready for inspection. The Building Official may require that every request for inspection be filed at least one working day before such inspection is desired. Such request may be requested in writing or by telephone at the option of the Building Official. It shall be the duty of the person requesting any inspections required by either this Code or the technical codes to provide access to and means for inspection of the work.

Section 111, "Certificate of Occupancy," is hereby adopted and amended by adding the following subsection:

111.5 Utility release. The following minimum requirements shall be completed prior to any occupancy or utility connection:

- (1) Written clearance from the Fire and Public Works Departments and Planning and Business License Divisions.
- (2) Written clearance from Monte Vista Water District, NPDES Coordinator and Environmental Manager, when applicable.
- (3) The following, when applicable:
  - (a) Electronic imaging of plans received.
  - (b) Verification of school fees paid.
  - (c) Grading certificate received.

- (d) All plan review fees paid.
- (e) Sewer assessment fees paid.
- (f) Hazardous materials statements received.
- (g) Subcontractor's list received.
- (h) Parkland development fees received.
- (i) Transportation development impact fees received.

Section 114, "Violations," is hereby adopted and amended as follows:

Subsection 114.4, "Violation penalties," is hereby amended by adding the following language:

Whenever the same person or entity is found to have performed work for which a permit is required without first obtaining said permit four or more times, said investigation fee shall be ten times the fee amount set forth in Section 108.

**Section III.** Sections 10.20.010 and 10.20.020 of the Montclair Municipal Code are hereby amended as follows:

**10.20.010 Adoption.**

Except as provided in this Chapter, the California Electrical Code, ~~2010~~2013 Edition, based on the ~~2008~~2011 National Electrical Code as published by the National Fire Protection Association, shall be and become the Electrical Code of the City of Montclair, regulating all installation, arrangement, alteration, repair, use, and other operation of electrical wiring, connections, fixtures, and other electrical appliances on premises within the City. The California Electrical Code is on file for public examination in the office of the ~~Building~~ Official.

**10.20.020 Electrical code amendments.**

The ~~2010~~2013 Edition of the California Electrical Code is hereby adopted with no amendments.

**Section IV.** Section 10.24.010 of the Montclair Municipal Code is hereby amended as follows:

**10.24.010 Permit required - Fee.**

No person shall erect or install any fence or block or masonry wall without first obtaining a permit to do so from the Building Official. The fee for a fence permit shall be pursuant to the City's Development Review Fee Schedule as established by resolution of the City Council ~~fee schedule shown in the latest adopted edition of the Building Code~~, which shall include the cost of inspection of such fence. The fee for a block or masonry wall permit shall be in accordance with the Development Review Fee Schedule as established by resolution of the City Council ~~as shown in the latest adopted edition of the Building Code~~.

**Section V.** Sections 10.30.010 and 10.30.020 of the Montclair Municipal Code are hereby amended as follows:

**10.30.010 Adoption.**

Except as provided in this Chapter, the California Green Standards Code, ~~2010~~2013 Edition, as published by the California Building Standards Commission, shall be and become the Green Building Standards Code of the City of Montclair, regulating and controlling the planning, design, operation, use and occupancy of every newly constructed building or structure in the City. The California Green Building Standards Code shall be on file for public examination in the office of the Building Official.

**10.30.020 Green Building Standards Code amendments.**

The ~~2010~~2013 Edition of the California Green Building Standards Code is hereby adopted with no amendments.

**Section VI.** Sections 10.36.010 and 10.36.020 of the Montclair Municipal Code are hereby amended as follows:

**10.36.010 Adoption.**

Except as provided in this Chapter, the California Mechanical Code, ~~2010~~2013 Edition, based on the ~~2009~~2012 Uniform Mechanical Code as published by the International Association of Plumbing and Mechanical Officials (IAPMO), shall be and become the Mechanical Code of the City of Montclair, regulating and controlling the design, construction, installation, quality of materials, location, operation, and maintenance of heating, ventilating, cooling, refrigeration systems, incinerators, and other miscellaneous heat-producing appliances. The California Mechanical Code is on file for public examination in the office of the Building Official.

**10.36.020 Mechanical Code amendments.**

The ~~2010~~2013 Edition of the California Mechanical Code is hereby adopted with no amendments.

**Section VII.** Sections 10.40.010 and 10.40.020 of the Montclair Municipal Code are hereby amended as follows:

**10.40.010 Adoption.**

Except as provided in this Chapter, the California Plumbing Code, ~~2010~~2013 Edition, based on the ~~2009~~2012 Uniform Plumbing Code as published by the International Association of Plumbing and Mechanical Officials (~~IAPMO~~)(IAPMO), shall be and become the Plumbing Code of the City of Montclair, regulating erection, installation, alteration, repair, relocation, replacement, maintenance, or use of plumbing systems within the City. The California Plumbing Code will be on file for public examination in the office of the Building Official.

**10.40.020 Plumbing Code amendments.**

The ~~2010~~2013 Edition of the California Plumbing Code is hereby adopted with no amendments.

**Section VIII.** Section 10.42.010 of the Montclair Municipal Code is hereby amended as follows:

**10.42.010 Adoption.**

Except as provided in this Chapter, the California Residential Code, ~~2010~~2013 Edition, based on the ~~2009~~2012 International Residential Code, as published by the California Building Standards Commission, shall be and become the Residential Building Code of the City of Montclair, regulating construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every detached one- and two-family dwelling and townhouse not more than three stories above grade in height with a separate means of egress and structures accessory thereto in the City. The California Residential Code will be on file for public examination in the office of the Building Official.

**Section IX.** Section 10.42.020 of the Montclair Municipal Code is hereby deleted in its entirety and replaced as follows:

**10.42.020 Residential Code amendments.**

The following portions and sections of Chapter 1, "Scope and Application, Division I, California Administration," and Division II, "Administration," are hereby amended as follows:

1.8.4 Permits, Fees, Applications and Inspections. Section 1.8.4 is hereby deleted in its entirety.

1.8.8 Appeals Board. Section 1.8.8 is hereby deleted in its entirety.

1.8.9 Unsafe Buildings or Structures. Section 1.8.9 is hereby deleted in its entirety.

Section R105, "Permits," is hereby amended as follows:

Item 1 under "Building" is hereby amended as follows:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet or measures over eight (8) feet in height to the highest point of the roof.

Item 2 under "Building" is hereby deleted in its entirety.

Item 3 under "Building" is hereby deleted in its entirety and replaced as follows:

3. Retaining walls that are not over three feet in height as measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II, or IIIA liquids.

Item 7 under "Building" is hereby deleted in its entirety and replaced as follows:

7. Prefabricated swimming pools that are capable of containing water to a depth of not more than 12 inches.

Section R109, "Inspection," is hereby adopted and amended by adding the following subsections:

R109.0.1 Workmanship. It is the intention of the City that all construction carried on under the review of the Building Division is of good quality. The Building Official shall be empowered to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well fit and of a durable nature. Paint in all cases shall not be below normal standard for the use applied. The proper grading of walks, drives and yards shall be required when being installed with the work requiring a building permit. A minimum thickness of 3½ inches for flat concrete work and 2 inches for asphalt paving shall be required. All exterior flat concrete work shall include such breaks for expansion as deemed necessary by the Building Official.

Subsection R109.1.4, "Frame and masonry inspection," is hereby amended by adding the following language:

The structure shall have lath paper completely installed at the time of framing inspection.

Subsection R109.1.5, "Other inspections," is hereby amended by adding the following language:

A reinspection fee may be assessed for each inspection or reinspection when such portion of work for which inspection is called is not complete or when corrections called for are not made. This Section is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of the technical codes but as controlling the practice of calling for inspections before the job is ready for such inspection or reinspection. Reinspection fees may be assessed when the inspection record card is not posted or otherwise available on the work site, the approved plans are not readily available to the inspector, for failure to provide access on the date for which inspection is requested, or deviation from plans requiring the approval of the Building Official. To obtain a reinspection, the applicant shall file an application therefor in writing upon a form furnished for that purpose and pay the reinspection fee in accordance with a fee schedule adopted by this jurisdiction. In instances where reinspection fees have been assessed, additional inspection of the work will not be performed until the required fees have been paid.

**Section X.** Section 10.56.020 of the Montclair Municipal Code is hereby deleted in its entirety and replaced as follows:

**10.56.020 Administrative Code amendments.**

The following portions and sections of the Administrative Code are amended as follows:

Subsection 101.3, "Scope," is hereby amended by adding the following language:

In order to properly maintain and safeguard healthful living conditions and comply with all provisions of the latest adopted codes, It is declared unlawful to use any streetcars, boxcars, house cars, motor bus bodies, or similar means of conveyance, or structures of similar nature of construction, for places of habitation, residence, or place of business in this City provided, however, that nothing contained herein shall prohibit the use of any house trailer or mobile home for places of abode or habitation in an approved mobile home park, provided such structures comply with all other conditions and requirements of this Code.

Subsection 301.2.1, "Building permits," is hereby amended as follows:

Item 2 is hereby deleted in its entirety.

Item 5 is amended to read as follows:

Retaining walls that are not over three feet in height, measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II, or III-A liquids.

Item 11 is hereby deleted in its entirety.

Subsection 304.1, "General," is hereby deleted in its entirety and replaced as follows:

Fees shall be assessed in accordance with the Development Review Fee Schedule as established by resolution of the City Council of the City of Montclair. For buildings, structures, electrical, plumbing, mechanical, gas or alterations requiring a permit, a fee for each permit shall be paid in accordance with said fee schedule.

Subsection 304.2, "Permit Fees," is hereby deleted in its entirety.

Subsection 304.3, "Plan Review Fees," paragraph one, is hereby deleted in its entirety and replaced as follows:

When submittal documents are required by Subsection 302.2, a plan review fee shall be paid at the time of submittal of documents for plan review. The plan review fee shall be established in the Development Review Fee Schedule as established by resolution of the City Council of the City of Montclair.

Subsection 304.3, "Plan Review Fees," paragraph two, is hereby deleted in its entirety and replaced as follows:

The plan review fees for electrical, mechanical and plumbing work shall be established in the Development Review Fee Schedule as established by resolution of the City Council of the City of Montclair.

Subsection 304.3, "Plan Review Fees," paragraph three, is hereby deleted in its entirety and replaced as follows:

When a plan for grading work is required to be submitted, a plan review fee shall be paid at the time of submitting plans and specifications for review. Said grading plan review fees are established by resolution of the City Council of the City of Montclair. Separate plan review fees shall apply to retaining walls of major drainage structures as required elsewhere in this Code.

Subsection 304.3, "Plan Review Fees," is hereby amended by adding the following language:

When the City retains a private entity or person to perform plan review, the plan review fee shall be in an amount sufficient to defray the cost of such services, plus a 15 percent fee to cover the cost of administration, but in no case shall the plan review fee be less than the amount specified in this Section.

Subsection 304.5.2, "Fee," is hereby deleted in its entirety and replaced as follows:

Whenever the same person or entity is found to have performed work for which a permit is required without first obtaining said permit four or more times; said investigation fee shall be ten times the fee amount set forth in the adopted Development Review Fee Schedule.

Section 305, "Inspections," is hereby amended by adding the following subsection:

305.9 Workmanship. It is the intention of the City that all construction carried on under the review of the Building Division be of good quality. The Building Official shall be empowered to enforce the installation of work which is straight, level, plumb, square, etc., as the situation requires. All work shall be well fit and of a durable nature. Paint in all cases shall not be below normal standard for the use applied. The proper grading of walks, drives and yards shall be required when being installed with the work requiring a building permit. A minimum thickness of 3½ inches for flat concrete work and 2 inches for asphalt paving shall be required. All exterior flat concrete work shall include such breaks for expansion as deemed necessary by the Building Official.

Section 309, "Certificate of Occupancy," is hereby deleted in its entirety.

Table 3-A, "Building Permit Fees," is hereby deleted in its entirety.

Table 3-B, "Electrical Permit Fees," is hereby deleted in its entirety.

Table 3-C, "Mechanical Permit Fees," is hereby deleted in its entirety.

Table 3-D, "Plumbing Permit Fees," is hereby deleted in its entirety.

Table 3-E, "Elevator Permit Fees," is hereby deleted in its entirety.

Table 3-F, "Elevator Annual Certificates of Inspection Fees," is hereby deleted in its entirety.

**Section XI. 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 XII. Effective Date.**

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

**Section XIII. 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, 2013.

**ATTEST:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
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. 13-938 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, 2013, by the following vote, to-wit:

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

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Yvonne L. Smith  
Deputy City Clerk

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER 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	<b>DATE:</b> December 2, 2013 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 1 <b>FILE I.D.:</b> FRD300 <b>DEPT.:</b> FIRE
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**REASON FOR CONSIDERATION:** The City Council is requested to consider 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.

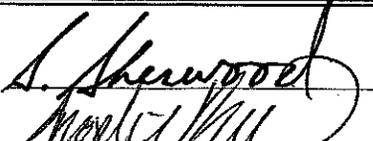
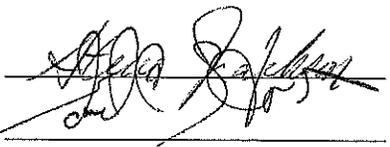
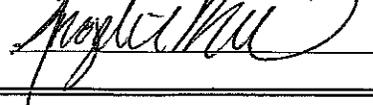
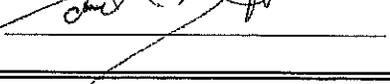
**BACKGROUND:** Every three years, the City adopts the latest version of the California Fire Code. The State of California has chosen to adopt the most recent version of the California Fire Code (2013 Edition), which is based on the 2012 International Fire Code and is part of the California Code of Regulations, 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. 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:** The cost to publish a Notice of Public Hearing in the *Inland Valley Daily Bulletin* related to proposed Ordinance No. 13-939 should not exceed \$400.

**RECOMMENDATION:** Staff recommends 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.

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

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**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: Appendices A, B, C, D, E, F, G, H, I, and K, and the whole thereof, including Chapter 5, Sections 503 and 510.3, 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 Deputy Fire Chief.
- B. The Deputy 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 103.4.2 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.

- B. 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.

- C. 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.

- D. 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.

- E. 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.

- F. 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.

- G. 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.

- H. 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.

- I. 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.

J. 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.

- K. 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.

- L. 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.

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Mayor

**ATTEST:**

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Deputy City Clerk

I, Yvonne L. Smith, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that 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

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<b>SUBJECT:</b> CONSIDER SETTING A PUBLIC HEARING TO CONSIDER ORDINANCE NO. 13-940 AMENDING SPECIFIC CHAPTERS OF TITLE 4 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO BUSINESS LICENSE EXEMPTIONS AND TO ESTABLISH MARCH 1, 2014, AS THE EFFECTIVE DATE OF THE AMENDMENT	<b>DATE:</b> December 2, 2013 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 2 <b>FILE I.D.:</b> FLP100 <b>DEPT.:</b> ADMIN. SVCS.
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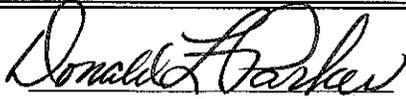
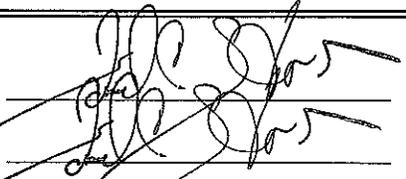
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**REASON FOR CONSIDERATION:** Amendments to the Montclair Municipal Code require public hearing review and approval by the City Council.

**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. Cases in which 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 because vendors may not want the additional administrative burden. Most entities that have larger contracts to provide services or products to the City have business licenses and it is the smaller entities that would find these requirements burdensome. Therefore, to avoid a blanket exemption for City services, it is 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, prime contractors use subcontractors or common carriers who deliver products to City job sites. The prime contractor would have a City business license; however, to require all the contractor's subcontractors or delivery companies to also have business licenses would impose a substantial burden upon the prime contractor and could cause these companies to not wish to do business with the City. It is, therefore, recommended that a supplier delivering materials in connection with a City contract and of use on a City project be exempt from the City's business license requirements.

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

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3. Common carrier deliveries are made to Montclair residents even though the shipper is not located within the City. These transactions most likely originate over the Internet; and the products should be coming from worldwide manufacturers, etc. Currently, our business license requirements do not grant an exemption for these and our ability to regulate these is beyond our capability. It is, therefore, recommended that common carriers be exempt from the City's business license requirements.

**FISCAL IMPACT:** The cost to publish a Notice of Public Hearing in the *Inland Valley Daily Bulletin* related to proposed Ordinance No. 13-940 should not exceed \$400.

**RECOMMENDATION:** Staff recommends 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 specific Chapters of Title 4 of the Montclair Municipal Code related to exemptions from business license requirements and establish 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 CHAPTER 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 HEREBY ORDAIN AS FOLLOWS:

**Section I.**

Chapter 4.04.100 Mandatory exemptions of the City of Montclair's 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 where 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 that it engages in no other business activities in or with the City. If, in addition to delivering goods by common carrier, a seller performs other business activities in the City, 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 XXXX, 2014.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Yvonne 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 16th day of December, 2013, and finally passed not less than five (5) days thereafter on the xxth day of XXXX, 2014, by the following vote, to-wit:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

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

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER 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	<b>DATE:</b> December 2, 2013
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 3
	<b>FILE I.D.:</b> PRK300
	<b>DEPT.:</b> PUBLIC WORKS

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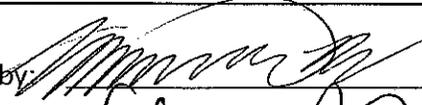
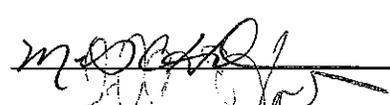
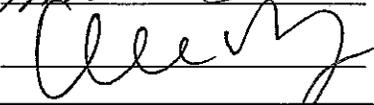
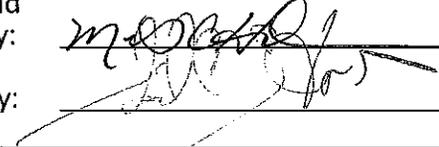
**REASON FOR CONSIDERATION:** The appropriation of funds from the General Fund Contingency Account requires City Council approval.

**BACKGROUND:** Over the past several years, copper theft has become more and more prevalent within the City of Montclair. Recently copper wire was stolen from the street lights on the Central Avenue overpass south of Holt Boulevard. The wire was replaced; and two months later, the same wiring was stolen a second time. As a result, City staff began contacting companies specializing in metal theft prevention devices and looked at several different devices from these companies. The Public Works Department is looking at certain devices to prevent the theft of wire on the Central Avenue overpass as well as preventing the theft of brass stems from fire-prevention devices in front of many of the City's newest facilities. Although there is no guarantee theft would be prevented, it is hoped the metal thieves will move on somewhere else when it becomes more difficult to steal the metal from these locations. The company chosen is not disclosed in this report because proprietary tools are purchased for the installation and removal of these devices; and it is preferred the vendor chosen not be publicized.

**FISCAL IMPACT:** The cost to purchase all devices required at this time is not expected to exceed \$10,000. Should the City Council approve this item, \$10,000 would be transferred from the Contingency Account to Account No. 1001-4691-51300-400-00000 for the purchase of metal theft prevention devices.

**RECOMMENDATION:** Staff recommends the City Council authorize a \$10,000 appropriation from the General Fund Contingency Account for the purpose of preventing metal theft at City facilities.

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<b>Prepared by:</b> 	<b>Reviewed and Approved by:</b> 
<b>Proofed by:</b> 	<b>Presented by:</b> 

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## AGENDA REPORT

**SUBJECT:** CONSIDER 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

CONSIDER 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

**DATE:** December 2, 2013

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 4

**FILE I.D.:** FIN356

**DEPT.:** ADMIN. SVCS.

**REASON FOR CONSIDERATION:** Pursuant to the City of Montclair's Purchasing Manual, professional service contracts shall be presented to the City Council and its authorization obtained for modification and additional associated expenditures.

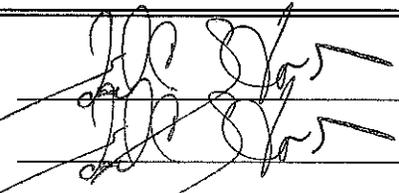
**BACKGROUND:** On March 18, 2013, the City Council approved awarding a contract to Springbrook Software for code rewriting, migration of database, and training associated with upgrading to version 7 of the City's Springbrook Software (Springbrook) suite. This is a major upgrade to the existing Finance and Human Resources software suite, which would improve the functionality of existing software and reduce future maintenance costs. After receiving the authorization, staff has reviewed in detail with Springbrook personnel our current database; and Springbrook has indicated additional services that are potentially needed as part of the upgrading process. These additional services are as follows:

- Testing Phase - Springbrook would send consultants to the City and initially perform testing once the database has been converted. It is anticipated that two consultants will be sent to the City for one week to make sure that major systems (General Ledger, Payroll, Utility Billing, Receipting, Human Resources, etc.) perform correctly. During that time, the City will be operating both versions of the software with live data so there would be an additional burden placed upon City staff. Also during this time, the consultants would generally be training City staff on how to accomplish these functions with the new version; however, because of this increased burden of processing two sets of transactions, this training may not be enough.
- Go Live Phase - Once the testing portion is completed, the City would "go live" with the software, which means that all transactions and operations would be conducted with the new version only. Springbrook has suggested, and City staff concurs, that additional services be provided whereby they again would provide two consultants to

Prepared by:



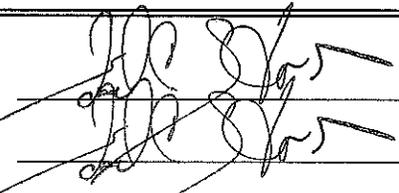
Reviewed and Approved by:



Proofed by:



Presented by:



come to the City and oversee live operations of the software with City staff. This would allow for additional training and would provide for any problem noted to be addressed immediately by the consultants who would be in contact with Springbrook programmers, etc.

It is estimated the additional cost of the consultants, including travel and lodging costs, would be \$7,000.

Currently, the City utilizes DataProse to prepare and mail billings for refuse and sewer charges. Additionally, the company also manages direct charges to customer's bank accounts to pay for these billings if the customer has authorized such a transfer. Costs associated with this vendor converting their operations to be compatible with our new version of the Springbrook Software was not anticipated for in our original estimation of costs associated with this upgrade. A proposal is currently being obtained from DataProse to accomplish its conversion, and Springbrook is providing other vendor information should DataProse's cost be excessive to accomplish this. Based upon information received from Springbrook, it is estimated that these conversion costs could range from \$3,000 to \$5,000.

Springbrook continues to indicate that the City would receive a reduction in its current maintenance costs. Presently, the City is spending \$61,346 annually to maintain the existing Finance and Human Resources suites. Springbrook has indicated an annual maintenance cost reduction of approximately \$14,000, and this would pay back the upgrade costs to Version 7 within a four-year period.

**FISCAL IMPACT:** Total costs associated with this upgrade are estimated to be \$55,000. This amount would be funded from two sources within the City, based upon expected benefit. The General Fund would contribute \$49,025 and the Sewer Fund, \$5,975. For the General Fund, funds would be transferred to the operating portion of the General Fund from the Technology Reserve; such transfer would not affect the current operating budget of the General Fund.

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

1. 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.
2. 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.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER 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 NORTH-EAST MONTCLAIR STREET REHABILITATION PROJECT	<b>DATE:</b> December 2, 2013
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 5
	<b>FILE I.D.:</b> STA540
CONSIDER RELEASE OF RETENTION 30 DAYS AFTER RECORDATION OF NOTICE OF COMPLETION	<b>DEPT.:</b> PUBLIC WORKS

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**REASON FOR CONSIDERATION:** State law requires Notices of Completion to be recorded with the County Recorder upon acceptance of a public works project. The City Council is requested to consider approval of the filing of a Notice of Completion with the Office of the San Bernardino County Recorder and related actions concerning the Northeast Montclair Street Rehabilitation Project.

**BACKGROUND:** On October 7, 2013, Gentry Brothers, Inc., was awarded a contract for construction of the Northeast Montclair Street Rehabilitation Project and entered into Agreement No. 13-83 with the City. All work required under Agreement No. 13-83 has been satisfactorily completed. 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.

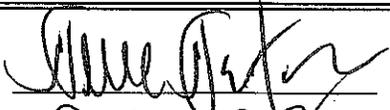
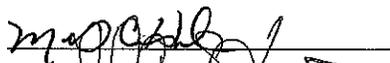
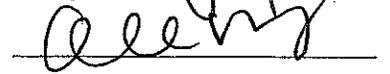
Project limits were from San Bernardino Street on the south, Rose Avenue on the west, San Jose Street on the north, and Benson Avenue on the east.

**FISCAL IMPACT:** Gentry Brothers, Inc., was awarded a construction contract for \$851,117 that included a construction contingency of \$85,000. The project was funded by Measure I. During the course of construction, it was necessary to extend construction limits at some locations and adjust a few quantities through construction change orders. The changes ultimately increased the total construction cost from the awarded amount of \$851,117 to the final cost of \$864,661.80, an increase of \$13,544.80.

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

1. Approve the filing of a Notice of Completion with the Office of the San Bernardino County Recorder.
2. Authorize reduction of the Faithful Performance Bond to 10 percent.
3. Authorize retention of the Payment Bond for six months.
4. Authorize release of retention 30 days after recordation of Notice of Completion.

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

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RECORDING REQUESTED BY:

**City of Montclair**

AND WHEN RECORDED MAIL DOCUMENT AND  
TAX STATEMENT TO:

NAME: **City of Montclair**

STREET ADDRESS: **5111 Benito Street**

CITY, STATE & ZIP  
CODE: **Montclair, CA 91763**

Government Code 6103

(Space above this line for Recorder's Use Only)

## NOTICE OF COMPLETION

NOTICE is hereby given that: The undersigned is the owner of an interest of estate in the hereinafter described property, the nature of which said interest or estate is:

fee

The full name and address of the undersigned is

**Michael C. Hudson  
Public Works Director  
City Engineer  
5111 Benito Street  
Montclair, CA 91763**

The work was completed on that certain work known as:

**Northeast Montclair Street Rehabilitation Project**

for the undersigned City of Montclair,  
a Municipal Corporation, on the

2nd

day of

December, 2013

The City accepted the job on the

19th

day of

November, 2013

The Contractor on said job was

**Gentry Brothers, Inc.  
384 Live Oak  
Irwindale, Ca. 91706**

The improvement consisted of:

**Street Improvements**

The property upon which said work of improvement was completed is described as:

**Various Streets within the City of Montclair, CA 91763**

### VERIFICATION

I, the undersigned, say that I am agent for the owner of the aforesaid interest or estate in the property described in the above notice. I have read the foregoing notice and know and understand the contents thereof, and the facts stated herein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 2, 2013

at 5111 Benito Street, Montclair, California

\_\_\_\_\_  
**Michael C. Hudson  
Public Works Director  
City Engineer**

## AGENDA REPORT

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**SUBJECT:** CONSIDER 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

**DATE:** December 02, 2013

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 6

**FILE I.D.:** CVC060

CONSIDER RELEASE OF RETENTION 30 DAYS AFTER RECORDATION OF NOTICE OF COMPLETION

**DEPT.:** PUBLIC WORKS

CONSIDER AUTHORIZING AN ADDITIONAL CONSTRUCTION CONTINGENCY OF \$10,336.91 FOR COSTS RELATED TO THE COMMUNITY CENTER RESTROOM AND TENANT IMPROVEMENT PROJECT

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**REASON FOR CONSIDERATION:** State law requires Notices of Completion to be recorded with the County Recorder upon acceptance of a public works project. The City Council is requested to consider approval of the filing of a Notice of Completion with the Office of the San Bernardino County Recorder and related to actions concerning the Community Center Restroom & T.I. Project.

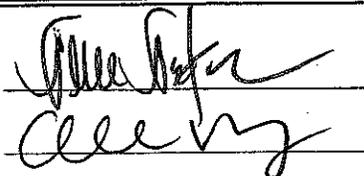
**BACKGROUND:** On October 15, 2012, T.A. Pointer Enterprises, Inc., was awarded a contract for construction of the Community Center Restroom and Tenant Improvement Project and entered into Agreement No. 12-97 with the City. All work required under Agreement No. 12-97 has been satisfactorily completed. The project converted an existing meeting room in the Community Center into public restrooms that are both compliant with the requirements of American with Disabilities Act (ADA) and include the number of facilities appropriate for the size of the building. The project also retrofitted all other existing doors within the building to meet ADA requirements including the addition of two new electric sliding entry doors.

**FISCAL IMPACT:** T.A. Pointer Enterprises, Inc., was awarded a construction contract for \$314,499 that included a construction contingency of \$40,000. The project is entirely funded by Community Development Block Grant Funds (CDBG). During the course of construction it was necessary to extend construction limits at some locations and adjust a few quantities through construction change orders. The changes ultimately increased the total construction cost from the awarded amount of \$314,499 to the final cost of \$364,835.91, an increase of \$50,336.91. The increases have been approved by CDBG.

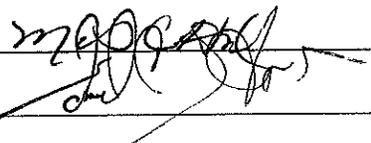
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Prepared by:



Reviewed and  
Approved by:



Proofed by:

Presented by:

**RECOMMENDATION:** Staff recommends the City Council take the following actions related to completion of the Community Center Restroom and Tenant Improvement Project:

1. Approve the filing of a Notice of Completion with the Office of the San Bernardino County Recorder.
2. Authorize reduction of the Faithful Performance Bond to 10 percent.
3. Authorize retention of the Payment Bond for six months.
4. Authorize release of retention 30 days after recordation of Notice of Completion.
5. Authorize an additional construction contingency of \$10,336.91.

RECORDING REQUESTED BY:

**City of Montclair**

AND WHEN RECORDED MAIL DOCUMENT AND  
TAX STATEMENT TO:

NAME: **City of Montclair**

STREET ADDRESS: **5111 Benito Street**

CITY, STATE & ZIP  
CODE: **Montclair, CA 91763**

Government Code 6103

(Space above this line for Recorder's Use Only)

## NOTICE OF COMPLETION

NOTICE is hereby given that: The undersigned is the owner of an interest of estate in the hereinafter described property, the nature of which said interest or estate is:

fee

The full name and address of the undersigned is  
Michael C. Hudson  
Public Works Director  
City Engineer  
5111 Benito Street  
Montclair, CA 91763

The work was completed on that certain work known as:

**Community Center Restroom & T.I. Project**

for the undersigned City of Montclair,  
a Municipal Corporation, on the 2nd day of December, 2013

The City accepted the job on the 21st day of November, 2013

The Contractor on said job was  
TA Pointer Enterprises, Inc.  
9121 Atlanta Ave. #410  
Huntington Beach, CA. 92646

The improvement consisted of:

**Building Improvements**

The property upon which said work of improvement was completed is described as:

**5111 Benito Street Montclair, CA 91763**

### VERIFICATION

I, the undersigned, say that I am agent for the owner of the aforesaid interest or estate in the property described in the above notice. I have read the foregoing notice and know and understand the contents thereof, and the facts stated herein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 19, 2013 at 5111 Benito Street, Montclair, California

\_\_\_\_\_  
Michael C. Hudson  
Public Works Director  
City Engineer

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER MONTCLAIR HOUSING AUTHORITY COMMISSIONERS' REVIEW AND ACCEPTANCE OF THE ANNUAL REPORT FOR FISCAL YEAR 2012-13	<b>DATE:</b> December 2, 2013 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 7 <b>FILE I.D.:</b> MHA030 <b>DEPT.:</b> MHA
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**REASON FOR CONSIDERATION:** The Montclair Housing Authority (MHA) is required to conduct an annual meeting to report its activities for the preceding year. Resolution No. 11-2918 establishes that the MHA hold its annual meeting on the first Monday in December.

The MHA Annual Report for Fiscal Year 2012-13 is attached for the MHA Commissioners' consideration.

**BACKGROUND:** The Montclair Housing Authority was created by the City Council on July 18, 2011, as a tool to safeguard the existing housing assets of the former Montclair Redevelopment Agency. Pursuant to the Governor and State Legislature's actions to eliminate redevelopment agencies, all housing assets other than fund balances (property and moneys) held by the former Montclair Redevelopment Agency in its low- to moderate-income housing funds would be automatically transferred to the County Housing Authority if the City did not have its own successor housing entity. The City Council designated itself commissioners of the MHA and designated certain City officials to serve as officers of the MHA. The City Manager is the Executive Director of the MHA.

The Successor Agency transferred cash and receivable assets that the former Redevelopment Agency held in the Low- to Moderate-Income Housing Fund to the MHA during the fiscal year. The MHA financial statements for the Fiscal Year ending June 30, 2013, is included in the MHA Annual Report for Fiscal Year 2012-13. The total assets for the MHA are \$8,453,466. Of this amount, \$494,324 is held in cash. The balance includes moneys due from the Montclair Housing Corporation for loans that were originally made by the former Redevelopment Agency and Residual Receipt Loan Receivables. A residual receipt is the repayment of moneys loaned by the former Montclair Redevelopment Agency to carry out a variety of housing programs.

**FISCAL IMPACT:** There would be no cost related to MHA's acceptance of the annual report.

**RECOMMENDATION:** The Montclair Housing Authority Board of Directors is requested to review and accept the Montclair Housing Authority Annual Report for Fiscal Year 2012-13.

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Prepared by: <u>Christine P. Waldwell</u>	Reviewed and Approved by: <u>M. J. STARRS</u>
Proofed by: <u>Andy Phillips</u>	Presented by: <u>[Signature]</u>

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**Montclair Housing Authority  
Annual Report  
Fiscal Year 2012-13**

# **Montclair Housing Authority**

**Paul M. Eaton, Chair**  
**Bill Ruh, Vice Chair**  
**Leonard Paulitz, Commissioner**  
**Carolyn Raft, Commissioner**  
**J. John Dutrey, Commissioner**

## **Officers**

**Edward C. Starr, Executive Director**  
**Marilyn J. Staats, Assistant Executive Director**  
**Donald L. Parker, Finance Officer**  
**Yvonne M. Smith, Housing Authority Secretary**

In accordance with Section 34328 of the Health and Safety Code of the State of California, below are financial statements for the Montclair Housing Authority (Success Housing Entity for the City of Montclair Redevelopment Agency) for the Fiscal Year Ended June 30, 2013:

**Balance Sheet**  
For the Year Ended June 30, 2013

**Assets**

Cash in Bank	\$ 494,324
Accounts Receivable	462
Due from Montclair Housing Corporation	5,358,772
Residual Receipt Loan Receivable	<u>2,599,908</u>
 Total Assets	 <u>\$ 8,453,466</u>

**Fund Balance**

Committed to Housing	<u>\$ 8,453,466</u>
 Total Fund Balance	 <u>\$ 8,453,466</u>

**Statement of Revenues, Expenditures  
and Changes in Fund Balance**  
For the Year Ended June 30, 2013

**Revenues**

Interest Income	\$ 37,998
Loan Repayments	<u>156,416</u>
 Total Revenues	 <u>194,414</u>

**Expenditures**

Personnel Costs	28,473
Legal Costs	671
Property Costs	<u>205</u>
 Total Expenditures	 <u>29,349</u>

Excess of Revenues Over (Under) Expenditures	165,065
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**Other Financing Sources (Uses)**

Contributions From Successor Agency	<u>8,288,401</u>
 Excess of Revenues and Other Sources Over (Under) Expenditures and Other Uses	 8,453,466

**Fund Balances**

Beginning of Fiscal Year	<u>-</u>
 End of Fiscal Year	 <u>\$ 8,453,466</u>

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATIONS	<b>DATE:</b> December 2, 2013
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 8
	<b>FILE I.D.:</b> FIN540
	<b>DEPT.:</b> ADMIN. SVCS.

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

**BACKGROUND:** Mayor Pro Tem Ruh has examined the Warrant Register dated December 2, 2013, and Payroll Documentations dated October 20, 2013, and November 3, 2013; finds them to be in order; and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated December 2, 2013, totals \$948,012.64. The Payroll Documentation dated October 20, 2013, totals \$560,742.21, with \$381,089.77 being the total cash disbursement. Payroll Documentation dated November 3, 2013, totals \$582,455.27, with \$397,033.85 being the total cash disbursement.

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

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Prepared by: <u><i>Andrus Stillejo</i></u>	Reviewed and Approved by: <u><i>[Signature]</i></u>
Proofed by: <u><i>[Signature]</i></u>	Presented by: <u><i>[Signature]</i></u>

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## AGENDA REPORT

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**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 13-93 WITH SOUTHERN CALIFORNIA  
TRANSCRIPTION SERVICES

**DATE:** December 2, 2013

**SECTION:** AGREEMENTS

**ITEM NO.:** 1

**FILE I.D.:** PDT175

**DEPT.:** POLICE

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 13-93 with Southern California Transcription Services for transcription of digital audio recorded material.

A copy of proposed Agreement No. 13-93 is attached for the City Council's review and consideration.

**BACKGROUND:** The Police Department has utilized professional transcription services for transcription of audio recorded material on an as-needed basis for many years. Services provided include, but are not limited to, transcription of employee interviews and meetings, dispatch recordings, and officer belt recordings.

Staff conducted an evaluation of past recordings transcribed by the current vendor at a rate of \$6.50 per page, and discovered the cost per recorded media is approximately \$300 per hour. Staff further concluded that through the proposed contractor, Southern California Transcription Services, the same recorded media would cost approximately \$140 per hour.

In accordance with Agreement No. 13-93, Southern California Transcription Services would be paid an hourly rate of \$35 per hour for transcription from English and \$40 per hour for transcription and translation from Spanish.

To ensure confidentiality of the recorded media, staff would have access to a secure internet-based resource to allow for the transfer of digital audio files from the Department to the contractor. Completed documents would be made available in a Microsoft Word format and emailed to the requestor within four business days of receipt.

Southern California Transcription Services would be bound by the confines of said Agreement with regard to confidentiality. Information obtained by Southern California Transcription Services in performance of said Agreement shall be considered confidential and not releasable by Southern California Transcription Services, its officers, employees, agents, or subcontractors without prior written authorization from the City Manager or City Attorney.

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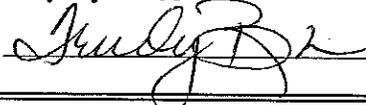
Prepared by:



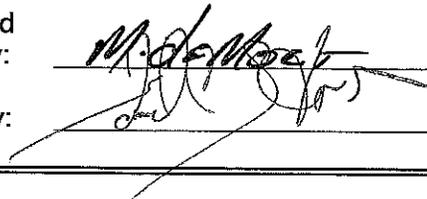
Reviewed and  
Approved by:



Proofed by:



Presented by:



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**FISCAL IMPACT:** The total cost of services proposed to be provided by Southern California Transcription Services would not exceed \$13,000 for the 36-month term of the Agreement without prior authorization of the City Manager and/or the City Council.

Funding for transcription services is contained annually in the Police Department Fiscal Year Budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 13-93 with Southern California Transcription Services.

**CITY OF MONTCLAIR**

**AGREEMENT FOR TRANSCRIPTION SERVICES**

THIS AGREEMENT is made and effective as of December 2, 2013, between the City of Montclair, a municipal corporation ("City") and Laureen Minnich, Owner, Southern California Transcription Services, a sole proprietor ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on the second day of December, 2013, and shall remain and continue in effect for a period of 36 months unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Contractor shall provide the following Services: (1) digital transcription of recorded materials, to include but not limited to recorded employee interviews and meetings, dispatch recordings, and officer belt recordings, (2) access to a secure internet based resource to allow for the transfer of digital audio files from City to Contractor, (3) completed transcription in Microsoft Word format emailed to the requestor within four business days of receipt.

3. **PERFORMANCE**

Contractor shall at all times faithfully, competently, and to the best of his/her ability, experience and talent, perform all tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement.

4. **CITY MANAGEMENT**

City's Police Chief shall represent City in all matters pertaining to the administration of this Agreement, and review and approval of all products submitted by Contractor, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Contractor. City's Police Chief shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Contractor's compensation, subject to Section 5 hereof.

5. **PAYMENT**

(a) The City agrees to pay Contractor monthly based upon actual time spent on the above tasks. Compensation for Services shall be based on the actual amount of time spent in adequately performing the Services, and shall be billed at the hourly rates of \$35.00 per hour for transcription from English and \$40.00 per hour for transcription/translation from Spanish. This total amount shall not exceed \$13,000 for

the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Contractor at the time City's written authorization is given to Contractor for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Fifteen Thousand Dollars (\$15,000.00). Any additional work in excess of this amount shall be approved by the City Council.

(c) Contractor will submit invoices monthly for actual services performed. Said invoices shall detail all costs, rates and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Contractor's fees, it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

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

## 6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City pursuant to Section 5(c).

## 7. DEFAULT OF CONTRACTOR

(a) The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the

terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Contractor a written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

#### 8. OWNERSHIP OF DOCUMENTS

(a) Contractor shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Contractor. With respect to computer files, Contractor shall make available to the City, at the Contractor's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

#### 9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Contractor's services, to the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless City and any and all

of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Contractor, its officers, agents, employees or subContractors (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Contractor shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to officers, agents, employees or subContractors of Contractor. Said indemnification shall include any claim that Contractor, or Contractor's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law.

(c) General Indemnification Provisions. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subContractor or other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this section.

#### 10. WORKERS COMPENSATION

(a) Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents as required by law, and agrees to defend, hold harmless and indemnify City for any and all claims arising out of any injury, disability or death of any of Contractor's employees or agents.

#### 11. INDEPENDENT CONTRACTOR

(a) Contractor is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control and shall not be construed to be employees of City for any purpose, including eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of

Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

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

## 12. LEGAL RESPONSIBILITIES

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

## 13. UNDUE INFLUENCE

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

## 14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

## 15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization. Contractor, its officers, employees, agents, or subContractors, shall not without written authorization from the City Manager or unless

requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

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

(c) Contractor covenants that neither he/she nor any office or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Contractor further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subContractor. Contractor further covenants that Contractor has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Contractor and/or its subContractors shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

## 16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

**To City:**

Michael deMoet, Chief of Police  
City of Montclair  
5111 Benito  
Montclair, CA 91763

**To Contractor:** Lauren Minnich, Owner  
Southern California Transcription Services  
4354 Avon Drive  
La Mesa, CA 91941

17. ASSIGNMENT

The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

18. LICENSES

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, including a City of Montclair business license.

19. GOVERNING LAW

The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Montclair.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. CONFIDENTIALITY

Information and materials obtained by the Contractor from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Contractor for any purpose other than the performance of this Agreement.

22. DISCRIMINATION

The Contractor agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Contractor agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

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

**CITY OF MONTCLAIR**

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

Attest:

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

Approved as to Form:

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

**CONTRACTOR**

By: \_\_\_\_\_  
Laureen Minnich, Owner  
Southern California Transcription Services

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 13-94 WITH CONSTRUCTION TESTING AND ENGINEERING, INC., FOR \$30,000 FOR ON-CALL TESTING AND INSPECTION SERVICES FOR MISCELLANEOUS CITY PROJECTS	<b>DATE:</b> December 02, 2013
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b> 2
	<b>FILE I.D.:</b> STA670
	<b>DEPT.:</b> PUBLIC WORKS

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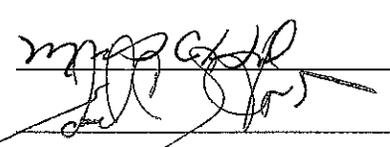
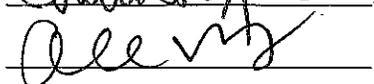
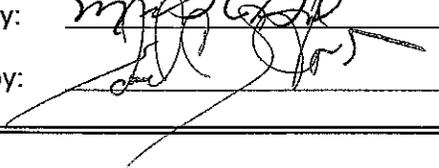
**REASON FOR CONSIDERATION:** Most City projects require some type of testing of materials or special inspection services City staff is not able to provide. The City Council is requested to consider approval of Agreement No. 13-94 with Construction Testing and Engineering, Inc., to provide these testing and inspection services on an "on-call" basis. Awards of contracts with the City require City Council approval.

**BACKGROUND:** For the past two years, the City has been using Construction Testing and Engineering, Inc., to provide soils compaction and concrete testing. Certain special inspection services, which City staff cannot perform, are sometimes required as well. The City previously entered into Agreement No. 11-130 with Construction Testing and Engineering, Inc., for these services. That agreement expired in July and new agreement is required.

**FISCAL IMPACT:** This agreement is written for an amount not to exceed \$30,000 and will cover a two-year period terminating on December 01, 2015. Purchase orders will be written based on quotations received for individual City projects, and will be charged to those City projects. The sum of these purchase orders will not exceed \$30,000, except as provided for in the agreement. The agreement authorizes the City Manager to increase the contract amount by no more than 15 percent.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 13-94 with Construction Testing and Engineering, Inc., for on-call testing and inspection services for miscellaneous City projects.

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

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**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**On-Call Special Inspection and Material Testing Services  
for  
Public Works Projects**

THIS AGREEMENT is made and effective as of December 03, 2013, between the City of Montclair, a municipal corporation ("City") and Construction Testing and Engineering, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on December 03, 2013, and shall remain and continue in effect until December 01, 2015, or until tasks described herein are completed, whichever is later, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform inspections, special inspections, and materials as requested by City. The performance of testing and inspection shall also include the preparation of all necessary maps, plans, reports, and documents as determined necessary by City. Consultant shall complete the tasks according to the schedule of performance established for each individual project.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the tasks to be performed or change Consultant's compensation, subject to Section 5 hereof.

## 5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$30,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed fifteen percent (15%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall specify each project for which services were provided, and detail all costs, rates, and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous calendar month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

## 6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5(c).

## 7. DEFAULT OF CONSULTANT

(a) Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating

Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

## 8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## 9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and

all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant. Said indemnification shall include any claim that Consultant, or Consultant's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

## 10. INSURANCE

(a) Consultant shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to City nor shall Consultant allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI:

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	1,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim and aggregate)	1,000,000
Worker's compensation	Statutory

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

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

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

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

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

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

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

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

11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

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

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

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

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

(c) Consultant covenants that neither he/she nor any office or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

#### 16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested,

addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: Michael C. Hudson  
City Engineer  
City of Montclair  
5111 Benito  
Montclair, CA 91763

To Consultant: Tiffany Hilborn  
Business Development  
Construction Testing and Materials, Inc.  
12155 Magnolia Avenue  
Suite C  
Riverside, CA 92503

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, including a City of Montclair business license.

19. GOVERNING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Montclair.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. NOT USED

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement.

23. DISCRIMINATION

The Consultant agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Consultant agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

CONTRACTOR:

CITY:

**CONSTRUCTION MATERIALS AND TESTING, INC.**

**CITY OF MONTCLAIR, CALIFORNIA**

12155 Magnolia Avenue  
Suite C  
Riverside, CA 92503

By: \_\_\_\_\_  
Name

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

\_\_\_\_\_  
Title

ATTEST:

By: \_\_\_\_\_  
Name

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

\_\_\_\_\_  
Title

**EXHIBIT A**



**Schedule of Fees and Services**

PROFESSIONAL SERVICES	Rate per Hour		
<b><u>PROFESSIONAL ENGINEERING STAFF</u></b>			
Principal Engineer / Geologist	\$140		
Senior Engineer / Geologist / Architect	\$125		
Project Engineer / Geologist / Architect	\$100		
Environmental Consultant / Registered Environmental Assessor	\$100		
Staff Engineer / Geologist / Architect	\$85		
Environmental Specialist	\$80		
Environmental Technician	\$65		
Roofing / Waterproofing Inspector	\$65		
Roofing / Waterproofing Consultant	QUOTE		
<b><u>INSPECTION SERVICES &amp; QUALITY CONTROL</u></b>			
Pile Driving Inspector / Deep Foundation Inspector	\$75		
Senior Soil Technician includes nuclear gauge or mobile laboratory	\$70		
Soil Technician II includes nuclear gauge or mobile laboratory	\$70		
Mechanical / Electrical Inspector	\$70		
Registered Special Inspector (Concrete, Masonry, Welding, Pre-Stress, Fireproofing)	\$70		
Shop Fabrication Inspection (Within California)	QUOTE		
Shop Fabrication Inspection (Outside California)	QUOTE		
Field Technician I (ACI / Soil)	\$70		
Concrete Technician (ACI)	\$70		
Inspector of Record / DSA / OSHPD Inspector	QUOTE		
Quality Control Representative	QUOTE		
Submittal Reviewer	QUOTE		
Prevailing Wage Site Work	QUOTE		
QC Plan Preparation	QUOTE		
<b><u>NON-DESTRUCTIVE TESTING SERVICES</u></b>			
Non-Destructive Testing Inspector (Ultrasonic, magnetic particle, dye penetrate)	\$85		
Metallic Surface Coatings (Paint or luminescent Fireproofing)	QUOTE		
Radiographic (low power portable and laboratory available)	QUOTE		
<b><u>SPECIAL SERVICES:</u></b>			
Coring / Sawing Operator & Equipment (1-man crew)	\$110		
Coring / Sawing Operator & Equipment (2-man crew)	\$200		
Floor Flatness (Includes reports and Registered Engineer Certification)	\$95		
Mobilization / Demobilization - flat rate	\$100		
Reinforcing Steel Location	\$70		
Anchor Pull Tests - up to 30 tons	\$70		
Glue Lamination Inspection	QUOTE		
Batch Plant Inspector	\$70		
Procedure Qualification per AWS, ASME or Military Standards	QUOTE		
<b><u>SUPPORT SERVICES:</u></b>			
Certificate of Completion	\$350		
Draftsman	\$60		
Express Mail (FEDEX/UPS) (minimum)	\$30		
Facsimile (each page)	\$1		
File Search, re-issue of report, copies (minimum)	\$50		
Review of Files for processing Affidavits and Certifications	\$45		
Word Processing/Secretarial (per hour)	\$45		
Sample Pickup (50 mile radius of CTE office - NIC Shotcrete Panels)	\$0		
<b><u>COURT APPEARANCE AND DEPOSITIONS:</u></b>			
Senior Professional Preparation, Deposition or Testimony	\$250		
Travel & Expenses	Actual + 15%		
Evidence Storage (per month)	\$50		



**Schedule of Fees and Services**

MATERIALS TESTING	Price per Specimen	ASTM Designation	Other Method Used
<b><u>SOILS:</u></b>			
California Bearing Ratio (CBR), Includes Maximum Density Curve	\$360	D 1883	---
Cement Treated Base, Laboratory Design - Soil Cement, Each Set	\$500	D-558	---
Cement Treated Base, Sample Fabrication (Set of Three)	\$120	D-558	CTM 312
Cement Treated Base, Compression Test	\$40	---	---
Chloride Content of Soil	\$70	---	---
Conductivity	\$35	---	CAL-TM-424
Consolidations - Per Point	200.00 or \$65.00 per point	D 2435	---
Direct Shear Test	\$195 to \$245	D 3080	---
Expansion Index	\$150	D 4829	UBC 18-2
Hydrometer Analysis (Fine Grade)	\$200	D-422	---
Hydrometer Analysis with coarse & fine grade	\$250	---	---
Laboratory Compaction Test (Moisture Density-Each Curve)	\$200	D 1557	CTM 216
Laboratory Compaction Test Requiring Rock Correction	\$200	D 1557 / D 4718	---
Moisture Content	\$35	D 2216	---
Plasticity Index / Liquid Limit/Atterburg Limits	\$100	D 4318	---
Permeability Test - Constant Head			
Fine Grained Soil	\$210	D-5084	---
Granular Soil	\$350	D 2434	---
Other	QUOTE	D 4318	---
R - Value (Minimum 3 pts.)	\$250	D-2844	CTM 301
Resistivity and pH of Soil	\$150	D-4972	CTM 643
Sand Equivalent	\$100	D 2419	CTM 217
Shrinkage Limit	\$90	D 427	---
Sodium Sulfate Soundness (Per Size Fraction)	\$70	C 88	---
Soil Classification w/ Atterburg & Gradation	\$245	D 2487	---
Sulphate Content of Soil	\$80	---	---
<b><u>AGGREGATES:</u></b>			
Absorption Test, Coarse Aggregate	\$25	C 127	---
Absorption Test, Fine Aggregate	\$25	C 128	---
Aggregate Conformance Testing for State of California Projects (Includes: Sieve Analysis, Specific Gravity, No. 200 Wash, Organic Impurities, Unit Weight)	\$210	---	---
Clay Lumps and Friable Particles	\$85	C 142	---
Cleanness Value	\$70	---	CTM 227
Crushed Particles, Percent	\$110	---	CTM 205
Durability Index, Coarse Aggregate	\$95	D 3744	CTM 229
Durability Index, Fine Aggregate	\$70	D 3744	CTM 229
LA Rattler	\$150	C 131 or C 535	CTM 211
Mortar making properties of fine aggregates	\$225	C 87	---
Organic Impurities in Sand	\$85	C 40	---
Sieve Analysis (Gradation), Coarse Aggregate	\$75	C 136	---
Sieve Analysis (Gradation), Fine Aggregate (Including Wash)	\$100	C 136	---
Soundness of Aggregates by Sulfates	\$45	---	---
Specific Gravity, Fine Aggregate	\$50	C 128	---
Specific Gravity, Coarse Aggregate	\$40	C 127	---
Unit Weight per Cubic Foot, Voids in Aggregate	\$50	C 29	---



**Schedule of Fees and Services**

MATERIALS TESTING	Price per Specimen	ASTM Designation	Other Method Used
<b><u>ASPHALT CONCRETE:</u></b>			
Asphalt Mix Design	Quote	Marshall & Hveem	---
Asphalt Mix Design Review	\$135	---	---
Bitumen Content	\$75	D 2172	
Compacted Max Density - HVEEM		D 1561	
Compacted Max Density - Marshall		D 1561	
Extraction, % Asphalt (including gradation)	\$130	D-6307 / C-136	CTM 310/CTM 382
Field Mix-HVEEM-Stability per Point	\$110	D 1560	
Field Mix-MARSHALL-Stability per Point	\$110	D 1559	
Film Stripping	\$65	---	CTM 302
Hveem Stability & Unit Weight	\$150	D 1560 / D 1561	CTM 304, 308 & 366
Marshall Stability, Flow & Unit Weight ( Three Specimens)	\$150	D 1559 / D 2726	---
Maximum Theoretical Unit Weight (Rice Specific Gravity)	\$150	D 2041	---
Percent Swell	\$80	---	CTM 305
Preparation of Bituminous Mixture	\$30	CAL-TM304	
Stabilometer Value of Bituminous Mixture	\$60	CAL-TM366	
Unit Weight Compacted Sample or Core (Bulk Specific Gravity)	\$50	D 2726	CTM 308
Unit Weight Sample Requiring Compaction	\$115	D 2726	CTM 304 & 308
<b><u>CONCRETE:</u></b>			
Cement Testing Compression (Cubes)	QUOTE	C-109 / C-109M	---
Compression Tests, 6x12 Cylinder	\$20 (each)	C 39	---
Compression Tests, Gunite/Shotcrete Panels, 3 Cut Cores per Panel (Set)	\$135	C 39	---
Compression Tests, Cores (Includes Sample Preparation)	\$45	C 42	---
Compression Tests, Lightweight Concrete Fill	\$30	C 495	---
Concrete Flexural Test, 6x6x20	\$55	C 293, C 78	---
Concrete Mix Design (Includes Aggregate Testing)	\$380	---	---
Concrete Mix Design (Revision or Review)	\$150	---	---
Drying Shrinkage (3 Specimens-28 Days)	\$190	C 157 (Mod)	---
Gunite/Shotcrete Panel Coring	\$95/hour	C-42	---
Modulus of Elasticity, Static	\$78	C 469	---
Splitting Strength Test	\$60	C 496	---
Trial Batch, Includes Mix Design, Aggregate Testing & Six Compression Tests	\$525	---	---
Unit Weight, Lightweight Concrete Fill	\$30	C 495	---
<b><u>MASONRY:</u></b>			
Absorption Test, Brick, 7-Day (Per Block, 3 block minimum)	\$45	C 67	---
Absorption Test, Brick, 24-Hour Submersion	\$25	C 67	---
Absorption Test, Brick, 5-Hour Boiling	\$40	C 67	---
Composite Prism (under 400,000 lbs.), Half Size 8 x 8 x 16	\$140	E 447	UBC 21-17
Composite Prism (under 400,000 lbs.), Full Size 8 x 16 x 16	\$150	E 447	UBC 21-17
Composite Prism (over 400,000 lbs) Full Size 12 x 16 x 16	\$250		
Compression Test, Brick	\$30	C 67	---
Compression Test, Blocks Larger Than 8x8x16	\$40	C 140	---
Compression Test, Blocks Less Than or Equal to 8x8x16	\$35	C 140	---
Compression Tests, Grout	\$18	C 1019	UBC 21-18
Compression Tests, Mortar, 2x4 cylinder UBC	\$18	C 780	UBC 21-16
Conformance Package	\$525	C 90	---
Efflorescence, Block with Mortar	\$40	C-90	---
Efflorescence, Block/Brick Only	\$30	C-90 / C-67	---
In-Place Shear Test (per test)	\$80	---	UBC 21-6
Linear Shrinkage	\$100	C 426	---
Modulus of Rupture, Brick	\$30	C 67	---
Moisture as Received, Brick	\$25	C 67	---
Saturation Co-Efficient (Includes Absorption) Brick	\$40	C 67	---
Shear Test, cores (excludes sample preparation)	\$150	---	Title 24
Compression Test Cores (includes sample preparation)	\$50	C 42	Title 24
Unit Weight & Absorption, Block	\$40	C 140	---



**Schedule of Fees and Services**

MATERIALS TESTING	Price per Specimen	ASTM Designation	Other Method Used
<b><u>STEEL:</u></b>			
High Strength Bolt, Nut & Washer Conformance (Wedge Tensile, Proof Load, Hardness)	\$100	A-325	---
Mechanical Tests, Hardness Test, Rockwell	\$50	---	---
Prestressed Steel, Tensile Test, Strand (7 wire)	\$90	---	---
Reinforcing Steel, Tensile Test - No. 11 Bars & Smaller	\$30	A 615	---
Reinforcing Steel, Tensile Test - No. 14 Bars & Larger (To Min. Requir. Only)	\$50	A 615	---
Reinforcing Steel, Bend Test - No. 11 Bars & Smaller			
Mechanically Spliced Reinforcing Steel	\$80	---	---
Fireproofing Density Tests	\$70	E 605	UBC 7-6
Fireproofing Adhesion / Cohesion Tests			
Structural Steel, Tensile Test - Up to 200,000 lbs.	\$30	A 370	---
Structural Steel, Bend Test.	\$40	---	---
Structural Steel, Pipe Flattening Test	\$30	---	---
Welded Specimens, Tensile Test - No. 11 Bars & Smaller	\$32	---	---
Welded Specimens, Tensile Test - No. 14 Bars (To Min. Require. Only)	\$60	---	---
Welded Specimens, Tensile Test - No. 18 Bars (To Min. Require. Only)	\$80	---	---
Welded Specimens, Tensile Testing - Mechanically Spliced Bar	\$80	---	---
<b><u>ROOFING:</u></b>			
Asbestos Evaluation (per ply)	\$40	---	---
Asphalt Softening Point	\$150	---	---
Roofing Material Analysis, With Surfacing	\$450	D 2829	---
Roofing Material Analysis, Without Surfacing	\$225	D 3617	---
Roofing Tile, Absorption (set of 5)	\$150	---	---
Roofing Tile, Strength Test (set of 5)	\$150	---	---
<b><u>WELDING CERTIFICATION</u></b>			
American Welding Society (AWS D1.1)	---	---	---
Limited Thickness Plate (per position)	\$200	---	---
Unlimited Thickness Plate (per position)	\$230	---	---
Pipe (per position)	\$230	---	---
American Welding Society (AWS D1.4)	---	---	---
Bar Sizes #3 through #9 (each)	\$200	---	---
Bar Sizes #10 through #11 (each)	\$230	---	---
Bar Sizes #14 through #18 (each)	\$250	---	---
American Society of Mechanical Engineers (ASME)	---	---	---
Plate or Pipe Procedure Qualification (each)	\$550	---	---
Plate or Pipe Welder Qualification (each)	\$550	---	---
American Welding Society (AWS D1.3)	---	---	---
Light Gauge Metal (includes butt and plug weld)	\$180	---	---
Procedure Qualification per AWS, ASME or Military Standards	QUOTE	---	---
Fillet Weld Test (Break and Etch Test)	\$180	---	---
Fillet Weld Test Plates	\$30	---	---
Ultrasonic Testing of Weld Coupons	\$90	---	---
Witness time, if Required	\$55	---	---



**Schedule of Fees and Services**

**Testing Samples:** A preparation charge will be added to all samples submitted to the laboratory that are not ready for testing. This preparation charge will be based on the actual time required and at the laboratory technician's rate of \$50.00 per hour. There will be a 50% premium charge for "RUSH/PRIORITY" testing. This testing laboratory agrees to exercise reasonable care in obtaining, preserving, and caring, for the samples to be tested, but assumes no responsibility for damages, either direct or consequential, which arise or are alleged to arise from loss, damage or destruction of samples due to circumstances beyond this testing laboratory's control. Samples are discarded after testing unless requested otherwise in writing by the client. A per month fee is charged for retained samples.

**On-Site Mobile Laboratory:** QUOTE

**Prevailing Wage:** Please note that all inspector and technician rates will increase every July 1, to commensurate with Local 12 document annual increase.

**Per Diem and Travel Expenses:** Minimum \$ 50.00 per day or Actual cost + 15%

**Scheduling:** A minimum of 24 hours notice is required to schedule personnel.

<b>Minimum Charges:</b>	Show-up time:	2-Hour Minimum Billing
	Site Time + 1 Hour	
	Swing/Graveyard Shift:	10% Premium
	Trip Charge:	\$0/hr (Minimum)
	Reimbursables:	Cost plus 15%

**Overtime Rates:** Rates are based on an 8-hour work day between the hours of 7:00 A.M. and 3:00 P.M., M-F. A premium of 1.5 times the quoted rates for the first 8 hours and 2.0 times thereafter will be charged for work outside of normal hours. Saturdays will be invoiced at 1.5 times the quoted rate for the first 8 hours and 2.0 times thereafter. Work on Sundays and holidays will be invoiced at 2.0 times the quoted rate.

**The following are CTE Inc. holidays:**

- New Year's Day    Labor Day
- Memorial Day    Thanksgiving Day
- Independence Day    Christmas Day

Should a Holiday fall on a Saturday or Sunday the closest previous or following regular work day shall be considered the holiday.

**Payment Terms:** Payment for services is due upon presentation. If not paid within 30 days of the invoice date, it will be considered past-due and a finance charge of 1 1/2% per month will be added to the unpaid balance. Additionally, any attorney's fees or other costs incurred in collecting any delinquent accounts will be added to the amounts due and shall be paid by the party invoiced.

The Fee Schedule contains only the basic services performed by this office and is not a complete listing. Please do not hesitate to call for a quotation or proposal if your service needs are not listed herein.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 13-95, WITH ALBERT GROVER & ASSOCIATES FOR TRAFFIC ENGINEERING SERVICES	<b>DATE:</b> December 2, 2013 <b>SECTION:</b> AGREEMENTS <b>ITEM NO.:</b> 3 <b>FILE I.D.:</b> PUB115 <b>DEPT.:</b> PUBLIC WORKS
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**REASON FOR CONSIDERATION:** Agreements with the City require City Council approval.

**BACKGROUND:** Traffic engineering services for smaller cities are typically provided through contracts with consultants specializing in traffic engineering. The City of Montclair has been using Albert Grover & Associates (AGA) and its predecessor, Mohle Grover and Associates, since 1990 for these services. Sample services include signal timing monitoring/changes, review of traffic issues related to development activities, warrant analyses for signals and stop signs, and other on-call services as necessary. AGA's services and response to City needs over the last 23 years have been outstanding.

A copy of proposed Agreement No. 13-95 is attached for the City Council's review and consideration.

**FISCAL IMPACT:** Invoicing for monthly traffic engineering services over the past five years has ranged from \$1,700 to \$3,400. The \$1,700 average occurred during a time when San Bernardino Associated Governments was performing regional traffic signal coordination and assumed the City's responsibility for traffic signal monitoring. That function is now performed by the City. The \$3,400 average occurred in a year that the City agreed to perform some traffic signal design modifications for the Paseos project on a reimbursement basis. Without that additional work, the monthly average would have been \$2,700.

It is anticipated that monthly invoices over the next 12-month period would likely average \$2,500 to \$3,000. The current budget includes an appropriation of \$35,000 for these services.

As with previous contracts for these services, the Agreement is written on a time and materials basis based on the hourly charge rate and expense reimbursement schedule, which is included in the Agreement as "Exhibit A." The Agreement allows for this exhibit to be modified on an annual basis subject to the approval of the City Manager.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 13-95 with Albert Grover & Associates for traffic engineering services.

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Prepared by: <u>          <i>Allen</i>          </u>	Reviewed and Approved by: <u>          <i>[Signature]</i>          </u>
Proofed by: <u>          <i>Allen</i>          </u>	Presented by: <u>          <i>[Signature]</i>          </u>

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**AGREEMENT FOR CONSULTANT SERVICES**  
**TRAFFIC ENGINEERING SERVICES**

THIS AGREEMENT is made and effective as of July 1, 2013, between the City of Montclair, a municipal corporation ("City") and Albert Grover & Associates, a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on July 1, 2013, and shall remain and continue in effect for a period of 60 months until tasks described herein are completed, but in no event later than June 30, 2018, unless extended or sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform general on-call traffic engineering services as identified and required by the City Engineer. Consultant shall complete all tasks within timeframes agreed upon by Consultant and City Engineer.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently, and to the best of his/her ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement and review and approval of all products submitted by Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 5 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the

amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall detail all costs, rates, and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Each July after the first year of the Agreement, the hourly rates set forth in Exhibit A shall be subject to change in accordance with Labor Agreements of Consultant's office and field personnel. Consultant shall submit the new hourly rate schedule to City for approval or rejection, which shall occur within 30 days following submission. If City rejects the revised rate schedule, this Agreement shall terminate. If City accepts the revised rate schedule, this Agreement shall continue with the revised rate schedule. Authority to reject or accept the revised rate schedule is delegated to the City Manager.

#### 6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5(c).

#### 7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she

shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

## 8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## 9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits,

actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant. Said indemnification shall include any claim that Consultant, or Consultant's employees or agents, are considered to be employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

10. INSURANCE

(a) Consultant shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to City nor shall Consultant allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI:

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	1,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim and aggregate)	1,000,000
Worker's compensation	Statutory

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

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

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

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

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

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

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

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

## 11. INDEPENDENT CONTRACTOR

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

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for

admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) Consultant covenants that neither he/she nor any office or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement.

## 16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: Michael C. Hudson  
Public Works Director/City Engineer  
City of Montclair  
5111 Benito  
Montclair, CA 91763

To Consultant: Rob Kuehn  
Corporate Secretary  
Albert Grover & Associates  
211 East Imperial Highway  
Suite 208  
Fullerton, CA 92835

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, including a City of Montclair business license.

19. GOVERNING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Montclair.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

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

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement.

23. DISCRIMINATION

The Consultant agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Consultant agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

CITY OF MONTCLAIR

CONSULTANT

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

By: \_\_\_\_\_  
Albert Grover, President/CEO

Attest:

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

By: \_\_\_\_\_  
Rob Kuehn, Corporate Secretary

Approved as to Form:

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



**EXHIBIT A**

**SCHEDULE OF HOURLY RATES  
EFFECTIVE SEPTEMBER 1, 2011**

Principal/President	\$ 275
Vice President	\$ 250
Director of Project Development	\$ 250
Senior Transportation Engineer	\$ 200
Senior Design Engineer	\$ 185
System Integrator	\$ 180
Senior Associate	\$ 170
Transportation Engineer	\$ 165
Design Engineer/Senior Signal Systems Specialist/Construction Inspector	\$ 150
Associate Transportation Engineer/Civil Engineering Associate	\$ 140
Transportation Engineering Associate	\$ 135
Signal Systems Specialist	\$ 135
Signal Systems Technician	\$ 125
Senior CADD Operator	\$ 125
Project Coordinator/Engineer	\$ 110
CADD Operator	\$ 110
Assistant Transportation Engineer/Assistant Engineer	\$ 90
Traffic Enumerator, Engineering Aide	\$ 75
Engineering Aide II	\$ 50
Council/Commission Meetings, Hearings, etc. (Billing Rate + \$50 Surcharge)	\$ 1,000 Minimum
Expert Witness (Billing Rate + \$50 Surcharge)	\$ 1,000 Minimum
Expert Witness - Deposition/Court (Billing Rate + \$100 Surcharge)	\$ 1,000 Minimum

Subconsultants will be billed at cost plus 20%

*Conditions of Usage: The above rates are typically effective for a 12-month period, but AGA maintains the right to change the billing rates at any time for convenience of record keeping. Therefore, all billings will always be at the then current billing rates. This will not affect any agreed upon total or not-to-exceed fees.*

INVOICES WILL BE SUBMITTED MONTHLY AND SHALL BE DUE AND PAYABLE WITHIN 30 DAYS. FINANCE CHARGES MAY BE ACCRUED DAILY ON UNPAID BALANCES BASED ON A 10% ANNUAL PERCENTAGE RATE.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER 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	<b>DATE:</b> December 2, 2013 <b>SECTION:</b> AGREEMENTS <b>ITEM NO.:</b> 4 <b>FILE I.D.:</b> GRT115 <b>DEPT.:</b> FIRE
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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 13-96 with San Bernardino County Fire Protection District Office of Emergency Services to receive approximately \$11,122 from the FY2013 Homeland Security Grant Program (HSGP).

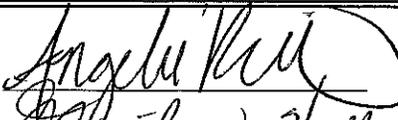
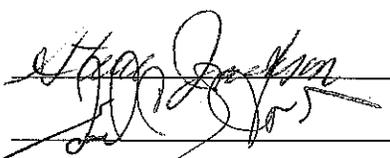
A copy of proposed Agreement No. 13-96 is attached for the City Council's review and consideration.

**BACKGROUND:** The FY2013 HSGP plays an important role in implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal of a secure and resilient nation. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community but, rather, require the combined effort of the whole community. The FY2013 HSGP supports core capabilities across the five mission areas of prevention, protection, mitigation, response, and recovery based on allowable costs. At a local government level, this grant program will assist the City with first responder training.

**FISCAL IMPACT:** Should the City Council approve proposed Agreement No. 13-96, the City would receive approximately \$11,122 from the FY2013 HSGP for the City's Federal Fiscal Year 2014-15. HSGP funds are distributed to fire jurisdictions within San Bernardino County. Each jurisdiction is allocated a \$10,000 base with the remainder of the grant distributed on a per capita basis to each eligible jurisdiction.

**RECOMMENDATION:** Staff recommends the City Council approve 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.

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

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**FY2013 Homeland Security Grant  
Estimates - Fire Jurisdiction's Allocations**

<b>Fire Jurisdictions</b>	<b>Population (POP)</b>	<b>Base</b>	<b>Percentage based on POP</b>	<b>Total District Allocation</b>
Adelanto	31,289	\$ 10,000	\$ 940	10,940
Apple Valley	70,436	10,000	\$ 2,117	12,117
Arrow Bear	854	10,000	\$ 26	10,026
Barstow	23,168	10,000	\$ 696	10,696
Big Bear City	6,349	10,000	\$ 191	10,191
Big Bear Lake	5,111	10,000	\$ 154	10,154
Chino	79,873	10,000	\$ 2,401	12,401
Chino Hills	76,033	10,000	\$ 2,285	12,285
Colton	52,956	10,000	\$ 1,592	11,592
Crest Forest	17,754	10,000	\$ 534	10,534
Daggett	522	10,000	\$ 16	10,016
Fontana	200,974	10,000	\$ 6,041	16,041
Grand Terrace	12,270	10,000	\$ 369	10,369
Hesperia	91,400	10,000	\$ 2,747	12,747
Highland	53,926	10,000	\$ 1,621	11,621
Loma Linda	23,476	10,000	\$ 706	10,706
Montclair	37,311	10,000	\$ 1,122	11,122
Morongo	3,562	10,000	\$ 107	10,107
Mt. Baldy	523	10,000	\$ 16	10,016
Needles	4,912	10,000	\$ 148	10,148
Newberry Springs	2,337	10,000	\$ 70	10,070
Ontario	166,866	10,000	\$ 5,016	15,016
Rancho	171,058	10,000	\$ 5,142	15,142
Redlands	69,813	10,000	\$ 2,098	12,098
Rialto	101,275	10,000	\$ 3,044	13,044
Running Springs	4,531	10,000	\$ 136	10,136
San Bernardino	212,639	10,000	\$ 6,392	16,392
Twentynine Palms	26,084	10,000	\$ 784	10,784
Unincorporated/County Fire	258,459	10,000	\$ 7,769	17,769
Upland	74,907	10,000	\$ 2,252	12,252
Victorville	120,368	10,000	\$ 3,618	13,618
Yermo	1,659	10,000	\$ 50	10,050
Yucaipa	52,549	10,000	\$ 1,580	11,580
Yucca Valley	21,030	10,000	\$ 632	10,632
<b>Total</b>	<b>2,076,274</b>	<b>\$ 340,000</b>	<b>\$ 62,409</b>	<b>\$ 402,409</b>

**San Bernardino County Fire Protection District  
FY 2013 Homeland Security Grant Program  
CFDA 97.067  
Subrecipient Agreement  
Grant No. 2013-00110**

Agreement No.  
13-96

Name of Applicant: City of Montclair Fire Department  
Address: P.O. Box 2308  
City: Montclair State: CA Zip Code: 91763  
Telephone Number: (909) 447-3540 Fax Number: (909) 621-5261  
E-Mail Address: mhall@cityofmontclair.org

As the duly authorized representative of the Applicant, I certify that the Applicant named above:

1. Will assure that all allocations and use of funds under this grant will be in accordance with the Fiscal Year 2013 HSGP Funding Opportunity Announcement.
2. Will assure that grant funds will support efforts related to providing an integrated mechanism to enhance the coordination of national priority efforts to prepare for, prevent, respond to, and recover from terrorist attacks, major disasters and other emergencies.
3. Has the legal authority to apply for federal assistance and has the institutional, managerial and financial capability to ensure proper planning, management and completion of the grant provided by the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) and sub-granted through the State of California, California Governor's Office of Emergency Services (Cal OES).
4. Will assure that grant funds are used for allowable, fair, and reasonable costs only and will not be transferred between grant programs (for example: State Homeland Security Program and Urban Area Security Initiative) or fiscal years.
5. Will comply with any cost sharing commitments included in the FY2013 Investment Justifications submitted to DHS/FEMA/Cal OES, where applicable.
6. Will establish a proper accounting system in accordance with generally accepted accounting standards and awarding agency directives.
7. Will give the DHS/FEMA, the General Accounting Office, the Comptroller General of the United States, the Cal OES, the Office of Inspector General, through any authorized representatives, access to, and the right to examine, all paper or electronic records, books, and documents related to the award, and will permit access to its facilities, personnel and other individuals and information as may be necessary, as required by DHS/FEMA or Cal OES, through any authorized representative, with regard to examination of grant related records, accounts, documents, information and staff.
8. Will require any subrecipients, contractors, successors, transferees, and assignees to acknowledge and agree to comply with applicable provisions governing DHS/FEMA access to records, accounts, documents, information, facilities, and staff.
  - a. Recipients must cooperate with any compliance review or complaint investigation conducted by DHS/FEMA or Cal OES.
  - b. Recipients must give DHS/FEMA and Cal OES access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to

- facilities, personnel, and other individuals and information as may be necessary, as required by DHS/FEMA and Cal OES program guidance, requirements, and applicable laws.
- c. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
  - d. If, during the past three years, the Recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the Recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS/FEMA/Cal OES awarding office and the DHS Office of Civil Rights and Civil Liberties.
  - e. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the Recipient, or the Recipient settles a case or matter alleging such discrimination, Recipients must forward a copy of the complaint and findings to the DHS/FEMA Component and/or awarding office. The United States has the right to seek judicial enforcement of these obligations.
9. Will comply with any other special reporting, assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement, or detailed in the program guidance.
  10. Agrees that funds utilized to establish or enhance state and local fusion centers must support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines, follow the federal and state approved privacy policies, and achieve (at a minimum) the baseline level of capability as defined by the Fusion Capability Planning Tool.
  11. Will initiate and complete the work within the applicable timeframe, in accordance with grant award terms and requirements, after receipt of approval from San Bernardino County Fire Protection District, Office of Emergency Services and will maintain procedures to minimize the amount of time elapsing between the award of funds and the disbursement of funds.
  12. Will provide timely, complete and accurate progress reports, and maintain appropriate documentation to support the reports.
  13. Will provide timely notifications to San Bernardino County Fire Protection District, Office of Emergency Services of any developments that have a significant impact on award- supported activities, including changes to key program staff.
  14. Agrees to be non-delinquent in the repayment of any federal debt. Examples of relevant debt may be found in OMB Circular A-129, form SF-424, item #17, and include delinquent payroll and other taxes, audit disallowances, and benefit overpayments.
  15. Will comply with the requirement of 31 U.S.C. Section 3729, which sets forth that no subgrantee, Recipient or subrecipient of federal payments shall submit a false claim for payment, reimbursement or advance. Administrative remedies may be found in 38 U.S.C. Section 3801-3812, addressing false claims and statements made.
  16. Will comply with all federal and state laws, executive orders, regulations, program and administrative requirements, cost principles, audit requirements, policies and any other terms and conditions applicable to this award.
  17. Will comply with Office of Management and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (also known as the "A-102 Common Rule"), found under FEMA regulations at Title 44, Code of Federal Regulations (CFR) Part 13, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, relocated to 2 CFR

Part 215; requirements for allowable costs/cost principles in the A-102 Common Rule, OMB Circular A-110 (2 CFR § 215.27); OMB Circular A-21, Cost Principles for Educational Institutions, relocated to 2 CFR Part 220; OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, relocated to 2 CFR Part 225; OMB Circular A-122, Cost Principles for Non-Profit Organizations, relocated to 2 CFR Part 230; and OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations, as applicable.

18. Will comply with all provisions of the Federal Acquisition Regulations including, but not limited to, Title 48 CFR Part 31.2, Part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations.
19. Will comply with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limits the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
20. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes, or presents the appearance of, personal or organizational conflict of interest, or personal gain for themselves or others, particularly those with whom they have family, business, or other connections.
21. Understands and agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express prior written approval from DHS/FEMA and Cal OES.
22. Will comply with all applicable lobbying prohibitions and laws, including those found in United States Code Title 31, § 1352, *et seq.*, and agrees that none of the funds provided under this award may be expended by the Recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action concerning the award or renewal of any federal contract, grant, loan, or cooperative agreement.
23. Agrees that, to the extent contractors or subcontractors are utilized, will use small, minority-owned, women-owned, or disadvantaged businesses, to the extent practicable.
24. Will comply with Title 2 of the Code of Federal Regulations regarding duplication of benefits, whereby any cost allocable to a particular federal award or cost objective under the principles provided for in this agreement may not be charged to other federal awards to overcome fund deficiencies.
25. Will ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources. Subgrantees and subrecipients may be required to demonstrate and document that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.
26. Will comply, if applicable, with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 *et seq.*), which prohibits the use of lead based paint in construction or rehabilitation of structures.
27. Will comply with all federal and state laws and regulations relating to civil rights protections and nondiscrimination. These include, but are not limited to:
  - a. Title VI of the Civil Rights Act of 1964, Public Law 88-352, (42 U.S.C. § 2000d *et seq.*), as amended, which prohibits discrimination on the basis of race, color and national origin.
  - b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § 1681 *et seq.*), which prohibits discrimination on the basis of gender.
  - c. The Americans with Disabilities Act, as amended, which prohibits Recipients from discriminating on the basis of disability (42 U.S.C. § 12101 *et seq.*).
  - d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability in any program receiving federal financial assistance.

- e. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*), which prohibits discrimination on the basis of age.
  - f. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse.
  - g. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
  - h. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records.
  - i. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 *et seq.*, as implemented by 24 CFR Part 100), as amended, relating to nondiscrimination in the sale, rental and financing of housing.
  - j. Title 44 of the Code of Federal Regulations (CFR) Parts 7, 16, and 19 relating to nondiscrimination.
  - k. The requirements of any other nondiscrimination provisions in the specific statute(s) under which the application for federal assistance is being made and any other applicable statutes.
  - l. Will, in the event that a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, gender, or disability against a Recipient of funds, the Recipient will forward a copy of the finding to the Office of Civil Rights, Office of Justice Programs.
  - m. Will provide an Equal Employment Opportunity Plan, if applicable, to the Department of Justice Office of Civil Rights within 60 days of grant award.
  - n. Will comply, and assure the compliance of all its subgrantees and contractors, with the nondiscrimination requirements and all other provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1.
28. Will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.* [P.L. 91-646]), which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interested in real property acquired for project purposes regardless of federal participation in purchases. Will also comply with Title 44 CFR, Part 25, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.
29. Will comply with all provisions of DHS/FEMA's regulation 44 CFR Part 10, Environmental Considerations.
30. Will comply with all applicable federal, state, and local environmental and historical preservation (EHP) requirements. Failure to meet federal, state, and local EHP requirements and obtain applicable permits may jeopardize federal funding. Agrees not to undertake any project having the potential to impact EHP resources without the prior written approval of DHS/FEMA and Cal OES, including, but not limited to, ground disturbance, construction, modification to any structure, physical security enhancements, communications towers, any structure over 50 years old, and purchase and/or use of any sonar equipment. The subgrantee must comply with all conditions and restrictions placed on the project as a result of the EHP review. Any construction-related activities initiated without the necessary EHP review and approval will result in a noncompliance finding, and may not be eligible for reimbursement with DHS/FEMA and Cal OES funding. Any change to the scope of work will require re-evaluation of compliance with the EHP. If ground-disturbing activities occur during the project implementation, the subgrantee must ensure monitoring of the disturbance. If any potential archeological resources are discovered, the subgrantee will immediately cease activity in that area and notify the San Bernardino County Fire Protection District, Office of Emergency Services – Grants Administration Unit and the appropriate State Historic Preservation Office.
31. Any construction activities that have been initiated prior to the full environmental and historic preservation review could result in a non-compliance finding. Subgrantees must complete the DHS/FEMA EHP Screening Form (OMB Number 1660-0115/FEMA Form 024-0-01) and submit it, with all supporting documentation, to the San Bernardino County Fire Protection District, Office of Emergency Services – Grants Administration Unit, for processing by the DHS/FEMA Grants Program Directorate EHP.

32. If applicable, subrecipients should submit the FEMA EHP Screening Form for each project as soon as possible upon receiving their grant award. The Screening Form for these types of projects is available at: [www.fema.gov/doc/government/grant/bulletins/info329\\_final\\_screening\\_memo.doc](http://www.fema.gov/doc/government/grant/bulletins/info329_final_screening_memo.doc)
33. Will ensure that the facilities under its ownership, lease or supervision, which shall be utilized in the accomplishment of this project, are not on the Environmental Protection Agency's (EPAs) List of Violating Facilities, and will notify the San Bernardino County Fire Protection District, Office of Emergency Services – Grants Administration Unit who will notify the DHS/FEMA of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating if a facility to be used in the project is under consideration for listing by the EPA.
34. Will provide any information requested by DHS/FEMA and Cal OES to ensure compliance with applicable laws including, but not limited to, the following:
- Institution of environmental quality control measures under the Archaeological and Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), and Environmental Justice (EO12898) and Environmental Quality (EO11514).
  - Notification of violating facilities pursuant to EO 11738.
  - Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*).
  - Conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 *et seq.*).
  - Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523).
  - California Environmental Quality Act (CEQA), California Public Resources Code Sections 21080-21098, and California Code of Regulations, Title 14, Chapter 3 Sections 15000-15007.
  - Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.
  - Applicable provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501 *et seq.*), which prohibits the expenditure of most new federal funds within the units of the Coastal Barrier Resources System.
35. Will comply with Standardized Emergency Management System (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, § 8607.1(e) and CCR Title 19, §§ 2445, 2446, 2447, and 2448.
36. Agrees that subgrantees and subrecipients collecting Personally Identifiable Information (PII) must have a publically-available privacy policy that describes what PII they collect, how they plan to use the PII, whether they share PII with third parties, and how individuals may have their PII corrected where appropriate. Subgrantees and subrecipients may also find DHS Privacy Impact Assessments, guidance and templates online at [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_guidance\\_june2010.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_guidance_june2010.pdf) and at [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_template.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_template.pdf), respectively.
37. Agrees that all DHS/FEMA-funded project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, and approvals are obtained.
38. Will comply with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225(a), whereby all subgrantees, recipients, and subrecipients must ensure that all conference, meeting, convention, or training space, funded in whole or in part with federal funds, complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. § 2225.
39. Agrees that all publications created or published with funding under this grant shall prominently contain the following statement: *"This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant*

*Programs Directorate or the U.S. Department of Homeland Security.*" The Recipient also agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: "*Purchased with funds provided by the U.S. Department of Homeland Security.*"

40. Acknowledges that DHS/FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for federal government purposes: a) the copyright in any work developed under an award or sub-award; and b) any rights of copyright to which a Recipient or sub-recipient purchases ownership with federal support. The Recipient agrees to consult with DHS/FEMA and Cal OES regarding the allocation of any patent rights that arise from, or are purchased with, this funding and has requested through the State of California, federal financial assistance to be used to perform eligible work approved in the submitted application for federal assistance and after the receipt of federal financial assistance, through the State of California, agrees to the following:
  - a. Promptly return to the State of California all funds received which exceed the approved, actual expenditures as determined by the federal or state government.
  - b. In the event the approved amount of the grant is reduced, the reimbursement applicable to the amount of the reduction will be promptly refunded to the State of California.
  - c. Property and equipment purchased under the HSGP reverts to Cal OES if the grant funds are deobligated or disallowed and not promptly repaid.
  - d. HSGP funds used for the improvement of real property must be promptly repaid following deobligation or disallowment of costs, and Cal OES reserves the right to place a lien on the property for the amount owed.
  - e. Separately account for interest earned on grant funds, and will return all interest earned, in excess of \$100 per federal fiscal year.
41. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
42. Will comply, if applicable, with the Laboratory Animal Welfare Act of 1966 (P. L. 89-544, as amended, 7 U.S.C. 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
43. Will comply with the minimum wage and maximum hour provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201), as they apply to employees of institutions of higher education, hospitals, and other non-profit organizations.
44. Agrees that "Classified national security information," as defined in Executive Order (EO) 12958, as amended or updated via later executive order(s) , means information that has been determined pursuant to EO 12958 to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form. No funding under this award shall be used to support a contract, subaward, or other agreement for goods or services that will include access to classified national security information if the Award Recipient has not been approved for and granted access to such information by appropriate authorities.
45. Agrees that where an Award Recipient has been approved for and has access to classified national security information, no funding under this award shall be used to support a contract, subaward, or other agreement for goods or services that will include access to classified national security information by the contractor, subrecipient, or other entity without prior written approval from the DHS Office of Security, Industrial Security Program Branch (ISPB), or, an appropriate official within the federal department or agency with whom the classified effort will be performed. Such contracts, subawards, or other agreements shall be processed and administered in accordance with the DHS "Standard Operating Procedures, Classified Contracting by States and Local Entities," dated July 7, 2008; EOs 12829, 12958, 12968, and other applicable executive orders; the National Industrial Security Program Operating Manual (NISPOM); and

other applicable implementing directives or instructions. Security requirement documents may be located at: <http://www.dhs.gov/xopnbiz/grants/index.shtm>

46. Immediately upon determination by the Award Recipient that funding under this award may be used to support a contract, subaward, or other agreement involving access to classified national security information pursuant to paragraph 46, and prior to execution of any actions to facilitate the acquisition of such a contract, subaward, or other agreement, the Award Recipient shall contact the San Bernardino County Fire Protection District, Office of Emergency Services – Grants Administration Unit, for approval and processing instructions.

San Bernardino County Fire Protection District,  
Office of Emergency Services  
ATTN: Grants Administration Unit  
157 West 5<sup>th</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92415-0451

47. Will comply with the requirements regarding Data Universal Numbering System (DUNS) numbers. If recipients are authorized to make subawards under this award, they must first notify potential subrecipients that no entity may receive or make a subaward to any entity unless the entity has provided a DUNS number.
48. For purposes of this award term, the following definitions will apply:
- a. "Data Universal Numbering System (DUNS)" number means the nine digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet, currently at <http://fedgov.dnb.com/webform>.
  - b. "Entity", as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, Subpart C, as a governmental organization, which is a state, local government, or Indian Tribe; or a foreign public entity; or a domestic or foreign nonprofit organization; or a domestic or foreign for-profit organization; or a federal agency, but only as a subrecipient under an award or subaward to a non-federal entity.
  - c. "Subaward" means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the Recipient award to an eligible subrecipient. It does not include your procurement of property and services needed to carry out the project or program (for further explanation, see § 210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations") and may be provided through any legal agreement, including an agreement that you consider a contract.
  - d. "Subrecipient" means an entity that receives a subaward from you under this award, and is accountable to you for the use of the federal funds provided by the subaward.
49. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. Section 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction sub-agreements.
50. Agrees that equipment acquired or obtained with grant funds:
- a. Will be made available pursuant to applicable terms of the California Disaster and Civil Defense Master Mutual Aid Agreement, in consultation with representatives of the various fire, emergency medical, hazardous materials response services, and law enforcement agencies within the jurisdiction of the Applicant, and deployed with personnel trained in the use of such equipment in a manner consistent with the California Law Enforcement Mutual Aid Plan or the California Fire Services and Rescue Mutual Aid Plan.
  - b. Is consistent with needs as identified in the State Homeland Security Strategy and will be deployed in conformance with that Strategy.

51. Will comply with the financial and administrative requirements set forth in the current edition of the DHS Financial Management Guide.
52. Agrees that all allocations and use of funds under this grant will be in accordance with the FY 2013 Homeland Security Grant Program Funding Opportunity Announcement, and the California Supplement to the FY 2013 Homeland Security Grant Program Funding Opportunity Announcement. All allocations and use of funds under this grant will be in accordance with the Allocations, and use of grant funding must support the goals and objectives included in the State and/or Urban Area Homeland Security Strategies as well as the investments identified in the Investment Justifications which were submitted as part of the California FY2013 Homeland Security Grant Program application. Further, use of FY13 funds is limited to those investments included in the California FY13 Investment Justifications submitted to DHS/FEMA and Cal OES and evaluated through the peer review process.
53. Will comply with Homeland Security Presidential Directive (HSPD)-5, *Management of Domestic Incidents*. The adoption of the National Incident Management System (NIMS) is a requirement to receive federal preparedness assistance, through grants, contracts, and other activities. The NIMS provides a consistent nationwide template to enable all levels of government, tribal nations, nongovernmental organizations, and private sector partners to work together to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity.
54. Will comply with OMB Standard Form 424B Assurances – Non-construction Programs, whereby the awarding agency may require subgrantees and subrecipients to certify to additional assurances.
55. Will not make any award or permit any award (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension". As required by Executive Order 12549, Debarment and Suspension, and implemented at 44 CFR Part 17, for prospective participants in primary covered transactions, the Applicant will provide protection against waste, fraud and abuse, by debarring or suspending those persons deemed irresponsible in their dealings with the federal government. Applicant certifies that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency.
  - b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default; and
  - d. Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.
56. Will comply with requirements to acknowledge federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.
57. Will comply with requirements that publications or other exercise of copyright for any work first produced under federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this award, including those works published in academic,

technical or professional journals, symposia proceedings, or similar works, the recipient grants the government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for government purposes in all such copyrighted works. The Recipient shall affix the applicable copyright notices of 17 U.S.C. § 401 or 402 and an acknowledgement of government sponsorship (including award number) to any work first produced under an award.

58. Will obtain, via San Bernardino County Fire Protection Districts, Office of Emergency Services - Grants Administration Unit, the prior approval from DHS on any use of the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
59. Will comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of U.S. flag air carriers (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.
60. Will comply with the requirements of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 *et seq.*), which requires that all organizations receiving grants from any federal agency agree to maintain a drug-free workplace. The Recipient must notify the awarding office if an employee of the recipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. These regulations are codified at 2 CFR 3001.
61. Will comply with the requirements of the government-wide award term which implements § 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104), located at 2 CFR Part 175. This is implemented in accordance with OMB Interim Final Guidance, Federal Register, Volume 72, No. 218, November 13, 2007. In accordance with Section 106(g) of the TVPA, as amended, requires the agency to include a condition that authorizes the agency to terminate the award, without penalty, if the Recipient or a subrecipient engages in severe forms of trafficking in persons during the period of time that the award is in effect, procures a commercial sex act during the period of time that the award is in effect; or uses forced labor in the performance of the award or subawards under the award. Full text of the award term is provided at 2 CFR § 175.15.
62. Will comply with the requirements of Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance; national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, Recipients must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipients are encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance and information regarding LEP obligations, go to <http://www.lep.gov>.
63. Will comply with the requirements of 42 U.S.C. § 7401 *et seq.* and Executive Order 11738, which provides for the protection and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters is considered research for other purposes.
64. Will comply with the requirements of the federal regulations at 45 CFR Part 46 and the requirements in DHS Management Directive 026-04, Protection of Human Subjects, prior to implementing any work with human subjects. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of

autopsy materials is governed by applicable state and local law and is not directly regulated by 45 CFR Part 46.

65. Will comply with the requirements of the National Environmental Policy Act (NEPA), as amended, 42 U.S.C. § 4331 *et seq.*, which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for its grant-supported activities, DHS requires the environmental aspects of construction grants (and certain non-construction projects as specified by the Component and awarding office) to be reviewed and evaluated before final action on the application.
66. Will comply with the requirements of § 1306(c) of the National Flood Insurance Act, as amended, which provides for benefit payments under the Standard Flood Insurance Policy for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate state or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. These regulations are codified at 44 CFR Part 63.
67. Will comply with the requirements of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001 *et seq.*), which provides that no federal financial assistance to acquire, modernize, or construct property may be provided in identified flood-prone communities in the United States, unless the community participates in the National Flood Insurance Program and flood insurance is purchased within one year of the identification. The flood insurance purchase requirement applies to both public and private applicants for DHS support. Lists of flood-prone areas that are eligible for flood insurance are published in the Federal Register by FEMA.
68. Will comply with the requirements of Executive Order 11990, which provides that federally funded construction and improvements minimize the destruction, loss, or degradation of wetlands. The Executive Order provides that, in furtherance of § 101(b)(3) of NEPA (42 U.S.C. § 4331(b)(3)), federal agencies, to the extent permitted by law, must avoid undertaking or assisting with new construction located in wetlands unless the head of the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. The public disclosure requirement described above also pertains to early public review of any plans or proposals for new construction in wetlands. This is codified at 44 CFR Part 9.
69. Will comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c. Among other things, it prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. The act also establishes restrictions on access to specified materials. "Restricted persons," as defined by the act, may not possess, ship, transport, or receive any biological agent or toxin that is listed as a select agent.

70. Understands the reporting of subawards and executive compensation rules, including first tier subawards to Cal OES.
- a. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in federal funds that does not include Recovery funds (as defined in § 1512(a)(2) of the American Recovery and Reinvestment Act of 2009,
  - b. Where and when to report: you must report on each obligating action described in the following paragraphs to San Bernardino County Fire Protection District, Office of Emergency Services – Grants Administration Unit. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2011, the obligation must be reported by no later than December 31, 2011.)
  - c. What to report: You must report the information about each obligating action that the submission instructions posted in Information Bulletin 350, to Cal OES. To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>. Subgrantees must report subrecipient executive total compensation to Cal OES by the end of the month following the month during which you make the subaward. Exemptions include: If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report on subawards, and the total compensation of the five most highly compensated executives of any subrecipient.
  - d. Reporting Total Compensation of Recipient Executives: You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if
    - i. the total federal funding authorized to date under this award is \$25,000 or more;
    - ii. in the preceding fiscal year, you received 80 percent or more of your annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under § 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
    - iv. Subrecipient Executives. Unless you are exempt as provided above, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if in the subrecipient's preceding fiscal year, the subrecipient received 80 percent or more of its annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and the public does not have access to information about the compensation of the executives through

periodic reports filed under § 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986.

71. Subrecipient acknowledges that equipment purchased with grant funds must be accounted for and reconciled with the San Bernardino County Fire Protection District's Grants Administration Unit's property records at each scheduled inventory inspection.
72. Subrecipient will develop a control tracking system to ensure adequate safeguards to prevent loss, damage or theft of grant funded equipment.
73. When equipment purchased with grant funds is no longer needed or is in need of being replaced, subrecipient will request disposition instructions from San Bernardino County Fire Protection District's Grants Administration Unit.
74. If items are lost, stolen, or damaged, subrecipient will provide explanation on the Damage, Lost, Stolen, or Retired (DLSR) form of how it happened and how subrecipient is going to prevent it from happening in the future.
75. **Personnel Activity Report (PAR)**  
Any employee who is partially funded by federal grants must maintain time and effort reporting and document the time they spend working on the grant's objectives. Documentation must reflect "actual" time spent by the employee on grants being charged (2 CFR 225, Appendix B.8.h). Attached is a Personnel Activity Report (PAR) document to assist in proper grant payroll documentation. PARs must itemized/log the time the employee has worked on a funded grant project.  
  
If your agency already has the capability of producing a document equivalent to the attached PAR form from your existing payroll system, you do NOT need to use the attached PAR to your track time.  
  
Salary costs that are not accurately and properly documented are "unallowable costs" and will not be reimbursed. If you have been reimbursed for wages that were not properly recorded and supported, the State or Federal Governments may require your agency to pay back any "unallowable costs."
76. Subrecipients will provide (2) photos in color or black & white of each grant purchased equipment and photo of serial number, if applicable. Provide the intended location of deployment/assignment of the equipment.
77. Understands that failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

The undersigned represents that he/she is authorized by the above named Applicant to enter into this agreement for and on behalf of the said Applicant.

Signature of Authorized Agent: \_\_\_\_\_

Printed Name of Authorized Agent: \_\_\_\_\_

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

MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
NOVEMBER 18, 2013, AT 7:56 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA

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**I. CALL TO ORDER**

Mayor Pro Tem Ruh called the meeting to order at 7:56 p.m.

**II. ROLL CALL**

Present: Mayor Pro Tem Ruh; Council Member Raft; and Finance Director Donald Parker

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of November 4, 2013.**

Moved by Finance Director Parker, seconded by Council Member Raft, and carried unanimously to approve the minutes of the Personnel Committee meeting of November 4, 2013.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

At 7:57 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 8:05 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 8:05 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Donald L. Parker  
Finance Director