

**CITY OF MONTCLAIR  
AGENDA FOR CITY COUNCIL, SUCCESSOR AGENCY,  
MONTCLAIR HOUSING CORPORATION, MONTCLAIR  
HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY  
FOUNDATION MEETINGS**

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

April 6, 2015

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/MCF meetings are now available in audio format on the City's website at [www.cityofmontclair.org](http://www.cityofmontclair.org) 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, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors

**II. INVOCATION**

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

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS**

- A. Presentation on California Executive Order B-29-15 by Mark Kinsey, Chief Executive Officer, Monte Vista Water District
- B. Introduction of New Employees
- C. Presentation of Plaque of Appreciation by the Montclair Fire Department to Public Works Superintendent Xavier Mendez
- D. Proclamation Declaring April 2015 as "DMV/Donate Life California Month" in the City of Montclair
- E. Proclamation Declaring April 2015 as "Child Abuse Prevention Month" in the City of Montclair

**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, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors. (Government Code Section 54954.3)*

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

**VII. PUBLIC HEARINGS**

- A. Consider Approval of Tentative Tract Map No. 19943 for an 18-Lot Residential Subdivision at the Southeast Corner of Monte Vista Avenue and Howard Street [CC] 5
- B. Consider Adoption of Resolution No. 15-3065 Ordering the Vacation of the Alley West Of 5384 San José Street [CC] 7
- C. Consider Adoption of Resolution No. 15-3068 Ordering the Vacation, Abandonment, and Removal of the Sidewalk West of 4350 Orchard Street and 4363 Rudisill Street and South of 10095 Amherst Avenue [CC] 15

**VIII. CONSENT CALENDAR**

- A. Approval of Minutes
  - 1. Minutes of the Regular Joint Council/Successor Agency Board/MHC Board/MHA Board Meeting of March 16, 2015 [CC/SA/MHC/MHA]
- B. Administrative Reports
  - 1. Consider Setting a Public Hearing to Consider Ordinance No. 15-948 Adding Chapter 11.65 to the Montclair Municipal Code Related to Reasonable Accommodations for Disabled Individuals [CC] 26
  - 2. Consider Setting a Public Hearing to Consider Adoption of Ordinance No. 15-950 Amending Sections 9.20.460 and 9.20.465 of the Montclair Municipal Code Related to the Equivalent Dwelling Unit Value [CC] 34
  - 3. Consider Montclair Community Foundation Board of Directors' Approval of Annual Goals for the Montclair Community Foundation [MCF] 38
  - 4. Consider Awarding a Procurement Contract to CBE Office Solutions for the Purchase and Ongoing Maintenance Services of a Sharp MX 7040N Digital Color Copier System [CC] 39
  - 5. Consider Authorizing the Reallocation and Expenditure of Supplemental Law Enforcement Services Account Grant Funds [CC] 43

	<u>Page No.</u>
6. Consider Approval of Parcel Merger No. 2015-1 for Five Parcels Located Generally on the East Side of Central Avenue South of the I-10 Freeway [CC]	44
7. Consider Approval of Warrant Register and Payroll Documentations [CC]	46
 C. Agreements	
1. Consider Approval of Agreement No. 15-16-I-92, an Irrevocable Annexation Agreement with Fermin Osuna Jiménez for 4838 Phillips Boulevard (APN 1013-071-11) [CC]	47
2. Consider Approval of Agreement No. 15-18 with Chaffey Joint Union High School District for Law Enforcement Services During Fiscal Year 2015-16 [CC]	54
3. Consider Approval of Agreement No. 15-19 with Frick, Frick & Jetté Architects, Incorporated, for Design Services for the Human Services and Recreation Weight Room Facility ADA Upgrade Project [CC]	58
4. Consider Approval of Agreement No. 15-20 Ratifying the Terms and Conditions of Employment Between the City of Montclair and Management Employees [CC]	74
5. Consider Approval of Agreement No. 15-21 Ratifying the Terms and Conditions of Employment Between the City of Montclair and Executive Management Employees [CC]	76
6. Consider Approval of Agreement No. 15-22 with Matrix Audiovisual Designs, Inc., for the Furnishing, Replacement, and Installation of New Microphones and Audio Equipment in the City Council Chambers [CC]	78
7. Consider Montclair Housing Corporation Board of Directors' Award of Contract to Jaramillo & Sons Construction in the Amount of \$32,100 [MHC]	
Consider Montclair Housing Corporation Board of Directors' Approval of Agreement No. 15-23 Between the Housing Corporation and Jaramillo & Sons Construction for the 4811 Canoga Street Garage and Deck Building Improvement Project [MHC]	
Consider Authorization of a \$3,210 Construction Contingency [MHC]	93
8. Consider Amending the Fiscal Years 2015-2018 Capital Improvement Program by Deleting the Measure I Funding Source for the Northeast Montclair Pavement Rehabilitation Project Phase 2 [CC]	
Consider Appropriation of \$600,000 from the Lease Revenue Bond Proceeds for the Northeast Montclair Pavement Rehabilitation Project Phase 2 [CC]	
Consider Award of Contract for the Northeast Montclair Pavement Rehabilitation Project Phase 2 to All American Asphalt, Inc., in the Amount of \$514,150 [CC]	

(Continued on next page)

Consider Approval of Agreement No. 15-24 with All American Asphalt, Inc., for Construction of the Northeast Montclair Pavement Rehabilitation Project Phase 2 [CC]

Consider Authorization of a \$55,000 Construction Contingency [CC]

109

D. Resolutions

1. Consider Adoption of Resolution No. 15-3069 Determining the Status of Local Safety Employee Deborah Lou Camou [CC]

116

2. Consider Adoption of Resolution No. 15-3070 Adjusting the Equivalent Dwelling Unit Monthly Fee for Sewer Service [CC]

120

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. RESPONSE - None**

**XI. COMMUNICATIONS**

A. City Attorney

B. City Manager/Executive Director

C. Mayor/Chairman

D. Council/SA/MHC Board/MHA Commissioners/MCF Board

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

1. Minutes of the Personnel Committee Meeting of March 16, 2015

124

2. Minutes of the Code Enforcement/Public Safety Committee Meeting of March 16, 2015

125

**XII. ADJOURNMENT OF CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS OF DIRECTORS, MONTCLAIR HOUSING AUTHORITY COMMISSIONERS, AND MONTCLAIR COMMUNITY FOUNDATION BOARD OF DIRECTORS**

*The next regularly scheduled City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation meetings will be held on Monday, April 20, 2015, 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, Montclair Housing Authority Commission, and Montclair Community Foundation Board after distribution of the Agenda packet are available for public inspection in the Office of the City Clerk located at 5111 Benito Street, Montclair, California, between 7:00 a.m. and 6:00 p.m., Monday through Thursday.*

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Deputy City Clerk at (909) 625-9416. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)*

*I, Andrea M. Phillips, 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 April 2, 2015.*

## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER APPROVAL OF TENTATIVE TRACT MAP NO. 19943 FOR AN 18-LOT RESIDENTIAL SUBDIVISION AT THE SOUTH-EAST CORNER OF MONTE VISTA AVENUE AND HOWARD STREET

**DATE:** April 6, 2015  
**SECTION:** PUBLIC HEARINGS  
**ITEM NO.:** A  
**FILE I.D.:** LDU350  
**DEPT.:** COMMUNITY DEV.

---

---

**REASON FOR CONSIDERATION:** Tentative maps require public hearing review and approval by the City Council.

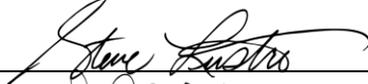
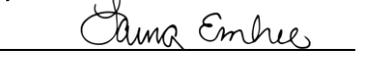
**BACKGROUND:** The tentative tract map, which has been recommended by the Planning Commission, was initiated by FH II LLC (Frontier Communities) in connection with its desire to subdivide an existing 4.4-acre parcel at the southeast corner of Monte Vista Avenue and Howard Street for the purpose of constructing 18 single-family dwellings pursuant to the requirements and development standards of the "R-1" zoning district. The Planning Commission conducted a public hearing on the request on March 9, 2015. Two members of the public addressed the Planning Commission during the public hearing with questions about access to the proposed subdivision, which were answered by staff. The Planning Commission unanimously recommended City Council approval of the tentative tract map.

**FISCAL IMPACT:** There would be no fiscal impact to the City's General Fund should the City Council approval of Tentative Tract Map No. 19943.

**RECOMMENDATION:** The Planning Commission and staff recommend the City Council approve Tentative Tract Map No. 19943 for an 18-lot residential subdivision at the southeast corner of Monte Vista Avenue and Howard Street.

---

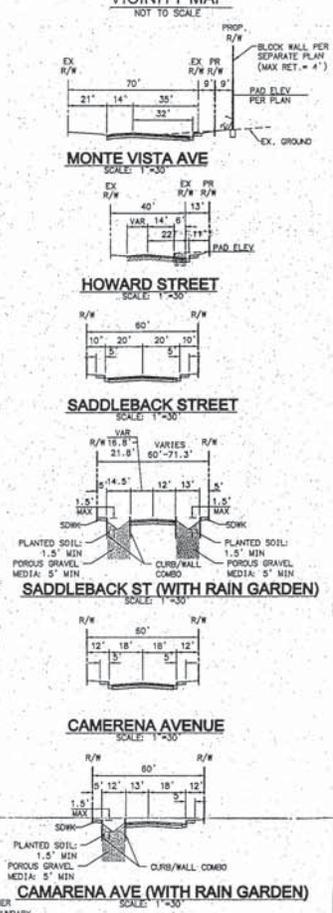
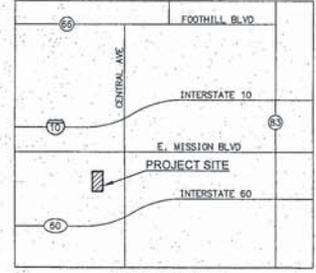
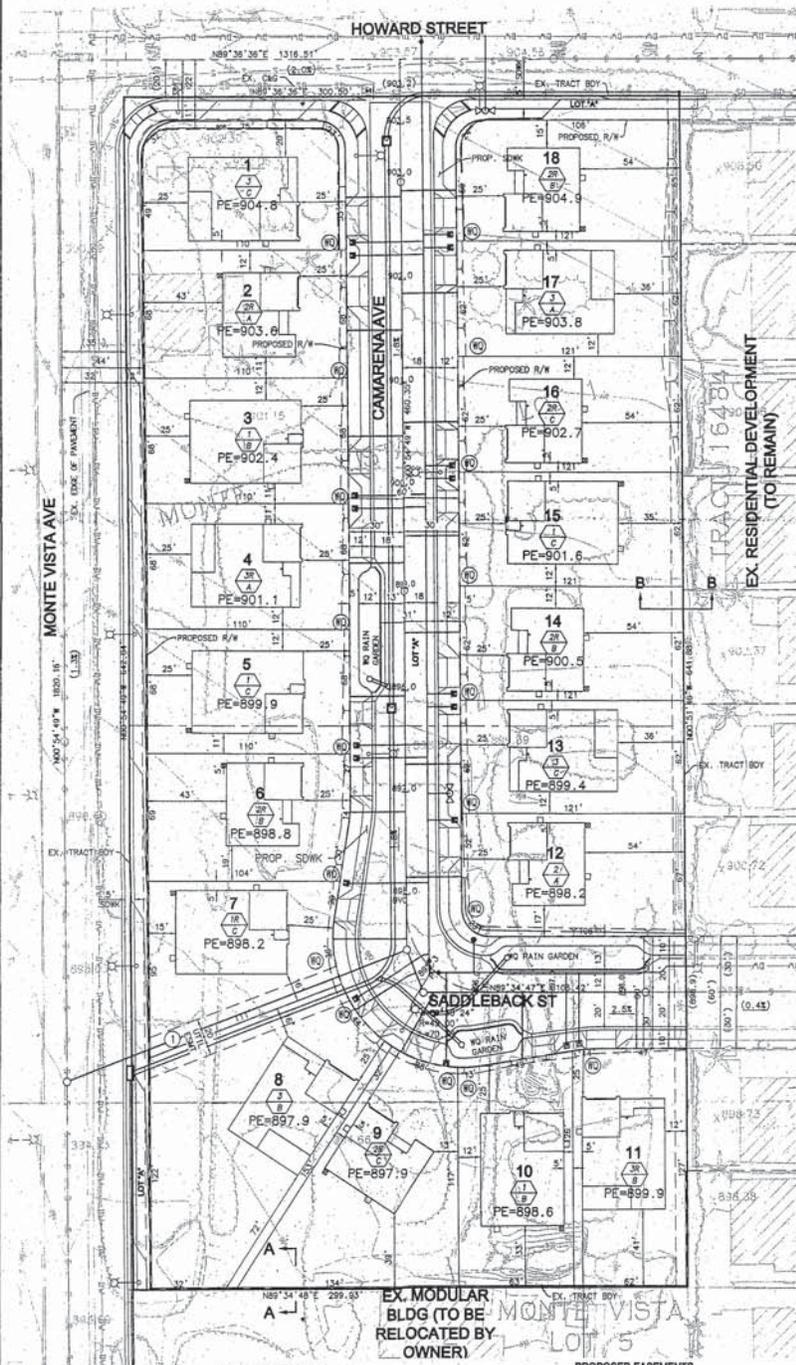
---

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

---

---

# TENTATIVE TRACT MAP 19943 FOR RESIDENTIAL PURPOSES CITY OF MONTCLAIR, SAN BERNARDINO COUNTY, CALIFORNIA



- LEGEND**
- 1 - LOT NUMBER
  - TRACT BOUNDARY
  - LOT LINE
  - - - EXISTING PROPERTY LINE
  - - - EXISTING EASEMENTS
  - - - PROPOSED EASEMENTS
  - - - PROPOSED CURB AND GUTTER
  - ⊙ - PROPOSED LOT NO LIGHT
  - ⊙ - PROPOSED FIRE HYDRANT
  - ⊙ - PROPOSED WATER METER
  - ⊙ - PROPOSED BLOW-OFF
  - ⊙ - PROPOSED STREET LIGHT
  - ⊙ - EXISTING STREET LIGHT
  - ⊙ - PLAN TYPE
  - ⊙ - ELEVATION

**LEGAL DESCRIPTION:**  
THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:  
PARCEL A: LOT 1 IN BLOCK 23 OF MONTE VISTA TRACT NO. 2, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE PLAN THEREOF RECORDED IN BOOK 16 OF MAPS, PAGES 33 AND 34, RECORDS OF SAID COUNTY.  
PARCEL B: ALL THAT PORTION OF LOT 2 IN BLOCK 23 OF MONTE VISTA TRACT NO. 2, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE PLAN THEREOF RECORDED IN BOOK 16 OF MAPS AT PAGES 33 AND 34 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE WESTERLY BOUNDARY LINE OF TRACT NO. 16484 ACCORDING TO THE MAP THEREOF FILED IN BOOK 300 OF MAPS AT PAGES 73 AND 74 IN SAID OFFICE OF THE COUNTY RECORDER.  
APR. 1011-481-01

**PROPOSED EASEMENTS**  
⊙ - DENOTES EASEMENT TO CITY OF MONTCLAIR FOR PUBLIC UTILITY PURPOSES.

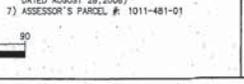
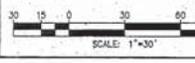
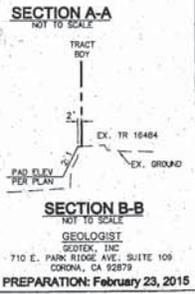
LOT	AREA
1	7,810 SF
2	7,500 SF
3	7,500 SF
4	7,500 SF
5	7,500 SF
6	7,500 SF
7	7,223 SF
8	7,500 SF
9	7,500 SF
10	7,500 SF
11	7,500 SF
TOTAL	144,925 SF
STREET	39,199 SF
R/W-WEST	7,343 SF
R/W-EAST	1,539 SF
TOTAL	48,171 SF
TOTAL 144,925 SF	TOTAL LOT AREA
48,171 SF	TOTAL PUBLIC AREA
192,699 SF	GROSS 4.4 AC GROSS
144,925 SF	NET 3.3 AC NET

**BENCH MARK STATEMENT:**  
ALL ELEVATIONS SHOWN HEREON ARE IN TERMS OF THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD83), BASED LOCALLY UPON THE FOLLOWING BENCHMARK(S) OR CONTROL STATION(S) AS PUBLISHED BY THE NATIONAL GEODETIC SURVEY (NGS):  
NAME: ELLIPSOID HT. (FT)  
CLAR: COPS CLAR (A14481) 1228.12  
EMPP: COPS EMPP (D7048) 1086.58  
PSCM: COPS PSCM (A19135) 915.62

**BASIS OF BEARINGS:**  
BEARINGS AND COORDINATES AS SHOWN HEREON ARE IN TERMS OF THE NAD83(2011) POSITION - EPOCH 2010.00 (CCS83, ZONE V), BASED LOCALLY UPON THE FOLLOWING CONTROL STATIONS AS PUBLISHED BY THE NATIONAL GEODETIC SURVEY (NGS):  
STATION (PID)/LATITUDE(N) LONGITUDE(W)  
CLAR (A14481) 34-06-35.72974 117-42-31.66743  
EMPP (D7048) 34-06-15.10133 117-31-32.05857  
PSCM (A19135) 34-05-30.34195 117-46-52.48047

**GENERAL INFORMATION**

- EXISTING LAND USE: NURSERY (COMMERCIAL)
- EXISTING ZONING: R-1
- GENERAL PLAN DESIGNATION: LOW (3-7 UNITS/ACRE)
- PROPOSED LAND USE: SFH
- UTILITY COMPANIES:
  - GAS: SOUTHERN CALIFORNIA GAS COMPANY
  - ELECTRICITY: SOUTHERN CALIFORNIA Edison
  - WATER: MONTE VISTA WATER DISTRICT
  - SEWER: CITY OF MONTCLAIR
  - REFUSE: BURNETT WASTE INDUSTRIES
  - CABLE TV: TIME WARNER CABLE
- FEMA FLOOD ZONE: X (PER PANEL 060270-08615H, DATED AUGUST 28, 2008)
- ASSESSOR'S PARCEL #: 1011-481-01



**RBF**  
REGISTERED PROFESSIONAL ENGINEER  
1478 ALTON PARKWAY  
IRVINE, CALIFORNIA 92614-2027  
408.473.3035 • FAX 408.473.8875 • www.rbf.com

**PROJECT ADDRESS:** 11119 AND 11211 MONTE VISTA AVE, MONTCLAIR, CA  
**DEVELOPER:** FRONTIER HOMES COMMUNITIES, 8300 UTICA, SUITE 300, RANCHO CUCAMONGA, CA 91730

**TENTATIVE TRACT MAP 19943** 1 of 1  
CITY OF MONTCLAIR

## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION  
NO. 15-3065 ORDERING THE VACATION OF  
THE ALLEY WEST OF 5384 SAN JOSÉ STREET

**DATE:** April 6, 2015

**SECTION:** PUBLIC HEARINGS

**ITEM NO.:** B

**FILE I.D.:** LDA550

**DEPT.:** PUBLIC WORKS

---

---

**REASON FOR CONSIDERATION:** A request has been made to vacate the alley west of 5384 San José Street. Vacations of City streets and alleys require City Council approval.

**BACKGROUND:** The property owner of 5384 San José Street, Mr. Ricardo Diaz, approached the City last year about the condition of the alley adjacent to his property. A tree on his property has roots extending beyond the property line that have uplifted the alley pavement. The alley primarily serves as his driveway as he is the only property having access off the alley. The alley also serves as a secondary access to MacArthur Park, as shown on the attached plan.

The City has not used this secondary access to MacArthur Park in several years, probably not in the last 20 years. The alley is the City's maintenance responsibility, but with only one property being served by the alley, it is more of a driveway for private use than a public alley. Rather than making the needed repairs to the alley, staff discussed with Mr. Diaz the possibility of vacating the alley to Mr. Diaz, with Mr. Diaz assuming the responsibility for removing the existing pavement, relocating/reconstructing block walls, and making onsite modifications to his property as necessary to incorporate the alley into his property.

Mr. Diaz is amenable to the idea of the vacation and quitclaim, provided there is minimal or no cost to him. With no other need for public access to this alley, City staff feels that it is in the City's best interest to vacate the alley and forego any future maintenance responsibilities associated with it.

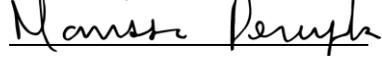
The method for vacating a public street or alley is prescribed in Section 8300, *et seq.*, of the Streets and Highways Code of the State of California. The City Council must first, by resolution, declare its intention to vacate the alley and then conduct a public hearing. The public hearing can be held no sooner than 15 days after the adoption of the resolution declaring the City's intention. This action was taken on March 16, 2015, with the City Council's adoption of Resolution No. 15-3064.

**FISCAL IMPACT:** Minimal costs are anticipated with the vacation of this alley. Assuming the City Council adopts the resolution of vacation as part of the public hearing process, the City will likely save several hundred dollars per year in maintenance and street sweeping costs.

---

---

Prepared by:  Reviewed and Approved by: 

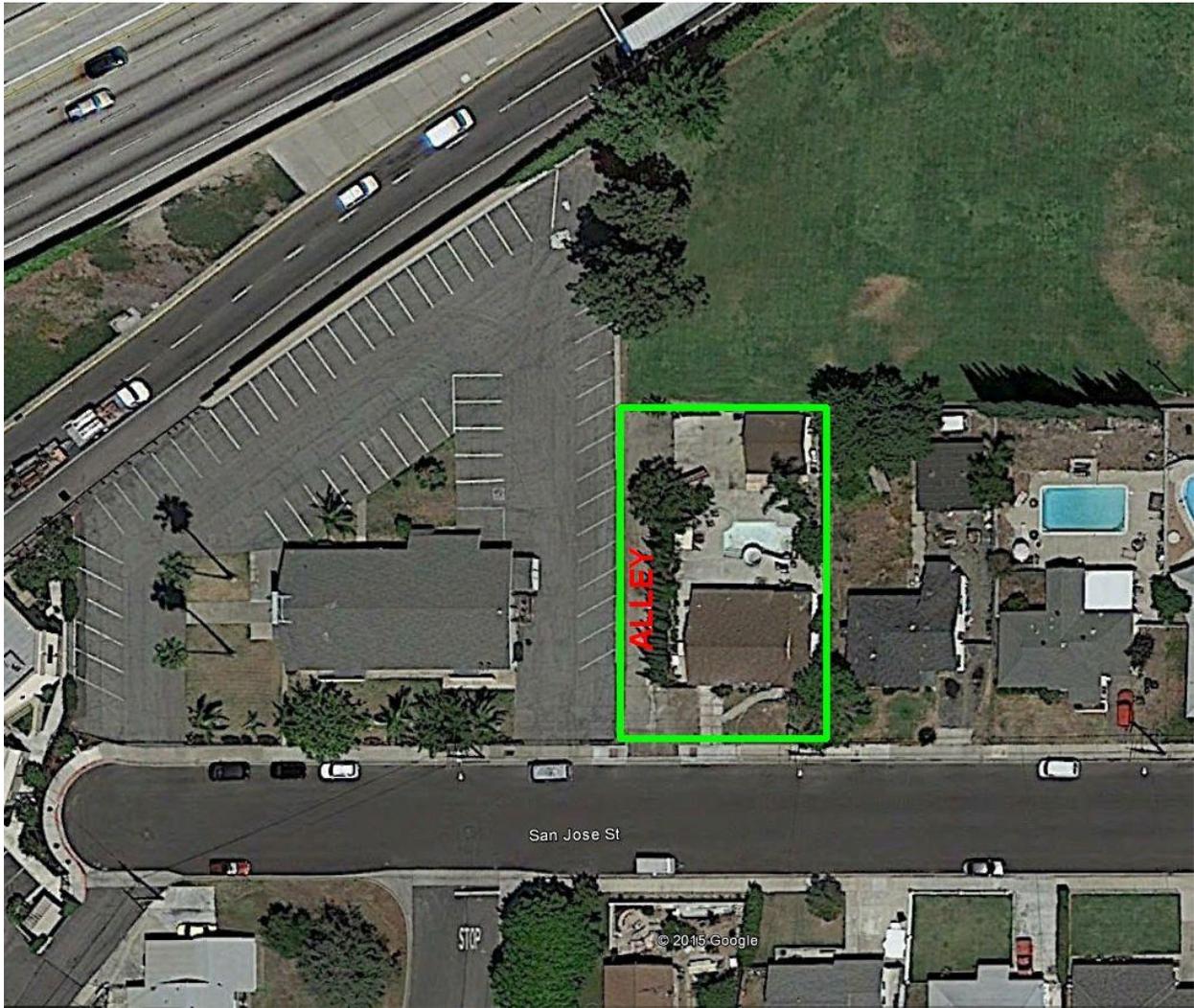
Proofed by:  Presented by: 

---

---

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 15-3065 ordering the vacation of the alley west of 5384 San José Street.

Subject Alley West of 5384 San José Street



**RESOLUTION NO. 15-3065**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF MONTCLAIR ORDERING THE VACATION  
OF THE ALLEY WEST OF 5384 SAN JOSÉ STREET**

**WHEREAS**, right-of-way for the alley west of 5384 San José Street was dedicated to San Bernardino County with the recordation of Tract No. 3259 as recorded in Book 44, Pages 21-22, Records of San Bernardino County Recorder; and

**WHEREAS**, street and alley dedications transferred to the City of Monte Vista with its incorporation on April 25, 1956; and

**WHEREAS**, on April 8, 1958, the City of Monte Vista changed its name to the City of Montclair; and

**WHEREAS**, said alley provides limited public use, primarily used as a secondary access to MacArthur Park for park maintenance purposes by Public Works crews; and

**WHEREAS**, the City of Montclair has determined that, because of its limited public use, there is no longer a need for this alley as a public alley; and

**WHEREAS**, the subject alley is in need of significant repairs due to tree roots uplifting, age, and natural deterioration; and

**WHEREAS**, the current owner of the adjacent parcel, Ricardo Diaz, 5384 San José Street, Montclair, CA, has requested that the City vacate and quitclaim this alley to him; and

**WHEREAS**, Section 8300, *et seq.*, of the Streets and Highways Code of the State of California prescribes the manner in which a City may vacate a street or portion of a street thereof; and

**WHEREAS**, said procedures are also applicable to alley by definition; and

**WHEREAS**, the City Council of the City of Montclair adopted Resolution 15-3064 at its meeting on March 2, 2015, declaring its intention to vacate the subject alley west of 5384 San José Street as defined in Exhibit A, attached hereto; and

**WHEREAS**, the City published notification of the public hearing and posted the subject property in accordance with Section 8322 of the Streets and Highways Code.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair hereby orders the vacation of that alley as defined in Exhibit A, attached hereto, and the Deputy City Clerk shall cause a certified copy of this Resolution of vacation be recorded with the Office of the San Bernardino County Recorder.

**APPROVED AND ADOPTED** this XX day of XX, 2015.

---

Mayor

**ATTEST:**

---

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 15-3065 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2015, and that it was adopted by the following vote, to-wit:

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

---

Andrea M. Phillips  
Deputy City Clerk

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO )  
 )  
City of Montclair )  
5111 Benito Street )  
P. O. Box 2308 )  
Montclair, CA 91763 )  
Attention: City Clerk )

---

This document is exempt from payment of a recording fee pursuant to Government Code Section 27383

Exempt from payment of Documentary Transfer Tax pursuant to Revenue and Taxation Code Section 11922

### QUITCLAIM DEED

**FOR VALUE RECEIVED, THE CITY OF MONTCLAIR, A CALIFORNIA MUNICIPAL CORPORATION,**

Quitclaims to

**Ricardo Diaz  
5384 San José Street, Montclair, CA 91763  
Assessor's Parcel No. 1008-311-15-0000**

All rights, title, and interest in and to that certain easement located in the City of Montclair, County of San Bernardino, State of California, and recorded in Book 11 of Maps, Page 24, Records of San Bernardino County, State of California, more particularly described in Exhibit A attached hereto and incorporated herein.

**IN WITNESS WHEREOF**, grantor has executed this Quitclaim Deed as of \_\_\_\_\_, 2015

**CITY OF MONTCLAIR, A CALIFORNIA MUNICIPAL CORPORATION**

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

Attest: \_\_\_\_\_  
Deputy City Clerk

EXHIBIT A

LEGAL DESCRIPTION

A PORTION OF LOT 9 OF THE SYCAMORE WATER DEVELOPMENT COMPANY'S ADDITION TO ONTARIO AS RECORDED IN BOOK 11 OF MAPS, PAGE 24, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 9, THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 9 453.86 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 00° 02' 15" WEST 120 FEET, THENCE EASTERLY ALONG A LINE PARALLEL TO THE SOUTHERLY LINE OF SAID LOT 9 20 FEET, THENCE SOUTH 00° 02' 15" EAST 120 FEET, THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 9 20 FEET TO THE TRUE POINT OF BEGINNING.



Prepared by: \_\_\_\_\_

\_\_\_\_\_  
Date



# EXHIBIT "B"

1 inch = 60 feet

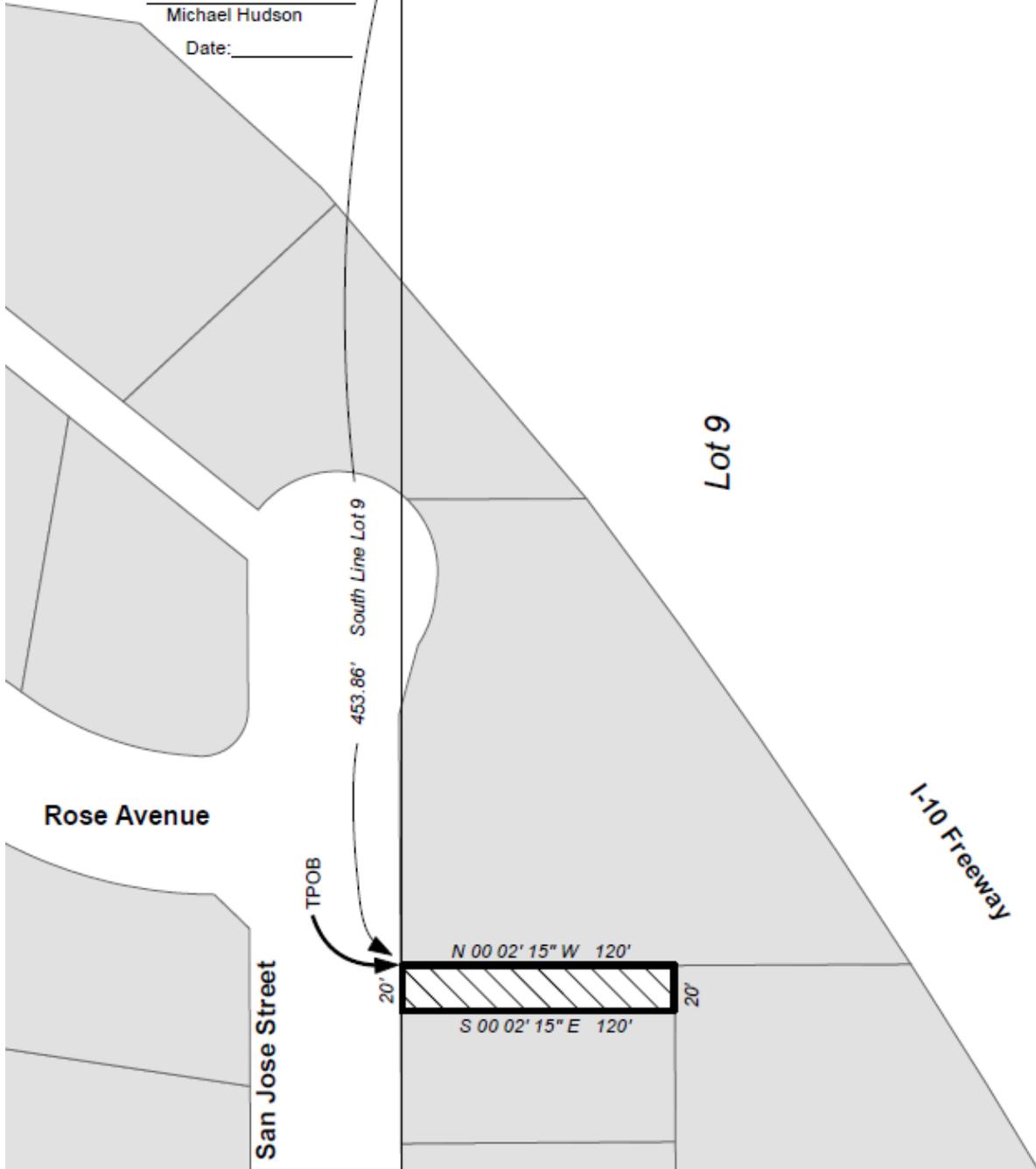


Central Avenue

SWC Lot 9

Michael Hudson

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



## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION  
NO. 15-3068 ORDERING THE VACATION,  
ABANDONMENT, AND REMOVAL OF THE  
SIDEWALK WEST OF 4350 ORCHARD STREET  
AND 4363 RUDISILL STREET AND SOUTH OF  
10095 AMHERST AVENUE

**DATE:** April 6, 2015

**SECTION:** PUBLIC HEARINGS

**ITEM NO.:** C

**FILE I.D.:** LDA550

**DEPT.:** PUBLIC WORKS

---

---

**REASON FOR CONSIDERATION:** A request has been made to remove the sidewalk connecting the intersection of Rudisill Street and Amherst Avenue with Orchard Street. The sidewalk is located between 4363 Rudisill Street and 10095 Amherst Avenue and between 4350 Orchard Street and the San Antonio Channel. Vacations of right-of-way for City streets, alleys, sidewalks, and other City easements require City Council approval.

**BACKGROUND:** The property owners of 4350 Orchard Street, Mr. Loren Stevens and Ms. Judith Stevens, approached the City last year regarding problems with a sidewalk that runs adjacent to their property connecting Rudisill Street and Amherst Avenue with Orchard Street. Their complaints concern drug use, sexual activities, and graffiti. They have asked that the City remove the sidewalk and have the area closed to public access. The subject sidewalk is shown on the attached aerial photograph.

Mr. and Ms. Stevens' request is not the first time such a request has been made. The previous owners of the property, Fiorella and Maria Abenes, also reported similar problems during their time of ownership. The Stevens have lived at this address for approximately 1.5 years.

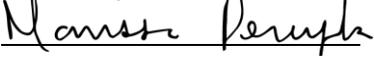
Staff cannot confirm the reports of drug use or sexual activities, although used condoms have been found in the area. Graffiti, however, has been a significant issue. Over the most recent five-year period, the Police Department confirms 118 reports of graffiti.

Staff presented the Stevens' request to the Public Works Committee at its December 18, 2014 meeting, with a recommendation that a survey be conducted among the area residents and the Ontario-Montclair School District for Lehigh Elementary School. On January 12, 2015, survey letters were sent to 119 addresses in the vicinity of this sidewalk and to the School District. Recipients were given three weeks to voice their concerns and return the survey letters to the City.

The City received a total of 21 responses with 18 voicing support for the closure, 3 opposed, and 98 not responding. No response was received from the School District either. The results of this survey were reported back to the Public Works Committee at its meeting on February 19, 2015. The Committee recommended proceeding with a public hearing to consider abandonment.

---

---

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

---

---

Because the sidewalk has a public use, staff feels that residents potentially impacted by the removal of the sidewalk should be given a forum in which to voice their support or opposition to closure. Staff recommends following the process prescribed in Section 8300, *et seq.*, of the Streets and Highways Code of the State of California. The City Council must first, by resolution, declare its intention to vacate the sidewalk and then conduct a public hearing. The public hearing can be held no sooner than 15 days after the adoption of the resolution declaring the City's intention. This action was taken by the City Council with the adoption of Resolution No. 15-2067 on March 16, 2015.

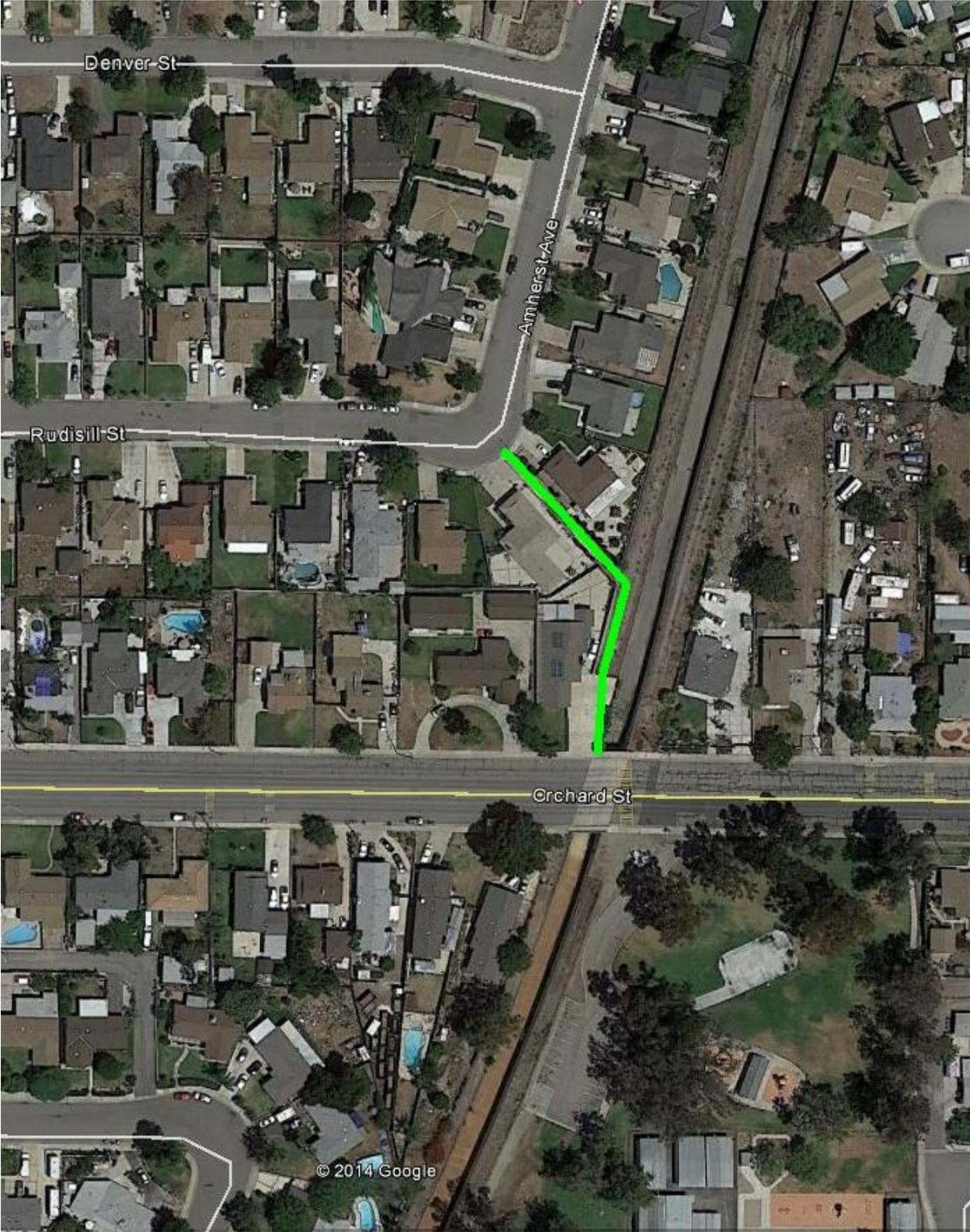
Notice of the City's intent to remove the sidewalk was sent to the original 119 surveyed residents as well as the Principal of Lehigh Elementary School and the administrative offices of Ontario-Montclair School District. No comments have been received to date.

If the sidewalk easement were to be vacated, ownership of the sidewalk area would revert back to the underlying fee owners. These properties are 10095 Amherst Avenue, 4363 Rudisill Street, and 4350 Orchard Street.

**FISCAL IMPACT:** Assuming the City Council adopts the resolution of vacation as part of the public hearing process, the City will likely spend \$1,000 in removing the existing sidewalk and fencing both ends of the former right-of-way, but save several hundred dollars per year in maintenance/graffiti abatement costs. It would be up to the three property owners adjacent to the sidewalk to modify their property walls to effect permanent closure of the area. These affected property owners have been so notified.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 15-3068 ordering the vacation, abandonment, and removal of the sidewalk west of 4350 Orchard Street and 4363 Rudisill Street and south of 10095 Amherst Avenue.

Subject Sidewalk Located Between 4363 Rudisill Street and 10095 Amherst Avenue and between 4350 Orchard Street and the San Antonio Channel



**RESOLUTION NO. 15-3068**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ORDERING THE VACATION, ABANDONMENT, AND REMOVAL OF THE SIDEWALK WEST OF 4350 ORCHARD STREET AND 4363 RUDISILL STREET AND SOUTH OF 10095 AMHERST AVENUE**

**WHEREAS**, right-of-way for the sidewalk west of 4350 Orchard Street and 4363 Rudisill Street and south of 10095 Amherst Avenue was dedicated to the City of Montclair with the recordation of Tract No. 8326 as recorded in Book 112, Pages 37-39, Records of San Bernardino County Recorder; and

**WHEREAS**, said sidewalk provides access from the intersection of Amherst Avenue and Rudisill Street to Orchard Street through an easement granted across three private properties; and

**WHEREAS**, a request by one property owner adjacent to the sidewalk has requested its removal; and

**WHEREAS**, the City of Montclair has conducted a survey of residents potentially using the sidewalk and would be impacted by its loss; and

**WHEREAS**, a sizeable majority of those residents responding to the survey supported the closure of the sidewalk; and

**WHEREAS**, Section 8300, *et seq.*, of the Streets and Highways Code of the State of California prescribes the manner in which a City may vacate a street or portion of a street thereof, including a sidewalk; and

**WHEREAS**, the City Council of the City of Montclair adopted Resolution 15-3067 at its meeting on March 16, 2015, declaring its intention to vacate, abandon, and remove the subject sidewalk west of 4350 Orchard Street and 4363 Rudisill Street and south of 10095 Amherst Avenue as defined in Exhibit A and as shown on Exhibit B, both attached hereto; and

**WHEREAS**, the City published notification of the public hearing and posted the subject property in accordance with Section 8322 of the Streets and Highways Code.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair hereby orders the vacation of that sidewalk easement and vacation, abandonment, and removal of that sidewalk west of 4350 Orchard Street and 4363 Rudisill Street and south of 10095 Amherst Avenue as defined in Exhibit A and as shown on Exhibit B, both attached hereto, and the City Clerk shall cause a certified copy of this Resolution of vacation be recorded with the Office of the San Bernardino County Recorder.

**APPROVED AND ADOPTED** this XX day of XX, 2015.

---

Mayor

**ATTEST:**

---

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 15-3068 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2015, and that it was adopted by the following vote, to-wit:

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

---

Andrea M. Phillips  
Deputy City Clerk

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO )  
 )  
City of Montclair )  
5111 Benito Street )  
P. O. Box 2308 )  
Montclair, CA 91763 )  
Attention: City Clerk )

---

This document is exempt from payment of a recording fee pursuant to Government Code Section 27383

Exempt from payment of Documentary Transfer Tax pursuant to Revenue and Taxation Code Section 11922

### QUITCLAIM DEED

**FOR VALUE RECEIVED, THE CITY OF MONTCLAIR, A CALIFORNIA MUNICIPAL CORPORATION,**

Quitclaims to

**JUDITH & LEE STEVENS, HANNAH PEI LI C  
4350 ORCHARD ST, MONTCLAIR CA 91763-3024  
Assessor's Parcel No. 1009-321-60-0000**

All rights, title, and interest in and to that certain easement located in the City of Montclair, County of San Bernardino, State of California, and recorded in Book 185 Page 23, Official Records in the office of the County Recorder, County of San Bernardino, State of California, more particularly described in Exhibit A attached hereto and incorporated herein.

**IN WITNESS WHEREOF**, grantor has executed this Quitclaim Deed as of \_\_\_\_\_, 2015

**CITY OF MONTCLAIR, A CALIFORNIA MUNICIPAL CORPORATION**

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

Attest: \_\_\_\_\_  
Deputy City Clerk

EXHIBIT A

LEGAL DESCRIPTION

THE NORTHEASTERLY 5 FEET OF LOT 2, PARCEL MAP NO. 15126 AS PER MAP RECORDED IN BOOK 185, PAGES 23-24 OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA



Prepared by: \_\_\_\_\_

\_\_\_\_\_  
Date

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO )  
 )  
City of Montclair )  
5111 Benito Street )  
P. O. Box 2308 )  
Montclair, CA 91763 )  
Attention: City Clerk )

---

This document is exempt from payment of a recording fee pursuant to Government Code Section 27383

Exempt from payment of Documentary Transfer Tax pursuant to Revenue and Taxation Code Section 11922

### QUITCLAIM DEED

**FOR VALUE RECEIVED, THE CITY OF MONTCLAIR, A CALIFORNIA MUNICIPAL CORPORATION,**

Quitclaims to

**THERESA G & THERESA BAGUNU  
10095 AMHERST AVE, MONTCLAIR CA 91763-3004  
Assessor's Parcel No. 1009-321-50-0000**

All rights, title, and interest in and to that certain easement located in the City of Montclair, County of San Bernardino, State of California, and recorded in Book 112, Pages 37-39, Official Records in the office of the County Recorder, County of San Bernardino, State of California, more particularly described in Exhibit A attached hereto and incorporated herein.

**IN WITNESS WHEREOF**, grantor has executed this Quitclaim Deed as of \_\_\_\_\_, 2015

**CITY OF MONTCLAIR, A CALIFORNIA MUNICIPAL CORPORATION**

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

Attest: \_\_\_\_\_  
Deputy City Clerk

EXHIBIT A

LEGAL DESCRIPTION

THE SOUTHWESTERLY 5 FEET OF LOT 15, TRACT MAP NO. 8326 AS PER MAP RECORDED IN BOOK 112, PAGES 37-39, OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA



Prepared by: \_\_\_\_\_

\_\_\_\_\_ Date

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO )  
 )  
City of Montclair )  
5111 Benito Street )  
P. O. Box 2308 )  
Montclair, CA 91763 )  
Attention: City Clerk )

---

This document is exempt from payment of a recording fee pursuant to Government Code Section 27383

Exempt from payment of Documentary Transfer Tax pursuant to Revenue and Taxation Code Section 11922

### QUITCLAIM DEED

**FOR VALUE RECEIVED, THE CITY OF MONTCLAIR, A CALIFORNIA MUNICIPAL CORPORATION,**

Quitclaims to  
**BASH 11 & 10/BASH 04**  
**4363 RUDISILL ST, MONTCLAIR, CA 91763-3047**  
**(Mailing Address 480 W ROWLAND ST #A, COVINA CA 91723-2964**  
**C/O RICHARD S BASH & BARBARA AITKEN)**  
**Assessor's Parcel No. 1009-321-48-0000**

All rights, title, and interest in and to that certain easement located in the City of Montclair, County of San Bernardino, State of California, and recorded in Book 185, Pages 23-24 Official Records in the office of the County Recorder, County of San Bernardino, State of California, more particularly described in Exhibit A attached hereto and incorporated herein.

**IN WITNESS WHEREOF**, grantor has executed this Quitclaim Deed as of \_\_\_\_\_, 2015

**CITY OF MONTCLAIR, A CALIFORNIA MUNICIPAL CORPORATION**

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

Attest: \_\_\_\_\_  
Deputy City Clerk

EXHIBIT A

LEGAL DESCRIPTION

THE NORTHEASTERLY 5 FEET OF LOT 1, PARCEL MAP NO. 15126 AS PER MAP RECORDED IN BOOK 185, PAGES 23-24 OFFICIAL RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA



Prepared by: \_\_\_\_\_

\_\_\_\_\_  
Date

## AGENDA REPORT

---

---

<b>SUBJECT:</b> CONSIDER SETTING A PUBLIC HEARING TO CONSIDER ORDINANCE NO. 15-948 ADDING CHAPTER 11.65 TO THE MONTCLAIR MUNICIPAL CODE RELATED TO REASONABLE ACCOMMODATIONS FOR DISABLED INDIVIDUALS	<b>DATE:</b> April 6, 2015
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 1
	<b>FILE I.D.:</b> GPL250
	<b>DEPT.:</b> COMMUNITY DEV.

---

---

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

**BACKGROUND:** On February 3, 2014, the City Council adopted Resolution No. 14-3018 approving a General Plan Amendment adopting the 2014-2021 Housing Element Update. The "Policy Program" chapter of the adopted Housing Element sets forth 25 Policy Actions that are required to be undertaken by the City to successfully implement the adopted Housing Element. The Policy Actions being addressed by this agenda item include the following:

Policy Action 3.1 requires staff to "Develop and adopt procedures to provide reasonable accommodations for persons with disabilities in compliance with the provisions of SB 520. These procedures shall include a formal written application and process."

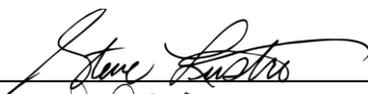
Staff notes that this is one of several General Plan and/or Municipal Code amendments related to implementation of the Policy Actions contained in the adopted Housing Element that are intended to be submitted to the Planning Commission and City Council for consideration. The Planning Commission is scheduled to consider this item at its regular meeting on April 13, 2015.

**FISCAL IMPACT:** The cost to publish a Notice of Public Hearing in the *Inland Valley Daily Bulletin* related to Ordinance No. 15-948 should not exceed \$500.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Monday, April 20, 2015, at 7:00 p.m. in the Council Chambers to consider Ordinance No. 15-948 adding Chapter 11.65 to the Montclair Municipal Code related to reasonable accommodations for disabled individuals.

---

---

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

---

---

**ORDINANCE NO. 15-948**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADDING CHAPTER 11.65 TO THE MONTCLAIR MUNICIPAL CODE RELATED TO REASONABLE ACCOMMODATIONS FOR DISABLED INDIVIDUALS**

**WHEREAS**, the Housing Element is one of seven statutorily-required elements of the General Plan; and

**WHEREAS**, the California Government Code requires cities to review and update their Housing Element according to a schedule set forth by the State's Housing and Community Development Department (HCD); and

**WHEREAS**, the City, through its consultant, RBF Consulting, prepared the 2014-2021 Housing Element, as an update to its previously adopted Housing Element in compliance with State law; and

**WHEREAS**, in January 2014, HCD provided the City with a letter of substantial compliance indicating that upon adoption by the City Council, the Housing Element would fully comply with State law; and

**WHEREAS**, on February 3, 2014, the City Council adopted Resolution No. 14-3018 approving a General Plan Amendment adopting the 2014-2021 Housing Element Update; and

**WHEREAS**, the "Policy Program" chapter of the adopted Housing Element sets forth 25 Policy Actions that are required to be undertaken by the City to successfully implement the adopted Housing Element; and

**WHEREAS**, Policy Action 3.12 requires staff to "Develop and adopt procedures to provide reasonable accommodations for persons with disabilities in compliance with the provisions of SB 520. These procedures shall include a formal written application and process;" and

**WHEREAS**, in order to be in full compliance with the state's certification of the City's Housing Element, the City desires to provide a procedural process for disabled individuals to seek reasonable accommodation with respect to the City's zoning regulations and development standards; and

**WHEREAS**, such a procedural process for disabled individuals to seek reasonable accommodation is intended to comply with Federal and State requirements for fair housing and is intended to reasonably allow disabled individuals to integrate into residential areas; and;

**WHEREAS**, a grant of reasonable accommodation shall be specific to applying individuals and shall not apply to subsequent or changes in the ownership or uses of property by individuals other than those specifically

granted a reasonable accommodation pursuant to the provisions of this Ordinance, except as may be required by Federal and/or State law; and

**WHEREAS**, the Planning Commission reviewed the subject Ordinance at its regular meeting on March 23, 2015, and recommended City Council adoption; and

**WHEREAS**, the adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Sections 15301(e) and 15303(e) of the State CEQA Guidelines. While the code amendment, in and of itself, does not approve any construction activities, it establishes criteria and procedures to provide reasonable accommodations for disabled individuals that would result in the construction of minor additions to existing residential structures.

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

**SECTION I. Amendment of Code.**

Chapter 11.65 is hereby added to the Montclair Municipal Code as follows:

**CHAPTER 11.65  
REASONABLE ACCOMMODATIONS FOR DISABLED INDIVIDUALS**

**Sections:**

- 11.65.010 Intent and purpose.**
- 11.65.020 Definitions.**
- 11.65.030 Public notice of availability of accommodation process.**
- 11.65.040 Requesting reasonable accommodation.**
- 11.65.050 Decision on application.**
- 11.65.060 Required findings.**
- 11.65.070 Appeals.**
- 11.65.080 Waiver of time periods.**

**11.65.010 Intent and purpose.**

The intent of this Chapter, pursuant to Fair Housing Laws, is to provide individuals with disabilities reasonable accommodation in the application of the City's rules, policies, practices and procedures as necessary to ensure equal access to housing. The purpose of this Chapter is to provide a process for individuals with disabilities to make requests for, and be provided, reasonable accommodation, when reasonable accommodation is warranted based upon sufficient evidence, from the various laws, rules, policies, practices and/or procedures of the City, including land use and zoning regulations.

#### **11.65.020 Definitions.**

**Applicant** means a person, business, or organization making a written request to the City for reasonable accommodation in the strict application of land use or zoning provisions of this Title.

**Director** means the Director of Community Development.

**Disabled or handicapped person or individual** means an individual who has a physical or mental impairment that limits one or more of that person's major life activities; anyone who is regarded as having such impairment; or anyone who has a record of having such impairment, but not including an individual's current, illegal use of a controlled substance.

**Fair Housing Laws** means the "Fair Housing Amendments Act of 1988" (42 U.S.C. § 3601, *et seq.*), including reasonable accommodation required by 42 U.S.C. § 3604 (f)(3)(B), and the "California Fair Employment and Housing Act" (California Government Code Section 12900, *et seq.*), including reasonable accommodation required specifically by California Government Code Sections 12927(c)(1), 12955, and 65583(c)(3) as any of these statutory provisions now exist or may be amended from time to time.

**Reasonable Accommodation, Major** means any deviation requested and/or granted from the strict application of the laws, rules, policies, practices and/or procedures of the City, including land use and zoning regulations of this Title, resulting in a physical modification to the property which cannot be restored or terminated within 90 days or less after the reasonable accommodation is terminated.

**Reasonable Accommodation, Minor** means any deviation requested and/or granted from the strict application of the laws, rules, policies, practices and/or procedures of the City, including land use and zoning regulations of this Title, which can be removed or terminated within 90 days or less after the need for the reasonable accommodation ends.

#### **11.65.030 Public notice of availability of accommodation process.**

The City shall prominently display at the Community Development Department public counter in City Hall a notice advising individuals with disabilities or their representatives that they may request a reasonable accommodation in accordance with the procedures established in this Chapter. City employees shall direct individuals to the display whenever they are requested to do so or reasonably believe that individuals with disabilities or their representatives may be entitled to a reasonable accommodation.

#### **11.65.040 Requesting reasonable accommodation.**

A. In order to make specific housing available to an individual with a disability, a disabled individual or representative may request reasonable accommodation, pursuant to this Chapter, relating to the application of various land use, zoning, or building laws, rules, policies, practices and/or procedures of the City.

B. If an individual or representative needs assistance in making a request for reasonable accommodation, or appealing a determination regarding reasonable accommodation, the Community Development Department will endeavor to provide the assistance necessary to ensure that the process is accessible to the applicant or representative. The applicant may be represented

at all stages of the proceeding by a person designated by the applicant as his or her representative.

C. A request for reasonable accommodation with respect to the laws, rules, policies, practices and/or procedures of the City shall be filed on an application form provided by the Community Development Department, shall be signed by the owner of the property, and shall include the following information:

1. A description of how the property will be used by the disabled individual(s);
2. The basis for the claim that the Fair Housing Laws apply to the individual(s) and evidence satisfactory to the City supporting the claim, which may include a letter from a medical doctor or other licensed health care professional, a disabled person license or placard, or other appropriate evidence that establishes that the individual(s) needing the reasonable accommodation is disabled/handicapped pursuant to the Fair Housing Laws;
3. The specific reason the requested accommodation is necessary to make particular housing available to the disabled individual(s);
4. Verification by the applicant that the property is the primary residence of the person for whom reasonable accommodation is requested;
5. A filing fee in an amount as determined from time to time by Resolution of the City Council, but not to exceed the reasonable estimated costs to the City in processing the application.

**11.65.050 Decision on application.**

A. The Director shall have the authority to consider and act on any application for a Minor Reasonable Accommodation. The Director shall issue a written determination within 30 days of the date of receipt of a completed application and may: (1) grant the accommodation request; (2) grant the accommodation request subject to specified nondiscriminatory conditions; (3) deny the request; or (4) refer the matter to the Planning Commission, which shall render a decision on the application in the same manner as it considers an appeal. Notice of the Director's consideration of a Minor Reasonable Accommodation application shall be made in writing, ten (10) days prior to a decision and shall be mailed first class and postage pre-paid to the applicant and the adjacent property owners.

B. The Planning Commission shall have the authority to consider and act on any application for a Major Reasonable Accommodation or any Minor Reasonable Accommodation request referred to it by the Director. The Planning Commission shall consider an application at the next reasonably available public meeting after submission of an application for reasonable accommodation, after the submission of any additional information required pursuant to this Section, or after referral from the Director. The Planning Commission may: (1) grant the accommodation request; (2) grant the accommodation request subject to specified nondiscriminatory conditions; or (3) deny the request. Notice of the Planning Commission meeting to review and act on a Major Reasonable Accommodation application, or Minor Reasonable Accommodation application referred by the Director, shall be made in writing ten (10) days prior to the meeting and shall be mailed first class and postage pre-paid to the applicant and all property owners within a 300-foot radius of the project boundary.

C. All written determinations shall give notice of the right to appeal and the right to request reasonable accommodation on the appeals process, if necessary. The notice of determination shall be sent to the applicant by first class mail.

D. If necessary to reach a determination on any request for reasonable accommodation, the Director may request further information from the applicant consistent with this Chapter, specifying in detail what information is required. In the event a request for further information is made, the 30-day period to issue a written determination shall be stayed until the applicant reasonably responds to the request.

E. If, based upon all of the evidence presented to the Director or the Planning Commission, the findings required in this Chapter may reasonably be made, the Director, the Planning Commission, or City Council, as applicable, shall grant the requested reasonable accommodation.

F. A reasonable accommodation granted pursuant to this Chapter shall not require the approval of any variance as to the reasonable accommodation.

G. The reasonable accommodation shall be subject to any reasonable conditions imposed on the approval that are consistent with the purposes of this Chapter to further fair housing. Such conditions may generally include, but are not limited to the following restrictions:

1. That the reasonable accommodation shall only be applicable to a particular individual(s);
2. That the reasonable accommodation shall only be applicable to the specific use for which application is made; and/or
3. That any change in use or circumstances which negates the basis for the granting of the approval shall render the reasonable accommodation null and void and/or revocable by the City.

#### **11.65.060 Required findings.**

The following findings shall be made in order to approve a request for reasonable accommodation:

A. The housing that is the subject of the request for reasonable accommodation shall be occupied as the primary residence by an individual protected under the Fair Housing Laws.

B. The request for reasonable accommodation is necessary to make specific housing available to one or more individuals protected under the Fair Housing Laws.

C. The requested reasonable accommodation will not impose an undue financial or administrative burden on the City.

D. The requested accommodation will not require a fundamental alteration of the zoning or building laws, policies and/or procedures of the City.

#### **11.65.070 Appeals.**

A. Within ten (10) days of the date the City issues a written decision on a reasonable accommodation application, any person aggrieved or affected by a decision on an application requesting the accommodation may appeal such determination in writing to the Planning Commission or City Council, as applicable.

B. All appeals shall contain a statement of the grounds for the appeal.

C. No such appeal shall be accepted unless there is, paid concurrently with the filing of such appeal, a filing and processing fee in a sum set forth by Resolution of the City Council. Upon receipt of a timely filed appeal, together with the filing and processing fee, the Secretary of the Planning Commission or City Clerk shall set the matter for a hearing before the Planning Commission or City Council, as applicable, at its next reasonably available public meeting.

D. The Planning Commission or City Council, as applicable, shall hear the matter and render a determination as soon as reasonably practicable, but in no event later than sixty (60) days after an appeal has been filed, or after an application has been referred to it by the Director. All determinations shall address and be based upon the same findings required to be made in the original determination from which the appeal is taken.

E. An applicant may request reasonable accommodation in the procedure by which an appeal will be conducted.

F. An applicant requesting the accommodation may appeal an adverse determination or any conditions or limitations imposed by the Planning Commission's decision to the City Council in accordance with this Section. The decision of the City Council shall be final.

#### **11.65.080 Waiver of time periods.**

Notwithstanding any provisions in this chapter regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this chapter or may request a continuance regarding any decision or consideration by the city of the pending appeal. Extensions of time sought by applicants shall not be considered delay on the part of the city, shall not constitute failure by the city to provide for prompt decisions on applications and shall not be a violation of any required time period set forth in this chapter.

#### **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 Deputy 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, 2015.

---

Mayor

**ATTEST:**

---

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 15-948 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2015, and finally passed not less than five (5) days thereafter on the XX day of XX, 2015, by the following vote, to-wit:

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

---

Andrea M. Phillips  
Deputy City Clerk

## AGENDA REPORT

---

---

<b>SUBJECT:</b> CONSIDER SETTING A PUBLIC HEARING TO CONSIDER ADOPTION OF ORDINANCE NO. 15-950 AMENDING SECTIONS 9.20.460 AND 9.20.465 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE EQUIVALENT DWELLING UNIT VALUE	<b>DATE:</b> April 6, 2015
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 2
	<b>FILE I.D.:</b> SEW125
	<b>DEPT.:</b> PUBLIC WORKS

---

---

**REASON FOR CONSIDERATION:** On March 10, 2015, Inland Empire Utilities Agency proposed new rates for connections to sewer systems that discharge to its sewage treatment facilities. Adjustments to the fee currently charged by the City are now required. Since the connection fee is set by the Municipal Code, adjustments to those fees must be made by ordinance. An ordinance requires a public hearing and consideration by the City Council.

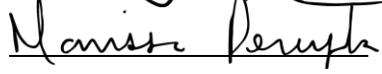
**BACKGROUND:** The Regional Sewage Supplemental Capital Outlay Fee for residential, commercial, and industrial structures, commonly known as the connection fee, is set forth in Chapter 9.20.460 of the Montclair Municipal Code. This fee, which is established by the Inland Empire Utilities Agency (IEUA) and assessed by the City at the time a building permit is issued, must be paid to IEUA for each new building connected to a sewer.

The current rate is \$5,107 per equivalent dwelling unit (EDU). IEUA has proposed a multiple-year step increase. Effective July 1, 2015, the EDU rate will increase to \$5,260. Effective October 1, 2015, the EDU rate will increase to \$6,605. Effective July 1, 2016, the EDU rate will increase based on the Engineering News-Record Construction Cost Index (ENR-CCI). It is currently assumed that ENR-CCI will be approximately 3 percent. Therefore, the EDU rate is anticipated to be \$6,800. Effective July 1, 2017, the EDU rate will again increase based on the ENR-CCI, again assumed to be approximately 3 percent. The rate will then be approximately \$7,000. The adjustments reflect the continuing increase in construction costs as the nation continues to climb out from the great recession. It is possible that the above rates may have to be adjusted in future years due to the actual ENR-CCI percent increase.

The connection fee is a pass through fee collected by the City and then sent to IEUA when a call is made for them. The interest earned on these fees is kept by the City until a call is made and can be used by the City for any sewer related purpose. All agencies served by IEUA are able to do this. In addition to the interest earned on the connection fees, a few agencies, including the City of Montclair, add on a surcharge to the

---

---

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

---

---

connection fee in order to expand their own facilities.

**FISCAL IMPACT:** Advertising this matter for public hearing is anticipated to cost under \$500. After the public hearing, the City Council may consider adoption of Ordinance No. 15-950 to permit the City to collect the higher fees being assessed by IEUA and continue a fund that can be used to expand the existing sewer system. Should Ordinance No. 15-950 not be adopted by the City Council, the City would be liable for the difference between the fee assessed by IEUA and the amount collected by the City on all new connections to the Montclair Sewer System.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Monday, April 20, 2015, at 7 p.m. in the City Council Chambers to consider adoption of Ordinance No. 15-950 amending Sections 9.20.460 and 9.20.465 of the Montclair Municipal Code related to the equivalent dwelling unit value.

**ORDINANCE NO. 15-950**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SECTIONS 9.20.460 AND 9.20.465 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE REGIONAL SEWAGE SUPPLEMENTAL CAPITAL OUTLAY FEE**

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

**Section I. Amendment to Code.** Section 9.20.460 of Title 9 of the Montclair Municipal Code is hereby amended as follows:

Section 9.20.460: Equivalent dwelling unit value.

The Regional Sewage Supplemental Capital Outlay Fee for residential, commercial, and industrial structures shall be the equivalent dwelling unit (EDU) number multiplied by the EDU value of Five Thousand Two Hundred Sixty Dollars (\$5,260) as established by the Inland Empire Utilities Agency effective July 1, 2015; Six Thousand Six Hundred Five Dollars (\$6,605) as established by the Inland Empire Utilities Agency effective October 1, 2015; Six Thousand Eight Hundred Dollars (\$6,800) as established by the Inland Empire Utilities Agency effective July 1, 2016; and Seven Thousand Dollars (\$7,000) as established by the Inland Empire Utilities Agency effective July 1, 2017. The EDU value is based on construction costs and takes into consideration the current Engineering News-Record Construction Cost Index nationwide using the 20-city average.

Section 9.20.465 is hereby is hereby amended as follows:

Section 9.20.465: Sanitary Sewer Expansion Fee

The Sanitary Sewer Expansion Fee for residential, commercial, and industrial structures shall be the equivalent dwelling unit (EDU) number multiplied by the EDU value of Six Hundred Sixty Dollars (\$660) effective July 1, 2015; Six Hundred Eighty Dollars (\$680) effective July 1, 2016; and Seven Hundred Dollars (\$700) effective July 1, 2017.

**Section II. Severability.**

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

**Section III. Effective Date.**

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

**Section IV. Posting.**

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

**APPROVED AND ADOPTED** this XX day of XX, 2015.

---

Mayor

**ATTEST:**

---

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 15-950 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2015, and finally passed not less than five (5) days thereafter on the XX day of XX, 2015, by the following vote, to-wit:

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

---

Andrea M. Phillips  
Deputy City Clerk

## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER MONTCLAIR COMMUNITY  
FOUNDATION BOARD OF DIRECTORS'  
APPROVAL OF ANNUAL GOALS FOR THE  
MONTCLAIR COMMUNITY FOUNDATION

**DATE:** April 6, 2015  
**SECTION:** ADMIN REPORTS  
**ITEM NO.:** 3  
**FILE I.D.:** MCF100  
**DEPT.:** MCF

---

---

**REASON FOR CONSIDERATION:** The City Council serves as the Board of Directors for the Montclair Community Foundation, and as such, is requested to approve the annual goals for the Montclair Community Foundation.

**BACKGROUND:** The Montclair Community Foundation (MCF) Board of Directors adopted the MCF Bylaws on September 17, 2012, through MCF Resolution No. 12-01. On May 12, 2014, MCF received a letter from the Department of Treasury that determined MCF is exempt from Federal income tax under section 501(c)(3) effective November 15, 2011.

The vision of MCF is to work collectively and collaboratively to strengthen services and enhance the quality of life for residents by promoting health, wellness, and economic stability for all, including the most vulnerable in our community. The mission of MCF is to guarantee a quality community for all by working together as diverse, committed individuals and organizations to make an impact that improves the overall wellbeing of the community. MCF strives to sustain improved quality of life for Montclair children, families and individuals and provide the knowledge and resources to access needed services. The annual goals for 2015 include:

- Collaborate with Chaffey College and Chaffey Joint Union High School District to implement the Online to College (OTC) Program at Montclair High School
- Enroll 25% of Montclair High School Freshmen in the OTC Program
- Conduct a minimum of four meetings annually for MCF

It is requested that the City Council, serving as the Montclair Community Foundation Board of Directors, approve the proposed goals. Approval of stated goals will assist in applying for potential grant opportunities to fulfill the vision and mission of MCF.

**FISCAL IMPACT:** There would be no fiscal impact at this time to approve the proposed goals for the Montclair Community Foundation.

**RECOMMENDATION:** Staff recommends the City Council, serving as the Board of Directors for the Montclair Community Foundation, approve the proposed annual goals.

---

---

Prepared by:

*M. Richter*

Reviewed and  
Approved by:

*[Signature]*

Proofed by:

*Vanessa Tom*

Presented by:

*[Signature]*

---

---

## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER AWARDING A PROCUREMENT CONTRACT TO CBE OFFICE SOLUTIONS FOR THE PURCHASE AND ONGOING MAINTENANCE SERVICES OF A SHARP MX 7040N DIGITAL COLOR COPIER SYSTEM.

**DATE:** April 6, 2015  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 4  
**FILE I.D.:** EQS175  
**DEPT.:** ADMIN. SVCS.

---

---

**REASON FOR CONSIDERATION:** The City Council awards procurement contracts for services and/or capital purchases acquired by competitive selection.

A copy of proposed procurement contract to CBE Office Solutions for the purchase and ongoing maintenance of a Sharp MX 7040N digital copier is attached for the City Council's review and consideration.

**BACKGROUND:** The current Canon ImageRunner 7086 digital copier in the front lobby of City Hall has reached beyond its end of life-cycle and needs to be replaced. The copier was purchased in 2007 and has produced over 2,100,000 copies and prints during its life cycle. Recently, the copier has been experiencing significant maintenance-related problems that frequently render the machine nonfunctional for extended periods. Due to its age, parts for repair are often difficult to find, resulting in maintenance costs that are well above the rates charged for comparable newer model copiers. The City expends roughly \$4,500 per year for maintenance and toner costs related to the Canon ImageRunner 7086.

Given the copier's age and constant operational malfunctions staff recommends terminating the existing maintenance contract and replacing the copier with a newer version. Additionally, staff recommends purchasing a copier that has the capability of color printing. Newer copier technology provides for full color copy and print functionality at a price point that was previously unavailable in the past. Staff feels that having a color copier would provide additional benefit to the organization, reduce overall costs for color prints in the organization, and reduce the wear and tear of the City's other color copiers.

Quotes were solicited from four competing copier vendors. These vendors responded with machine selections, features, and price estimates that satisfied criteria including digital and network capability, speed, reliability, cost per copy, document handling, finishing features, and annual service/maintenance costs.

The quotes on the following page were obtained from competing vendors for color copiers with comparable features.

---

---

Prepared by: 

Reviewed and Approved by: 

Proofed by: John Nguyen

Presented by: 

---

---

<u>Vendor/Copier</u>	<u>Copier Cost</u>	<u>Maintenance Cost</u>
Xerox C70	\$15,693.00	\$0.006 per BW and \$0.050 per Color
Lanier/Ricoh 6502SP	\$17,035.92	\$0.009 per BW and \$0.064 per Color
Canon ImageRunner C9270	\$23,500.00	\$150 monthly minimum, \$0.0075 per BW and \$0.057 per Color
CBE/Sharp MX 7040N	\$14,924.00	\$0.0055 per BW and \$0.055 per Color

Through the competitive process, staff recommends purchasing the Sharp MX 7040N digital color copier from CBE Office Solutions and having CBE Office Solutions provide ongoing maintenance services. This recommendation is based on the features of the copier, its competitive pricing, and the fact that CBE Office solutions provided the most responsive bid while being the most cost effective proposal. Staff reviewed all proposals based on costs, functionality, features, design, and quality.

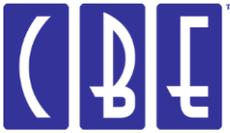
The Sharp MX 7040N color digital copier is the recipient of the BLI Buyers Lab Winter 2014 “Pick” award for “Outstanding 61-to-70 ppm A3 Color MFP” because of its excellent reliability, robust scan functionality, and very good overall image quality.

Accordingly, staff recommends awarding a procurement and maintenance contract to CBE Office Solutions for the purchase of a Sharp MX 7040N digital color copier.

**FISCAL IMPACT:** The cost to purchase the Sharp MX 7040N digital copier from CBE Office Solution would be \$14,924.00. Including sales tax the cost would be \$16,155.23. Maintenance costs for the printer would be based on the number of copies produced by the machine with a cost per prints/copies at \$0.0055 for black and white and \$0.055 for color. There would be a zero minimum print requirement to cover all service, parts, and supplies. Furthermore, there would be a reduction in costs related to maintenance fees in comparison to the amount spent on maintenance for the Cannon ImageRunner 7086 digital copier.

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

1. Award a procurement contract to CBE Office Solutions for the purchase of a Sharp MX 7040N digital color copier including maintenance costs.
2. Authorize the City Manager to execute all documents on behalf of the City of Montclair in relation to the awarding of a procurement contract with CBE Office Solutions for the purchase of a Sharp MX 7040N digital color copier including maintenance costs.
3. Authorize a \$16,155.23 transfer from the Technology Fund to Administrative Services Department Account No. 1001-4316-62010-400-00000 for costs associated with the purchase of a Sharp MX 7040N color digital copier.



# Sales and Service Agreement

Purchase Order No. \_\_\_\_\_ Date: 03/16/15 Terms: \_\_\_\_\_ Salesperson: Chris Farry

<b>Customer</b>	SOLD TO: <u>City of Montclair</u>		SHIP TO: _____	
	<u>5111 Benito Street, PO Box 2308</u>		_____	
	<u>Montclair, CA 91763</u>		_____	
	Contact:	<u>John Nguyen</u>	Contact:	_____
	Phone:	<u>(909) 625-9409</u>	Phone:	_____
	E-mail:	_____	E-mail:	_____

Qty	Description	Amount
1	Sharp MX-7040 Color Copy/Print/Scan System	\$14,924.00
1	Duplexing Single Pass Feeder	
1	3,500 Sheet Large Capacity Tray	
1	50 Sheet Staple Finisher	
1	Hole Punch Unit	
1	Curl Correction Unit	
1	10.1" W-SVGA Touch Screen Monitor	
1	High Voltage Surge Protector	

<b>Service</b>	<b>Billing Options: Monthly</b>	<b>Term Length: Annual</b>
	<b>Includes: All Service, Parts, and Supplies</b>	
	<b>Excludes: Paper, Staples</b>	
	<b>Pricing: Base Rate: 0</b>	<b>Includes 0 B/W Copies</b>
	<b>Overages: \$ 0.0055 B/W</b>	<b>\$ 0.0550 Color Start Meter: 0</b>

Additional Notes: Free delivery, networking, training and set-up. Excludes extra cabling, if necessary. CBE will remove old Canon machine, at no cost to customer. Prices plus tax.	Subtotal	\$ 14,924.00
	Initial Set-up	N/C
	Sales Tax	\$ 1,231.23
	Delivery	N/C
	Trade-In	
	<b>Total Due</b>	<b>\$ 16,155.23</b>
	Amount Paid	
<b>Balance Due</b>	<b>\$ 16,155.23</b>	

<b>Acceptance</b>	Customer Signature: _____ Title: _____ Date: _____
	X _____
	CBE Acceptance _____ Title: _____ Date: _____

SIGNATURES BY BOTH PARTIES ACT AS A BINDING CONTRACT AND CANNOT BE CANCELLED OR TERMINATED AND CONFIRMS YOU HAVE READ AND UNDERSTAND THE MAINTENANCE TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS DOCUMENT

1. **GENERAL SCOPE OF COVERAGE** This Agreement covers both the labor and the material for adjustments, repair and replacements of parts as required by normal use of the equipment, subject to the exceptions in and in accordance with these terms and conditions. This Agreement does not cover charges for installation of equipment or de-installation of equipment if it is moved. Damage to the equipment or its parts arising out of or caused by misuse, abuse, negligence, attachment of unauthorized components, accessories or parts, use of substandard paper or substandard supplies or other causes beyond the control of CBE are not covered by this Agreement and may subject Customer to a surcharge or to cancellation of this Agreement. In addition, CBE may terminate this Agreement if the equipment is modified, damaged, altered or serviced by personnel other than the CBE Authorized Personnel, or if parts, accessories or components not meeting machine specifications are titled to the equipment. This Agreement does not cover charges for repairs due to Customer or third party modifications to software or hardware.
2. **SERVICE CALLS** Service calls under this Agreement will be made during normal business hours at the installation address shown on the reverse side of this Agreement. Travel and labor time for service calls after normal business hours, on weekends and on holidays, if and when available, will be charged at the published overtime rates in effect at the time the service call is made. CBE Representatives will not handle, disconnect or repair unauthorized attachments or components; Customer is responsible for disconnecting and reconnecting unauthorized attachments or components. Customer hereby indemnifies and holds CBE and its Representatives harmless for claims for damages to any unauthorized parts, components or accessories resulting from service performed on CBE equipment. Labor performed during a service call includes lubrication and cleaning of the equipment and the adjustment, repair or replacement of parts described below.
3. **REPAIR AND REPLACEMENT OF PARTS** All parts necessary to the operation of the equipment, due to normal wear and tear, with the exception of the parts listed below, and subject to the general scope of coverage, will be furnished free of charge during a service call included in the maintenance service provided by this Agreement.
4. **RECONDITIONING THIS PARAGRAPH (4) IS NOT APPLICABLE TO EQUIPMENT COVERED BY A CBE CONTINUOUS MAINTENANCE GUARANTEE.** Rebuilding or major overhauls are not covered by this Agreement. In addition, when in its sole discretion CBE determines that a reconditioning is necessary, as a result of expected wear and tear of materials and age factors caused by normal office environment usage, in order to keep the equipment in working condition, CBE will submit to the Customer an estimate of needed repairs and their cost which will be in addition to the charge payable under this Agreement. If the Customer does not authorize such reconditioning, CBE may discontinue service of the equipment under this Agreement (refunding the unused portion of the maintenance charge) or may refuse to renew this Agreement upon its expiration. Thereafter, the CBE Representative may make service available on a "Per Call" basis based upon published rates in effect at the time of service.
5. **USE OF CBE SUPPLIES** If the Customer uses other than CBE supplies and if such supplies are defective or unacceptable for use in CBE machines and cause abnormally frequent service calls or service problems, then CBE may, at its option, assess a surcharge or terminate this Agreement. In this event, the Customer may be offered service on a "Per Call" basis based upon published rates. It is not a condition of this Agreement, however, that the Customer use only CBE authorized supplies.
6. **SUPPLY INCLUSIVE CONTRACTS** If supplies are included in the service provided under this Agreement, CBE will supply toner, ink and developer, unless otherwise stated in this Agreement, to the Customer based upon normal yields. If the Customer's usage of the supplies exceeds the normal yields for the equipment being serviced, CBE will invoice and the Customer agrees to pay, for the excess supplies at CBE's current retail prices then in effect. CBE reserves the right to charge for freight for all supply shipments.
7. **ELECTRICAL** In order to insure optimum performance by the CBE equipment, it is mandatory that specific models be plugged into a dedicated line and comply with manufacturer electrical specifications. These power standards are required by UL and/or local safety regulations. Reference CBE Bulletin A-00012.
8. **CHARGES** The initial non-refundable charge for maintenance under this Agreement shall be the amount set forth on the reverse side of this Agreement. The annual maintenance charge with respect to any renewal term, or second or third term of multi-term agreement, will be the charge in effect at the time of renewal. CBE may increase the rate up to 10% annually as costs increase. Customer shall pay all charges within 10 days of invoicing. If equipment is moved to a new CBE service territory, CBE shall have the option to charge, and the Customer agrees to pay the difference in published maintenance charges between the current territory and the new territory (on a pro-rata basis). If equipment is moved beyond CBE's service territory, CBE reserves the right to cancel or the Customer agrees to pay a fair and reasonable upcharge for continued service, taking into account the distance to Customer's new location and the published rates of CBE for service on a "Per Call" basis. Reestablishing network connection after a move is not covered under this Service Agreement and CBE has the option to charge the published rate for connectivity.
9. **TERM** This Agreement becomes effective upon CBE's receipt of the initial non-refundable maintenance charge provided on the reverse side of this Agreement or, if Customer is billed in arrears, upon the date indicated in the "Start Date" space thereon, and shall continue for the period as specified on the face of this Agreement. In the event a Customer reaches or exceeds the allowance specified on the face of this Agreement prior to the expiration of the one-year term, a new contract will be negotiated or the Customer will be charged for all excess meters, at the rate indicated on the opposite side of this document, through the end of the contract term.
10. **EVENT OF DEFAULT AND TERMINATION** The occurrence of the following shall constitute an Event of Default: the Customer fails to pay any portion of the charges for maintenance or parts, as provided under this Agreement when due, or the Customer fails to duly perform any covenant, condition or limitation of this Agreement. Upon an Event of Default, CBE may: (i) refuse to service the equipment; (ii) furnish service on a C.O.D. "Per Call" basis based upon published rates in effect at the time of service; and (iii) terminate this Agreement. Within sixty (60) days of the expiration or termination of this Agreement, CBE shall submit to Customer an itemized invoice for any fees or expenses, including any Per Call fees, theretofore accrued under this Agreement. Except as otherwise provided herein, Customer, upon payment of accrued amounts so invoiced, shall thereafter have no further liability or obligation to CBE whatsoever for any further fees or expenses arising hereunder. In the event CBE terminates this Agreement because of the breach of Customer, CBE shall be entitled to payment for work in progress plus reimbursements for out-of-pocket expenses.
11. **INDEMNITY** Customer shall indemnify, save and hold CBE, its affiliates, officers, directors, shareholders, employees, agents and representatives and its and their successors and assigns ("CBE Parties") harmless from and against any liability, loss, cost, expense or damage whatsoever caused by reason of any breach of this Agreement by Customer or by reason of any injury whether to body, property, business, character or reputation sustained by CBE Parties or to any other person by reason of any act, neglect, omission or default by Customer. Customer shall defend any action to which this indemnity shall apply. In the event Customer fails to defend such action CBE may do so and recover from Customer in addition, all costs and expenses including attorneys' fees in connection therewith. CBE shall be entitled to recover from Customer all costs and expenses, including, without limitation, attorneys' fees and disbursements, incurred by CBE in connection with actions taken by CBE or its representatives (i) to enforce any provision of this Agreement; (ii) to effect any payments or collections provided for herein; (iii) to institute, maintain, preserve, enforce and foreclose on CBE's security interest in or lien on the goods, whether through judicial proceedings or otherwise; or (iv) to defend or prosecute any actions or proceedings arising out of or relating to any CBE transactions with Customer. The foregoing provisions of this Paragraph 11 shall survive the termination or expiration of this Agreement.
12. **FULL AGREEMENT** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and may not be added to, modified, supplemented or waived in any way except in writing signed by the parties (other than pricing changes provided for herein).
13. **SUCCESSORS AND ASSIGNS; TERMINATION** This Agreement shall be binding on the parties hereto, their heirs, successors, and assigns. However, this Agreement may not be assigned by Customer without the consent of CBE.
14. **SEPARABILITY OF PROVISIONS** Each provision of this Agreement shall be considered separable, and, if for any reason any provision that is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.
15. **COUNTERPARTS AND SIGNATURES** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one Agreement binding on all parties hereto, notwithstanding that all the parties have not signed the same counterpart. A faxed or e-mailed signature of this Agreement bearing authorized signatures may be treated as an original.
16. **WAIVER OF JURY TRIAL ALL PARTIES HERETO HEREBY IRREVOCABLY WAIVE (a) THE RIGHT TO TRIAL BY JURY; AND (b) THE RIGHT TO INTERPOSE ANY AND ALL COUNTERCLAIMS IN ANY ACTION, PROCEEDING OR CLAIM ARISING OUT OF OR PERTAINING TO THIS AGREEMENT.**
17. **JURISDICTION** All parties hereby consent and voluntarily submit to personal jurisdiction in the State of California and in the courts in such State located in Orange County in any proceeding arising out of or relating to this Agreement.
18. **HOLD HARMLESS** In no event shall CBE be liable for any damages whatsoever including without limitation, special, incidental, consequential, or indirect damages for personal injury, loss of business profits, business interruption, loss of business information arising out of or inability to use this product. CBE is not liable for any claim made by a third party or made by you for a third party. The Customer acknowledges that the service coverage is such that the equipment may continue to provide copies and when configured function as a printer or scanner. Specifically, this Agreement is applicable to print volume only services and excludes help desk support, network support, software application support and any other connectivity support services.
19. **FORCE MAJEURE** CBE shall not be liable to Customer for any failure or delay caused by events beyond CBE's control, including, without limitation, Customer's failure to furnish necessary information; sabotage; failure or delays in transportation or communication; boycotts; embargoes; failures or substitutions of equipment; labor disputes; accidents; shortages of labor, fuel, raw materials, machinery, or equipment; technical failures; fire; storm; flood; earthquake; explosion; acts of the public enemy; war; insurrection; riot; public disorder; epidemic; quarantine restrictions; acts of God; acts of any government or any quasi-governmental authority, instrumentality or agency.
20. **NO WARRANTY CBE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TECHNICAL COMPATIBILITY, FITNESS FOR USE, OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER AGREES THAT CBE IS NOT RESPONSIBLE FOR DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, THE LOSS OF USE OF THE EQUIPMENT.**
21. **INSURANCE** Customer shall obtain and maintain, at its own expense, insurance relating to claims for injury and/or property damage (including commercial general liability insurance) based on its use of the equipment, goods and machinery.

## AGENDA REPORT

---

<b>SUBJECT:</b> CONSIDER AUTHORIZING THE REALLOCATION AND EXPENDITURE OF SUPPLEMENTAL LAW ENFORCEMENT SERVICES ACCOUNT GRANT FUNDS	<b>DATE:</b> April 6, 2015 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 5 <b>FILE I.D.:</b> PDT362 <b>DEPT.:</b> POLICE
---	--

---

**REASON FOR CONSIDERATION:** The City Council is requested to consider reallocating Fiscal Year 2013-14 Supplemental Law Enforcement Services Account (SLESA) grant funds in the Police Department Fiscal Year 2014-15 Budget.

**BACKGROUND:** On October 6, 2014, the City Council approved the allocation of \$24,987 in unexpended Fiscal Year 2013-14 SLESA grant funds for the purchase of graphics, two television monitors, and miscellaneous articles of furniture to outfit the Mobile Command Trailer, as well as motorcycle equipment, supplies, and uniform apparel.

Since receiving City Council approval of the allocation recommendations noted above, staff has realized the need to replace lost, faded, and damaged traffic cones in the Patrol fleet and is, therefore, requesting the reallocation of \$1,453 in unexpended SLESA grant funds to purchase 230 new traffic cones.

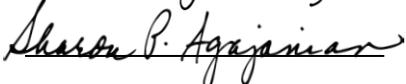
Cost quotations were received from the following vendors:

<i>Vendor</i>	<i>Bid Amount</i>
Main Street Signs	\$1,453
Traffic Safety Store	\$1,976
Emedco	\$5,639

**FISCAL IMPACT:** If approved by the City Council, reallocation of Fiscal Year 2013-14 SLESA grant funds would not create a negative fiscal impact to the General fund because the these funds were allocated during the previous fiscal year.

**RECOMMENDATION:** Staff recommends the City Council authorize the reallocation and expenditure of Supplemental Law Enforcement Services Account grant funds.

---

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

---

## AGENDA REPORT

---

<b>SUBJECT:</b> CONSIDER APPROVAL OF PARCEL MERGER NO. 2015-1 FOR FIVE PARCELS LOCATED GENERALLY ON THE EAST SIDE OF CENTRAL AVENUE SOUTH OF THE I-10 FREEWAY	<b>DATE:</b> April 6, 2015 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 6 <b>FILE I.D.:</b> LDU225 <b>DEPT.:</b> PUBLIC WORKS
--	--

---

**REASON FOR CONSIDERATION:** Parcel mergers are permitted under the Subdivision Map Act and the Montclair Municipal Code, subject to the approval of the City Council.

**BACKGROUND:** The owners of properties located on the east side of Central Avenue between I-10 Freeway and an alley approximately 600 feet to the south, have expressed their wish to merge all five parcels into a single parcel. Such a merger is permitted under both the Subdivision Map Act and the City's Municipal Code. A parcel merger application has been submitted and is currently being reviewed.

The properties in question are generally identified as 9303-9407 Central Avenue. The properties are currently vacant. Previous development included medical office buildings, a dermatology office, and a restaurant. Proposed development includes two restaurant pads and some strip commercial usage.

**FISCAL IMPACT:** The merger of these parcels would have an unknown but positive fiscal impact to the City, potentially through increased property values and sales taxes.

**RECOMMENDATION:** Staff recommends the City Council approve Parcel Merger No. 2015-1 for five parcels located generally on the east side of Central Avenue south of the I-10 Freeway.

---

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

---

# EXHIBIT "A"

## CERTIFICATE OF PARCEL MERGER NO. 2015-1

SCALE: 1"=100'

**LINE DATA**

NO.	BEARING	DISTANCE
L1	N42°27'27"E	78.61'
L2	N47°27'35"E	44.96'
L3	N39°09'22"E	73.22'
L4	N89°53'46"W	137.00'
L5	N00°05'15"E	80.00'
L6	N89°53'46"W	17.00'

**CURVE DATA**

NO.	RADIUS	DELTA	ARC
C1	98.65'	39°04'07"	67.27'

**NOTE:**

- ① INDICATES PARCEL 1 OF L.L.A. NO. 2005-1, REC. 10-17-2006 AS INST. NO. 2006-0705163, O.R.
- ② INDICATES AN EASEMENT FOR PUBLIC ROAD AND HIGHWAY PURPOSES IN FAVOR OF THE CITY OF MONCLAIR PER 7187/862, REC. 2-25-1969, O.R.
- ③ INDICATES AN EASEMENT FOR STREET AND HIGHWAY PURPOSES IN FAVOR OF THE CITY OF MONCLAIR PER 9369/1729, REC. 3-15-1978, O.R.

**LEGEND:**

- LOT LINE TO REMAIN
- - - - - LOT LINE TO BE DELETED
- OFFSITE PROP. LINE AND R/W LINE
- - - - - STREET CENTERLINE

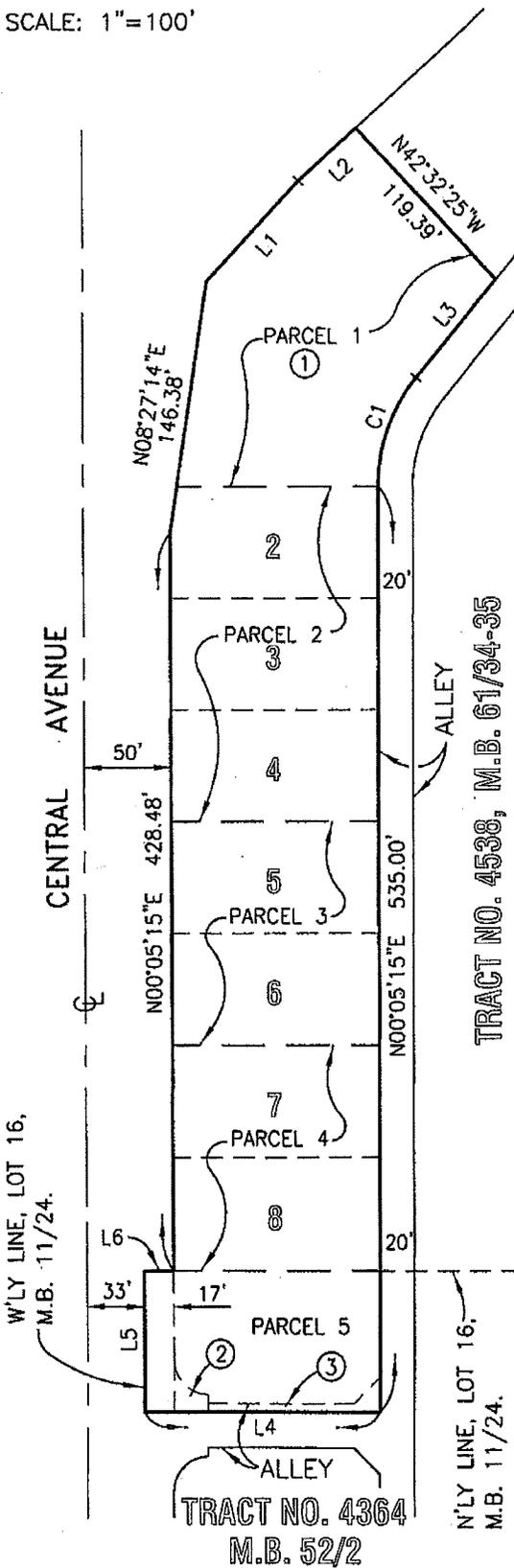
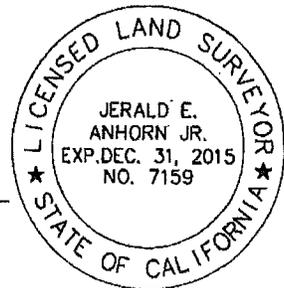
**PARCELS TO BE MERGED**

NO.	ASSESSOR PARCEL NUMBERS	AREA
1	A.P.N. 1008-371-18	23,234 S.F., 0.533 AC.
2	A.P.N. 1008-371-05	23,349 S.F., 0.536 AC.
3	A.P.N. 1008-371-03, 04	15,600 S.F., 0.358 AC.
4	A.P.N. 1008-371-01, 02	15,599 S.F., 0.358 AC.
5	A.P.N. 1008-381-19	10,960 S.F., 0.252 AC.

**AREA OF MERGED PARCEL: 88,742 S.F., 2.037 AC.**

PREPARED UNDER THE SUPERVISION OF:

*Jerald E. Anhorn Jr.*  
 JERALD E. ANHORN JR.,  
 L.S. 7159 EXP. 12-31-15.



## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION      **DATE:** April 6, 2015  
**SECTION:** ADMIN. REPORTS  
**ITEM NO.:** 7  
**FILE I.D.:** FIN540  
**DEPT.:** ADMIN. SVCS.

---

---

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

**BACKGROUND:** Mayor Pro Tem Raft has examined the Warrant Register dated April 6, 2015, and Payroll Documentation dated March 22, 2015, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated April 6, 2015, totals \$1,973,404.77. The Payroll Documentation dated March 22, 2015, totals \$600,433.40 gross, with \$438,526.32 net being the total cash disbursement.

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

---

---

Prepared by: Andrea M Phillips

Reviewed and Approved by: [Signature]

Proofed by: Stephanie Hick

Presented by: [Signature]

---

---

## AGENDA REPORT

---

---

<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 15-16-I-92, AN IRREVOCABLE ANNEXATION AGREEMENT WITH FERMIN OSUNA JIMÉNEZ FOR 4838 PHILLIPS BOULEVARD (APN 1013-071-11)	<b>DATE:</b> April 6, 2015
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b> 1
	<b>FILE I.D.:</b> SEW080
	<b>DEPT.:</b> COMMUNITY DEV.

---

---

**REASON FOR CONSIDERATION:** Irrevocable Annexation Agreements are subject to City Council review and approval.

**BACKGROUND:** The proposed Irrevocable Annexation Agreement would permit the property owner of the subject parcel located in unincorporated County territory to connect to the sanitary sewer system owned and maintained by the City of Montclair and located on Phillips Boulevard. The City is willing to allow the requested connection to said sanitary sewer system, subject to the Agreement that would require annexation of the property to the City when feasible at a future date.

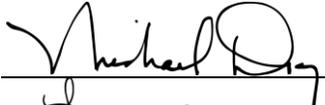
If approved by the City Council, the Agreement would also be subject to approval by the Local Agency Formation Commission (LAFCO). The proposed Agreement and sewer connection request is consistent with City policy and meets all applicable City requirements. Following City Council and LAFCO approvals, the Agreement is recorded against the property and becomes binding on future owners, heirs, successors, or assigns.

**FISCAL IMPACT:** There would be no fiscal impact as a result of the City Council's approval of Agreement No. 15-16-I-92 and execution of the Irrevocable Annexation Agreement.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 15-16-I-92, an Irrevocable Annexation Agreement with Fermin Osuna Jiménez, for the property at 4838 Phillips Boulevard.

---

---

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

---

---

**Recording Requested by:**

Michael Diaz  
City of Montclair

**When Recorded Mail To:**

Michael Diaz  
City Planner  
City of Montclair  
5111 Benito Street, P.O. Box 2308  
Montclair, CA 91763

**This Space for Recorder's Use Only**

---

**FREE RECORDING PURSUANT TO GOVERNMENT CODE §27383**

AGREEMENT NO. 15-16-I-92  
AN IRREVOCABLE AGREEMENT TO ANNEX  
TO THE CITY OF MONTCLAIR

Fermin Osuna Jiménez  
4838 Phillips Boulevard

**Title of Document**

**AGREEMENT NO. 15-16-I-92**

**AN IRREVOCABLE AGREEMENT TO ANNEX  
TO THE CITY OF MONTCLAIR**

Fermin Osuna Jiménez  
4838 Phillips Boulevard

This agreement is entered into this 6th day of April, 2015, between Fermin Osuna Jiménez, hereinafter referred to as "Owner," and the City of Montclair, hereinafter referred to as "City."

**WHEREAS**, Owner is the legal property owner of the real property located at 4838 Phillips Boulevard, also referenced as San Bernardino County Tax Assessor Parcel Number (APN) 1013-071-11, shown as Exhibit "A" attached, and is further described as follows:

LOT 31 OF TRACT 3976, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 51, PAGE 66 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 1013-071-11-0000

**WHEREAS**, the subject property is a 7,575 square-foot (0.17-acre) lot on the north side of Phillips Boulevard, within unincorporated San Bernardino County area that is a part of the Sphere of Influence of the City of Montclair; and

**WHEREAS**, the subject property is developed with a single-family residence with an attached 2-car garage constructed in 1960; and

**WHEREAS**, the Owner desires to connect an existing single-family home at the above-described property to the sanitary sewer system in Phillips Boulevard, which is owned and maintained by the City of Montclair; and

**WHEREAS**, the City is willing to allow a connection to said sanitary sewer system if a request is made at the earliest possible time to annex to the City of Montclair; and

**WHEREAS**, Owner desires to annex to the City of Montclair; and

**WHEREAS**, the City intends to pursue annexation of Owner's property plus other property, but said annexation will cause delay, which would create a substantial hardship for Owner of said property; and,

**WHEREAS**, the agreements, conditions, and covenants contained herein are made for the direct benefit of the land subject to this Agreement and described herein and shall create an equitable servitude upon the land and operate as a covenant running with the land for the benefit of the Owner of the land and his heirs, successors, and assigns.

**NOW, THEREFORE**, the parties do agree as follows:

1. Owner does hereby give irrevocable consent to annex to the City of Montclair at such time as the annexation may be properly approved through appropriate legal proceedings, and Owner does further agree to provide all reasonable cooperation and assistance to the City in the annexation proceedings. Said cooperation is contemplated to include signing any applications of consent prepared by the City, and submitting any evidence reasonably within the control of the Owner to the various hearings required for the annexation. Said cooperation does not include, however, any obligation on behalf of the Owner to institute any litigation of judicial proceeding whatsoever to force annexation to the City.

2. The City of Montclair does hereby agree to allow a connection of said property to the sewer line owned by the City of Montclair, which is located on Phillips Boulevard, at such time as all applicable permits have been obtained and associated fees have been paid.

3. Owner agrees to pay such annexation fees and costs and other municipal charges as would ordinarily be charged in the annexation of property to the City. Said fees shall be payable when the same becomes due and payable. (In some circumstances, these fees may be borne by the City.)

4. Owner shall pay all fees and charges and make all deposits required by the City to connect to and use the sewer, and Owner agrees to be bound by all City ordinances, rules, and regulations with respect to the sewer system. Owner agrees to pay monthly sewer charges beginning on the date this agreement is approved by the City Council.

5. Owner shall be responsible for the maintenance and repair of the sewer lateral from the house, building, and/or structure to which the sewer lateral is connected to the public sewer main in the street or City easement. This responsibility includes both the portion of the sewer lateral on private property and the portion located beneath the sidewalk and street up to the point where the lateral connects to the public sanitary sewer main. Property owners' responsibilities include maintenance and repair of the lateral, overflow cleanup, and damages to sewer main and/or pavement. The City **may** respond and take corrective action in the event of a sewage overflow from a lateral where there is an immediate threat to health or safety. However, the property owner shall be responsible for all costs incurred by the City.

6. Owner shall install any and all future improvements upon said property to the City's standards, except that the County standard(s) shall apply when more restrictive than the City standard(s).

7. Owner shall execute this agreement on behalf of himself, his heirs, successors, and assigns, and said agreement shall be irrevocable without the prior written consent of both parties hereto.

8. The benefit and responsibilities to the subject property shall inure to the benefit and responsibilities of subsequent owners, their heirs, successors, and assigns; and the agreements, conditions, and covenants contained herein shall be binding upon them and upon the land.

9. This agreement shall be recorded with the Office of the Recorder of the County of San Bernardino.

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

CITY:

**CITY OF MONTCLAIR, CALIFORNIA**

OWNER:

**FERMIN OSUNA JIMÉNEZ**

---

Paul M. Eaton

---

Fermin Osuna Jiménez

**ATTEST:**

---

Andrea M. Phillips  
Deputy City Clerk

---

Date

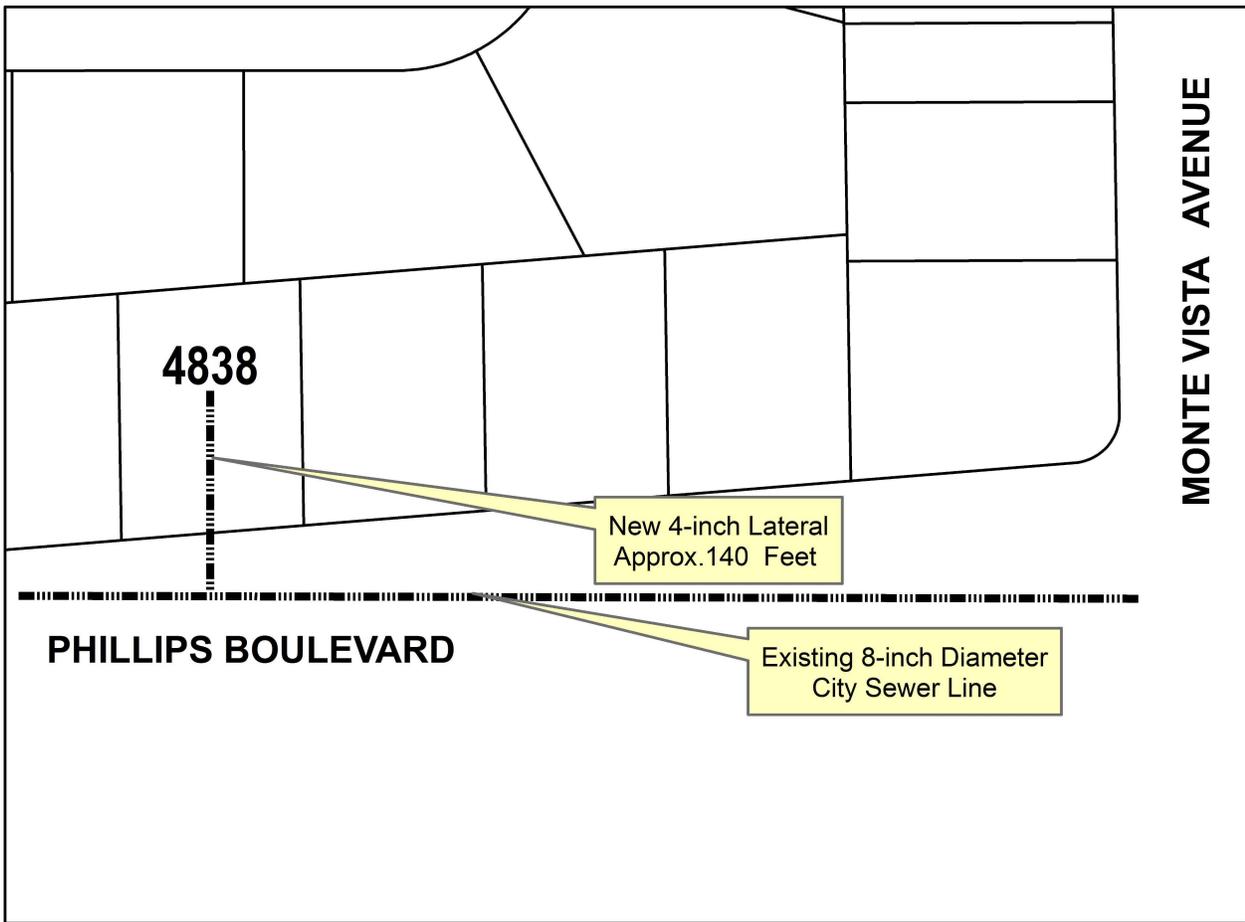
**APPROVED AS TO FORM:**

---

Diane E. Robbins  
City Attorney

# Exhibit A

## Irrevocable Annexation Agreement IAA No. 15-16-I-92 4838 Phillips Boulevard, Montclair, CA 91762



Jimenez Residence  
APN 1013-071-11



## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 15-18 WITH CHAFFEY JOINT UNION  
HIGH SCHOOL DISTRICT FOR LAW  
ENFORCEMENT SERVICES DURING  
FISCAL YEAR 2015-16

**DATE:** April 6, 2015  
**SECTION:** AGREEMENTS  
**ITEM NO.:** 2  
**FILE I.D.:** SCH125/350  
**DEPT.:** POLICE

---

---

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 15-18 with Chaffey Joint Union High School District to continue the Safe School Zone Officer assignment at Montclair High School.

A copy of proposed Agreement No. 15-18 is attached for the City Council's review and consideration.

**BACKGROUND:** Since 1995, the Montclair Police Department has provided the community with the services of a Safe School Zone Officer at Montclair High School.

Pursuant to the terms of proposed Agreement No. 15-18, Chaffey Joint Union High School District would pay \$64,000 toward the cost of a Safe School Zone Officer. The Police Department would be obligated to provide an on-campus presence for eight hours each school day. Our experience has shown an Officer's presence has a positive impact at the high school with little change to the allocation of patrol resources.

**FISCAL IMPACT:** Chaffey Joint Union High School District would pay \$64,000 toward the salary of the Safe School Zone Officer during Fiscal Year 2015-16 should this item be approved.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 15-18 with Chaffey Joint Union High School District for law enforcement services during Fiscal Year 2015-16.

---

---

Prepared by:   
Proofed by: 

Reviewed and  
Approved by:   
Presented by: 

---

---

**AGREEMENT  
FOR SPECIALIZED LAW ENFORCEMENT SERVICES**

This Agreement is made and entered into this 1st day of July, 2015 by and between the City of Montclair (hereinafter referred to as CITY) and the Chaffey Joint Union High School District (hereinafter referred to as DISTRICT), both of whom understand as follows:

**WITNESSETH**

WHEREAS, the following services are to be performed subject to the conditions hereinafter set forth:

NOW, THEREFORE in consideration of these services and mutual conditions hereinafter provided, the parties hereto agree as follows:

- A. Beginning with the school year through the end of the school year, the CITY will perform specialized law enforcement services for the DISTRICT at and about the campus of Montclair High School. It is understood that these services are to be provided, to the extent possible, on regularly scheduled school days between 7:00 a.m. and 4:00 p.m., and during mutually agreed upon “in-service” or familiarization periods.
  - 1. It is acknowledged that the provision of services may be interrupted by the normal working conditions experienced by law enforcement agencies, which include, but are not limited to: employee illness, court appearances, training requirements, prisoner transportation, emergency circumstances taxing on other departmental resources, etc. Should the interruption of services, for any reason, extend beyond four successive days, the CITY shall meet its obligation through the assignment of an alternate sworn employee.
  
- B. This Agreement will allow the CITY, through its Police Department, to provide the following specialized law enforcement services to the DISTRICT:
  - 1. One Sworn Community Oriented Officer, known as a Safe School Zone Officer, shall, through random patrol and their on-campus presence, strive to maintain a crime-free zone on and around each school campus.
  - 2. Through the Safe School Zone Officer, provide a consistent and timely response to calls for assistance from the high school or concerning students from the high school.
  - 3. Through the Safe School Zone Officer, provide a consistent liaison for the high school administration on law enforcement matters.

4. Through the Safe School Zone Officer, provide resources and materials necessary for classroom presentations on law enforcement matters.
  5. Through the Safe School Zone Officer, maintain a physical presence on campus during the hours of approximately 7:00 a.m. and 4:00 p.m. on each school day subject to possible interruptions as described in paragraph A(1) above. While on campus, the role of the officer is to:
    - a. Act as a positive role model for students.
    - b. Facilitate a positive and interactive student/law enforcement relationship.
    - c. Maintain a proactive stance toward crime prevention and order maintenance.
    - d. Act as first responder to criminal conduct or order maintenance issues occurring on or about the high school campus.
    - e. Within the confines of the law, act as information resource for school administrators on matters of mutual concern.
- C. In addition to the above, beginning with the summer session of 2015, the Safe School Zone Officer will provide similar services to the high school, adjusting the hours to the school schedule.
1. One Safe School Zone Officer will maintain a physical presence on campus each day during the regularly scheduled school hours.
- D. In consideration for providing these services, the DISTRICT will pay to the CITY a total of \$64,000 invoiced in two equal \$32,000 amounts; the first during November 2015, and the second due in May 2016.
- E. It is understood by both parties that the Safe School Zone Officer or other CITY officers providing this service shall remain CITY's employee at all times. As such, the CITY shall be responsible for all employment costs, supervision, control, and assignment of said officers.
- F. This Agreement is not assignable, either in whole or in part, by DISTRICT without the prior written consent of the CITY. The laws of the State of California shall govern the rights, obligation, duties, and liabilities of the parties to this Agreement and shall also govern the interpretation of the Agreement, if in dispute.

#### TERMINATION OR MODIFICATION OF AGREEMENT

This Agreement shall end on June 30, 2016, unless extended by both the CITY and DISTRICT. The CITY or DISTRICT may terminate all or any portion of this Agreement at any time upon providing a thirty (30) day written notice delivered to the addresses below. In the event the Agreement is terminated by either party prior to June 30, 2016, DISTRICT shall pro-rate its final payment for services rendered at \$5,500 per month.

CITY: City of Montclair  
5111 Benito Street  
Montclair, California 91763

DISTRICT: Chaffey Joint Union High School District  
211 West Fifth Street  
Ontario, California 91762

INDEMNIFICATION

DISTRICT shall defend, indemnify and hold harmless the CITY, its elective and appointive boards, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, in any manner arising out of any negligent or intentional or willful acts or omissions of DISTRICT under this Agreement.

CITY shall defend, indemnify and hold harmless the DISTRICT, its elective and appointive boards, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, in any manner arising out of any negligent or intentional or willful acts or omissions of CITY under this Agreement.

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

CITY OF MONTCLAIR

---

Paul M. Eaton,  
Mayor

ATTEST:

---

Andrea M. Phillips,  
Deputy City Clerk, City of Montclair

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT

---

Timothy Ward,  
Assistant Superintendent

## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 15-19 WITH FRICK, FRICK & JETTÉ ARCHITECTS, INCORPORATED, FOR DESIGN SERVICES FOR THE HUMAN SERVICES AND RECREATION WEIGHT ROOM FACILITY ADA UPGRADE PROJECT

**DATE:** April 6, 2015

**SECTION:** AGREEMENTS

**ITEM NO.:** 3

**FILE I.D.:** CVC060

**DEPT.:** PUBLIC WORKS

---

---

**REASON FOR CONSIDERATION:** Architectural design services are required for the development of construction plans to address Americans with Disabilities Act (ADA) requirements for the Human Services and Recreation Weight Room Facility.

**BACKGROUND:** The Human Services and Recreation Facility was constructed in March 1977 with minimal design or construction consideration for disabled participants. Since the time of construction, awareness of ADA requirements has increased, prompting staff to modify the existing facility to allow full amenities for all recreation participants.

The weight room remodel is the second phase of the Human Services and Recreation Facility remodel. The first phase included the men's and women's locker rooms, a racquetball court entrance, and the addition of an employee restroom. For the initial phase of design, a Request for Proposals (RFP) for the development of a master plan, construction plans, specifications, and bid documents was sent to five architectural firms:

- Brian Bloom Architects, Ontario, CA.
- Core State Architects, Ontario, CA.
- HC & D Architects, Norco, CA.
- Martinez Design Group, Irvine, CA.
- Frick, Frick & Jetté Architects, Apple Valley, CA.

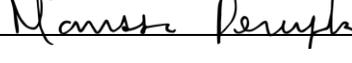
After reviewing the responses to the City's RFP, the City's evaluation team determined that the proposal submitted by Frick, Frick & Jetté Architects, Inc., exhibited the most knowledge, experience, and projects of a similar nature.

With the first phase of design being completed by Frick, Frick & Jetté Architects, Inc., the design team has become familiar with the existing conditions as well as the City's desire to expand and construct the weight room facility to meet ADA requirements. With the weight room being located directly between the men's and women's locker rooms, Frick, Frick & Jetté Architects, Inc., has already prepared the preliminary base map for the design

---

---

Prepared by:  Reviewed and Approved by: 

Proofed by:  Presented by: 

---

---

as part of the first phase of improvements. By utilizing the work already completed, Frick, Frick & Jetté Architects, Inc., would be the preferred architect for this project based on familiarity of the project as well as the cost savings associated with work already completed and paid for.

**FISCAL IMPACT:** Funding for this ADA improvement project is provided through the Community Development Block Grant Program. The total project budget is estimated at \$400,000. The design contract with Frick, Frick & Jetté Architects, Inc., is for an amount not to exceed \$32,500.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 15-19 with Frick, Frick & Jetté Architects, Inc., for design services for the Human Services and Recreation Weight Room Facility ADA Upgrade Project.

**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**HUMAN SERVICES & RECREATION WEIGHT ROOM REMODEL**

THIS AGREEMENT is made and effective as of April 7, 2015, between the City of Montclair, a municipal corporation ("City") and Frick, Frick & Jetté Architects 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 April 7, 2015, and shall remain and continue in effect for a period of 18 months until tasks described herein are completed, but in no event later than October 7, 2016, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

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

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$32,500 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

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

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

## 6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

## 7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the

Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

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

## 8. OWNERSHIP OF DOCUMENTS

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

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

## 9. INDEMNIFICATION

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

or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

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

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

## 10. INSURANCE      EXHIBIT B

(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 subagreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

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

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

16. NOTICES

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

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

To Consultant: Gino Bastianon  
Frick, Frick & Jetté Architects  
19153 Town Center Drive, Suite 101  
Apple Valley, CA 92308

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Because of the personal nature of the services to be rendered pursuant to this Agreement, only Gino Bastianon (responsible employee) shall perform the services described in this Agreement.

Consultant's responsible employee may use assistants, under his direct supervision, to perform some of the services under this Agreement. Consultant shall provide City fourteen (14) days' notice prior to the departure of the responsible employee from Consultant's employ. Should he leave Consultant's employ, the City shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

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

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY:

CONSULTANT:

**CITY OF MONTCLAIR, CALIFORNIA**

**FRICK, FRICK & JETTÉ ARCHITECTS**

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**ATTEST:**

\_\_\_\_\_  
Andrea M. Phillips  
Deputy City Clerk

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**APPROVED AS TO FORM:**

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

## EXHIBIT A



FRICK, FRICK & JETTÉ  
ARCHITECTS, INCORPORATED

February 18, 2015

Mr. Steve Stanton  
Project Manager, Engineering Division  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

Re: Human Services/Recreational Building Remodel  
Phase II (Weight Room)

Dear Mr. Stanton:

Thank you for the opportunity to submit our proposal for the referenced project. The proposed scope is to provide standard architectural/engineering drawings for the existing weight room and expansion into the hallway and exterior stage.

Services include the following:

- Architectural tenant improvement plans for demolition, new walls, ceiling and related finishes.
- Structural designs for improved areas.
- Expand/add new mechanical for proposed layout.
- Expand/add new electrical and lighting for the proposed layout.
- Submittal to the city for review and approval.
- Assistance with competitive bid process and contractor evaluation.
- Field administration and project management.

Exclusions:

- Governing agency fees.
- Printing and advertising for bidding and construction.
- Hazardous materials identification and removal.

19153 TOWN CENTER DRIVE, SUITE 101, APPLE VALLEY, CALIFORNIA 92308  
(760) 240-6211 • [www.fj-arch.com](http://www.fj-arch.com) • FAX: (760) 240-7729



Human Services/Recreational Building Remodel  
Phase II (Weight Room)  
Page two

Proposed Professional Services Fees:

• Architectural	\$16,800.00
• Structural Engineering	\$ 7,600.00
• Mechanical Engineering	\$ 3,800.00
• Electrical Engineering	<u>\$ 4,300.00</u>
Total:	<u>\$32,500.00</u>

Please feel free to contact our office if you should have any questions. If this meets with your approval, please sign below authorizing us to proceed. Thank you.

Sincerely,

FRICK, FRICK & JETTÉ ARCHITECTS, INC.

Gino Bastianon  
President

City of Montclair

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date



**EXHIBIT C**



**MONTCLAIR**

May 7, 2013

Mr. Gino Bastianon  
Frick, Frick & Jette Architects  
19153 Town Center Drive, Suite 101  
Apple Valley, CA. 92308

RE: REQUEST FOR INTRESTS

The City of Montclair is seeking an architect firm for preparation of plans, specifications, and cost estimate for the remodel of an existing city facility.

The first step in the selection process is to develop a pool of qualified consultants from which the City will request proposals. If you are interested in receiving a request for proposal, please submit a letter of interest and a statement of qualifications. If you wish, you may use the federal form SF-255.

The project will entail renovations of a men's and women's restroom/locker room, racquetball court modifications, a weight room expansion and lobby improvements. Associated work includes Plumbing, Mechanical and Electrical.

Interested consultants shall provide in writing, services provided, past experiences, project input, and references. Statements of qualifications / letters of interest are due by May 24, 2013, and shall be submitted to;

Mr. Steve Stanton  
Project Manager  
City of Montclair  
5111 Benito Street  
Montclair, CA. 91763

Please submit any questions or comments to Steve Stanton;  
sstanton@ci.montclair.ca.us

(909) 625-9444

City of Montclair  
Public Works Department  
Engineering Division

Steve Stanton  
Project Manager

**CITY OF MONTCLAIR**

5111 Benito Street, P. O. Box 2308, Montclair, CA 91763 (909) 626-8571 FAX (909) 621-1584

Mayor Paul M. Eaton \* Mayor Pro Tem Bill Ruh \* Council Members: Leonard Paulitz, J. John Dutrey, Carolyn Raft \* City Manager Edward C. Starr

## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 15-20 RATIFYING THE TERMS AND CONDITIONS OF EMPLOYMENT BETWEEN THE CITY OF MONTCLAIR AND MANAGEMENT EMPLOYEES

**DATE:** April 6, 2015

**SECTION:** AGREEMENTS

**ITEM NO.:** 4

**FILE I.D.:** MAN500

**DEPT.:** ADMIN. SVCS.

---

---

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 15-20 ratifying the terms and conditions of employment between the City of Montclair and management employees.

A copy of proposed Agreement No. 15-20 is included in the agenda packet for the City Council's review and consideration.

**BACKGROUND:** The City of Montclair and management employees have reached agreement on the provisions related to the terms and conditions of employment. Proposed Agreement No. 15-20 shall be effective upon date of ratification by the City Council for the period July 1, 2014, through June 30, 2015. After June 30, 2015, the existing terms, conditions, and provisions of the proposed Agreement shall remain in effect; and City and employees agree to abide by those terms, conditions, and provisions unless otherwise altered by the meet-and-confer process or unless otherwise indicated in the proposed Agreement.

The Following is a summary of the changes in proposed Agreement No. 15-20 related to the terms and conditions of employment:

- Article 1: Change of Agreement number.
- Article 6 (Section 6.01): This change relates to the one-time stipend payment of \$2,000 provided to management employees during fiscal year 2014-15.
- Article 7 (Section 7.01): This change relates to an increase in the benefit fund contribution for management employees from \$875 to \$950 per month effective April 1, 2015.
- Article 13 (Section 13.01): This change relates to the establishment of a 1,250 hour sick leave accrual cap for management employees effective April 1, 2015.
- Article 31: This change relates to an increase in the Service Award Program awards for management employees, as shown in Table 1 on the following page.

---

---

Prepared by:


Reviewed and Approved by:


Proofed by:

Presented by:

**Table 1  
City of Montclair  
Service Award Program**

Years of Service	Current Award	Amended Award
5	\$ 100	\$ 0
10	\$ 200	\$ 500
15	\$ 300	\$ 1,000
20	\$ 400	\$ 1,500
25	\$ 500	\$ 2,000
30	\$ 500	\$ 2,500
35	\$ 500	\$ 2,500
40	\$ 500	\$ 2,500

- Article 42: The change relates to the term of the Agreement.

**FISCAL IMPACT:** There is no fiscal impact associated with ratifying proposed Agreement No. 15-20 between the City of Montclair and management employees other than what has been included in the Fiscal Year 2014-15 Budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 15-20 ratifying the terms and conditions of employment between the City of Montclair and management employees.

## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT  
NO. 15-21 RATIFYING THE TERMS AND  
CONDITIONS OF EMPLOYMENT BETWEEN  
THE CITY OF MONTCLAIR AND EXECUTIVE  
MANAGEMENT EMPLOYEES

**DATE:** April 6, 2015

**SECTION:** AGREEMENTS

**ITEM NO.:** 5

**FILE I.D.:** EXM100

**DEPT.:** ADMIN. SVCS.

---

---

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 15-21 ratifying the terms and conditions of employment between the City of Montclair and executive management employees.

A copy of proposed Agreement No. 15-21 is included in the agenda packet for the City Council's review and consideration.

**BACKGROUND:** The City of Montclair and executive management employees have reached agreement on the provisions related to the terms and conditions of employment. Proposed Agreement No. 15-21 shall be effective upon date of ratification by the City Council for the period July 1, 2014, through June 30, 2015. After June 30, 2015, the existing terms, conditions, and provisions of the proposed Agreement shall remain in effect; and City and employees agree to abide by those terms, conditions, and provisions unless otherwise altered by the meet-and-confer process or unless otherwise indicated in the proposed Agreement.

The Following is a summary of the changes in proposed Agreement No. 15-21 related to the terms and conditions of employment:

- Article 1: Change of Agreement number.
  - Article 6 (Section 6.01): This change relates to the one-time stipend payment of \$2,000 provided to executive management employees during fiscal year 2014-15.
  - Article 7 (Section 7.01): This change relates to an increase in the benefit fund contribution for executive management employees from \$875 to \$950 per month effective April 1, 2015.
  - Article 13 (Section 13.01): This change relates to the establishment of a 1,250 hour sick leave accrual cap for executive management employees effective April 1, 2015.
  - Article 29: This change relates to an increase in the Service Award Program awards for executive management employees, shown in Table 1 on the next page.
- 
- 

Prepared by: Gary E. Charlot Reviewed and Approved by: \_\_\_\_\_

Proofed by: M. [Signature] Presented by: \_\_\_\_\_

---

---

**Table 1  
City of Montclair  
Service Award Program**

Years of Service	Current Award	Amended Award
5	\$ 100	\$ 0
10	\$ 200	\$ 500
15	\$ 300	\$ 1,000
20	\$ 400	\$ 1,500
25	\$ 500	\$ 2,000
30	\$ 500	\$ 2,500
35	\$ 500	\$ 2,500
40	\$ 500	\$ 2,500

- Article 41: The change relates to the term of the Agreement.

**FISCAL IMPACT:** There is no fiscal impact associated with ratifying proposed Agreement No. 15-21 between the City of Montclair and executive management employees other than what has been included in the Fiscal Year 2014-15 Budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 15-21 ratifying the terms and conditions of employment between the City of Montclair and executive management employees.

## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 15-22 WITH MATRIX AUDIOVISUAL DESIGNS, INC., FOR THE FURNISHING, REPLACEMENT, AND INSTALLATION OF NEW MICROPHONES AND AUDIO EQUIPMENT IN THE CITY COUNCIL CHAMBERS.

**DATE:** April 6, 2015

**SECTION:** AGREEMENTS

**ITEM NO.:** 6

**FILE I.D.:** COM025

**DEPT.:** ADMIN. SVCS.

---

---

**REASON FOR CONSIDERATION:** The existing microphones and audio equipment used in the City Council Chambers are operationally deficient resulting in declining quality of audio recordings and amplification of sound. This has led to discussions that are often muffled and inaudible. The age of the microphones and audio equipment makes further repair difficult as components and parts are difficult to acquire, and previous attempts at repair have proven ineffective.

As a result, staff is recommending entering into an agreement with Matrix Audiovisual Designs, Inc., for the replacement and installation of new microphones and audio equipment in the City Council Chambers.

A copy of proposed Agreement No. 15-22 between the City of Montclair and Matrix Audiovisual Designs, Inc., for the furnishing, replacement, and installation of new microphones and audio equipment in the City Council Chambers is attached for the City Council's review and consideration.

**BACKGROUND:** The City Council Chambers is used by elected officials, staff, and the public to conduct official City business and host public forums. The Council Chambers routinely hosts City Council, Planning Commission, Community Action Committee, and Oversight Board Review meetings, as well as other governmental and civic groups, and homeowners' association meetings.

The current microphones and audio equipment were installed in 2008 during the renovation and upgrade of the technologies in the City Council Chambers. The Taiden system, the operating system for the microphones and audio equipment, has been routinely experiencing technical problems for the past several years. These problems include sound fluctuations, microphones stalling, background noises, and a host other issues that interrupt the regular decorum of meetings held in the City Council Chambers. Given the significance of the events held in the City Council Chambers, it is imperative that that the microphones, audio equipment, and operating system be able to reinforce and record events in a discernible and audible manner.

Staff has met with several professionals with audio and acoustic backgrounds to

---

---

Prepared by: \_\_\_\_\_



Reviewed and Approved by: \_\_\_\_\_



Proofed by: \_\_\_\_\_

*John Nguyen*

Presented by: \_\_\_\_\_

address the current audio technical issues. Upon, a full review and testing of the microphones, audio equipment, and Taiden system it was determined that the equipment and operating system be replaced with a newer fully functional audio and operating system, and that new microphones and speakers be purchased.

After, reviewing several types of microphones, audio equipment, and operating systems, staff determined that the Audio Technica operating system would be a good candidate to replace the existing Taiden system. Staff further tested several types of microphones and audio equipment compatible with the Audio Technica operating system and determined that utilizing Audio Technica microphones and audio equipment would be a better choice versus choosing equipment from another manufacturer. These would likely reduce the compatibility issues that currently plague the existing microphones, audio equipment, and operating system.

Staff submitted Requests for Quotes (RFQs) to several audio equipment firms that utilize Audio Technica microphones, audio equipment, and operating system, and has determined that only the following three firms meet the necessary criteria set forth in the RFQ to warrant consideration as a possible vendor for the replacement of the exiting microphones, audio equipment, and Taiden system.

These firms provided demonstrations of their solutions, capabilities, and experience with Audio Technica microphones, audio equipment, and operating system. The following are the estimated quotes from each firm for the furnishing, replacement, and installation of the Audio Technica microphones, audio equipment, and operating system:

Enko Systems	\$27,450.00
Matrix Audio Visual Systems	\$20,096.76
GST Technology	\$18,765.53

After careful consideration of each proposal, staff has selected Matrix Audio Visual Designs, Inc., as the best option. Matrix Audio Visual Designs, Inc.'s qualifications, customer service, estimated price point, and extensive experience in repurposing and installing microphone and audio equipment systems set the company apart from the other firms. In particular, the ability to refurbish the existing microphones and audio equipment system set Matrix Audio Visual Designs, Inc., apart from its closest priced competitor GST Technology.

*Matrix Audio Visual Designs, Inc.*

Matrix Audio Visual Designs, Inc., has been in business since 1991 and is an audio, video, lighting, and control systems design and integration firm located in Burbank, California. Matrix Audio Visual Designs, Inc. has experience integrating technology solutions for residential applications, private businesses, educational institutions, houses of worship, military, and government agencies. Matrix Audio Visual Designs, Inc., is dedicated to providing the highest quality audiovisual system integrations for all budgets.

Over the past twenty years, Matrix Audio Visual Designs, Inc., has serviced many clients from government to education to defense to residential. Every design and installation is given the utmost care and attention.

Matrix Audio Visual Designs, Inc., is the preferred vendor for this project because they were awarded the last contract to upgrade the microphones and audio equipment in the City Council Chamber. This provides Matrix Audio Visual Designs, Inc. with an in depth understanding of the unique audio requirements of the City Council Chambers.

### *Scope of Work*

As part of the scope of work, Matrix Audio Visual Designs, Inc., shall provide, develop, install, and integrate control systems for the Audio Technica microphones, audio equipment, and operating system. Matrix Audio Visual Designs, Inc., will consult with staff in order to review and evaluate the related plans and systems requirements for the project and ensure that staff is involved in every step of the process.

The furnishing, refurbishment, and installation of microphones, audio equipment, and operating system would occur in the following stages:

- ✓ Removal of existing microphones, audio equipment, and Taiden system.
- ✓ Installation of thirteen (13) 18" gooseneck microphones. Seven (7) Gooseneck microphone will be installed at the dais with remaining six (6) on two staff desks.
- ✓ Installation of nine (9) small format (4.5") loudspeakers for local sound reinforcement. Seven (7) of the loudspeakers will be installed at the dais one (1) for each council member and two (2) shall be installed one at each staff desk.
- ✓ Installation of small format amplifiers to power the loudspeakers at the dais and staff desks.
- ✓ Installation and programming of a new microphone and audio system to process audio signals
- ✓ Reprogramming of the existing Crestron control system to interface with the Audio Technica microphone, audio equipment, and operating system.

Additionally, Matrix Audio Visual Designs, Inc., is including a sixty (60) day complete satisfaction guarantee. If after the sixty (60) day period, City Council and staff are not satisfied with the Audio Technia microphones, audio equipment, and operating system, then Matrix Audio Visual Designs, Inc., will remove all equipment and restore the prior microphones, audio equipment, and Taiden system at no charge.

Staff recommends the City Council adopt proposed Agreement No. 15-22 based on the in depth understanding of the unique audio requirements of the Council Chambers and the firms experience with Audio Technica microphones, audio equipment, and operating system.

**FISCAL IMPACT:** Approval of Agreement No. 15-22 between the City of Montclair and Matrix Audiovisual Designs, Inc. would result in a cost to the City of \$20,096.70 payable from the Technology Reserve Fund, which was established in Fiscal Year 1999-2000 to fund unanticipated and planned major technology upgrades.

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

1. Approve Agreement No. 15-22 with Matrix Audio Visual Designs, Inc., for the furnishing, replacement, and installation of new microphones and audio equipment in the City Council Chambers.
2. Authorize the City Manager to execute all documents on behalf of the City of Montclair in relation to implementation of Agreement No. 15-22.
3. Authorize a \$20,096.70 transfer from the Technology Reserve Fund to Account No. 1001-4316-62010-400-00000 for costs associated with the purchase of new microphone and audio equipment.

The Agreement ("Agreement") is entered into between the following parties ("the Parties"): CITY OF MONTCLAIR (*hereinafter* "Owner") located at 5111 Benito Street Montclair, CA 91703 and MATRIX AUDIO VISUAL DESIGNS, INC. (*hereinafter* "AV Contractor") located at 2525 W. Burbank Blvd. Burbank, CA 91505.

In consideration of the mutual execution of this Agreement and the promises made in the Agreement by the Parties, the Parties agree as follows:

**For this Project:**

*Project Name:* City of Montclair – Council Chambers Audio Upgrade (*hereinafter* "Project")

*Description of Project:* Audio system upgrade – Removal of the Taiden System

*Job Site Address:* 5111 Benito Street, Montclair, CA 91763

*Today's Date:* 02/04/2015

*Revised Date:* 03/18/2015

***With a Contracted Value of: Nineteen Thousand Seven Hundred Seventy Five Dollars and Five Cents (\$19,775.05)***, which represents the total price of all Equipment, Software, Work, and other components comprising the System, **including 8.25% and Excludes Owner Furnished Products**, provided that the Purchase Price amount may be adjusted in accordance with the terms and conditions contained herein relating to the costs, including variation or modification thereof, of the Equipment, Software, System, and/or Work.

**1. COMPLETE AGREEMENT**

- 1.1. This Agreement shall not be binding upon AV Contractor, unless signed by an authorized representative of the Owner and signed by an officer of AV Contractor. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Owner and AV Contractor have the legal power, right, and actual authority to bind Owner and AV Contractor to the terms and conditions hereof and thereof.
- 1.2. Neither the Owner nor AV Contractor shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such an event, the lender shall assume the Owner's rights and obligations under this Agreement - AV Contractor shall execute and take all steps reasonably necessary to facilitate such assignment.
- 1.3. This Agreement, including attachments mentioned in the body as incorporated by references, sets forth the entire agreement between the Parties with regard to the subject matter hereof. All prior agreements, representations and warranties, express or implied, oral or written, with respect to the subject matter hereof, are hereby superseded by this Agreement. This is an integrated agreement.
- 1.4. In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.
- 1.5. This Agreement may be modified, superseded, or voided only upon the written and signed agreement of the Parties. Further, the physical destruction or loss of this document shall not be construed as a modification or termination of the agreement contained herein.
- 1.6. The Parties agree to act in good faith and to cooperate fully with each other in carrying out the intent of this Agreement, and for that purpose agree to execute all additional documents as may prove reasonably necessary to accomplish that intent.
- 1.7. The Parties agree that the laws of the State of California shall be utilized in construing this Agreement and in enforcing the rights and remedies of the Parties. Any litigation arising out of a dispute concerning the Agreement shall be litigated in Los Angeles, California. The Parties agree to venue in that jurisdiction for all such disputes concerning this Agreement.
- 1.8. If any suit or action or other proceeding is commenced to enforce or interpret any of the terms or provisions of this Agreement, the prevailing Party in such suit or action or other proceeding shall be entitled to an award against the other Party for the prevailing Party's reasonable attorney's fees and costs incurred both at trial and on any appeal.
- 1.9. This Agreement shall inure to the benefit of and shall be binding upon each of the Parties here and their respective agents, representatives, executors, administrators, trustees, personal representatives, partners, directors, officers, shareholders, agents, attorneys, insurers, employees, representatives, predecessors, successors, heirs and assigns.
- 1.10. Each party acknowledges that he or she has had an adequate opportunity to read and study this Agreement, to consider it, to consult with attorneys if he or she has so desired.
- 1.11. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals, and with the same effect as if all Parties had signed the same document. All of such counterparts shall be construed together with and shall constitute one agreement, but in making proof, it shall only be

Initials: \_\_\_\_\_

necessary to produce one such counterpart. A facsimile transmission shall be as valid and enforceable as an original.

## **2. AV CONTRACTOR'S RESPONSIBILITIES**

- 2.1. The AV Contractor's services shall be performed in accordance with the degree of professional skill and care required by applicable law and as expeditiously as is consistent with professional skill and care and the orderly progress of the Project.
- 2.2. The AV Contractor shall submit for the Owner's approval a schedule for the performance of the AV Contractor's services (per Section 15) which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the AV Contractor or the Owner.
- 2.3. The AV Contractor shall designate a representative authorized to act on behalf of the AV Contractor with respect to the Project. Insofar as it is reasonable, the same person shall remain consistent from Project inception until completion. This representative shall be referred to as the Project Manager.
- 2.4. The AV Contractor's work shall be neat and workmanlike and shall assign enough workers with the required skills and qualifications to the job to meet its schedule commitments as outlined at the signing of this document.
- 2.5. The AV Contractor shall coordinate and cooperate with other trades to ensure satisfactory work progress.
- 2.6. The AV Contractor shall, at its own cost and expense, comply with all State/Provincial and local laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements necessary for the prosecution of the Work.
- 2.7. The AV Contractor will install all equipment in accordance with the manufacturers' instructions unless otherwise approved by the Owner. Where these instructions are exceeded by any applicable national and local regulations, ordinances, and codes, such regulations, ordinances, and codes shall apply.
- 2.8. Upon completion of the Work, the AV Contractor shall remove from the site all unused materials, containers, and equipment. The AV Contractor will endeavor to protect all floors, walls, and other adjacent surfaces from stains, marring or other damage. The space shall be clean and undamaged.
- 2.9. The AV Contractor is not responsible for the operation or the performance of equipment supplied by others outside this contract. The AV Contractor does not warrant that equipment supplied by others either can be connected to or can work satisfactorily with our system, except as specified in this document.

## **3. OWNER'S RESPONSIBILITIES**

- 3.1. The Owner shall provide full information in a timely manner regarding requirements for and limitations on the Owner's objectives, schedule, constraints and criteria.
- 3.2. The Owner shall furnish to the AV Contractor, within 10 days after receipt of a written request, information necessary and relevant for the AV Contractor to evaluate, give notice of, or enforce lien rights.
- 3.3. The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or the designated representative shall render decisions in a timely manner pertaining to documents submitted by the AV Contractor in order to avoid unreasonable delay in the orderly and sequential progress of the AV Contractor's services.
- 3.4. The Owner shall furnish the services, at the Owner's expense, of any and all consultants reasonably required for the proper execution of the Project as and when requested by the AV Contractor. The AV Contractor shall be entitled to rely upon the accuracy and completeness of any information provided by these consultants.
- 3.5. The Owner shall furnish all legal, accounting, and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests.
- 3.6. The Owner shall provide prompt written notice to AV Contractor if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in AV Contractor's proposal and/or quotation.
- 3.7. The Owner shall ensure that the Project is secure and set up for both pre-wiring and installation of the Equipment in accordance with the requirements of AV Contractor. The Owner shall be solely responsible for the Project site conditions, including the security, safety, and fitness of the areas in which AV Contractor's services are to be performed. The Owner warrants to AV Contractor that the Project site is adequate and sufficient to install, use, and store the Equipment.
- 3.8. At the time of signing of this Agreement, the Owner shall have identified and provide information to the AV Contractor of all other equipment and connections that will interface with the Equipment to be provided by the AV Contractor related to this Project, with the understanding that any omissions to the information provided to date may result in additional charges from the AV Contractor in order to accommodate such changes or omissions.
- 3.9. The Owner shall provide access to the Project site during normal business hours to allow AV Contractor to perform its services in a timely and orderly manner. Further, the Owner shall provide suitable and secure locations at the Project site for storage of the Equipment prior to installation.
- 3.10. The Owner shall provide a representative to accept delivery of equipment from the AV Contractor as required at the Project site, and shall remain liable for any loss or damage to the Equipment located at the Project site.

## **4. SCOPE OF SERVICES**

Initials: \_\_\_\_\_

- 4.1. Within the context of this document, "Approve" means review of and comment on, existing conditions or design by others. "Design" means complete design service including drawings. "Specify" means establishment of criteria for design to be done by others.
- 4.2. The AV Contractor shall provide, develop, install, and integrate control system for the Project. The AV Contractor will consult with the Owner and Owner's representatives or authorized agents in order to review and evaluate the related architectural plans and systems requirements for the Project. The AV Contractor will make all recommendations or modifications as may be required in cooperation with the Owner, or others as directed by the Owner, and shall assist in finalizing a functional description of the system Scope to include schematic designs, design administration, preparation of a preliminary and final budget estimate of audio/visual system costs, attendance at progress meetings, and preparation of preliminary and final drawings and documentation.
- 4.3. The AV Contractor shall inspect audio/visual systems installed in the Project and will assist the Owner in the commissioning of the audio visual systems. The AV Contractor will make recommendations as to training, support, and maintenance of the audio/visual systems.
- 4.4. The specific Scope of Services for this Project are as follows:
  - Remove existing Taiden audio system.
  - Furnish and install (13) new 18" gooseneck microphones with base which includes mute switch. (7) Gooseneck microphone to be installed at the dais with remaining (6) on two staff desks.
  - Furnish and install (1) 18" gooseneck microphone at the lectern with shock mount.
  - Furnish and Install (9) small format (4.5") loudspeakers for local sound reinforcement. Seven of the loudspeakers will be installed at the dais one for each council member and two shall be installed one at each staff desk.
  - Furnish and install small format amplifiers to power the loudspeakers at the dais and staff desk.
  - Furnish, install and program a new DSP system to process the audio signal.
  - Furnish and install all cabling necessary to provide a turnkey system.
  - Program the Crestron control system to interface with the new DSP system. Option I includes the ability to make phone calls with the system speaking through the microphones and remote audio projecting through the loudspeakers. Option II eliminates this feature.
  - **Extend system labor warranty for a period one year at no additional charge. This includes labor to remedy issues with the AV equipment in the equipment rack, cameras and the dimming system valued at \$7,500.00.**
  - **Complete satisfaction guaranteed. No payment will be requested until complete satisfaction is reached by using the system for a period of 60 days. Once satisfied complete payment will be requested and is due on the 60<sup>th</sup> day. If Owner is not satisfied the system will be restored with the Taiden system at no charge.**

## 5. INTELLECTUAL PROPERTY

- 5.1. The Parties agree that AV Contractor shall be solely entitled to all patent rights and all copyrights to any products, tools, devices, manuals, plans, drawings, customized programs and software, and anything else subject to patent or copyright (the "Intellectual Property") invented, generated, developed, or otherwise produced by AV Contractor or its agents, representatives, employees, and subcontractors in connection with the performance of the Services, and shall at all times remain the property of the AV Contractor. The Parties hereto intend and agree, however, that the AV Contractor shall grant a perpetual, non-exclusive, non-transferable license to any and all products, tools, devices, manuals, plans, drawings, customized programs, and software for the life of the Project; provided, however, that:
  - 5.1.1. Such license shall be non-transferable by the Owner without the prior written consent of AV Contractor, and shall be exercised by the Owner solely for the Owner's benefit in direct connection with the Project following the date of this Agreement;
  - 5.1.2. Licensing rights as outlined shall require the express written permission of the AV Contractor in order to reproduce or distribute to any other third party any or all of the above mentioned drawings, plans, specifications, reports, and other documentation; and
  - 5.1.3. The AV Contractor shall maintain rights to all such software source codes, drawings, plans, specifications, reports, and other documentation, for use in connection with the conduct of the AV Contractor's ordinary course of business, without any compensation or payment of any kind or nature being made to the Owner in connection with such use.
  - 5.1.4. The AV Contractor shall provide the Owner with current copies of all software upon request; these shall be for archival and administrative purposes only.
  - 5.1.5. Notwithstanding the foregoing, as consideration for the limited licensing rights in connection with the above, the Owner hereby agrees to:
    - 5.1.5.1. Use its best efforts to promote and credit AV Contractor's integral role in connection with the completion and operation of the Project, which efforts shall include, without limitation, the advertisement and promotion, whenever and wherever reasonably possible, of Supplier as the designer, provider, and supplier of the technology used in connection with the Project.
    - 5.1.5.2. Permit AV Contractor to cite the Project, together with AV Contractor's role, relative to the design technology developed and used in connection therewith, for purposes of AV Contractor's advertising, marketing, and public relations efforts.

Initials: \_\_\_\_\_

## 6. DISPUTE RESOLUTION

### 6.1. MEDIATION

- 6.1.1. In the event that any claim, dispute, or other matter in question arises out of or relates to this Agreement, Owner and AV Contractor shall first attempt resolution of same via mediation prior to seeking resolution through arbitration and/or initiating legal proceedings. If such a matter relates to or is the subject of a lien arising out of AV Contractor services, AV Contractor may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.
- 6.1.2. The Owner and AV Contractor shall endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the Parties mutually agree otherwise, shall be in accordance with the procedures of an established national, regional, or local mediation service. Request for mediation shall be filed in writing with the other party to this Agreement and with such mediation service.
- 6.1.3. Parties shall mutually agree in writing as to the particular mediation service and/or mediator to conduct and/or officiate the mediation process. The Parties shall share the mediator's fee and equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

### 6.2. ARBITRATION

- 6.2.1. Any dispute or disagreement arising between the Parties in connection with this Agreement which is not settled to the mutual satisfaction of the Parties by the mediation process above within sixty (60) days (or such longer or shorter period as may be mutually agreed upon) from the date that either party initiates a formal mediation request may be settled by non-binding arbitration.
- 6.2.2. A demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such a claim dispute or other matter in question would be barred by the applicable statute of limitations.
- 6.2.3. No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, AV Contractor, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent arbitration to any claim, dispute, or other matter in question not described in the written consent or with a person or entity not there named or described. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by Parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction over it.
- 6.2.4. The Parties agree that the arbitrator(s) shall have no power or authority to make awards or issue orders of any kind except as expressly permitted by this Agreement, and in no event shall the arbitrator(s) have the authority to award punitive or exemplary damages.
- 6.2.5. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon in accordance with applicable law in any court having jurisdiction.
- 6.2.6. The cost of the arbitration, including the fees and expenses of the arbitrator(s), will be shared equally by the Parties unless the award otherwise provides. Each party shall bear the cost of preparing and presenting its case.

### 6.3. LEGAL PROCEEDINGS

- 6.3.1. In the event any dispute or disagreement arising between the Parties in connection with this Agreement which is not settled to the mutual satisfaction of the Parties by the mediation process above within sixty (60) days (or such longer or shorter period as may be mutually agreed upon) from the date that either party initiates a formal mediation request, legal proceedings may be initiated by the allegedly offended party.
- 6.3.2. The prevailing party in any legal proceedings arising out of or related to this Agreement, shall be entitled to any and all costs, expenses, fees, and attorneys' incurred in such legal proceedings including but not limited enforcement of any judgment(s) obtained via same proceedings. Whether Owner or AV Contractor is prevailing party in such legal proceedings will be determined in accordance with California law.
- 6.3.3. Parties to this Agreement agree that any legal proceedings arising out of and/or related to this Agreement shall be limited to the jurisdiction and venue of Los Angeles County, State of California.

## 7. PERMITS

- 7.1. The Owner shall bear at its own cost all consents, licenses, permits, approvals, authorizations, and inspections from local government authorities, agencies, or officials required for the prosecution and completion of the Work and the delivery of the System as obtained by either the Owner or the AV Contractor in relation to this Project.

Initials: \_\_\_\_\_

- 7.2. Where such consents, licenses, permits, approvals, authorizations, and inspections are obtained by the AV Contractor, such costs shall be considered in addition to the approved contract cost, and shall be subject to a 15% administration fee above and beyond the cost paid by the AV Contractor.

## 8. Exclusions and Assumptions

- 8.1. Exclusions
- 8.1.1. Patch work
  - 8.1.2. Painting
  - 8.1.3. Bonding – 3%
  - 8.1.4. Overtime and/or shift work
  - 8.1.5. Prevailing wage
  - 8.1.6. Certified payroll
  - 8.1.7. Fees and permits
  - 8.1.8. Parking
  - 8.1.9. All cabling within walls and ceiling shall be plenum rated.

## 9. REPRESENTATIONS

- 9.1. The AV Contractor is not, and does not represent to be, a licensed architect, electrician, electrical engineer, mechanical engineer, or structural engineer and shall not perform, nor be responsible for the performance of, the work of such persons. All information, drawings, schematics, specifications, or other documents containing references to, or depictions of, architectural, electrical, or mechanical attributes which are supplied to the Owner by the AV Contractor hereunder will be provided for the sole purpose of indicating the AV Contractor's suggestions related to the Work, and the AV Contractor shall have no liability whatsoever, including liability for the Owner's reliance thereon, except as such information, drawings, documents, specifications, or other documents may relate to the performance of the System.
- 9.2. The Owner's signing and delivery of this Agreement and its performance of its obligations hereunder:
- 9.2.1. Have been duly authorized by all necessary corporate action;
  - 9.2.2. Do not conflict with any terms or conditions of its Certificate of Incorporation or By-laws;
  - 9.2.3. Do not violate any law, regulation, order, judgment or decree by which it may be bound; and
  - 9.2.4. Will not violate or result in a breach, acceleration, or default under any agreement or understanding to which it is a party or by which it may be bound which will materially affect its ability to perform its obligations hereunder.
- 9.3. When signed and delivered by the Owner, this Agreement will constitute the legal, valid and binding obligation of the Owner, and will be enforceable against it in accordance with its terms and conditions, subject only to the rights of creditors under applicable laws relating to bankruptcy or the relief of debtors.

## 10. TERM & TERMINATION

- 10.1. The term of this Agreement will be from the Effective Date until completion of the Work and payment of the Purchase Price, except as otherwise provided for herein.
- 10.2. Except as otherwise provided for herein, either party may terminate this Agreement upon notice in writing to the other in the event that such other party shall breach or be in default of any of the covenants, obligations, warranties, representations, terms, or conditions of this Agreement in a material manner (a "Default") and such other party fails to remedy such Default within thirty (30) days after notice thereof from the party not in default; provided that where a remedy will reasonably require greater than thirty (30) days to complete, the non-defaulting party may terminate this Agreement if the defaulting party does not start to remedy the Default within the thirty (30) day period, or, once started, fails to diligently proceed with and complete the remedy. Such notice shall provide in reasonable detail the basis upon which the Default is claimed.
- 10.3. In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under applicable bankruptcy legislation or any other applicable statute relating to insolvency or the protection of rights of creditors, then the other party may terminate this Agreement.
- 10.4. In the event the AV Contractor terminates this Agreement pursuant to either paragraph 10.2 or 10.3 of this Section, then all licenses granted by AV Contractor to the Owner shall immediately terminate and the Owner shall immediately discontinue use of any Software furnished hereunder and return to the AV Contractor all copies of such Software and any Confidential Information furnished hereunder.

Initials: \_\_\_\_\_

## 11. ADDITIONAL COSTS

- 11.1. The following costs shall be borne by the Owner in addition to the approved contract cost, and shall be billed in full plus an administration fee of 15% at the completion of the Project:
  - 11.1.1. Parking
  - 11.1.2. Equipment Storage (under the conditions defined within Section 16.7)
  - 11.1.3. Specifically requested Insurance other than as defined within Section 17
  - 11.1.4. Performance and Labor bonds
  - 11.1.5. Permits, licenses, approvals, and Inspections as defined within Section 7

## 12. PREVAILING TERMS

- 12.1. If any purchase order, acceptance, or other document is used by Purchaser in connection with the purchase of the System, then notwithstanding any provisions therein contained to the contrary, the terms of all such documents shall be governed by the provisions of this Agreement and any terms thereof which are inconsistent with, different from, or in addition to, the provisions of this Agreement shall be null and void and of no force or effect.

## 13. CHARGES AND INVOICING

- 13.1. The Owner shall pay to AV Contractor the charges for the equipment, all labor, materials, and services as detailed by AV Contractor's proposal and revision along with any modifications and changes to same as outlined in any subsequent change orders.
- 13.2. All charges are inclusive of federal, State/Provincial and local sales, use, excise, utility, and gross receipts taxes and other similar tax-like charges, including tax-related surcharges, which the Owner agrees to pay. In the event the Owner provides the AV Contractor with a duly authorized tax exemption certificate, the AV Contractor agrees to exempt the Owner in accordance with the law; effective on the date exemption certificate is received by the AV Contractor.
- 13.3. The AV Contractor shall invoice the Owner for charges due under this Agreement as set forth herein. All invoices are due and payable within 30 days of the invoice date with the exception of the invoice for the Project initiation fees which is due and payable upon signing the Agreement. The Owner is responsible for meeting payment terms as listed below. The AV Contractor reserves the right to withhold delivery of products, installation, and maintenance services pending this payment.
- 13.4. All invoiced amounts that remain unpaid for more than 30 days shall be subject to a finance charge of 2.5% per month, computed from the date of invoice.
- 13.5. The Owner shall not make any deductions of any kind from any payment becoming due to the AV Contractor unless Owner shall have received an official credit memorandum from AV Contractor authorizing such deduction.
- 13.6. If the Owner fails to make any payment to AV Contractor as provided for herein, the AV Contractor may, upon 30 business days prior written notice to the Owner, suspend performance of the Work until such payment is received in full and the period of suspension shall be added to the time which AV Contractor has estimated to complete performance of same.
- 13.7. Payment terms and schedule are agreed as follows:

Below you will find our payment schedule. Matrix Audio Visual Designs is an integration firm we purchase equipment as needed per job basis. Thus our vendors need to be paid on time as equipment is delivered. We ask you to adhere to the following payment terms so in turn we can honor their payment schedule.

**No payment shall be requested until system is used for a period of 60 days after completion. An invoice will be sent out once the project installation is complete for processing. Full payment shall be requested upon your satisfaction at the end of 60<sup>th</sup> day. If not satisfied the system will be restored with the Taiden system and no payment will be requested.**

## 14. OWNERSHIP

- 14.1. All hardware shall remain the property of AV Contractor until final payment is received.
- 14.2. Upon delivery of any equipment to site, a representative of the Owner shall be required to sign for acceptance of such equipment.
- 14.3. From the point that any hardware is delivered to site, responsibility for the safekeeping and security of such equipment shall be borne by the Owner, who shall remain responsible for the cost of any repair or replacement of such equipment damaged or lost as a result of any actions taken by any individual other than in the direct employment of AV Contractor.

## 15. PROJECT SCHEDULE

Initials: \_\_\_\_\_

- 15.1. Time is of the essence in performance of this Contract. Both the Owner and the AV Contractor shall proceed with the work in a prompt and diligent manner in accordance with the current Project schedule.
- 15.2. The AV Contractor shall coordinate its work with the work of others on the site in a manner which will avoid conflict or interference with the work of AV Contractor and others and which will avoid delay in the completion of any part or the entire Project.
  - 15.2.1. The Owner recognizes that construction delays could affect the schedule for any given system, and shall advise AV Contractor immediately of any adjustments to the Project schedule that may have an impact on any system related to AV Contractor's Scope of Work. Upon presentation of a written request and cost adjustment, the Owner will review, in an expeditious manner, such charges as presented by AV Contractor to increase the likelihood of meeting the schedule.
- 15.3. AV Contractor will require various sign-offs and approvals throughout the design, engineering, and installation process. The AV Contractor, where applicable, shall provide the Owner with a required date of acceptance in order to maintain the agreed Project schedule. At that time, the Owner agrees to not unreasonably withhold its agreement for such documents. A minimum of 7 business days, where possible, shall be allotted by AV Contractor to allow for communication and response from the Owner without penalty to the schedule or Project.
- 15.4. AV Contractor shall not be liable for any default or delay caused by any third party impeding production or delivery of the products ordered. All promises of delivery are made in good faith and AV Contractor will make best efforts to fulfill them. However, if AV Contractor is unable to meet a scheduled delivery date, then AV Contractor shall not be liable for additional transportation charges incurred on the Owner's request to use a faster means of transportation.

## 16. DELAYS

- 16.1. Delays by other trades, Owner's schedules, approval of AV Contractor's drawings and submittals, change orders, or non-availability of specific equipment shall be cause for reasonable extensions of completion date.
- 16.2. The Owner's criteria will always be the AV Contractor's goal; however, no liability can be assumed for such delays.
- 16.3. Any delays due to performance of other trades and/or contractors or labor disputes/strikes related to trades outside AV Contractor's obligations under this Agreement will result in additional fees.
- 16.4. Identified shipping and delivery dates of Equipment are provided in good faith and represent AV Contractor's best estimate. If the manufacture, delivery, or installation of the Equipment is delayed, in whole or in part, through no fault of AV Contractor, including, but not limited to, Acts of God, terrorism, war, strikes, fire, and governmental acts, AV Contractor's performance time shall be extended and AV Contractor's compensation shall be adjusted due to such a delay.
- 16.5. AV Contractor shall not be liable for any default or delay caused by any third party impeding production or delivery of the products ordered.
- 16.6. Freight charges contained in this proposal, if any, are estimated to allow standard ground- based shipping methods. If expedited shipping is requested by the Owner, or is required in order to meet a scheduled delivery date, AV Contractor shall be additionally compensated for additional transportation charges incurred on the Owner's behalf.
- 16.7. If the Owner requests a delay in the shipment or installation of Equipment that has already been ordered or manufactured, AV Contractor upon receiving that Equipment may place the identified Equipment in storage at the Owner's expense.
- 16.8. The Owner shall pay the storage charges upon acceptance.
- 16.9. If the Owner requests a delay in the shipment or installation of Equipment before the Equipment has been ordered or manufactured, the Owner shall pay any increases in the Equipment's price occurring prior to the date of subsequent release of order by AV Contractor.
- 16.10. Notwithstanding any provision to the contrary in this Agreement, if the Owner requests a delay, or if for any reason the Project is suspended for thirty (30) consecutive days, the Owner shall compensate AV Contractor within 15 days of the date of notification of request of delay by Owner or within 15 days of the thirtieth (30th) day of suspension,
  - 16.10.1. The full price of services performed prior to the request or suspension, and
  - 16.10.2. The full price of all Equipment ordered and applicable storage charges.
- 16.11. When the Project is resumed, AV Contractor shall be compensated for expenses incurred in the interruption and resumption of AV Contractor's services. AV Contractor's fees for the remaining services and the time schedules shall be equitably adjusted.
- 16.12. If the Project is suspended or AV Contractor's services are suspended for more than 60 consecutive days, AV Contractor may terminate this Agreement by giving not less than 15 days' written notice.

## 17. INSURANCE

- 17.1. The AV Contractor shall, at its own expense, carry all workers compensation insurance to protect AV Contractor's employees and comprehensive general liability insurance necessary for the protection of the AV Contractor and the Owner.
- 17.2. This will cover injury to persons or property arising from acts of the AV Contractor during the progress of the work.
- 17.3. Any sub-contractors will be required to provide similar insurance coverage.

Initials: \_\_\_\_\_

- 17.4. The Owner shall obtain and pay for insurance against injury to its own employees, if any, and persons on the site at the Owner's direction.
- 17.5. The AV Contractor shall not be responsible for any on site damage solely caused by the Owner or his agents, or by Acts of God beyond the control of the AV Contractor.
- 17.6. The AV Contractor shall submit a Certificate of Insurance naming the Owner as additional insured upon written request by the Owner.

## 18. LIMITATION OF LIABILITY

IN NO EVENT SHALL AV CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES; LOSS OF REVENUE OR PROFIT; OR LOSS, DAMAGE OR DESTRUCTION OF DATA OR PROPERTY INCLUDING SOFTWARE PROBLEMS EXPERIENCED BY OWNER IN SOFTWARE PACKAGES OR DATABASES IN PLACE PRIOR TO THE INSTALLATION OF ANY SOFTWARE HEREUNDER AND INCLUDING ANY ELECTRICAL DAMAGE OR ELECTRICAL PROBLEMS THAT MAY OCCUR AS A RESULT OF ANY OF THE USE OF THE EQUIPMENT OR INSTALLATION OR MAINTENANCE SERVICES PROVIDED UNDER THE TERMS OF THIS AGREEMENT; REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, EVEN IF AWARE OF THE POSSIBILITY THEREOF. AV CONTRACTOR'S LIABILITY FOR DAMAGES FOR BREACH OF THE AGREEMENT OR ARISING IN ANY OTHER RESPECT OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE MONIES PAID TO AV CONTRACTOR BY OWNER FOR THE ITEM(S) OF EQUIPMENT OR SERVICE GIVING RISE TO THE CAUSE OF ACTION; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO PERSONAL INJURY, INCLUDING DEATH OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AV CONTRACTOR. IT IS THE OWNER'S RESPONSIBILITY TO ENSURE THAT ALL OF ITS DATA FILES ARE ADEQUATELY DUPLICATED AND DOCUMENTED. AV CONTRACTOR WILL NOT BE RESPONSIBLE FOR THE OWNER'S FAILURE TO DO SO, OR FOR THE COST OF RECONSTRUCTION DATA STORED ON DISK FILES, TAPES, MEMORIES, ETC., WHICH IS LOST DURING THE COURSE OF PERFORMANCE OF AV CONTRACTOR HEREUNDER.

## 19. FORCE MAJEURE

- 19.1. AV Contractor shall not be deemed in breach of contract, negligent, at fault, or liable for any delay or failure of performance resulting from Acts of God, war, accidents, riots, terrorism, civil insurrection, labor disputes, strikes or any other cause not the fault of and beyond the reasonable control of AV Contractor; provided, that AV Contractor will give the Owner prompt notice of the delay in sufficient detail to permit the Owner the opportunity to minimize the effect of such delay, if practicable.

## 20. WARRANTY

- 20.1. All equipment furnished by AV Contractor shall be accompanied by each manufacturer's standard warranty. AV Contractor shall be solely responsible for seeing that warranty repairs are made.
- 20.2. In addition to the standard manufacturer's warranty, AV Contractor warrants that all Equipment and installation shall be fit for its intended purpose as outlined in the Statement of Work and free from defects in materials and workmanship for one year after Substantial Completion.
- 20.3. Notwithstanding the foregoing, AV Contractor's warranty obligations shall not apply to the extent that the Equipment has been subjected to abuse, unauthorized modifications or alterations, improper maintenance, unauthorized or improper repair and misuse, including, but not limited to, operating the Equipment outside of its environmental, performance, electrical, temperature, or humidity specification.
- 20.4. For any services covered under the AV Contractor's one (1) year warranty, AV Contractor shall be the sole source utilized for repairs. The Owner agrees to provide access for any scheduled or requested services of the System or Equipment. If the Equipment is not available during the scheduled time, AV Contractor may charge the Owner its normal trip charge and, if asked to wait on-site, AV Contractor's current published hourly rates for standing by until the Equipment is made available or until instructed to return at another time.

## 21. DURATION OF WARRANTY

- 21.1. Except as otherwise provided by virtue of any manufacturer's warranty set forth in Paragraph 22.2, all warranties made herein by AV Contractor shall commence as of the execution of this Agreement, and shall remain in effect for a period of one (1) year following the achievement of Substantial completion, as outlined within Section 20 of this document, or first beneficial use, whichever occurs first.
- 21.2. In the event that the Owner desires to engage AV Contractor to perform and/or provide additional services and/or Project maintenance following the expiration of said one (1) year warranty period, AV Contractor shall submit to the Owner a quotation for an extended service and/or maintenance arrangement.

## 22. WARRANTY CLAIMS

- 22.1. Upon receipt of written notice from the Owner of any warranty claim pursuant to this Section, the Owner may, as its sole remedy against AV Contractor under this Agreement, require AV Contractor to correct any Services not conforming to the warranties set forth herein, or promptly repair and/or replace any deficient goods, materials, or equipment sold or provided by AV Contractor in connection herewith.

Initials: \_\_\_\_\_

- 22.2. The cost and expense of all such remedial work, so as to bring the Services in compliance with the warranties set forth herein, shall be borne solely by the AV Contractor.
- 22.3. AV Contractor's sole obligation in connection with this Section shall be limited to the correction and/or repair of any Services, or the repair and/or replacement of any goods, materials, or equipment sold or provided to the Owner in connection therewith, which do not conform to the warranties set forth herein.
- 22.4. AV Contractor shall assume no liability or expense for any corrections, repairs, or replacements except those performed by AV Contractor or its authorized agents, and AV Contractor shall not be liable for any expense or damages beyond the actual cost of correction, repair, or replacement as set forth in this Section. With respect to all repair and/or replacement obligations imposed upon AV Contractor pursuant to this Section, it shall be within the AV Contractor's sole discretion as to whether to repair or replace any deficient goods, materials, or equipment; which option shall in all events be accepted by the Owner so long as the deficient goods, materials, or equipment, as applicable, are made to conform to the warranties set forth by AV Contractor pursuant to this Section.
- 22.5. THE WARRANTIES SET FORTH IN THIS ARTICLE ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES SET FORTH IN THIS ARTICLE IV ARE EXCLUSIVE AND ARE ACKNOWLEDGED BY THE OWNER TO BE IN LIEU OF ALL SUCH OTHER REMEDIES AS MAY OTHERWISE BE AVAILABLE TO THE OWNER AT LAW OR IN EQUITY.

**23. SUBSTANTIAL COMPLETION & ACCEPTANCE**

- 23.1. Upon completion of installation and testing, notification will be transmitted by the AV Contractor to the Owner of such completion in the form of a Certificate of Substantial Completion.
- 23.2. A demonstration to the Owner of system functionality, in keeping with the Scope of Work as outlined herein, shall be scheduled within 7 days of such notification at a time mutually acceptable to both Parties.
- 23.3. During the demonstration, the Owner shall prepare a punch list of deficiencies; if any deficiencies are noted during the demonstration, these shall be noted on the Certificate of Substantial Completion.
- 23.4. AV Contractor and the Owner shall agree upon and identify any deficiencies that would prevent the Owner from having beneficial use of the System(s) and Equipment.
- 23.5. The AV Contractor shall promptly correct any deficiencies deemed as preventing beneficial use, at which point the Owner shall sign the Certificate of Substantial Completion. This shall be deemed as Substantial Completion.
- 23.6. In no event shall the Owner use or operate the System(s) or Equipment until AV Contractor achieves Substantial Completion.
- 23.7. Should the Owner use or operate the system prior to the AV Contractor achieving substantial completion, the Owner will automatically deem the Project substantially complete, coincidentally triggering and accepting any payment conditions that may be associated with this milestone, with any outstanding deficiency resolution by the contract now deemed a part of final acceptance and signoff.
- 23.8. Promptly following AV Contractor's provision to the Owner of a Certificate of Substantial Completion, the AV Contractor shall remedy any remaining deficiencies noted at the time of Substantial Completion, and the Owner shall execute a mutually acceptable Final Acceptance and Project Completion Agreement indicating that all facets of the Services have been completed by AV Contractor in accordance with the terms and conditions of this Agreement.

**24. CHANGES IN THE SCOPE OF WORK**

- 24.1. Costs resulting from material changes in the Scope of Work of this Project by the Owner, additional requirements or restrictions placed on AV Contractor by the Owner, or changes in the configuration of the Equipment described herein, will be added to, or subtracted from, the contract value depending upon the changes required.
- 24.2. When AV Contractor becomes aware of the nature and impact of the change, a Contract Change Order will be submitted for review and approval by the Owner, prior to continuing work. Contract Change Order cost calculations will be commensurate with the materials and labor rates provided within the base contract.
- 24.3. Such changes shall be billed at 100% of the approved value upon completion of the change, and shall not be subject to the progressive payment schedule as outlined within Section 13 of this document.

**25. RETURN POLICY & RESTOCKING CHARGES**

- 25.1. Under no circumstances shall the Equipment be returned by the Owner without AV Contractor's Return Merchandise Authorization (RMA) number.
- 25.2. The following conditions apply to systems included in this Agreement:
- 25.3. No custom equipment returns will be allowed.
- 25.4. Return of equipment damaged by the Owner, or any of their representatives will not be accepted.

Initials: \_\_\_\_\_

- 25.5. Equipment returned for any reason, other than warranty repair or defect, must
- 25.6. Be in original "as-new", undamaged and untarnished condition
- 25.7. Include, at the time of return, all supplied accessories in original "as-new", undamaged and untarnished condition, and
- 25.8. Include, at the time of return, all original packaging, manuals and documentation for any returns to be accepted.
- 25.9. It shall be the Owner's responsibility to provide storage for such packaging should they wish to retain such subsequent to equipment delivery.
- 25.10. Returns of software products sold and delivered will not be accepted.
- 25.11. Restocking charges for equipment subject to return shall be invoiced to the Owner as follows:
- 25.12. Costs of any restocking fees to be charged by the Equipment vendor to AV Contractor to re-stock the items in question.
- 25.13. All related miscellaneous costs related to the return of such goods, including, but not limited to, transportation, brokerage, etc.
- 25.14. Labor charges associated with removal, project administration, project management, system re-engineering, system re-programming, system re-drafting, handling of goods, etc.

## 26. ASSIGNMENT

- 26.1. Neither party may assign or transfer to any person or entity its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 26.2. Any prohibited assignment of this Agreement or the obligations hereunder shall be null, void, and of no effect.
- 26.3. Upon permitted assignment hereunder, the terms and conditions of this Agreement shall become the direct and primary obligations of the assignee or successor in interest.
- 26.4. Subject to the foregoing, all of the terms, conditions, and provisions of this Agreement shall be binding upon and shall inure to the benefit of each party's permitted successors and assignees.

## 27. NOTICES

- 27.1. A notice, document, or other communication required hereunder shall be deemed to have been properly given or delivered if same is delivered by hand, sent via fax or email and confirmed by certified mail, or sent by certified or registered mail to the following address:

**OWNER**  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763  
John Nguyen  
Tel: 909 625-9403  
Fax:  
E-mail: [jnquyen@ci.montclair.ca.us](mailto:jnquyen@ci.montclair.ca.us)

**AV CONTRACTOR**  
Matrix Audio Visual Designs, Inc.  
2525 W. Burbank Blvd.  
Burbank, CA 91505  
Hovik Mirzakhanian  
Tel: 818 841-4700 Ext. 262  
Fax: 818 841-4707  
E-Mail: [hovik@matrixav.com](mailto:hovik@matrixav.com)

## 28. PUBLICITY

- 28.1. The Owner agrees that the AV Contractor may publicize and advertise its relationship with and work for the Owner to promote the AV Contractor's business.
- 28.2. The Owner agrees the AV Contractor upon request and at an agreed and scheduled time may photograph its work related to this Project at the Owner's location(s). The Owner shall release all rights of reproduction of such photos to the AV Contractor; however, upon request the Owner shall be afforded any rights to reproduction or use of such photos for the Owner's purposes without cost.

## 29. NON-SOLICITATION

- 29.1. The Owner agrees that it will not, without the prior written consent of the AV Contractor, during the term of this Agreement or for a period of one (1) year after any direct contact with the employee;
- 29.2. Induce, entice, hire, or attempt to hire or employ any employee of the AV Contractor.
- 29.3. Contact and/or solicit any other Person that has an exclusive business relationship with the AV Contractor in the AV Contractor's Business and which provides products and services to the AV Contractor.

Initials: \_\_\_\_\_

**30. ACCESS TO SITE – HOURS OF ACCESS**

- 30.1. So as to ensure proper and timely performance of its duties, AV Contractor shall have access to the Project site during all normal business hours and otherwise upon the reasonable consent of the Owner.
- 30.2. AV Contractor shall not be liable for any delay or failure relative to the provision of its duties caused by the failure of Owner or site status to provide such access.
- 30.3. The Owner agrees that AV Contractor shall not be liable for any additional costs related to site access outside of these hours as a result of any delay per Sections 16 or 18 of this Agreement.
- 30.4. Any requirement for the need to work overtime shall be presented by the AV Contractor to the Owner in writing for approval prior to being undertaken; the Owner agrees to approve such charges or grant an extension to the completion schedule within one (1) business day.
- 30.5. If the site is not available during the scheduled time, the AV Contractor may charge the Owner the greater of its minimum callout/trip charge or, if asked to wait on-site, the AV Contractor's hourly rates to stand by until the site is made available, plus travel time and mileage allowances if instructed to return at another time.

The Parties, by their signatures below, have executed this Agreement and agree to be bound by it.

**By: CITY OF MONTCLAIR**

**By: MATRIX AUDIO VISUAL DESIGNS, INC.**

Signature

Signature

**Paul M. Eaton**

**Hovik Mirzakhianian**

Name

Name

**Mayor**

**Vice President**

Title

Title

**04/07/2015**

**03/18/2015**

Date

Date

## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER MONTCLAIR HOUSING CORPORATION BOARD OF DIRECTORS' AWARD OF CONTRACT TO JARAMILLO & SONS CONSTRUCTION IN THE AMOUNT OF \$32,100

CONSIDER MONTCLAIR HOUSING CORPORATION BOARD OF DIRECTORS' APPROVAL OF AGREEMENT NO. 15-23 BETWEEN THE HOUSING CORPORATION AND JARAMILLO & SONS CONSTRUCTION FOR THE 4811 CANOGA STREET GARAGE AND DECK BUILDING IMPROVEMENT PROJECT

CONSIDER AUTHORIZATION OF A \$3,210 CONSTRUCTION CONTINGENCY

**DATE:** April 6, 2015

**SECTION:** AGREEMENTS

**ITEM NO.:** 7

**FILE I.D.:** MHC025

**DEPT.:** MHC

---

---

**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to consider awarding a contract to, and approving a contract with Jaramillo & Sons Construction for the 4811 Canoga Street Garage and Deck Improvement Project.

A copy of proposed Agreement No. 15-23 is attached for the Montclair Housing Corporation Board's review and consideration.

**BACKGROUND:** A portion of the garage and deck at the 4811 Canoga Street apartment complex is in need of extensive repairs due to water damage from the adjacent pool equipment room and the deck located above the garage. The damage is a result of years of wear and tear on the deck and from water leaks from the adjacent pool equipment room. The extensive damage resulted in the need to remove portions of the lath and plaster in a section of the garage, as well as the removal of extensive dry rot. The area was tested for lead and asbestos and the materials were properly removed by a licensed abatement contractor. Since the damaged areas have already been removed and abated, the Canoga Street Garage and Deck Improvement Project addresses the reconstruction of the garage walls, removal and installation of new support beams, and removal and replacement of the deck area located above the damaged section of the garage.

The 4811 Canoga Street apartment complex is managed by the Montclair Housing Corporation. Staff solicited bids from three contractors and conducted an onsite walkthrough of the project with the contractors. Only two of the three contractors contacted by staff submitted a bid.

---

---

Prepared by:	<u>Christine P. Waldwell</u>	Reviewed and Approved by:	<u>Marilyn Staats</u>
Proofed by:	<u>Labida Gorda</u>	Presented by:	<u>[Signature]</u>

---

---

The bid results are as follows:

<i>Contractor</i>	<i>Bid Amount</i>
<b>Construction Estimate</b>	<b>\$35,000</b>
Jaramillo & Sons Construction	\$32,100
E. Alcantara Construction	\$38,373

Both proposals were reviewed for completeness and accuracy. The apparent low bidder, Jaramillo & Sons Construction, provided all of the required documents and was deemed the lowest responsible bidder for the project. The company appears to have the personnel, equipment, and experience necessary to complete the contract in accordance with the specifications of the project.

**FISCAL IMPACT:** Funding for the improvements to the garage and deck at the 4811 Canoga Street apartment complex was included in the Montclair Housing Corporation Fiscal Year 2014-15 Budget under Major Building Repairs.

**RECOMMENDATION:** Staff recommends the Montclair Housing Corporation Board of Directors take the following actions related to the 4811 Canoga Street Garage and Deck Building Improvement Project:

1. Award a contract to Jaramillo & Sons Construction in the amount of \$32,100.
2. Approve Agreement No. 15-23 between the Montclair Housing Corporation and Jaramillo & Sons Construction for the 4811 Canoga Street Garage and Deck Building Improvement Project.
3. Authorize a \$3,210 construction contingency.

**MONTCLAIR HOUSING CORPORATION**

**CONSTRUCTION CONTRACT**

**4811 CANOGA STREET GARAGE AND DECK IMPROVEMENT PROJECT**

THIS CONTRACT is made and effective as of April 6, 2015, between the Montclair Housing Corporation (“MHC”), a non-profit housing corporation and Jaramillo & Sons Construction, a Sole Ownership (“Contractor”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Contract shall commence on May 4, 2015 and shall remain and continue in effect for a period of thirty (30) working days until tasks described herein are completed, but in no event later than June 24, 2015, unless sooner terminated pursuant to the provisions of this Contract.

2. **SERVICES**

Contractor shall perform the tasks described and set forth in Exhibit “A”, attached hereto and incorporated herein as though set forth in full. Contractor shall complete the tasks according to the schedule of performance which is also set forth in Exhibit “A”.

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 Contract.

4. **CITY MANAGEMENT**

The Assistant Director of Housing or her designee shall represent the MHC in all matters pertaining to the administration of this Contract, 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. The Assistant Director shall be authorized to act on MHC’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 MHC agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit “C”, 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 \$32,100 for the total term of the Contract unless additional payment is approved as provided in this Contract.

(b) Contractor shall not be compensated for any services rendered in connection with its performance of this Contract which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the Assistant Director. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by the Assistant Director and Contractor at the time MHC's written authorization is given to Contractor for the performance of said services. The Executive Director may approve additional work not to exceed ten percent (10%) of the amount of the Contract. Any additional work in excess of this amount shall be approved by the MHC Board of Directors.

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

## 6. SUSPENSION OR TERMINATION OF CONTRACT WITHOUT CAUSE

(a) The MHC may at any time, for any reason, with or without cause, suspend or terminate this Contract, 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 Contract, unless the notice provides otherwise. If the MHC suspends or terminates a portion of this Contract, such suspension or termination shall not make void or invalidate the remainder of this Contract.

(b) In the event this Contract is terminated pursuant to this Section, the MHC 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 MHC. Upon termination of the Contract pursuant to this Section, the Contractor will submit an invoice to the MHC pursuant to Section 5(c).

7. DEFAULT OF CONTRACTOR

(a) The Contractor's failure to comply with the provisions of this Contract shall constitute a default. In the event that Contractor is in default for cause under the terms of this Contract, the MHC shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Contract 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 Executive Director or his/her delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Contract, 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 MHC shall have the right, notwithstanding any other provision of this Contract, to terminate this Contract without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Contract.

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 the MHC that relate to the performance of services under this Contract. 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 the MHC or its designees at reasonable times to such books and records; shall give the MHC the right to examine and audit said books and records; shall permit the MHC to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Contract. 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 Contract, 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 Contract shall become the sole property of the MHC and may be used, reused, or otherwise disposed of by the MHC without the permission of the Contractor. With respect to computer files, Contractor shall make available to the MHC, at the Contractor's office and upon reasonable written request by the MHC, 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 the MHC 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 Contract.

(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 the MHC, 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 Contract 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 MHC or are entitled to any employee benefits from the MHC, including but not limited to those available under Public Employees Retirement Law.

(c) General Indemnification Provisions. Contractor agrees to obtain executed indemnity contracts 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 Contract. 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 the MHC to monitor compliance with these requirements imposes no additional obligations on the MHC and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend the MHC as set forth here is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Contract or this section.

10. INSURANCE

(a) Contractor shall neither commence work under this Contract until it has obtained all insurance required hereunder in a company or companies acceptable to the MHC nor shall Contractor allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. Contractor shall, at all times during the term of this Contract, 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. Contractor agrees that it will not cancel or reduce said insurance coverage. Contractor agrees that if it does not keep the aforesaid insurance in full force and effect the MHC may either immediately terminate this Contract or, if insurance is available at a reasonable cost, the MHC may take out the necessary insurance and pay, at Contractor's expense, the premium thereon.

(c) Auto liability insurance shall cover owned, nonowned and hired autos. If Contractor 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 Contract, Contractor shall maintain on file with the MHC a certificate of insurance, in a form acceptable to the MHC 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. Contractor shall promptly file with the MHC 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 Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the Indemnitees.

(f) All insurance coverage and limits provided by Contractor and available or applicable to this Contract are intended to apply to the full extent of the policies. Nothing contained in this Contract 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. Contractor shall, prior to commencing work, sign and file with the MHC 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 Contract."

(h) General Insurance Requirements: All insurance required by express provision of this Contract 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 the MHC and the MHC's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by the MHC; and (3) they cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to the MHC by certified mail. Contractor shall furnish the MHC with copies of all such policies. Contractor may effect for its own account insurance not required under this Contract.

#### 11. INDEPENDENT CONTRACTOR

(a) Contractor is and shall at all times remain as to the MHC a wholly independent contractor. The personnel performing the services under this Contract 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 the MHC for any purpose, including eligibility under Public Employees Retirement Law. Neither the MHC 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 Contract. 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 MHC. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against the MHC, or bind the MHC in any manner.

(b) No employee benefits shall be available to Contractor in connection with the performance of this Contract. Except for the fees paid to Contractor as provided in the Contract the MHC shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for the MHC. The MHC 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 Contract. The Contractor shall at all times observe and comply with all such laws and regulations. The MHC, 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 MHC of Montclair in connection with the award, terms or implementation of this Contract, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the MHC will receive compensation, directly or indirectly, from Contractor, or from any officer, employee or agent of Contractor, in connection with the award of this Contract or any work to be conducted as a result of this Contract. Violation of this Section shall be a material breach of this Contract entitling the MHC to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of the MHC, 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 contract or sub-contract, or the proceeds thereof, for work to be performed in connection with the project performed under this Contract.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Contractor in performance of this Contract shall be considered confidential and shall not be released by Contractor without the MHC's prior written authorization. Contractor, its officers, employees, agents, or subcontractors, shall not without written authorization from the Executive Director 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 Contract 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 the MHC notice of such court order or subpoena.

(b) Contractor shall promptly notify the MHC 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 Contract and the work performed thereunder or with respect to any project or property located within the City. The MHC 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 the MHC and to provide the opportunity to review any response to discovery requests provided by Contractor. However, the MHC's right to review any such response does not imply or mean the right by the MHC 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 Contract, 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 Contract or Contracts 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 Contract.

16. NOTICES

Any notices which either party may desire to give to the other party under this Contract 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 MHC: Christine S. Caldwell  
Assistant Director of Housing  
City of Montclair  
5111 Benito St.  
Montclair, CA 91763

To Contractor: Jaramillo & Sons Construction  
565 W. Second St. Loft 9  
Pomona, CA 91766

17. ASSIGNMENT

The Contractor shall not assign the performance of this Contract, nor any part thereof, nor any monies due hereunder, without prior written consent of the MHC. Because of the personal nature of the services to be rendered pursuant to this Contract, only Jaramillo Construction, Inc. (responsible employee) shall perform the services described in this Contract.

Contractor's responsible employee may use assistants, under his direct supervision, to perform some of the services under this Contract. Contractor shall provide the MHC fourteen (14) days' notice prior to the departure of the responsible employee from Contractor's employ. Should he leave Contractor's employ, the MHC shall have the option to immediately terminate this Contract, within three (3) days of the close of said notice period. Upon termination of this Contract, Contractor's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the MHC Board of Directors and the Contractor.

18. LICENSES

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

19. GOVERNING LAW

The MHC 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 Contract and also govern the interpretation of this Contract. Any litigation concerning this Contract shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Montclair.

20. ENTIRE CONTRACT

This Contract contains the entire understanding between the parties relating to the obligations of the parties described in this Contract. All prior or contemporaneous contracts, understandings, representations, and statements, oral or written, are merged into this Contract and shall be of no further force or effect. Each party is entering into this Contract 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

Contractor is bound by the contents of MHC's Request for Proposal, Exhibit "A" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Contractor, Exhibit "B" hereto. In the event of conflict, the requirements of the MHC's Request for Proposals and this Contract shall take precedence over those contained in the Contractor's proposals.

22. CONFIDENTIALITY

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

23. DISCRIMINATION

The Contractor agrees that no person shall be excluded from employment in the performance of this Contract 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 CONTRACT

The person or persons executing this Contract on behalf of Contractor warrants and represents that he/she has the authority to execute this Contract 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 Contract to be executed the day and year first above written.

**MONTCLAIR HOUSING CORPORATION**

**JARAMILLO & SONS CONSTRUCTION**

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

By: \_\_\_\_\_  
(Title)

Attest:

By: \_\_\_\_\_  
(Title)

By: \_\_\_\_\_  
Andrea M. Phillips, Secretary

MONTCLAIR HOUSING CORPORATION

Exhibit "A"

CONTRACTOR'S BID PROPOSAL

\_\_\_\_\_  
Contractor

Montclair Housing Corporation  
Client's Name

\_\_\_\_\_  
Address

4811 Canoga St. Montclair  
Property Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

**ALL WORK TO BE COMPLETED IN ACCORDANCE WITH CITY OF MONTCLAIR'S APPLICABLE BUILDING, ELECTRICAL AND PLUMBING CODES**

ITEM	DESCRIPTION	ESTIMATE
Business License & permit fees	The Contractor is responsible for obtaining a City Business License and any Building permits necessary to complete the project. (The Montclair Housing Corporation will not absorb License or Building permit fees.)	\$
Removal & Replacement of Wood Lumber	Removal and replacement of 14 (2x6) wood lumbers and 1 (6x6) wood lumber. Replace (all) mudsill on west wall of garage. Add 3 ½ sister boards: 3 on east wall of garage, and ½ on north wall of garage/ south of Pool Equipment Room.) Add 1 (2x4) next to sister board in pool Equipment Room. (Include all straps and hardware to sister boards).	\$
Installation of Insulation	Install R-13 insulation on the west wall of the Pool Equipment Room. (Location specified at walkthrough)	
Installation of new Drywall in Garage	Install new ½" drywall inside the garage including walls and ceiling. Install ceiling taping level 3 with orange peel texture. (Location specified at walkthrough)	\$
Installation of Green Boards in Pool Equipment Room	Install 5/8" green boards on the walls and ceiling of the Pool Equipment Room. (Location specified at walkthrough)	
Concrete Work	Remove plaster and add patch-crete at footings along north wall of garage and smooth out: including required foam around pipes of laundry room.	
Plumbing	Cut down and cap off 5 (five) galvanized pipes not in use by Pool Equipment Room and Laundry Room (use rubber caps). (Location specified at walk through)	
Painting	Paint all drywall inside the garage and pool equipment room (including ceilings); in Swiss Coffee <u>semi-gloss</u> finish.	\$

New Deck	Remove and replace deck. Includes: plywood, coating, paint, and seal. Approximately 50' x 28'	
<b>Bid Due Date</b>	<b>All bids are due on Thursday, January 29, 2015 at 5:00 PM</b>	
Project Schedule	<b>Thirty (30) working-days Monday – Thursday 7:00 AM – 5:00 PM</b>	
Clean-up	Contractor is responsible for removal and haul-away of all debris. All waste material shall not be allowed to accumulate at the site, driveway, garage, alley, and shall be removed frequently to keep the premises clean. Garage and Pool Equipment Room shall be cleaned of any debris daily.	\$
	<b>Refer to specific project requirements as noted in walk-through.</b>	
	<b>TOTAL =</b>	\$

Notes/Comments

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Date

CONTRACTOR'S BID PROPOSAL

Hugo M. Saramillo  
Contractor

Montclair Housing Corporation  
Client's Name

565 W 2nd St # 9  
Address

4811 Canoga St. Montclair  
Property Address

Pomona Ca 91766  
City, State, Zip Code

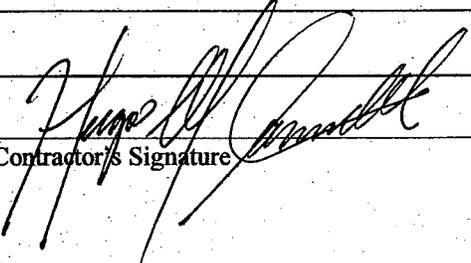
909 815-9635  
Phone Number  
9635

ALL WORK TO BE COMPLETED IN ACCORDANCE WITH CITY OF MONTCLAIR'S APPLICABLE BUILDING, ELECTRICAL AND PLUMBING CODES.

ITEM	DESCRIPTION	ESTIMATE
Business License & permit fees	The Contractor is responsible for obtaining a City Business License and any Building permits necessary to complete the project. (The Montclair Housing Corporation will not absorb License or Building permit fees.)	\$ 400 <sup>≈</sup>
Removal & Replacement of Wood Lumber	Removal and replacement of 14 (2x6) wood lumbers and 1 (6x6) wood lumber. Replace (all) mudsill on west wall of garage. Add 3 1/2 sister boards: 3 on east wall of garage, and 1/2 on north wall of garage/ south of Pool Equipment Room.) Add 1 (2x4) next to sister board in pool Equipment Room. (Include all straps and hardware to sister boards).	\$ 700 <sup>≈</sup>
Installation of Insulation	Install R-13 insulation on the west wall of the Pool Equipment Room. (Location specified at walkthrough)	150 <sup>≈</sup>
Installation of new Drywall in Garage	Install new 1/2" drywall inside the garage including walls and ceiling. Install ceiling taping level 3 with orange peel texture. (Location specified at walkthrough)	\$ 4300 <sup>≈</sup>
Installation of Green Boards in Pool Equipment Room	Install 5/8" green boards on the walls and ceiling of the Pool Equipment Room. (Location specified at walkthrough)	1100 <sup>≈</sup>
Concrete Work	Remove plaster and add patch-crete at footings along north wall of garage and smooth out: including required foam around pipes of laundry room.	750 <sup>≈</sup>
Plumbing	Cut down and cap off 5 (five) galvanized pipes not in use by Pool Equipment Room and Laundry Room (use rubber caps). (Location specified at walk through)	100 <sup>≈</sup>
Painting	Paint all drywall inside the garage and pool equipment room (including ceilings); in Swiss Coffee semi-gloss finish.	\$ 2300 <sup>≈</sup>

New Deck	Remove and replace deck. Includes: plywood, coating, paint, and seal. Approximately 50' x 28'	22,000 <sup>00</sup>
Bid Due Date	All bids are due on Thursday, January 29, 2015 at 5:00 PM	
Project Schedule	Thirty (30) working-days Monday – Thursday 7:00 AM – 5:00 PM	
Clean-up	Contractor is responsible for removal and haul-away of all debris. All waste material shall not be allowed to accumulate at the site, driveway, garage, alley, and shall be removed frequently to keep the premises clean. Garage and Pool Equipment Room shall be cleaned of any debris daily.	\$ 300 <sup>00</sup>
	Refer to specific project requirements as noted in walk-through.  TOTAL =	\$ 32,100 <sup>00</sup>

Notes/Comments

  
 Contractor's Signature

4/29/15  
 Date

## AGENDA REPORT

---

---

<p><b>SUBJECT:</b> CONSIDER AMENDING THE FISCAL YEARS 2015-2018 CAPITAL IMPROVEMENT PROGRAM BY DELETING THE MEASURE I FUNDING SOURCE FOR THE NORTHEAST MONTCLAIR PAVEMENT REHABILITATION PROJECT PHASE 2</p> <p>CONSIDER APPROPRIATION OF \$600,000 FROM THE LEASE REVENUE BOND PROCEEDS FOR THE NORTHEAST MONTCLAIR PAVEMENT REHABILITATION PROJECT PHASE 2</p> <p>CONSIDER AWARD OF CONTRACT FOR THE NORTHEAST MONTCLAIR PAVEMENT REHABILITATION PROJECT PHASE 2 TO ALL AMERICAN ASPHALT, INC., IN THE AMOUNT OF \$514,150</p> <p>CONSIDER APPROVAL OF AGREEMENT NO. 15-24 WITH ALL AMERICAN ASPHALT, INC., FOR CONSTRUCTION OF THE NORTHEAST MONTCLAIR PAVEMENT REHABILITATION PROJECT PHASE 2</p> <p>CONSIDER AUTHORIZATION OF A \$55,000 CONSTRUCTION CONTINGENCY</p>	<p><b>DATE:</b> April 6, 2015</p> <p><b>SECTION:</b> AGREEMENTS</p> <p><b>ITEM NO.:</b> 8</p> <p><b>FILE I.D.:</b> STA540</p> <p><b>DEPT.:</b> PUBLIC WORKS</p>
--	---

---

---

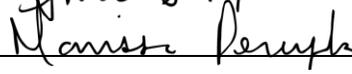
**REASON FOR CONSIDERATION:** Awards of contracts and agreements with the City require City Council approval.

**BACKGROUND:** The Northeast Montclair Street Rehabilitation Project Phase 2 is intended to repair uplifted curb, gutter, and sidewalk as well as resurface residential streets throughout a large portion of the northeast portion of the City. Project limits are Palo Verde Street on the south, Benson Avenue on the east, Caroline Street on the north, and Central Avenue on the west. This project is a follow up to recent Monte Vista Water District water line improvements in the same area. The condition of the streets prior to the Water District work was fair to poor, but with the trench repairs that were made, it was determined that the streets should be rehabilitated sooner rather than later.

On Thursday March 19, 2015, the Deputy City Clerk's designee received and opened nine bid proposals for construction of the Northeast Montclair Street Rehabilitation Project Phase 2. The bid results are shown below. Following the bid opening, the nine bid proposals were reviewed for completeness and accuracy. The bid proposal of the apparent low bidder, All American Asphalt, Inc., provided all the required documents and was deemed the lowest responsible, responsive bidder for the project. All

---

---

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

---

---

American Asphalt, Inc., has performed several street improvement projects within the City and is known to have the personnel, equipment, and job experience necessary to complete this contract in accordance with the plans and specifications.

<i>Bidder</i>	<i>Bid Amount</i>
Engineer's Estimate	\$500,000.00
All American Asphalt, Inc.	\$514,150.00
Gentry Brothers, Inc.	\$516,010.50
Palp, Inc. DBA Excel Paving Company	\$532,173.25
R.J. Noble Company	\$561,054.25
Hardy & Harper, Inc.	\$563,000.00
Sully-Miller Contracting Co.	\$563,922.80
Lee & Stires, Inc.	\$574,903.05
G.M. Sager Construction Co. Inc.	\$608,930.65
E.C. Construction	\$623,572.80

The pavement rehabilitation work requires the removal of several trees that have uplifted curb, gutter, sidewalk, and pavement. Rather than include the removal of these trees as part of the construction contract, the City will use West Coast Arborists, already under contract with the City, to do the removals.

**FISCAL IMPACT:** The subject project is included in the Fiscal Years 2015–2018 Capital Improvement Program (CIP). Measure I funds were previously appropriated as part of the adoption of the CIP. Rather than using Measure I funds for this project, staff proposes using Lease Revenue Bond Proceeds from the Successor Agency. The change in funding is included in the staff recommendations. The Lease Revenue Bond Proceed funding appropriation also includes funds for the removal of trees required for this project. The trees will be removed by West Coast Arborists, already under an annual contract with the City for tree maintenance services.

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

1. Amend the Fiscal Years 2015–2018 Capital Improvement Program by deleting the Measure I funding source for the Northeast Montclair Pavement Rehabilitation Project Phase 2.
2. Appropriate \$600,000 from the Lease Revenue Bond Proceeds for the Northeast Montclair Pavement Rehabilitation Project Phase 2.
3. Award contract for construction of the Northeast Montclair Pavement Rehabilitation Project Phase 2 to All American Asphalt, Inc. in the amount of \$514,150.
4. Approve Agreement No. 15–24 with All American Asphalt, Inc. for construction of the Northeast Montclair Pavement Rehabilitation Project Phase 2.
5. Authorize a \$55,000 construction contingency.

## AGREEMENT NO. 15-24

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

### A. Recitals.

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

### NORTHEAST MONTCLAIR STREET REHABILITATION PROJECT PHASE 2

"PROJECT" hereinafter.

### B. Resolution.

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

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do all work contemplated and embraced for the PROJECT. Said PROJECT to be performed in accordance with specifications and standards on file in the Office of the City Engineer and in accordance with bid prices hereinafter mentioned and in accordance with the instructions of the Engineer.

2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The aforesaid specifications are incorporated herein by reference thereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Notice Inviting Bids, the Instructions to Bidders, the Proposal and any City-issued addenda, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.

3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within the time specified in the Special Provisions. CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher, for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may

become due the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

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

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

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

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

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

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

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

- (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;
  - (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.
- d. Each such policy of insurance provided for in paragraph b. shall:
- (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
  - (2) Name as additional insureds the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
  - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
  - (4) Contain a clause substantially in the following words:  
  
"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."
  - (5) Otherwise be in form satisfactory to CITY.
- e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

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

The CONTRACTOR will indemnify CITY against and will hold and save CITY harmless from any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY and in connection therewith:

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

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

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

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

8. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **March 16, 2015**.

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

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

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

CONTRACTOR:

CITY:

**ALL AMERICAN ASPHALT, INC.**  
P.O. Box 2229  
Corona, CA 92878-2229

**CITY OF MONTCLAIR, CALIFORNIA**

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

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

\_\_\_\_\_  
Title

**ATTEST:**

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

\_\_\_\_\_  
Andrea M. Phillips  
Deputy City Clerk

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Title

## AGENDA REPORT

---

---

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 15-3069 DETERMINING THE STATUS OF LOCAL SAFETY EMPLOYEE DEBORAH LOU CAMOU

**DATE:** April 6, 2015

**SECTION:** RESOLUTIONS

**ITEM NO.:** 1

**FILE I.D.:** PER600

**DEPT.:** ADMIN. SVCS.

---

---

**REASON FOR CONSIDERATION:** In accordance with Government Code Sections 21154 and 21156, the City Council determines if a safety employee is disabled either physically or cognitively; and if such disability is industrial. When a safety member is determined to be disabled and unable to perform the duties of his/her position, the California Public Employees' Retirement System (CalPERS) requires adoption of a resolution that terminates the local safety employee's employment for that reason.

**BACKGROUND:** Deborah Lou Camou was hired as a Police Officer on October 11, 2004. On May 30, 2012, she was assigned to a modified duty position as a result of her work-related injury. She was promoted to the position of Police Sergeant on June 4, 2012, and she resigned from her position with the City of Montclair as of May 30, 2013.

Following is a summary of Ms. Camou's reported work-related injuries:

<i>Date of Injury</i>	<i>Description of Injury</i>
01.23.05	Employee fractured her right hand during a struggle with a combative suspect.
05.05.11	Employee sustained an injury to her right hand when she struck a suspect while attempting to take him into custody.
10.11.04 to 05.05.11	Employee claimed a continuous trauma injury to her right hand and right upper extremity as a result of performing her regular job duties as a Police Officer.
09.27.11	Employee developed an infection to her right eye after arresting a person that appeared to have some type of eye irritation.

**CLAIM HISTORY:** On May 5, 2011, Deborah Camou sustained an injury to her right hand when she struck a suspect while she was attempting to take him into custody. This injury occurred on the same hand that she fractured in 2005 during a struggle with a combative suspect. On May 24, 2011, Ms. Camou was evaluated for her hand injury and

---

---

Prepared by: Gary E. Charlton Reviewed and Approved by: [Signature]

Proofed by: [Signature] Presented by: [Signature]

---

---

was returned to work on modified duty. On June 15, 2011, the physician determined that her condition had improved and released her to full duty without restriction. Ms. Camou continued to have follow-up visits for her hand injury and remained working full duty without restrictions. In December of 2011, Ms. Camou elected to start treating with Dr. Sabbag for her hand injury. On January 5, 2012, Dr. Sabbag gave orders for her to work in a modified duty capacity until April 10, 2012, when she had surgery to perform a joint fusion on the fifth finger of her right hand.

Ms. Camou returned to work in a modified duty position on May 24, 2012. She then retained an attorney to represent her in her workers' compensation claim and in July of 2012, she filed an additional claim for a continuous trauma injury to her right hand and right upper extremity. Ms. Camou underwent a second surgery on January 15, 2013, for a revision joint fusion on her right hand fifth finger. In March of 2013, she returned to work in her previously assigned modified duty position, and in May of 2013, she applied for an industrial disability retirement with California Public Employees Retirement System (CalPERS). Ms. Camou resigned from her position with the City of Montclair on May 30, 2013, and in July of 2013 she converted her industrial disability retirement application with CalPERS to a service retirement pending an industrial disability retirement determination.

In June 2013, Dr. Sabbag issued a permanent and stationary report concluding that Ms. Camou is able to use her right hand "fully to tolerance"; however, he opined that she cannot manipulate a gun or subdue a suspect to the degree that she was able to before the injury. In July of 2013, Dr. Sabbag issued a supplemental permanent and stationary report upon Ms. Camou's request that identified specific work restrictions precluding her from involvement in forceful confrontation and participation in submissions or altercations. Based on the physician's work restrictions, Ms. Camou is not able to perform her usual and customary duties as a Police Sergeant and therefore does qualify as a candidate for an industrial disability retirement with CalPERS.

**FISCAL IMPACT:** CalPERS requires employers to make "advanced disability pension payments" (ADPP) to safety members who have qualified for benefits under Labor Code Section 4850 and have submitted an application for industrial disability retirement. The employer is required to pay the ADPP to the member until the member begins receiving his/her retirement benefits directly from CalPERS or until the application for disability retirement is denied. Once the employee's disability retirement benefits commence, CalPERS will reimburse the employer for the payments made. However, CalPERS regulations state that ADPP cannot be paid to members who are receiving a service retirement allowance. One ADPP was issued on July 2, 2013, to Ms. Camou in the amount of \$3,305.50 prior to her converting her CalPERS industrial disability retirement application to a normal service retirement pending an industrial disability retirement determination. No further ADPPs were issued.

Over the long run, pooled disability retirements eventually do affect the City's CalPERS rate for safety members.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 15-3069 determining the status of local safety employee Deborah Lou Camou.

**RESOLUTION NO. 15-3069**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MONTCLAIR DETERMINING  
THE DISABILITY FOR RETIREMENT PURPOSES  
OF A LOCAL SAFETY MEMBER (CALIFORNIA  
GOVERNMENT CODE SECTION 21156)**

**WHEREAS**, the City of Montclair is a contracting agency of the California Public Employees' Retirement System (CalPERS); and

**WHEREAS**, the Public Employees' Retirement Law requires that a contracting agency determine whether an employee of such agency, in employment in which he/she is classified as a local safety member, is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such law; and

**WHEREAS**, an application for industrial disability retirement of Deborah Lou Camou previously employed by the Montclair Police Department in the position of Police Sergeant has been filed with CalPERS; and

**WHEREAS**, the City Council of the City of Montclair has reviewed the medical and other evidence relevant to such alleged disability.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby find and determine that Deborah Lou Camou is incapacitated within the meaning of the Public Employees' Retirement Law for performance of her duties in the position of Police Sergeant; and

**BE IT FURTHER RESOLVED** that the City Council does hereby find and determine that Deborah Lou Camou is incapacitated for performance of the usual duties of the position for other California Public Agencies in CalPERS; and

**BE IT FURTHER RESOLVED** that the City Council does hereby find and determine that such disability is a result of injury or disease arising out of and in the course of employment; and

**BE IT FURTHER RESOLVED** that neither Deborah Lou Camou nor the City of Montclair has applied to the Workers' Compensation Appeals Board for a determination pursuant to Section 21166 as to whether such disability is industrial; and

**BE IT FURTHER RESOLVED** that Deborah Lou Camou's last day on pay status is May 30, 2013; and

**BE IT FURTHER RESOLVED** that one Advanced Disability Pension Payment (ADPP) was made in the amount of \$3,305.50. No further ADPPs were issued as a result of Deborah Lou Camou's conversion of her industrial disability application to a service retirement pending an industrial disability retirement determination; and

**BE IT FURTHER RESOLVED** that the member's primary disabling condition is physical.

**APPROVED AND ADOPTED** this XX day of XX, 2015.

---

Mayor

**ATTEST:**

---

Deputy City Clerk

I, Andrea M. Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 15-3069 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2015, and that it was adopted by the following vote, to-wit:

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

---

Andrea M. Phillips  
Deputy City Clerk

## AGENDA REPORT

<b>SUBJECT:</b> CONSIDER ADOPTION OF RESOLUTION NO. 15-3070 ADJUSTING THE EQUIVALENT DWELLING UNIT MONTHLY FEE FOR SEWER SERVICE	<b>DATE:</b> April 6, 2015  <b>SECTION:</b> RESOLUTIONS  <b>ITEM NO.:</b> 2  <b>FILE I.D.:</b> SEW125  <b>DEPT.:</b> PUBLIC WORKS
---	---

**REASON FOR CONSIDERATION:** The Inland Empire Utilities Agency (IEUA) provides sewage treatment services to the City of Montclair and six other regional contracting agencies. The IEUA Board of Directors has approved a rate increase for the fee charged to the contracting agencies for this sewage treatment. This higher rate is effective July 1, 2015. In addition to the rate increase approved by IEUA, the City's sewer maintenance costs are expected to increase over the next year. In order to cover the cost of the rate increase by IEUA and the higher City maintenance costs, the City must change the rates charged to its customers. The rate may be changed by a Resolution adopted by the City Council.

**BACKGROUND:** IEUA provides sewage treatment for seven regional contracting agencies including the City of Montclair. Treatment costs are passed on to City residents and businesses via a monthly fee based on an equivalent dwelling unit (EDU). Annual adjustments in these rates may be made, provided that the rates have been approved by the City Council under the requirements of Proposition 218.

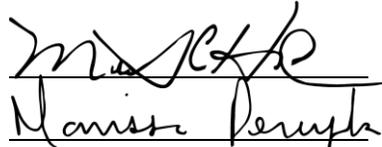
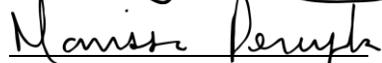
On June 17, 2013, the City Council of the City of Montclair conducted a public hearing in accordance with Proposition 218 requirements. As a result of that hearing process, rate caps were approved by the City Council for a five-year period. For Fiscal Year 2015-16, the maximum rate established by the City Council was \$23.48 per equivalent dwelling unit per month.

The sewer rate is composed of three parts:

- Part 1 Fee - Inland Empire Utilities Agency Sewage Treatment Fee (Maximum rate under June 17, 2013, rate cap hearing-\$15.89)
- Part 2 Fee - City Sewer Maintenance Cost (Maximum rate under June 17, 2013, rate cap hearing-6.09)
- Part 3 Fee - City Sewer Replacement Cost (Maximum rate under June 17, 2013, rate cap hearing-\$1.50)

The rate proposed for fiscal year 2015/2016 is as follows:

Effective Date	Part 1	Part 2	Part 3	Rate
July 1, 2015	\$15.89	\$6.09	\$1.50	\$23.48

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

**FISCAL IMPACT:** Adoption of Resolution No. 15-3070 would permit the City to collect the sufficient funds to pay the higher treatment rate being assessed by IEUA, pay for increased maintenance costs, and continue to contribute to the sewer replacement fund. Should the City not adopt Resolution No. 15-3070, it would still be obligated to pay the increased IEUA treatment rate, and find some other source of funds for sewer maintenance, or operate the sewer program at a deficit.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 15-3070 adjusting the equivalent dwelling unit monthly fee for sewer service.

**RESOLUTION NO. 15-3070**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MONTCLAIR SETTING  
THE EQUIVALENT DWELLING UNIT RATE  
FOR SEWER SERVICE**

**WHEREAS**, on June 17, 2013, the City Council of the City of Montclair conducted a public hearing to discuss maximum sewer rates for the five-year period commencing July 1, 2013, and terminating June 30, 2018; and

**WHEREAS**, the City Council of the City of Montclair approved the rates as recommended by staff; and

**WHEREAS**, the maximum monthly rate to be charged per equivalent dwelling unit (EDU) for the period commencing July 1, 2015, and ending June 30, 2016, was set as follows:

Part 1 Fee - Inland Empire Utilities Agency Treatment Fee	\$ 15.89
Part 2 Fee - City Sewer Maintenance Fund	6.09
Part 3 Fee - City Sewer Replacement Fund	<u>1.50</u>
Total Maximum Monthly EDU Rate	<u>\$23.48</u>

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby set the monthly EDU rate as follows:

Part 1 Fee - Inland Empire Utilities Agency Treatment Fee	\$ 15.89
Part 2 Fee - City Sewer Maintenance Fund	6.09
Part 3 Fee - City Sewer Replacement Fund	<u>1.50</u>
Total Maximum Monthly EDU Rate	<u>\$23.48</u>

**APPROVED AND ADOPTED** this XX day of XX, 2015.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Andrea Phillips, Deputy City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 15-3070 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2015, and that it was adopted by the following vote, to-wit:

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

---

Andrea M. Phillips  
Deputy City Clerk

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
MARCH 16, 2015, AT 7:50 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

---

**I. CALL TO ORDER**

Mayor Pro Tem Raft called the meeting to order at 7:50 p.m.

**II. ROLL CALL**

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

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of March 2, 2015.**

Moved by City Manager Starr, seconded by Mayor Pro Tem Raft, and carried unanimously to approve the minutes of the Personnel Committee meeting of March 2, 2015.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

At 7:51 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 8:10 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Raft stated that no announcements would be made at this time.

**VI. ADJOURNMENT**

At 8:10 p.m., Mayor Pro Tem Raft adjourned the Personnel Committee.

Submitted for Personnel Committee approval,

  
\_\_\_\_\_  
Edward C. Starr  
City Manager

**MINUTES OF THE MEETING OF THE MONTCLAIR  
CODE ENFORCEMENT/PUBLIC SAFETY COMMITTEE  
HELD ON MONDAY, MARCH 16, 2015, AT 6:00 P.M.  
IN THE CITY HALL CONFERENCE ROOM, 5111  
BENITO STREET, MONTCLAIR, CALIFORNIA**

---

**I. CALL TO ORDER**

Council Member Dutrey called the meeting to order at 6:00 p.m.

**II. ROLL CALL**

Present: Council Member Dutrey, Mayor Pro Tem Raft, City Manager Starr; Deputy City Manager/Executive Director, Office of Economic Development Staats; Police Chief/Executive Director, Office of Public Safety deMoet; Community Development Director Lustro, City Attorney Robbins.

**III. APPROVAL OF MINUTES**

**A. Minutes of Code Enforcement Committee Meeting of February 17, 2015**

It was the consensus of the Code Enforcement Committee to approve the minutes of the Code Enforcement Committee meeting of February 17, 2015.

**IV. PUBLIC COMMENT**

None.

**V. OLD BUSINESS**

1. Status of code amendment regarding massage establishments (CE). The Committee was provided the first draft of an ordinance by City Attorney Robbins. City Attorney Robbins commented she felt the ordinance was comprehensive in regulating tighter control on the business and not the therapists because if the therapist is a CAMTC member, they have already met state regulations set by the state and we cannot require a full background check. She asked the Committee to review the draft and let her know of any comments or changes. Discussion followed regarding limits through zoning, requiring a conditional use permit, compliance with development standards by existing establishments, and how many establishments are currently operating in the City. The

Committee agreed to review the draft ordinance and bring it back to the April meeting.

**2. Crime Suppression Unit Update (PD)**

Police Chief/Executive Director, Office of Public Safety deMoet updated the Committee regarding the Crime Suppression Unit (CSU) solving a vandalism case where City property was vandalized by a high school student. He also commented that the CSU has been forging partnerships in the community and overall doing very well.

**VI. NEW BUSINESS**

1. Discussion about regulating exterior colors of residences (CE). Discussion followed regarding two homes that were recently painted a less-than-desirable shade of blue on Vernon Avenue and whether the Code should be amended to include restrictions on colors or choosing a set color palette, as other cities do, to better regulate repainting of homes. Community Development Director Lustro will conduct a survey of what other cities are doing on this subject and bring it back to the Committee for further discussion and/or action.

**VII. DISTRIBUTION OF LIST OF PROBLEM PROPERTIES / Q&A**

Community Development Director Lustro updated the Committee on several of the properties that have been on the list for quite some time. The good news is that no additional properties have been added to the list and some may come off the list by the next meeting. The property at 9575 Helena, which has been a long-running problem, recently sold and, although there is a pile of trash that was left behind, Code Enforcement will have that taken care of by the new owner. The commercial property at 4100 Mission Boulevard (former World Brake business) is in escrow and the prospective buyer has been made aware of the need to demolish the structure as soon as possible. The hope was that demolition will take place before the Committee's next meeting. The Pinebrook Apartments has a property management company and professional security in place that is keeping in contact with Code Enforcement. They are doing tenant screening, requiring deposits and evicting the last of the few problem tenants. The properties at 4934 and 4944 Carlton Street have sold and are vacant. The new owner also owns the adjacent, vacant commercial property and intends to remove all the illegal structures, correct all substandard conditions, and clean up the lots.

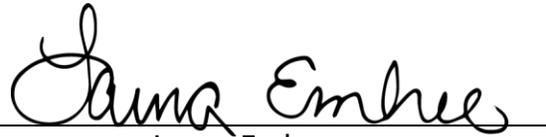
**VIII. NEXT MEETING**

The next meeting is scheduled for Monday, April 20, 2015, at 6:00 p.m. in the City Hall Conference Room.

**IX. ADJOURNMENT**

At 6:28 p.m., Council Member Dutrey adjourned the Code Enforcement/Public Safety Committee.

Submitted for Code Enforcement/  
Public Safety Committee approval,

A handwritten signature in black ink, reading "Laura Embree", written over a horizontal line.

Laura Embree  
Recording Secretary