

**CITY OF MONTCLAIR**

**AGENDA FOR CITY COUNCIL, REDEVELOPMENT AGENCY, AND  
MONTCLAIR HOUSING CORPORATION MEETINGS**

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

April 20, 2009

7:00 p.m.

*As a courtesy please silence your cell phones, pagers, and other electronic devices while the meeting is in session. Thank you.*

*The CC/RDA/MHC meetings are now available in audio format on the City's website at [www.ci.montclair.ca.us](http://www.ci.montclair.ca.us) and can be accessed the day following the meeting after 10:00 a.m.*

Page No.

**I. CALL TO ORDER - City Council, Redevelopment Agency, and Montclair Housing Corporation**

**II. INVOCATION**

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

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS**

- A. Proclamation Supporting the San Bernardino County Homeless Partnership
- B. Proclamation Declaring April 24, 2009, as "Arbor Day" in the City of Montclair
- C. Presentation of "Volunteer of the Year" Award

**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 and Redevelopment Agency and Montclair Housing Corporation Boards of Directors. (Government Code Section 54954.3)*

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

**VII. PUBLIC HEARINGS**

- A. First Reading - Consider Adoption of Ordinance No. 09-908 Amending Section 9.20.460 of the Montclair Municipal Code Related to the Equivalent Dwelling Unit Value [CC] 5

**VIII. CONSENT CALENDAR**

- A. Approval of Minutes
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- B. Administrative Reports
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  - 2. Consider Approval of Warrant Register and Payroll Documentation [CC] 9
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  - 6. Consider Approval of Warrant Register [MHC] 13
  - 7. Consider Setting a Public Hearing to Consider Resolution No. 09-2796 Repealing Resolution No. 94-2018 and Revising the Bail Schedule, Late Penalties, Administrative Fees, and Related Charges for Parking Violations [CC] 14
  - 8. Consider Setting a Public Hearing to Consider Resolution No. 09-2797 Amending the Fee Schedule for the Control, Regulation, and Boarding of Animals [CC] 19
  - 9. Consider Approval of the City of Montclair Statement of Investment Policy for the Year Ending December 31, 2009 [CC] 27
  - 10. Consider Redevelopment Agency Board of Directors' Approval of the City of Montclair Redevelopment Agency Statement of Investment Policy for the Year Ending December 31, 2009 [RDA] 40
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  - 12. Consider Authorization to Purchase Two Welded Basketball Masts with Motor Drive Operation from Jaypro Sporting Equipment [CC] 66
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2. Consider Award of Contract to West Tek, Inc., in the Amount of \$233,700 for Construction of the Public Works Corporate Yard Above Ground Fuel Tank Project [CC]	
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Consider Authorization of a \$25,000 Construction Contingency [CC]	
Consider Appropriating \$260,000 from the 2005 Lease Revenue Bond Proceeds for the Public Works Corporate Yard Above Ground Fuel Tank Project [CC]	81
3. Consider Approval of Agreement No. 09-31 with San Bernardino County to Receive Approximately \$7,427 in Nonmatching Funds from the Emergency Management Performance Grant Program [CC]	89
4. Consider Approval of Agreement No. 09-32 Approving the Disadvantaged Business Enterprise Implementation Agreement [CC]	102
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1. Consider Adoption of Resolution No. 09-2798 Approving the Legal Authority Element of the Sewer System Management Plan [CC]	112
<b>IX. PULLED CONSENT CALENDAR ITEMS</b>	
<b>X. RESPONSE - None</b>	
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A. City Attorney/Agency Counsel	
B. City Manager/Executive Director	
C. Mayor/Chairman	
D. Council/Agency Board	
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1. Minutes of the Public Works Committee Meeting of February 19, 2009	123

2. Minutes of the Personnel Committee Meeting of April 6, 2009

**XII. COUNCIL/AGENCY WORKSHOP**

- A. Update on Red Light Camera Enforcement Program

(Council/Agency may consider continuing this item to an adjourned joint meeting on Monday, May 4, 2009, at 5:45 p.m. in the City Council Chambers).

**XIII. ADJOURNMENT OF CITY COUNCIL AND REDEVELOPMENT AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS OF DIRECTORS**

*The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, April 20, 2009, 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, Redevelopment Agency Board, or Montclair Housing Corporation 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 City Clerk at (909) 625-9415. 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, Donna M. Jackson, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the bulletin board adjacent to the south door of Montclair City Hall on April 16, 2009.*

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF ORDINANCE NO. 09-908 AMENDING SECTION 9.20.460 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE EQUIVALENT DWELLING UNIT VALUE  <u>FIRST READING</u>	<b>DATE:</b> April 20, 2009 <b>SECTION:</b> PUBLIC HEARINGS <b>ITEM NO.:</b> A <b>FILE I.D.:</b> SEW125 <b>DEPT.:</b> PUBLIC WORKS
<b>BUSINESS PLAN:</b> N/A	

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**REASON FOR CONSIDERATION:** Inland Empire Utilities Agency has adjusted the fee for new connections to the City's sewer system. Since the connection fee is set by the Municipal Code, adjustments to those fees must be done 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 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 \$4,673 per equivalent dwelling unit (EDU). IEUA has proposed increasing the connection fee to \$4,766 per EDU effective July 1, 2009. The adjustment is based on the Engineering News-Record Construction Cost Index for the Los Angeles area.

**FISCAL IMPACT:** Adoption of Ordinance No. 09-908 would permit the City to collect the higher fee being assessed by IEUA. Should Ordinance No. 09-908 not be adopted by the 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 adopt the First Reading of Ordinance No. 09-908 amending Section 9.20.460 of the Montclair Municipal Code related to the equivalent dwelling unit value.

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

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**ORDINANCE NO. 09-908**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SECTION 9.20.460 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 Four Thousand Seven Hundred Sixty-Six Dollars (\$4,766) as established by the Inland Empire Utilities Agency effective July 1, 2009. The EDU value is based on construction costs and takes into consideration the current Engineering News-Record Construction Cost Index for the Los Angeles area.

**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, 2009.

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Mayor

**ATTEST:**

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City Clerk

I, Donna M. Jackson, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 09-908 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2009, and finally passed not less than five (5) days thereafter on the XX day of XX, 2009, by the following vote, to-wit:

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

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Donna M. Jackson  
City Clerk

## AGENDA REPORT

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

**DATE:** April 20, 2009

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 1

**BUSINESS  
PLAN:** N/A

**FILE I.D.:** FIN520

**DEPT.:** ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** State law requires the City Council to receive and file the Treasurer's Report.

**BACKGROUND:** Included in your agenda is a copy of the Treasurer's Report for the period ending March 31, 2009.

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

**RECOMMENDATION:** Staff recommends the City Council receive and file the Treasurer's Report for the month ending March 31, 2009.

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

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

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

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

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## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION	<b>DATE:</b> April 20, 2009
	<b>SECTION:</b> ADMIN. REPORT
	<b>ITEM NO.:</b> 2
<b>BUSINESS PLAN:</b> N/A	<b>FILE I.D.:</b> FIN540
	<b>DEPT.:</b> ADMIN. SVCS.

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

**BACKGROUND:** Mayor Pro Tem Dutrey has examined the Warrant Register dated April 20, 2009, and Payroll Documentation dated February 15, 2009, finds them to be in order and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated April 20, 2009, totals \$1,539,539.35. The Payroll Documentation dated February 15, 2009, totals \$660,941.59, with \$503,381.86 being the total cash disbursement.

**RECOMMENDATION:** Staff recommends the above-referenced Warrant Register and Payroll Documentation be approved as presented.

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

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## AGENDA REPORT

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

**DATE:** April 20, 2009

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 3

**FILE I.D.:** FIN510

**BUSINESS**

**PLAN:** N/A

**DEPT.:** REDEVELOPMENT

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**REASON FOR CONSIDERATION:** State law requires the Agency Board of Directors to receive and file the Treasurer's Report.

**BACKGROUND:** Included in your agenda is a copy of the Treasurer's Report for the period ending March 31, 2009.

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

**RECOMMENDATION:** Staff recommends the Agency Board of Directors receive and file the Treasurer's Report for the month ending March 31, 2009.

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

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

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

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

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## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF WARRANT REGISTER	<b>DATE:</b> April 20, 2009
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 4
<b>BUSINESS PLAN:</b> N/A	<b>FILE I.D.:</b> FIN530
	<b>DEPT.:</b> REDEVELOPMENT

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**REASON FOR CONSIDERATION:** State law requires the Agency Board of Directors to receive and file the Warrant Register.

**BACKGROUND:** Vice Chairman Dutrey has examined the Warrant Register dated 03/01/09 - 03/31/09 in the amounts of \$1,832.50 for Project I; \$397.51 for Project II; \$151,278.64 for Project III; \$42,504.91 for Project IV; \$165,114.18 for Project V; and \$0.00 for Mission Boulevard Joint Redevelopment Project and finds it to be in order.

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

**RECOMMENDATION:** Vice Chairman Dutrey recommends approval of the Warrant Register for the period ending March 31, 2009.

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

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## AGENDA REPORT

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

**DATE:** April 20, 2009

**SECTION:** ADMIN. REPORTS

**ITEM NO.:** 5

**BUSINESS**

**PLAN:** N/A

**FILE I.D.:** FIN525

**DEPT.:** MHC

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**REASON FOR CONSIDERATION:** State law requires the Montclair Housing Corporation Board of Directors to receive and file the Treasurer's Report.

**BACKGROUND:** Included in your agenda is a copy of the Treasurer's Report for the period ending March 31, 2009.

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

**RECOMMENDATION:** Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending March 31, 2009.

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

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

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

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

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## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF WARRANT REGISTER	<b>DATE:</b> April 20, 2009
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 6
<b>BUSINESS PLAN:</b> N/A	<b>FILE I.D.:</b> FIN545
	<b>DEPT.:</b> MHC

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**REASON FOR CONSIDERATION:** State law requires the Montclair Housing Corporation Board of Directors to receive and file the Warrant Register.

**BACKGROUND:** Vice Chairman Dutrey has examined the Warrant Register dated 03/01/09 - 03/31/09 in the amount of \$12,447.19 for the Montclair Housing Corporation and finds it to be in order.

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

**RECOMMENDATION:** Vice Chairman Dutrey recommends approval of the Warrant Register for the period ending March 31, 2009.

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

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## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER SETTING A PUBLIC HEARING TO CONSIDER RESOLUTION NO. 09-2796 REPEALING RESOLUTION NO. 94-2018 AND REVISING THE BAIL SCHEDULE, LATE PENALTIES, ADMINISTRATIVE FEES, AND RELATED CHARGES FOR PARKING VIOLATIONS	<b>DATE:</b> April 20, 2009 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 7 <b>FILE I.D.:</b> FLP110 <b>DEPT.:</b> POLICE
<b>BUSINESS PLAN:</b> N/A	

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**REASON FOR CONSIDERATION:** The City Council is requested to consider setting a public hearing to consider Resolution No. 09-2796 repealing Resolution No. 94-2018 and revising the bail schedule, late penalties, administrative fees, and related charges for parking violations. Resolution No. 09-2796 is attached for consideration by the City Council.

**BACKGROUND:** In January 1994, the responsibility for processing and adjudicating parking citations was transferred from the courts to the cities as the result of Assembly Bill 408. AB 408 also required cities to establish a bail schedule for parking violations. The City Council subsequently adopted Resolution No. 94-2018 on June 20, 1994, establishing a bail schedule for Municipal Code Vehicle Parking Violations. The bail amounts designated in the Judicial Council Uniform Bail Schedule for Vehicle Code violations at that time have continued to be used for Vehicle Code parking violations. Since the implementation of the provisions of Assembly Bill 408, the Judicial Council of the State of California has removed most Vehicle Code parking violations from the Uniform Bail Schedule, leaving the designation of bail amounts for specific Vehicle Code violations to the cities.

Prior to the beginning of the 2009 calendar year, the City has been required to remit \$3 to the San Bernardino County Treasurer's Office for the Jailhouse Construction parking penalty and \$1.50 to the County Treasurer's Office for the State Court Construction parking penalty. These penalties are paid from the bail amount collected for each parking violation. Senate Bill 1407 increased the State Court Construction parking penalty from \$1.50 to \$4.50 per violation effective January 1, 2009. Payment of the increased penalty is retroactive to January 1, 2009.

The increase in jailhouse and court construction penalties, coupled with the increase in administrative costs necessary to issue, process, and adjudicate parking citations since 1994, warrants consideration for increases to present Parking Violation Bail Schedule amounts. Vehicle Code Section 40203.5(a) requires agencies that issue parking citations within a county to standardize their parking penalties to the greatest extent possible. The proposed bail amounts outlined in Exhibit "A" are within the general range of parking violation bail amounts established by neighboring cities.

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

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**FISCAL IMPACT:** Implementation of the revised Parking Violation Bail Schedule would result in an annual revenue increase of approximately \$65,000.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Monday, May 4, 2009, at 7:00 p.m. in the City Council Chambers to consider Resolution No. 09-2796 repealing Resolution No. 94-2018 and revising the bail schedule, late penalties, administrative fees, and related charges for parking violations.

**RESOLUTION NO. 09-2796**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MONTCLAIR REPEALING  
RESOLUTION NO. 94-2018 AND REVISING  
THE BAIL SCHEDULE, LATE PENALTIES,  
ADMINISTRATIVE FEES, AND RELATED  
CHARGES FOR PARKING VIOLATIONS**

**WHEREAS**, Assembly Bill 408 requires each entity issuing parking citations to establish a bail schedule; and

**WHEREAS**, to comply with Section 40203.5 of the California Vehicle Code, parking fines should be standardized throughout a county; and

**WHEREAS**, the Judicial Council of the State of California sets the bail amounts for code violations other than Municipal Codes, however, it does not set bail amounts for certain Vehicle Code parking violations or late penalties for these violations; and

**WHEREAS**, Exhibit "A" outlines the Parking Violation Bail Schedule, together with each penalty and other fees set forth therein.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby determine the City of Montclair Parking Violation Bail Schedule to be as indicated on Exhibit "A" attached hereto and made a part hereof.

**APPROVED AND ADOPTED** this XX day of XX, 2009.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Donna M. Jackson, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 09-2796 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, 2009, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Donna M. Jackson  
City Clerk

**EXHIBIT "A"**  
**CITY OF MONTCLAIR**  
**PARKING VIOLATION BAIL SCHEDULE**  
**MAY 18, 2009**

<i>Municipal Code Section</i>	<i>Violation</i>	<i>Current Bail</i>	<i>Proposed Bail</i>
8.16.010	Limited Time Zone	\$ 31	\$ 40
8.20.010	Keys in Ignition	\$ 31	\$ 40
8.36.020A	Parked Over 72-Hours	\$ 31	\$ 40
8.36.030A	Repairing Vehicle on Roadway	\$ 31	\$ 40
8.36.030B	Vehicle for Sale on Roadway	\$ 31	\$ 40
8.36.040	Angle Parking	\$ 31	\$ 40
8.36.050B	Parking Adjacent to School	\$ 31	\$ 40
8.36.060A	Parking in Public Alley	\$ 31	\$ 40
8.36.070	Vendors, Peddlers Parked Over Ten Minutes	\$ 31	\$ 40
8.36.080B	Emergency/Temporary Parking	\$ 31	\$ 40
8.36.090A	Commercial Vehicle - Residential Zone	\$ 50	\$ 100
8.36.090B	Commercial Vehicle-Commercial Zone 4 Hr.	\$ 50	\$ 100
8.36.100	Park in Violation of Curb Marking/Signs	\$ 31	\$ 40
8.36.120A	Green Curb 20 Minutes	\$ 31	\$ 40
8.36.120B	Red Curb	\$ 31	\$ 40
8.36.120C	Yellow/White Curb-Except Load 15 Min.	\$ 31	\$ 40
8.36.140A1	Civic Center Parking - Permit Required	\$ 31	\$ 40
8.36.140C	Civic Center - Limited Time Zone	\$ 31	\$ 40
8.36.160A	For Sale on Private Property	\$ 31	\$ 40
8.36.170A	Parking on Unpaved Area, Lawns	\$ 31	\$ 40
8.36.180	Park on Private Prop-No Cruising Zone	\$ 31	\$ 40
8.44.010	Block Crossing by Railway Vehicle	\$ 31	\$ 40

<i>Vehicle Code Section</i>	<i>Violation</i>	<i>Current Bail</i>	<i>Proposed Bail</i>
21113(a)	Public Grounds Rules	\$ 40	\$ 40
21211(b)	Parked on Bike Path	\$ 103	\$ 103
21458(b)	Parked in Passenger/Freight Zone	\$ 15	\$ 40
22500(a)	Parked in Intersection	\$ 25	\$ 40
22500(b)	Parked in Crosswalk	\$ 25	\$ 40
22500(c)	Parked in Red Zone	\$ 20	\$ 40
22500(d)	Stopped at Fire Station Entrance - 15 Feet	\$ 25	\$ 40
22500(e)	Parked Blocking Driveway	\$ 25	\$ 40
22500(f)	Parked on Sidewalk	\$ 25	\$ 40
22500(g)	Stop Opposite Obstruction	\$ 20	\$ 40
22500(h)	Double Parking	\$ 25	\$ 40

22500(i)	Stopping in Bus Zone	\$ 250	\$ 250
22500(l)	Parking in Wheelchair Access	\$ 250	\$ 250
22502(a)	Park on Right Side - 18-Inches	\$ 25	\$ 40
22500.1	Fire Lane - Posted	\$ 103	\$ 103
22507.8(a)	Handicapped Zone (Parked)	\$ 275	\$ 275
22507.8(b)	Handicapped Zone (Blocking)	\$ 275	\$ 275
22507.8(c)1	Handicapped Zone (Boundary Lines)	\$ 275	\$ 275
22507.8(c)2	Handicapped Zone (Crosshatch Lines)	\$ 275	\$ 275
22511.5	Disabled Parking Zone	\$ 20	\$ 40
22514	Fire Hydrant - 15-Feet	\$ 25	\$ 40
22515(a)	Motor Running - Unattended Vehicle	\$ 25	\$ 40
22515(b)	Parked - Failure to Set Brake	\$ 20	\$ 40
22516	Parked - Person Locked in Vehicle	\$ 103	\$ 103
22519	Designated parking Space	\$ 20	\$ 40
22521	Parked Railroad Tracks - Seven Feet	\$ 25	\$ 40
22522	Blocking Access Ramp (Sidewalk)	\$ 275	\$ 275
22951	Parking Lot Park Customer Vehicle on Street	\$ 103	\$ 103
24401	Dimmed Lights on Parked Vehicle	\$ 20	\$ 40
27155	Fuel Tank Required	\$ 76*	\$ 76*
4000(a)	No Current Registration	\$ 135*	\$ 135*
5200	License Plates Required	\$ 76*	\$ 76*
5201	License Plate Not Secure	\$ 76*	\$ 76*
5204(a)	Current Registration Tabs Required	\$ 76*	\$ 76*

Any parking violation not specifically outlined above will be set at \$40.

\*Bail is reduced to \$10 with proof of correction if paid by the due date.

*Administrative Fees:*

Late Penalty for All Parking Violations Issued within the City of Montclair - \$25  
 Surcharge for Court Construction Parking Penalty - \$4.50  
 Surcharge for Jail Construction Parking Penalty - \$3  
 Proof of Equipment Violation Correction Fee - \$10  
 Returned Check Fee - \$25

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER SETTING A PUBLIC HEARING TO CONSIDER RESOLUTION NO. 09-2797 AMENDING THE FEE SCHEDULE FOR THE CONTROL, REGULATION, AND BOARDING OF ANIMALS	<b>DATE:</b> April 20, 2009
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 8
<b>BUSINESS PLAN:</b> N/A	<b>FILE I.D.:</b> ANL600
	<b>DEPT.:</b> ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** The City of Montclair's animal-control service rates for the control, regulation, and boarding of animals are inconsistent with rates for similar services assessed in other client cities of the Inland Valley Humane Society (IVHS). To ensure that comparable service levels are provided to each client city, IVHS is requesting an adjustment to Montclair's schedule of service fees. The City Council approves amendments to the fee schedule for the control, regulation, and boarding of animals.

**BACKGROUND:** Municipal agencies contracting with IVHS are responsible for the full cost of animal-control services within their respective administrative boundaries. Each agency pays its proportionate share for services through a combination of annual general fund payments and animal-control service fees.

A functional and effective animal-control regulation program requires that pet owners shoulder direct responsibility for the cost of providing animal-control services. To achieve this objective, municipal agencies developed licensing programs for dogs and boarding and impound fees for drop-off, rescued, impounded, and recovered animals harbored at animal-control facilities.

In recent years, the City's General Fund absorbed a disproportionate share of the cost to operate an animal-control program; concurrently, the direct cost to pet owners remained constant and effectively declined when adjusted for inflation and actual service costs. The increasing cost to the City for animal-control-related services is directly related to the following factors:

- Rising costs related to administration and implementation of animal-control services programs.
- Failure in recent years to adopt annual animal-control service rate adjustments that would pass direct service-related costs to pet owners.
- The increasing burden of cats on animal-control service programs—cat owners do not directly contribute to the cost of animal-control services.

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

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The City of Montclair last adjusted its schedule of rates for animal-control services in January 2002. Resolution No. 09-2797 proposes adjustments to the City's animal-control service fee schedule. These increases are standardized to reflect current and/or proposed rates for other cities contracting with IVHS. **Table 1** compares animal-control service rates currently assessed in Montclair with proposed rates. A survey of current animal-control fees assessed by IVHS client cities is attached as *Appendix 1*.

**TABLE 1  
FEE SCHEDULE  
ANIMAL-CONTROL SERVICES—CITY OF MONTCLAIR**

ANIMAL-CONTROL SERVICE	CURRENT FEE	PROPOSED FEE
<i><b>Dog License Fees</b></i>		
Unaltered	\$ 25.00	\$ 40.00
Altered	\$ 10.00	\$ 20.00
Senior-owned—Unaltered	\$ 25.00	\$ 40.00
Senior-owned—Altered	\$ 3.75	\$ 7.50
Penalty	\$ 25.00	\$ 35.00
<i><b>Impound Fees</b></i>		
Dog—1st Offense/Altered	\$ 25.00	\$ 25.00
Dog—1st Offense/Unaltered	\$ 25.00	\$ 25.00
Dog—2nd Offense/Altered	\$ 40.00	\$ 40.00
Dog—2nd Offense/Unaltered	\$ 40.00	\$ 40.00
Dog—3rd Offense/Altered	\$ 60.00	\$ 60.00
Dog—3rd Offense/Unaltered	\$ 60.00	\$ 60.00
Cat—Altered	\$ 5.00	\$ 5.00
Cat—Unaltered	\$ 5.00	\$ 5.00
Small Animal	\$ 5.00	\$ 5.00
Medium Animal	\$ 15.00	\$ 15.00
Large Animal	\$ 25.00	\$ 25.00
<i><b>Boarding, Food, and Care (per day)</b></i>		
Dog	\$ 7.00	\$ 10.00
Cat	\$ 7.00	\$ 10.00
Small Animal	\$ 5.00	\$ 7.00
Medium Animal	\$ 7.00	\$ 10.00
Large Animal	\$ 10.00	\$ 15.00
Biter Animal	\$ 10.00	\$ 15.00
<i><b>Owner Release</b></i>		
Per Animal	\$ 20.00	\$ 20.00
Per Litter	\$ 15.00	\$ 25.00
Pickup Live	\$ 30.00	\$ 30.00
Pickup Dead (DOA)	\$ 20.00	\$ 20.00

**Cat Licensing:** The Humane Society of the United States reports that cats are now considered equal to dogs as the family pet for American households. Following are additional statistics reported by the organization:

- Cats represent nearly 55 percent of the total pet population—there are approximately 88.3 million owned cats; approximately 74.8 million owned dogs.
- The combined estimated number of cats and dogs entering animal shelters each year is 6 million to 8 million. In calendar year 2008, IVHS processed and euthanized over 10,000 cats; approximately 5,000 dogs were processed and euthanized.
- 3 million to 4 million cats and dogs are euthanized annually; an equal number are adopted by families.
- Fewer than 750,000 dogs entering shelters are reclaimed by their owners each year; fewer than 100,000 cats are reclaimed.

These sobering statistics confirm that cats represent at least 50 percent of the nation's animal-control problem. However, in most municipalities, little if any licensing revenue is contributed by cat owners for animal-control-related services—of the ten local governments served by IVHS, only three require the licensing of cats: Diamond Bar, La Verne, and Pomona. Each participating city assesses a \$10 fee for an unaltered cat; \$5 for an altered cat; and a \$10 penalty fee for failure to license. A cat licensing program in Montclair would generate approximately \$4,500 annually, based on comparable rates.

Clearly, dog owners carry a disproportionate burden for the cost of animal-control services, directly contributing more than 90 percent of the total revenue raised through animal-control programs. However, the emerging popularity of cats as a comparable pet of choice is negatively impacting licensing revenue and directly increasing the cost to municipalities to provide animal-control services.

In recognition of the growing popularity of cats and a corollary increase in animal-control-related services, City Council members should be aware the IVHS Board of Directors is encouraging each client city to adopt a cat licensing ordinance and will reinforce this position during renegotiation of the City's current agreement with IVHS in 2011. The Board is taking this posture on cat licensing to discourage irresponsible pet ownership, raise the standard of animal care, and significantly curtail the number of abandoned cats euthanized annually.

**FISCAL IMPACT:** Adjusting the service fee schedule as proposed in Resolution No. 09-2797 would generate approximately \$30,000 in additional annual revenue to fund Montclair's animal-control service program.

Animal-control-related service fees are collected by IVHS on the City's behalf; collected fees are used to reduce Montclair's annual General Fund allocation to IVHS for animal-control services.

For Fiscal Year 2008-09, Montclair's General Fund allocation for animal-control services is \$158,500; the City Council's adoption of Resolution No. 09-2797 would reduce the Fiscal Year 2009-10 allocation to approximately \$128,500.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Monday, May 4, 2009, at 7:00 p.m. in the City Council Chambers to consider Resolution No. 09-2797 amending the fee schedule for the control, regulation, and boarding of animals.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER SETTING A PUBLIC HEARING TO CONSIDER RESOLUTION NO. 09-2797 AMENDING THE FEE SCHEDULE FOR THE CONTROL, REGULATION, AND BOARDING OF ANIMALS	<b>DATE:</b> April 20, 2009 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> <b>FILE I.D.:</b>
<b>BUSINESS PLAN:</b> N/A	<b>DEPT.:</b> ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** The City of Montclair's animal-control service rates for the control, regulation, and boarding of animals are inconsistent with rates for similar services assessed in other client cities of the Inland Valley Humane Society (IVHS). To ensure that comparable service levels are provided to each client city, IVHS is requesting an adjustment to Montclair's schedule of service fees. The City Council approves amendments to the fee schedule for the control, regulation, and boarding of animals.

**BACKGROUND:** Municipal agencies contracting with IVHS are responsible for the full cost of animal-control services within their respective administrative boundaries. Each agency pays its proportionate share for services through a combination of annual general fund payments and animal-control service fees.

A functional and effective animal-control regulation program requires that pet owners shoulder direct responsibility for the cost of providing animal-control services. To achieve this objective, municipal agencies developed licensing programs for dogs and boarding and impound fees for drop-off, rescued, impounded, and recovered animals harbored at animal control facilities.

In recent years, the City's General Fund absorbed a disproportionate share of the cost to operate an animal-control program; concurrently, the direct cost to pet owners remained constant and effectively declined when adjusted for inflation and actual service costs. The increasing cost to the City for animal-control-related services is directly related to the following factors:

- Rising costs related to administration and implementation of animal-control services programs;
- Failure, in recent years, to adopt annual animal-control service rate adjustments that would pass direct service-related costs to pet owners; and
- The increasing burden of cats on animal-control service programs—cat owners do not directly contribute to the cost of animal-control services.

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

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The City of Montclair last adjusted its schedule of rates for animal-control services in January 2002. Resolution No. 09-2797 proposes adjustments to the City's animals-control service fee schedule. These increases are standardized to reflect current and/or proposed rates for other cities contracting with IVHS. **Table 1** compares animal-control service rates currently assessed in Montclair with proposed rates. A survey of current animal-control fees assessed by IVHS client cities is attached as *Appendix 1*.

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<i><b>Dog License Fees</b></i>		
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Altered	\$10.00	\$20.00
Senior Citizen—Unaltered	\$25.00	\$40.00
Senior Citizen—Altered	\$ 3.75	\$ 7.50
Penalty	\$25.00	\$35.00
<i><b>Impound Fees</b></i>		
Dog—1st Offense/Altered	\$25.00	\$25.00
Dog—1st Offense/Unaltered	\$25.00	\$25.00
Dog—2nd Offense/Altered	\$40.00	\$40.00
Dog—2nd Offense/Unaltered	\$40.00	\$40.00
Dog—3rd Offense/Altered	\$60.00	\$60.00
Dog—3rd Offense/Unaltered	\$60.00	\$60.00
Cat—Altered	\$ 5.00	\$ 5.00
Cat—Unaltered	\$ 5.00	\$ 5.00
Small Animal	\$ 5.00	\$ 5.00
Medium Animal	\$15.00	\$15.00
Large Animal	\$25.00	\$25.00
<i><b>Boarding, Food, and Care (per day)</b></i>		
Dog	\$ 7.00	\$10.00
Cat	\$ 7.00	\$10.00
Small Animal	\$ 5.00	\$ 7.00
Medium Animal	\$ 7.00	\$10.00
Large Animal	\$10.00	\$15.00
Biter Animal	\$10.00	\$15.00
<i><b>Owner Release</b></i>		
Per Animal	\$20.00	\$20.00
Per Litter	\$15.00	\$25.00
Pickup Live	\$30.00	\$30.00
Pickup Dead (DOA)	\$20.00	\$20.00

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- Cats represent nearly 55 percent of the total pet population—there are approximately 88.3 million owned cats; approximately 74.8 million owned dogs.
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In recognition of the growing popularity of cats and a corollary increase in animal-control-related services, City Council members should be aware the IVHS Board of Directors is encouraging each client city to adopt a cat licensing ordinance, and will reinforce this position during renegotiation of the City's current agreement with IVHS in 2011. The Board is taking this posture on cat licensing to discourage irresponsible pet ownership, raise the standard of animal care, and significantly curtail the number of abandoned cats euthanized annually.

**FISCAL IMPACT:** Adjusting the service fee schedule as proposed in Resolution No. 09-2797 would generate approximately \$30,000 in additional, annual revenue to fund Montclair's animal-control service program.

Animal-control-related service fees are collected by IVHS on the City's behalf; collected fees are used to reduce Montclair's annual General Fund allocation to IVHS for animal-control services.

For Fiscal Year 2008-09, Montclair's General Fund allocation for animal-control services is \$158,500; approval of Resolution No. 09-2797 would reduce the Fiscal Year 2009-10 allocation to approximately \$128,500.

**RECOMMENDATION:** Staff recommends the City Council set a public hearing for Monday, May 4, 2009, at 7:00 p.m. in the City Council Chambers to consider Resolution No. 09-2797, amending the fee schedule for the control, regulation, and boarding of animals.

**RESOLUTION NO. 09-2797**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MONTCLAIR AMENDING  
THE FEE SCHEDULE FOR THE CONTROL,  
REGULATION, AND BOARDING OF ANIMALS**

**WHEREAS**, Section 5.08.020(A) of Chapter 5.08 of Title 5 of the Montclair Municipal Code provides that dog license fees shall be collected as set forth by Resolution of the City Council; and

**WHEREAS**, Section 5.08(B) of Chapter 5.08 of Title 5 of the Montclair Municipal Code provides that fees for the impoundment and boarding of animals shall be collected as set forth by Resolution adopted by the City Council; and

**WHEREAS**, a functional and effective animal-control regulation program requires that pet owners bear direct responsibility for the cost of providing animal-control services; and

**WHEREAS**, the growing cost to administer an animal-control services program supports the need to increase owner-related fees and fees for impounding, sheltering, and caring for animals; and

**WHEREAS**, the Montclair City Council last adjusted its schedule of rates for animal-control services in January 2002; and

**WHEREAS**, the Montclair City Council examined the proposed rate schedule and determined animal-control service rates hereinafter enumerated are fair, reasonable, and necessary; bear a reasonable relationship between actual cost to provide such services and the benefit received by residents; and are standardized to reflect rates currently assessed or soon to be assessed in other cities contracting with the Inland Valley Humane Society.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair hereby sets forth in **Table 1** a schedule of fees for the licensing of dogs and the impoundment and boarding of animals harbored within the City.

**BE IT FURTHER RESOLVED** that this fee schedule shall become effective thirty days (30) following adoption by the Montclair City Council but no sooner than July 1, 2009.

**BE IT FURTHER RESOLVED** that the City Clerk is hereby directed to forward a copy of this Resolution to the Inland Valley Humane Society.

**BE IT FINALLY RESOLVED** that the Inland Valley Humane Society shall, at least once within fifteen (15) days after the date of adoption of this fee schedule, publish the same in the Inland Valley Daily Bulletin. Proof of such publication shall be forwarded to the City of Montclair within a reasonable period of time.

**TABLE 1  
FEE SCHEDULE  
ANIMAL-CONTROL SERVICES—CITY OF MONTCLAIR**

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<i><b>Dog License Fees</b></i>		
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Dog—3rd Offense/Altered	\$ 60.00	\$ 60.00
Dog—3rd Offense/Unaltered	\$ 60.00	\$ 60.00
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Small Animal	\$ 5.00	\$ 5.00
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Biter Animal	\$ 10.00	\$ 15.00
<i><b>Owner Release</b></i>		
Per Animal	\$ 20.00	\$ 20.00
Per Litter	\$ 15.00	\$ 25.00
Pickup Live	\$ 30.00	\$ 30.00
Pickup Dead (DOA)	\$ 20.00	\$ 20.00

**APPROVED AND ADOPTED** this XX day of XX, 2009.

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Mayor

**ATTEST:**

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City Clerk

I, Donna M. Jackson, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 09-2797 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, 2009, and that it was adopted by the following vote, to-wit:

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

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Donna M. Jackson  
City Clerk

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF THE CITY OF MONTCLAIR STATEMENT OF INVESTMENT POLICY FOR THE YEAR ENDING DECEMBER 31, 2009	<b>DATE:</b> April 20, 2009
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 9
<b>BUSINESS PLAN:</b> N/A	<b>FILE I.D.:</b> FIN370
	<b>DEPT.:</b> ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of the City of Montclair Statement of Investment Policy for the Year Ending December 31, 2009. The Statement of Investment Policy is attached for consideration by the City Council.

**BACKGROUND:** The City of Montclair Statement of Investment Policy for calendar year 2009 outlines the following:

- The Treasurer's authority to invest surplus moneys
- The criteria for investment selection
- The permissible investment media as set forth in Government Code Section 53635
- Internal control procedures
- The City's investment strategy for 2009

The Policy is submitted to the City Council in accordance with Government Code Section 53646—Section 53646 was added to the Government Code as a result of the 1995 Orange County bankruptcy.

In addition to an annual investment policy, the Treasurer or his designee may issue a quarterly report to the City Council that provides specifics of the investment activity during the period covered; a statement of compliance with the investment policy; and a statement denoting the City's ability to meet its expenditure requirements during the next six months.

Beginning in calendar year 2001, AB 943 added a requirement that each city must semi-annually submit a copy of its investment report to the State Treasurer. AB 943 also requires each city to annually submit a copy of its investment policy to the State

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

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Treasurer. The Investment Policy for 2009, in all important respects, is identical to last year's policy approved by the City Council during March 2008.

Prior to 2006, Government Code Section 53646 required municipalities to annually review and approve, at a public meeting, their investment policies and present quarterly reports to their respective legislative bodies. As part of the reform of the State Mandate Reimbursement Program, these two requirements were changed to become optional and, thus, ineligible for state mandate reimbursement by simply changing the word "shall" to "may" as demonstrated below:

- "In the case of any other local agency, the treasurer or chief fiscal officer of the local agency *may* annually render to the legislative body of that local agency and any oversight committee of that local agency a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting."
- "The treasurer or chief fiscal officer *may* render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency."

The State Legislature encourages city officials to continue taking the actions formerly mandated by Government Code Section 53646 in recognition of state and local interests.

It is important to note that despite the changes to Section 53646 of the Government Code, the City must continue with semiannual submission of the investment report and annual submission of the investment policy as required by AB 943.

**FISCAL IMPACT:** Approval of the City of Montclair Statement of Investment Policy for the Year Ending December 31, 2009, would create no fiscal impact for the City.

**RECOMMENDATION:** Staff recommends the City Council approve the City of Montclair Statement of Investment Policy for the Year Ending December 31, 2009.



## **CITY OF MONTCLAIR**

### **Statement of Investment Policy for the Year Ending December 31, 2009**

#### **I. PURPOSE**

The purpose of this investment policy is (1) to fix the responsibility for investing surplus moneys with the City Treasurer and his designee; (2) to establish criteria for selecting investments; (3) to outline investment media in which a local agency may invest its surplus money; (4) to establish internal control procedures to assure the investment program is operated in a safe and prudent manner; and (5) to set forth the investment strategy for calendar year 2009.

#### **II. SCOPE**

It is intended that this policy cover all funds and investment activities under the direct authority of the City of Montclair.

#### **III. TREASURER'S AUTHORITY TO INVEST SURPLUS MONEYS**

It is the responsibility of the City Treasurer and his designee, the Assistant Finance Director, to invest the City's surplus moneys. Government Code Section 53607 enables a city council to delegate its responsibility to invest surplus moneys to the treasurer, provided he submits to the council a monthly report of investment transactions (Treasurer's Report).

#### **IV. PUBLIC TRUST**

All participants in the investment process shall act as custodians of the public trust. The City Treasurer or his designee, the Assistant Finance Director, shall recognize that the investment portfolio is subject to public review and evaluation. The overall program shall be designed and managed with a degree of professionalism that is worthy of the public trust. In a diversified portfolio it must be recognized that occasional measured losses are inevitable, and must be considered within the context of the overall portfolio's investment return, provided that adequate diversification has been implemented.

#### **V. PRUDENCE**

The City of Montclair adheres to the guidance provided by the "prudent investor standard," which obligates a fiduciary to insure that all persons investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing public funds shall act with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent

person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the City.

#### **VI. DIVERSIFICATION**

The investment portfolio will be diversified to avoid incurring unreasonable and avoidable risks regarding specific security types or individual financial institutions.

#### **VII. MARKET-AVERAGE RATE OF RETURN**

The investment portfolio shall be designed to attain a market-average rate of return throughout budgetary and economic cycles, taking into account the City of Montclair's risk constraints, the cash flow characteristics of the portfolio, state and local laws, and ordinances and resolutions that restrict investments.

#### **VIII. CRITERIA FOR INVESTMENT SELECTION**

In accordance with Government Code Section 53600.5, the primary criteria, in priority of order, which investment decisions shall be based upon are as follows:

- (a) **SAFETY:** Safety of principal is the most important criteria of investment. Attention must be given to the continued solvency of financial institutions in which the City invests money. Also, investments in long-term securities must be considered from the standpoint of potential losses incurred upon sale of securities to meet operating needs.
- (b) **LIQUIDITY:** The City's investment portfolio will remain sufficiently liquid to meet all operating requirements that might be reasonably anticipated.
- (c) **YIELD (RETURN ON INVESTMENT):** Investments should be made with the objective of maximizing the rate of return consistent with safety and liquidity requirements.

#### **IX. PERMISSIBLE INVESTMENTS**

Government Code Section 53635 authorizes a local agency to deposit a portion or all of its moneys in state or national banks, savings associations or federal associations, credit unions, or any federally insured industrial loan company in this state. Also, Code Section 53635 enumerates investment media in which a local agency may invest its surplus moneys pursuant to Code Section 53601. The following list of permissible investment media is verbatim from Government Code Section 53601:

- (a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the local agency or by a department, board, agency, or authority of the local agency.
- (b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.
- (c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the state or by a department, board, agency, or authority of the state.
- (d) Registered Treasury notes or bonds of any of the other 49 United States in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 United States, in addition to California.
- (e) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.
- (f) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.
- (g) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as banker's acceptances, which are eligible for purchase by the Federal Reserve System. Purchases of banker's acceptances may not exceed 180 days maturity or 40 percent of the agency's surplus funds, which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the banker's acceptances of any one commercial bank pursuant to this section.
- (h) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Nationally Recognized Statistical-Rating Organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):

- (1) The entity must be organized and operating in the United States as a general corporation having total assets in excess of five hundred million dollars (\$500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, as provided for by a nationally recognized statistical-rating organization.
- (2) The entity must be organized within the United States as a special purpose corporation, trust, or limited liability company having program-wide credit enhancements including, but not limited to, over-collateralization, letters of credit, or surety bond, and having commercial paper that is "A-1" or higher rating, or the equivalent, by a nationally recognized statistical-rating organization.

Purchases of eligible commercial paper may not exceed 270 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. No more than 40 percent of the agency's money may be invested in eligible commercial paper.

- (i) Negotiable certificates of deposit issued by a nationally or state-chartered bank or a savings association or federal association or a state or federal credit union or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money, which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decision-making authority in the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.
- (j)
  - (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.
  - (2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the

agreements does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly.

- (3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:
  - (A) The security to be sold on reverse repurchase agreement or securities lending agreements has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.
  - (B) The total of all reverse repurchase agreements and securities lending agreement owned by the local agency does not exceed 20 percent of the base value of the portfolio.
  - (C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sales of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.
  - (D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.
- (4) (A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank

of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

- (B) For purposes of this chapter, "significant banking relationship" means any of the following activities of a bank:
  - (i) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.
  - (ii) Financing of a local agency's activities.
  - (iii) Acceptance of a local agency's securities or funds as deposits.
- (5) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.
- (B) "Securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.
- (C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date, and includes other comparable agreements.
- (D) "Securities lending agreement" means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.
- (E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool

by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

- (F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.
- (k) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated "A" or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's money that may be invested pursuant to this section.
- (l)
  - (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.
  - (2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).
  - (3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:
    - (A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

- (B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and with assets under management in excess of five hundred million dollars (\$500,000,000).
- (4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:
  - (A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.
  - (B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).
- (5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's money that may be invested pursuant to this section. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).
- (m) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.
- (n) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the

custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

- (o) Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pass-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond of a maximum of five years' maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.
- (p) Shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (o), inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:
  - (1) The adviser is registered or exempt from registration with the Securities and Exchange Commission.
  - (2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (o), inclusive.
  - (3) The adviser has assets under management in excess of five hundred million dollars (\$500,000,000).

Government Code Section 16429.1 authorizes a local agency to deposit a portion or all of its surplus moneys in the Local Agency Investment Fund (LAIF). LAIF is an account established by the state that offers a local agency a safe, highly liquid means to invest its surplus funds. Government Code Section 16430 limits LAIF to investing in securities, which are essentially the same as those prescribed in Section 53635 above. An agency may deposit \$40,000,000 with LAIF and engage in 15 transactions per month.

## **X. INTERNAL CONTROL PROCEDURES**

The following internal control procedures are established to assure that the investment program is operated in a safe and prudent manner. An employee of the City, other than the City Treasurer or his designee, will verify on a monthly basis to City Council that all investment activity undertaken during the month has been conducted in compliance with the investment policy, including the below internal control procedures.

- (a) **SAFEKEEPING:** Securities purchased from brokers/dealers must be held in a third-party custodial safekeeping account. The securities should be held in a manner that establishes the City's right of ownership.
- (b) **CONFIRMATION:** Confirmation receipts for purchase of authorized securities should include the following information: trade date, par value, maturity value, interest rate, price, settlement date, description of securities purchased, agency's name, net amount due, and third-party custodial information. The confirmation receipt must be issued by the third-party custodian and must be received by the City prior to remitting payment for the security.
- (c) **PAYMENT:** Payment for securities should be on a Delivery Versus Payment (DVP) basis. This must be done via the City's third-party safekeeping agent. **NOTE:** Book entry is considered delivery.
- (d) **WIRE TRANSFERS:** All wire transfers for the purchase of securities should be initiated by the City Treasurer or his designee who is authorized to invest on behalf of the City. The bank document used to initiate a wire transfer must be approved by the employee responsible for monitoring compliance with internal control procedures prior to executing the wire transfer. **NOTE:** This procedure does not apply to deposits with the LAIF.

## **XI. BANKS AND SECURITIES DEALERS**

In selecting financial institutions for the deposit or investment of the City of Montclair funds, the Treasurer or his designee, the Assistant Finance Director, shall consider the creditworthiness of institutions. The Treasurer and his designee, the Assistant Finance Director, shall continue to monitor financial institutions' credit characteristics and financial history throughout the period in which funds are deposited or invested.

## **XII. RISK TOLERANCE**

The City of Montclair recognizes that investment risks can result from issuer defaults, market price changes, or various technical complications leading to temporary illiquidity. Portfolio diversification

is employed as a way to control risk. The City Treasurer and his designee, the Assistant Finance Director, are expected to display prudence in the selection of securities, as a way to minimize default risk. No individual investment transaction shall be undertaken which jeopardizes the total capital position of the overall portfolio. The Treasurer or his designee, the Assistant Finance Director, may periodically establish guidelines and strategies to control risks of default, market price changes, and illiquidity.

### **XIII. INVESTMENT STRATEGY FOR CALENDAR YEAR 2009**

The City shall invest at least 15 percent of its surplus moneys to mature within one year. The moneys will be deposited in the LAIF, in certificates of deposit issued by banks and savings and loans in amounts which are fully insured by FDIC and invested in the securities discussed in (a) through (p) of Section IX above, provided no moneys will be invested in reverse repurchase agreements, nor will any securities be purchased on margin. Further, pursuant to Government Code Section 53601.6, no moneys will be invested in inverse floaters, range notes, or interest-only strips that are derived from a pool of mortgages.

The City shall invest at least 50 percent of its surplus moneys, including the moneys invested pursuant to paragraph (1), in investment media with maturities no greater than three years. The investment restrictions outlined in paragraph (1) will apply to investments made in accordance with this paragraph.

The City may invest the balance of its surplus funds in any of the investment media set forth in paragraph (1), provided the investment has a maturity no greater than five years. The investment restrictions outlined in paragraph (1) will apply to investments made in accordance with this paragraph.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER REDEVELOPMENT AGENCY BOARD OF DIRECTORS' APPROVAL OF THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY STATEMENT OF INVESTMENT POLICY FOR THE YEAR ENDING DECEMBER 31, 2009	<b>DATE:</b> April 20, 2009 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 10 <b>FILE I.D.:</b> FIN360
<b>BUSINESS PLAN:</b> N/A	<b>DEPT.:</b> REDEVELOPMENT

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**REASON FOR CONSIDERATION:** The Redevelopment Agency Board of Directors is requested to consider approval of the City of Montclair Redevelopment Agency Statement of Investment Policy for the Year Ending December 31, 2009. The Statement of Investment Policy is attached for consideration by the Redevelopment Agency Board of Directors.

**BACKGROUND:** The Redevelopment Agency Statement of Investment Policy for calendar year 2009 outlines the following:

- The Treasurer's authority to invest surplus moneys
- The criteria for investment selection
- The permissible investment media as set forth in Government Code Section 53635
- Internal control procedures
- The Agency's investment strategy for 2009

The Policy is submitted to the Redevelopment Agency Board of Directors in accordance with Government Code Section 53646—Section 53646 was added to the Government Code as a result of the 1995 Orange County bankruptcy.

In addition to an annual investment policy, the Treasurer or his designee may issue a quarterly report to the Redevelopment Agency Board of Directors that provides specifics of the investment activity during the period covered; a statement of compliance with the investment policy; and a statement denoting the Agency's ability to meet its expenditure requirements during the next six months.

Beginning in calendar year 2001, AB 943 added a requirement that each municipal governing board must semiannually submit a copy of its investment report to the State Treasurer.

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

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AB 943 also requires each municipal governing board to annually submit a copy of its investment policy to the State Treasurer. The Investment Policy for 2009, in all important respects, is identical to last year's policy approved by the Redevelopment Agency Board of Directors during March 2008.

Prior to 2006, Government Code Section 53646 required municipal governing boards to annually review and approve, at a public meeting, their investment policies and present quarterly reports to their respective legislative bodies. As part of the reform of the State Mandate Reimbursement Program, these two requirements were changed to become optional and, thus, ineligible for state mandate reimbursement by simply changing the word "shall" to "may" as demonstrated below:

- "In the case of any other local agency, the treasurer or chief fiscal officer of the local agency *may* annually render to the legislative body of that local agency and any oversight committee of that local agency a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting."
- "The treasurer or chief fiscal officer *may* render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency."

The State Legislature encourages local agency officials to continue taking the actions formerly mandated by Government Code Section 53646 in recognition of state and local interests.

It is important to note that despite the changes to Section 53646 of the Government Code, the Agency must continue with semiannual submission of the investment report and annual submission of the investment policy as required by AB 943.

**FISCAL IMPACT:** Approval of the City of Montclair Redevelopment Agency Statement of Investment Policy for the Year Ending December 31, 2009, would create no fiscal impact for the Agency.

**RECOMMENDATION:** Staff recommends the Redevelopment Agency Board of Directors approve the City of Montclair Redevelopment Agency Statement of Investment Policy for the Year Ending December 31, 2009.



## **CITY OF MONTCLAIR REDEVELOPMENT AGENCY**

### **Statement of Investment Policy for the Year Ending December 31, 2009**

#### **I. PURPOSE**

The purpose of this investment policy is as follows: (1) to fix the responsibility for investing surplus moneys with the Agency Treasurer and his designee; (2) to establish criteria for selecting investments; (3) to outline investment media in which a local agency may invest its surplus money; (4) to establish internal control procedures to assure the investment program is operated in a safe and prudent manner; and (5) to set forth the investment strategy for calendar year 2009.

#### **II. SCOPE**

It is intended that this policy cover all funds and investment activities under the direct authority of the Montclair Redevelopment Agency.

#### **III. TREASURER'S AUTHORITY TO INVEST SURPLUS MONEYS**

It is the responsibility of the Agency Treasurer and his designee, the Assistant Finance Director, to invest the Agency's surplus moneys. Government Code Section 53607 enables a legislative body to delegate its responsibility to invest surplus moneys to the treasurer, provided he submits to the legislative body a monthly report of investment transactions.

#### **IV. PUBLIC TRUST**

All participants in the investment process shall act as custodians of the public trust. The Agency Treasurer or his designee, the Assistant Finance Director, shall recognize that the investment portfolio is subject to public review and evaluation. The overall program shall be designed and managed with a degree of professionalism that is worthy of the public trust. In a diversified portfolio it must be recognized that occasional measured losses are inevitable, and must be considered within the context of the overall portfolio's investment return, provided that adequate diversification has been implemented.

#### **V. PRUDENCE**

The City of Montclair Redevelopment Agency adheres to the guidance provided by the "prudent investor standard," which obligates a fiduciary to insure that all persons investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing public funds shall act with care, skill, prudence, and diligence under the circumstances then

prevailing that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the Agency.

#### **VI. DIVERSIFICATION**

The investment portfolio will be diversified to avoid incurring unreasonable and avoidable risks regarding specific security types or individual financial institutions.

#### **VII. MARKET-AVERAGE RATE OF RETURN**

The investment portfolio shall be designed to attain a market-average rate of return throughout budgetary and economic cycles, taking into account the Montclair Redevelopment Agency risk constraints, the cash flow characteristics of the portfolio, state and local laws, and ordinances and resolutions that restrict investments.

#### **VIII. CRITERIA FOR INVESTMENT SELECTION**

In accordance with Government Code Section 53600.5, the primary criteria, in priority of order, which investment decisions shall be based upon are as follows:

- (a) **SAFETY:** Safety of principal is the most important criteria of investment. Attention must be given to the continued solvency of financial institutions in which the Agency invests money.
- (b) **LIQUIDITY:** The Agency's investment portfolio will remain sufficiently liquid to meet all operating requirements that might be reasonably anticipated.
- (c) **YIELD (RETURN ON INVESTMENT):** Investments should be made with the objective of maximizing the rate of return consistent with safety and liquidity requirements.

#### **IX. PERMISSIBLE INVESTMENTS**

Government Code Section 53635 authorizes a local agency to deposit a portion or all of its moneys in state or national banks, savings associations and federal associations, credit unions, or any federally insured industrial loan company in this state. Also, Code Section 53635 enumerates investment media in which a local agency may invest its surplus moneys pursuant to Code Section 53601. The following list of permissible investment media is verbatim from Government Code Section 53601:

- (a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned,

controlled or operated by the local agency or by a department, board, agency or authority of the local agency.

- (b) United States Treasury notes, bonds, bills or certificates of indebtedness or those for which the faith and credit of the United States are pledged for the payment of principal and interest.
- (c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the state or by a department, board, agency or authority of the state.
- (d) Registered treasury notes or bonds of any of the other 49 United States in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency or authority of any of the other 49 United States, in addition to California.
- (e) Bonds, notes, warrants or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the local agency or by a department, board, agency or authority of the local agency.
- (f) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.
- (g) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as banker's acceptances, which are eligible for purchase by the Federal Reserve System. Purchases of banker's acceptances may not exceed 180 days maturity or 40 percent of the agency's surplus funds, which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the banker's acceptances of any one commercial bank pursuant to this section.
- (h) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Nationally Recognized Statistical-Rating Organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):
  - (1) The entity must be organized and operating in the United States as a general corporation having total assets in excess of five hundred million dollars (\$500,000,000) and having an

"A" or higher rating for the issuer's debt, other than commercial paper, as provided for by a nationally recognized statistical-rating organization.

- (2) The entity must be organized within the United States as a special purpose corporation, trust, or limited liability company having program-wide credit enhancements including, but not limited to, over-collateralization, letters of credit, or surety bond, and having commercial paper that is "A-1" or higher rating, or the equivalent, by a nationally recognized statistical-rating organization.

Purchases of eligible commercial paper may not exceed 270 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. No more than 40 percent of the agency's money may be invested in eligible commercial paper.

- (i) Negotiable certificates of deposit issued by a nationally or state-chartered bank or a savings association or federal association or a state or federal credit union or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money, which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decision-making authority in the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.
- (j)
  - (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.
  - (2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreements does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed

against those securities and the value shall be adjusted no less than quarterly.

- (3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:
  - (A) The security to be sold on reverse repurchase agreement or securities lending agreements has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.
  - (B) The total of all reverse repurchase agreements and securities lending agreement owned by the local agency does not exceed 20 percent of the base value of the portfolio.
  - (C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sales of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.
  - (D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.
- (4) (A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

- (B) For purposes of this chapter, "significant banking relationship" means any of the following activities of a bank:
  - (i) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.
  - (ii) Financing of a local agency's activities.
  - (iii) Acceptance of a local agency's securities or funds as deposits.
  
- (5) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.
  
- (B) "Securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.
  
- (C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date, and includes other comparable agreements.
  
- (D) "Securities lending agreement" means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.
  
- (E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

- (F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.
- (k) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated "A" or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's money that may be invested pursuant to this section.
- (l)
  - (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.
  - (2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).
  - (3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:
    - (A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.
    - (B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to

(o), inclusive, and with assets under management in excess of five hundred million dollars (\$500,000,000).

- (4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:
- (A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.
  - (B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).
- (5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's money that may be invested pursuant to this section. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).
- (m) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.
- (n) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal

regulations applicable to the types of securities in which the security interest is granted.

- (o) Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pass-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond of a maximum of five years' maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.
- (p) Shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (o), inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:
  - (1) The adviser is registered or exempt from registration with the Securities and Exchange Commission.
  - (2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (o), inclusive.
  - (3) The adviser has assets under management in excess of five hundred million dollars (\$500,000,000).

Government Code Section 16429.1 authorizes a local agency to deposit a portion or all of its surplus moneys in the Local Agency Investment Fund (LAIF). LAIF is an account established by the state that offers a local agency a safe, highly liquid means to invest its surplus funds. Government Code Section 16430 limits LAIF to investing in securities that are essentially the same as those prescribed in Section 53635 above. An agency may deposit \$40,000,000 with LAIF and engage in 15 transactions per month.

#### **X. INTERNAL CONTROL PROCEDURES**

The following internal control procedures are established to assure that the investment program is operated in a safe and prudent manner. An employee of the Agency, other than the Agency Treasurer or his designee, will verify on a monthly basis to the Agency Board that all

investment activity undertaken during the month has been conducted in compliance with the investment policy, including the below internal control procedures.

- (a) **SAFEKEEPING:** Securities purchased from brokers/dealers must be held in a third-party custodial safekeeping account. The securities should be held in a manner that establishes the Agency's right of ownership.
- (b) **CONFIRMATION:** Confirmation receipts for purchase of authorized securities should include the following information: trade date, par value, maturity value, interest rate, price, settlement date, description of securities purchased, agency's name, net amount due and third-party custodial information. The confirmation receipt must be issued by the third-party custodian and must be received by the Agency prior to remitting payment for the security.
- (c) **PAYMENT:** Payment for securities should be on a Delivery Versus Payment (DVP) basis. This must be done via the Agency's third-party safekeeping agent. **NOTE:** Book entry is considered delivery.
- (d) **WIRE TRANSFERS:** All wire transfers for the purchase of securities should be initiated by the Agency Treasurer or his designee who is authorized to invest on behalf of the Agency. The bank document used to initiate a wire transfer must be approved by the employee responsible for monitoring compliance with internal control procedures prior to executing the wire transfer. **NOTE:** This procedure does not apply to deposits with the LAIF.

## **XI. BANKS AND SECURITIES DEALERS**

In selecting financial institutions for the deposit or investment of Montclair Redevelopment Agency funds, the Treasurer or his designee, the Assistant Finance Director, shall consider the creditworthiness of institutions. The Treasurer and his designee, the Assistant Finance Director, shall continue to monitor financial institutions' credit characteristics and financial history throughout the period in which funds are deposited or invested.

## **XII. RISK TOLERANCE**

The Montclair Redevelopment Agency recognizes that investment risks can result from issuer defaults, market price changes, or various technical complications leading to temporary illiquidity. Portfolio diversification is employed as a way to control risk. The Agency Treasurer and his designee, the Assistant Finance Director, are expected to display prudence in the selection of securities, as a way to minimize default risk. No individual investment transaction shall be

undertaken which jeopardizes the total capital position of the overall portfolio. The Treasurer or his designee, the Assistant Finance Director, may periodically establish guidelines and strategies to control risks of default, market price changes and illiquidity.

### **XIII. INVESTMENT STRATEGY FOR CALENDAR YEAR 2009**

The Agency will invest at least 25 percent of its surplus moneys (excluding tax allocation bond proceeds) in the LAIF and in certificates of deposit issued by banks and savings and loans provided, however, that money deposited with banks and savings and loans are fully insured by FDIC and have maturities of no more than one year. The balance of the Agency's surplus moneys may be invested in any of the investment media discussed in (a) to (p) of Section IX above, provided the investment term is no greater than three years and no investments are made in reverse repurchase agreements. Further, pursuant to Government Code Section 53601.6, no moneys will be invested in inverse floaters, range notes, or interest-only strips that are derived from a pool of mortgages.

Remaining tax allocation bond proceeds, however, will be invested directly in short-term governmental securities and mutual funds comprised of short-term governmental securities. Investments of tax allocation bond proceeds will be made pursuant to Government Code Section 5922 and the bond indentures. The permitted investments set forth in Government Code Section 5922 and the bond indentures are substantially the same as those set forth in Government Code Section 53635.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER MONTCLAIR HOUSING CORPORATION BOARD OF DIRECTORS' APPROVAL OF THE CITY OF MONTCLAIR HOUSING CORPORATION STATEMENT OF INVESTMENT POLICY FOR THE YEAR ENDING DECEMBER 31, 2009	<b>DATE:</b> April 20, 2009
	<b>SECTION:</b> ADMIN. REPORTS
	<b>ITEM NO.:</b> 11
<b>BUSINESS PLAN:</b> N/A	<b>FILE I.D.:</b> FIN380
	<b>DEPT.:</b> MHC

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to consider approval of the City of Montclair Housing Corporation Statement of Investment Policy for the Year Ending December 31, 2009. The Statement of Investment Policy is attached for consideration by the Housing Corporation Board of Directors.

**BACKGROUND:** The Housing Corporation Statement of Investment Policy for calendar year 2009 outlines the following:

- The Treasurer's authority to invest surplus moneys
- The criteria for investment selection
- The permissible investment media as set forth in Government Code Section 53635
- Internal control procedures
- The Corporation's investment strategy for 2009

The Policy is submitted to the Housing Corporation Board of Directors in accordance with Government Code Section 53646—Section 53646 was added to the Government Code as a result of the 1995 Orange County bankruptcy.

In addition to an annual investment policy, the Treasurer or his designee may issue a quarterly report to the Housing Corporation Board of Directors that provides specifics of the investment activity during the period covered; a statement of compliance with the investment policy; and a statement denoting the Corporation's ability to meet its expenditure requirements during the next six months.

Beginning in calendar year 2001, AB 943 added a requirement that each municipal governing board must semiannually submit a copy of its investment report to the State

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

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Treasurer. AB 943 also requires each municipal governing board to annually submit a copy of its investment policy to the State Treasurer. The Investment Policy for 2009, in all important respects, is identical to last year's policy approved by the Housing Corporation Board of Directors during March 2008.

Prior to 2006, Government Code Section 53646 required municipal governing boards to annually review and approve, at a public meeting, their investment policies and present quarterly reports to their respective legislative bodies. As part of the reform of the State Mandate Reimbursement Program, these two requirements were changed to become optional, and thus ineligible for state mandate reimbursement by simply changing the word "shall" to "may" as demonstrated below:

- "In the case of any other local agency, the treasurer or chief fiscal officer of the local agency *may* annually render to the legislative body of that local agency and any oversight committee of that local agency a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting."
- "The treasurer or chief fiscal officer *may* render a quarterly report to the chief executive officer, the internal auditor, and the legislative body of the local agency."

The State Legislature encourages local agency officials to continue taking the actions formerly mandated by Government Code Section 53646 in recognition of state and local interests.

It is important to note that despite the changes to Section 53646 of the Government Code, the Montclair Housing Corporation must continue with semiannual submission of the investment report and annual submission of the investment policy as required by AB 943.

**FISCAL IMPACT:** Approval of the City of Montclair Housing Corporation Statement of Investment Policy for the Year Ending December 31, 2009, would create no fiscal impact for the Corporation.

**RECOMMENDATION:** Staff recommends the Montclair Housing Corporation Board of Directors approve the City of Montclair Housing Corporation Statement of Investment Policy for the Year Ending December 31, 2009.



## **CITY OF MONTCLAIR HOUSING CORPORATION**

### **Statement of Investment Policy for the Year Ending December 31, 2009**

#### **I. PURPOSE**

The purpose of this investment policy is (1) to fix the responsibility for investing surplus moneys with the Corporation Treasurer and his designee; (2) to establish criteria for selecting investments; (3) to outline investment media in which a local agency may invest its surplus money; (4) to establish internal control procedures to assure the investment program is operated in a safe and prudent manner; and (5) to set forth the investment strategy for calendar year 2009.

#### **II. SCOPE**

It is intended that this policy cover all funds and investment activities under the direct authority of the City of Montclair Housing Corporation.

#### **III. TREASURER'S AUTHORITY TO INVEST SURPLUS MONEYS**

It is the responsibility of the Corporation Treasurer and his designee, the Assistant Finance Director, to invest the Corporation's surplus moneys. Government Code Section 53607 enables a public housing corporation's board to delegate its responsibility to invest surplus moneys to the treasurer, provided he submits to the board a monthly report of investment transactions (Treasurer's Report).

#### **IV. PUBLIC TRUST**

All participants in the investment process shall act as custodians of the public trust. The Corporation Treasurer or his designee, the Assistant Finance Director, shall recognize that the investment portfolio is subject to public review and evaluation. The overall program shall be designed and managed with a degree of professionalism that is worthy of the public trust. In a diversified portfolio it must be recognized that occasional measured losses are inevitable, and must be considered within the context of the overall portfolio's investment return, provided that adequate diversification has been implemented.

#### **V. PRUDENCE**

The City of Montclair adheres to the guidance provided by the "prudent investor standard," which obligates a fiduciary to insure that all persons investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing public funds shall act with care, skill, prudence,

and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the Corporation.

#### **VI. DIVERSIFICATION**

The investment portfolio will be diversified to avoid incurring unreasonable and avoidable risks regarding specific security types or individual financial institutions.

#### **VII. MARKET-AVERAGE RATE OF RETURN**

The investment portfolio shall be designed to attain a market-average rate of return throughout budgetary and economic cycles, taking into account the City of Montclair Housing Corporation's risk constraints, the cash flow characteristics of the portfolio, state and local laws, and ordinances and resolutions that restrict investments.

#### **VIII. CRITERIA FOR INVESTMENT SELECTION**

In accordance with Government Code Section 53600.5, the primary criteria, in priority of order, which investment decisions shall be based upon are as follows:

- (a) **SAFETY:** Safety of principal is the most important criteria of investment. Attention must be given to the continued solvency of financial institutions in which the Corporation invests money. Also, investments in long-term securities must be considered from the standpoint of potential losses incurred upon sale of securities to meet operating needs.
- (b) **LIQUIDITY:** The Corporation's investment portfolio will remain sufficiently liquid to meet all operating requirements, which might be reasonably anticipated.
- (c) **YIELD (RETURN ON INVESTMENT):** Investments should be made with the objective of maximizing the rate of return consistent with safety and liquidity requirements.

#### **IX. PERMISSIBLE INVESTMENTS**

Government Code Section 53635 authorizes a local agency to deposit a portion or all of its moneys in state or national banks, savings associations or federal associations, credit unions, or any federally insured industrial loan company in this state. Also, Code Section 53635 enumerates investment media in which a local agency may invest its surplus moneys pursuant to Code Section 53601. The

following list of permissible investment media is verbatim from Government Code Section 53601:

- (a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the local agency or by a department, board, agency, or authority of the local agency.
- (b) United States Treasury notes, bonds, bills or certificates of indebtedness or those for which the faith and credit of the United States are pledged for the payment of principal and interest.
- (c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the state or by a department, board, agency or authority of the state.
- (d) Registered treasury notes or bonds of any of the other 49 United States in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 United States, in addition to California.
- (e) Bonds, notes, warrants or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by the local agency or by a department, board, agency or authority of the local agency.
- (f) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.
- (g) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as banker's acceptances, which are eligible for purchase by the Federal Reserve System. Purchases of banker's acceptances may not exceed 180 days maturity or 40 percent of the agency's surplus funds, which may be invested pursuant to this section. However, no more than 30 percent of the agency's surplus funds may be invested in the banker's acceptances of any one commercial bank pursuant to this section.
- (h) Commercial paper of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided for by Nationally Recognized Statistical-Rating Organization (NRSRO).

The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):

- (1) The entity must be organized and operating in the United States as a general corporation having total assets in excess of five hundred million dollars (\$500,000,000) and having an "A" or higher rating for the issuer's debt, other than commercial paper, as provided for by a nationally recognized statistical-rating organization.
- (2) The entity must be organized within the United States as a special purpose corporation, trust, or limited liability company having program-wide credit enhancements including, but not limited to, over-collateralization, letters of credit, or surety bond, and having commercial paper that is "A-1" or higher rating, or the equivalent, by a nationally recognized statistical-rating organization.

Purchases of eligible commercial paper may not exceed 270 days maturity nor represent more than 10 percent of the outstanding paper of an issuing corporation. No more than 40 percent of the agency's money may be invested in eligible commercial paper.

- (i) Negotiable certificates of deposit issued by a nationally or state-chartered bank or a savings association or federal association or a state or federal credit union or by a state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit may not exceed 30 percent of the agency's surplus money, which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decision-making authority in the administrative office, manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.
- (j) (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

- (2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreements does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly.
- (3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:
  - (A) The security to be sold on reverse repurchase agreement or securities lending agreements has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.
  - (B) The total of all reverse repurchase agreements and securities lending agreement owned by the local agency does not exceed 20 percent of the base value of the portfolio.
  - (C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sales of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.
  - (D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.
- (4) (A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may only be made upon prior approval of the

governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

- (B) For purposes of this chapter, "significant banking relationship" means any of the following activities of a bank:
  - (i) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.
  - (ii) Financing of a local agency's activities.
  - (iii) Acceptance of a local agency's securities or funds as deposits.
- (5) (A) "Repurchase agreement" means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.
- (B) "Securities," for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.
- (C) "Reverse repurchase agreement" means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date, and includes other comparable agreements.
- (D) "Securities lending agreement" means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

- (E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.
  - (F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.
- (k) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated "A" or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's money that may be invested pursuant to this section.
- (l) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.
- (2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).
- (3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

- (A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.
  - (B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and with assets under management in excess of five hundred million dollars (\$500,000,000).
- (4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:
  - (A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.
  - (B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).
- (5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's money that may be invested pursuant to this section. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).
- (m) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.
- (n) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of

securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

- (o) Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pass-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond of a maximum of five years' maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.
- (p) Shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (o), inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:
  - (1) The adviser is registered or exempt from registration with the Securities and Exchange Commission.
  - (2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (o), inclusive.
  - (3) The adviser has assets under management in excess of five hundred million dollars (\$500,000,000).

Government Code Section 16429.1 authorizes a local agency to deposit a portion or all of its surplus moneys in the Local Agency Investment Fund (LAIF). LAIF is an account established by the state that offers a local agency a safe, highly liquid means to invest its surplus funds. Government Code Section 16430 limits LAIF to investing in securities, which are essentially the same as those

prescribed in Section 53635 above. An agency may deposit \$40,000,000 with LAIF and engage in 15 transactions per month.

#### **X. INTERNAL CONTROL PROCEDURES**

The following internal control procedures are established to assure that the investment program is operated in a safe and prudent manner. An employee of the Corporation, other than the Corporation Treasurer or his designee, will verify on a monthly basis to Corporation's board that all investment activity undertaken during the month has been conducted in compliance with the investment policy, including the below internal control procedures.

- (a) **SAFEKEEPING:** Securities purchased from brokers/dealers must be held in a third-party custodial safekeeping account. The securities should be held in a manner that establishes the Corporation's right of ownership.
- (b) **CONFIRMATION:** Confirmation receipts for purchase of authorized securities should include the following information: trade date, par value, maturity value, interest rate, price, settlement date, description of securities purchased, agency's name, net amount due, and third-party custodial information. The confirmation receipt must be issued by the third-party custodian and must be received by the Corporation prior to remitting payment for the security.
- (c) **PAYMENT:** Payment for securities should be on a Delivery Versus Payment (DVP) basis. This must be done via the Corporation's third-party safekeeping agent. NOTE: Book entry is considered delivery.
- (d) **WIRE TRANSFERS:** All wire transfers for the purchase of securities should be initiated by the Corporation Treasurer or his designee who is authorized to invest on behalf of the Corporation. The bank document used to initiate a wire transfer must be approved by the employee responsible for monitoring compliance with internal control procedures prior to executing the wire transfer. NOTE: This procedure does not apply to deposits with the LAIF.

#### **XI. BANKS AND SECURITIES DEALERS**

In selecting financial institutions for the deposit or investment of the City of Montclair Housing Corporation funds, the Treasurer or his designee, the Assistant Finance Director, shall consider the creditworthiness of institutions. The Treasurer and his designee, the Assistant Finance Director, shall continue to monitor financial institutions' credit characteristics and financial history throughout the period in which funds are deposited or invested.

## **XII. RISK TOLERANCE**

The City of Montclair Housing Corporation recognizes that investment risks can result from issuer defaults, market price changes, or various technical complications leading to temporary illiquidity. Portfolio diversification is employed as a way to control risk. The Corporation Treasurer and his designee, the Assistant Finance Director, are expected to display prudence in the selection of securities, as a way to minimize default risk. No individual investment transaction shall be undertaken that jeopardizes the total capital position of the overall portfolio. The Treasurer or his designee, the Assistant Finance Director, may periodically establish guidelines and strategies to control risks of default, market price changes and illiquidity.

## **XIII. INVESTMENT STRATEGY FOR CALENDAR YEAR 2009**

The Corporation will invest at least 50 percent of its surplus moneys in the LAIF and in certificates of deposit issued by banks and savings and loans provided, however, that money deposited with banks and savings and loans are fully insured by FDIC and have maturities of no more than one year. The balance of the Agency's surplus moneys may be invested in any of the investment media discussed in (a) to (p) of Section IX above, provided the investment term is no greater than three years and no investments are made in reverse repurchase agreements. Further, pursuant to Government Code Section 53601.6, no moneys will be invested in inverse floaters, range notes, or interest only strips that are derived from a pool of mortgages.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER AUTHORIZATION TO PURCHASE TWO WELDED BASKETBALL MASTS WITH MOTOR DRIVE OPERATION FROM JAYPRO SPORTING EQUIPMENT	<b>DATE:</b> April 20, 2009
	<b>SECTION:</b> ADMIN. REPORT
	<b>ITEM NO.</b> 12
<b>BUSINESS PLAN:</b> STRATEGIC PRIORITY NOS. 4 AND 5	<b>FILE I.D.:</b> HSV070
	<b>DEPT.:</b> PUBLIC WORKS

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**REASON FOR CONSIDERATION:** The basketball masts in the Community Center gymnasium are no longer functional or safe. One of the masts cannot be raised at all; the other has had multiple rewelds of the support frame. The masts should be replaced as quickly as possible.

**Replacement of the existing basketball masts will satisfy a portion of Strategic Priority Nos. 4 and 5 as contained in the City of Montclair's "Business Plan."**

**BACKGROUND:** The existing basketball masts, the support structures holding the basketball hoops, are the original masts installed when the Community Center was constructed in 1981. Over the years, the repeated raising and lowering of the masts, together with the associated basketball playing, has led to partial failure of the masts. City staff has welded and rewelded the support structures multiple times in order to keep them in service. Further welding and repairs could be done, but the structural integrity of the masts has been impaired to the point where it is no longer advisable to do so.

Staff has obtained a quote from Jaypro Sports Equipment of Waterford, Connecticut, to furnish and install new masts and remove the old ones. The work includes all new components except for the reuse of the existing backboards. These were replaced within the past three years. Most of the companies specializing in this type of equipment are located on the east coast. Jaypro Sporting Equipment is the vendor with a west coast sales representative.

The summer Youth Basketball Program will begin in July. Jaypro estimates that it will take six to eight weeks to furnish and install the equipment, thus meeting the deadline for use.

**FISCAL IMPACT:** The quote from Jaypro Sporting Equipment is for \$18,786 and includes two masts, motor assemblies, winches, other support equipment, and the shipping and installation of the masts. Funding for this project will be from the 2005 Lease Revenue Bond proceeds.

**RECOMMENDATION:** Staff recommends the City Council authorize the purchase of two welded basketball masts with motor drive operation from Jaypro Sporting Equipment.

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

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## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER DECLARING UNCLAIMED BICYCLES IN POLICE CUSTODY AS SURPLUS AND AVAILABLE FOR DONATION TO CALIFORNIA INSTITUTION FOR WOMEN	<b>DATE:</b> April 20, 2009 <b>SECTION:</b> ADMIN. REPORTS <b>ITEM NO.:</b> 13 <b>FILE I.D.:</b> EQS051/052 <b>DEPT.:</b> POLICE
<b>BUSINESS PLAN:</b> N/A	

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**REASON FOR CONSIDERATION:** The City Council is requested to declare unclaimed bicycles in police custody as surplus so they may be made available for donation to the California Institution for Women.

**BACKGROUND:** The bicycles included on the attached list are considered unclaimed property in police custody. Upon being declared as surplus by the City Council, the bicycles would be available for donation to the California Institution for Women.

**FISCAL IMPACT:** There would be no fiscal impact to the City as a result of the donation of these bicycles.

**RECOMMENDATION:** Staff recommends the City Council declare unclaimed bicycles in police custody as surplus and available for donation to the California Institution for Women.

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

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**CITY OF MONTCLAIR  
BICYCLE PROPERTY LIST FOR CIW  
APRIL 2009**

**Montclair Police Department**

Tag No.	Quantity	Description	Serial No.	CR#	Notation
1	1	GREEN BICYCLE		09-0709	
2	1	BLUE SCHWINN SIDEWINDER BICYCLE		08-6640	
3	1	SILVER HUFFY VERONA MOUNTAIN BICYCLE	5L3110079112M0089	08-6746	
4	1	BLACK MOUNTAIN BICYCLE		08-6813	
5	1	BLUE ROADMASTER BICYCLE		08-6815	
6	1	SILVER GT BICYCLE		08-6898	
7	1	SILVER ALUMINUM ESTES BICYCLE		08-6938	
8	1	GREEN 15-SPEED BICYCLE		08-6582	
9	1	BLACK BEACH CRUISER BICYCLE	M130301958	08-6645	
10	1	GRAY COLUMBIA MOUNTAIN BICYCLE	22261	08-6691	
11	1	GT 4130 BICYCLE	6890181	08-7090	
12	1	SHIMANO MAGNA BICYCLE	93TD118543	08-7090	
13	1	ARROW PACIFIC BICYCLE	BC2B007859	08-6072	
14	1	BLUE BMX BICYCLE	AW205902	08-4572	
15	1	BLACK BICYCLE		08-4853	
16	1	CHROME MOUNTAIN BICYCLE	SNFSD05464189	08-5347	
17	1	SILVER 21-SPEED BICYCLE		08-5041	
18	1	WHITE NEXT BICYCLE		08-4862	
19	1	GREEN MAGNA MOUNTAIN BICYCLE	8563-61	08-4609	
20	1	BLACK PHAT BEACH CRUISER BICYCLE	SBCPB00393	08-4831	
21	1	SILVER MAGNA MOUNTAIN BICYCLE	0110 268293	08-4250	
22	1	GRAY BEACH CRUISER BICYCLE	LB33728	08-3308	
23	1	SILVER RAZOR SCOOTER		08-3289	
24	1	PINK ZENITAL BMX BICYCLE	91053559	08-3289	

## AGENDA REPORT

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<b>SUBJECT:</b>	CONSIDER "NO ACTION" ON ALCOHOLIC BEVERAGE PERMIT APPLICATION - BLACK ANGUS STEAKHOUSE	<b>DATE:</b>	April 20, 2009
		<b>SECTION:</b>	ADMIN. REPORTS
		<b>ITEM NO.:</b>	14
<b>BUSINESS PLAN:</b>	N/A	<b>FILE I.D.:</b>	FLP025
		<b>DEPT.:</b>	ADMIN. SVCS.

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**REASON FOR CONSIDERATION:** Applications for Alcoholic Beverage Licenses are routinely presented to the City Council for review.

**BACKGROUND:** Mr. Raymond C. French, Taurian BA, LLC, has applied for an "On-Sale General" license for Black Angus Steakhouse, 9415 Monte Vista Avenue, Montclair, California.

**FISCAL IMPACT:** No fiscal impact

**RECOMMENDATION:** Staff recommends the City Council take "No action" on the California Department of Alcoholic Beverage Control Application for Alcoholic Beverage License(s) for Black Angus Steakhouse, 9415 Monte Vista Avenue, Montclair, California.

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

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## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 09-29, A COMMUNITY DEVELOPMENT BLOCK GRANT CITY-COUNTY DELEGATE AGENCY AGREEMENT FOR FISCAL YEARS 2009-10, 2010-11, AND 2011	<b>DATE:</b> April 20, 2009 <b>SECTION:</b> AGREEMENTS <b>ITEM NO.:</b> 1 <b>FILE I.D.:</b> GRT050 <b>DEPT.:</b> COMMUNITY DEV.
<b>BUSINESS PLAN:</b> N/A	

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**REASON FOR CONSIDERATION:** In June 2008, the City and County entered into a Cooperation Agreement for the Community Development Block Grant (CDBG) Program for Fiscal Years 2009-10 through 2011-12. This Delegate Agreement is a subordinate agreement outlining the details of program administration.

**BACKGROUND:** Federal CDBG regulations provide that cities with a population of 50,000 or greater may receive funding directly from the Department of Housing and Urban Development; conversely, cities having a population of less than 50,000, such as Montclair, may cooperate with their respective counties to qualify for funds.

Montclair has participated in this program since 1974 with numerous street improvements, park improvements, and neighborhood revitalization projects to remove blight and assist low- and moderate-income housing. During the next three years, it is anticipated Montclair's funding would amount to approximately \$300,000 annually.

**FISCAL IMPACT:** Over the three-year term of proposed Agreement No. 09-29, the City would receive approximately \$900,000.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 09-29, a Community Development Block Grant City-County Delegate Agency Agreement for Fiscal Years 2009-10, 2010-11, and 2011-12.

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

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COMMUNITY DEVELOPMENT BLOCK GRANT  
CITY-COUNTY DELEGATE AGENCY AGREEMENT  
For Fiscal Years 2009-10, 2010-11, 2011-12

This Agreement is made and entered into, by and between the County of San Bernardino hereinafter referred to as "COUNTY", and the City of Montclair, a municipal corporation and a political subdivision of the State of California located within the boundaries of San Bernardino County, hereinafter referred to as "CITY".

WITNESSETH

WHEREAS, COUNTY has been designated an "Urban County" by the United States Department of Housing and Urban Development, hereinafter referred to as "HUD", as that term is defined in Title I of the Housing and Community Development Act of 1974 as amended, hereinafter referred to as "ACT", and accordingly, COUNTY will administer a Community Development Block Grant (CDBG) program (CFDA No. 14.218) that includes the development of a Consolidated Submission of the HUD Housing and Community Development Grant programs, hereinafter referred to as "CONSOLIDATED PLAN", which constitutes COUNTY's application for federal assistance under said ACT; and,

WHEREAS, CITY and COUNTY have entered into a "Cooperation Agreement for Community Development Block Grant Funds", as part of COUNTY's CDBG program, covering Fiscal Years 2009-10, 2010-11, and 2011-12, to which this is a subordinate and supplementary agreement per Section 15 (Other Agreements) of said Cooperation Agreement executed by these parties, dated June 17, 2008; and,

WHEREAS, COUNTY administers a CDBG program in cooperation with 12 cities, and in the unincorporated areas of San Bernardino County, through County Department of Community Development and Housing, hereinafter referred to as "CDH"; and,

WHEREAS, CITY has the ability to manage and administer CDBG projects; and,

WHEREAS, CITY chooses to assume the responsibility of project implementation within its corporate limits in cooperation with COUNTY; and,

WHEREAS, both COUNTY and CITY seek to coordinate their efforts to maximize utilization of personnel and resources and increase efficiency and economies of scale in the planning and administration of the program hereinafter set forth.

NOW, THEREFORE, it is understood and agreed by and between the parties hereto as follows:

1. PURPOSE

This Agreement is made pursuant to the provisions of Article 1, Chapter 5, Division 7, Title I of the Government Code of the State of California (commencing with Section 6500), relating to public agencies. The purpose of this Agreement is to implement the provisions of the Cooperation Agreement in carrying out CDBG activities that have been approved by COUNTY for CITY in accordance with CONSOLIDATED PLAN. The purpose will be accomplished pursuant to the requirements of the ACT, its regulations and other federal, state and county laws and policies in the manner hereinafter set forth.

Unless specified otherwise, CDH shall have the authority to represent COUNTY regarding the terms and conditions of this Contract and the administration thereof.

2. TERM

This Agreement shall become effective starting Fiscal Year 2009-2010 that begins July 1, 2009 and shall continue in full force and effect through Fiscal Year 2011-2012 that ends on June 30, 2012. COUNTY may grant an extension of up to six months of the effective period of this Agreement for the purpose of completing CITY's projects/activities that are underway and cannot be completed during the term of this Agreement. CITY must request any such extension in writing. Any extension will only be effective if granted in writing by COUNTY. Maintenance and operation and monitoring requirements for facilities developed under the terms of the Agreement shall be in effect and continue in full force as prescribed in Section 9.

3. AUTHORIZATION OF PROJECT/ACTIVITY

CITY shall not initiate nor incur expenses for any CDBG funded project or activity covered under the terms of this Agreement prior to receiving written authorization from COUNTY. Written authorization will be accomplished when Attachments A (Request to Initiate Project or Activity) and B (Project or Activity Description) of this Agreement have been completed for a CDBG funded project or activity and signed by CITY and countersigned by CDH. Any such authorized Project or Activity shall hereinafter be referred to as an "AUTHORIZED PROJECT".

4. IMPLEMENTATION OF AUTHORIZED PROJECT

CITY agrees to implement AUTHORIZED PROJECTS in the manner prescribed in the Delegate Agency Coordination Procedures (Attachment C), using the forms and language contained in the Delegate Agency Construction Contract Provisions (Attachment D), and agrees to comply with all applicable local county, state and federal regulations associated with the implementation of CDBG projects.

CITY may contract for all necessary services to complete AUTHORIZED PROJECTS described on its executed Attachments A and B provided that contracts are submitted to and approved in writing by CDH prior to their execution. CITY Attorney is responsible for assuring and certifying that the AUTHORIZED PROJECT undertaken by CITY's contracting party complies with all applicable regulations and statutes, as amended, listed in Attachment C, Section IV.

5. MODIFICATION OF AUTHORIZED PROJECTS

All modifications to AUTHORIZED PROJECT must be pre-approved by COUNTY in order to be considered a part of AUTHORIZED PROJECT and eligible for reimbursement by COUNTY. CITY may request modification(s) to CDBG funding levels authorized by Attachment A or the pertinent Project Description (i.e. Scope of Activity) authorized by Attachment B. Upon receipt of a written request from CITY, and approval by COUNTY, COUNTY will revise Attachments A and B.

6. CONSOLIDATED PLAN AMENDMENT

Requests by CITY to add, delete or substantially modify an activity listed in CONSOLIDATED PLAN must be made in writing to COUNTY. Requests to add new activity(ies) must be accompanied by a CDBG project proposal application.

Substantial modifications are defined as follows: 1) a net increase of greater than \$25,000 for activities with an allocation listed in a published CDBG Action Plan, or as amended, in an amount of \$25,000 or less; or 2) a net increase or decrease greater than 100% of the activity allocation if the allocation is over \$25,000 as listed in a published Action Plan, or as amended; or 3) a net increase or decrease in the activity allocation greater than \$100,000; or 4) a change in the type of activity; or 5) a change in the location of the activity; 6) a change in the beneficiaries of the activity.

Requests for additions and substantial modifications will be reviewed by COUNTY for eligibility and compatibility with CONSOLIDATED PLAN. Additions, deletions and substantial modifications must be approved by CITY Council action and supportive documentation for said action must be sent to COUNTY. CITY shall comply with the requirements of and participate in the implementation of the citizen participation portion of CONSOLIDATED PLAN.

7. COUNTY RESPONSIBILITIES

COUNTY, through CDH, is empowered to enforce all federal regulations pertaining to CDBG funded projects undertaken by CITY under this Agreement. CITY recognizes that COUNTY, as the formal grantee of the CDBG, has full responsibility and obligations to HUD for undertaking the CDBG program and has full authority in administering and allocating funds. CITY will have no direct responsibilities or obligations to HUD, except as identified, under this Agreement. COUNTY will provide technical assistance to CITY in a timely and expeditious manner upon written request to the Director of CDH.

8. CONFORMANCE TO COUNTY PROCEDURES

Under this Agreement, CITY elects to be responsible for carrying out CDBG projects. However, in implementing said projects, CITY must perform all services and activities in accordance with federal and state statutory requirements and with the policies and procedures established by the Board of Supervisors, and shall comply with the following:

A. COMMUNITY DEVELOPMENT ADMINISTRATOR

Upon COUNTY and CITY's mutual assent to this Agreement, CITY will designate a "Community Development Administrator" by filling in the name of said person in the space provided below. The Community Development Administrator is the responsible authority for all correspondence with COUNTY, the signatory on AUTHORIZED PROJECT Attachments A and B and shall advise the CITY council, CITY administration and CITY staff, as appropriate regarding the CDBG program. CITY may, by written notification as set forth below, change the Community Development Administrator.

CITY's Community Development Administrator for this Agreement is

Steve Lustro, TITLE: Community Development Director

B. FISCAL CONTACT PERSON

For purposes of this Agreement, CITY shall also designate a fiscal contact person by filling in the space provided below. The fiscal contact person shall be responsible for billing and fiscal procedures regarding the CDBG program and will serve as the primary contact for technical fiscal matters. CITY may, by written notification as set forth below, change the fiscal contact person.

CITY Fiscal Contact person for this Agreement is

Richard Beltran, TITLE: Assistant Finance Director

C. CITY shall be responsible for maintaining complete and separate fiscal accounts for CDBG funds which come under its control in such manner as to permit the reports required by COUNTY to be prepared therefrom and to permit the tracing of CDBG funds to their final expenditure. CITY will submit to CDH complete and detailed project descriptions, budgets, and expenses for each project that CITY implements with CDBG funds along with monthly reports of grant expenditures.

9. MAINTENANCE AND OPERATION OF FACILITIES

CITY shall provide maintenance and operation for the life of any and all facilities constructed with CDBG funds under this Agreement that are CITY owned or operated, for the life of the facility, not less than 20 years. This Section shall survive the termination of this Agreement.

10. FUNDING LIMITS

CDBG funding of AUTHORIZED PROJECTS is limited to the amount allocated by CITY in AUTHORIZED PROJECTS Attachment A.

11. DISBURSEMENT OF FUNDS

All CDBG funds allocated to CITY'S AUTHORIZED PROJECT(S) shall be received from the federal government by COUNTY under ACT. CDH will disburse the funds to CITY on a cost reimbursement basis. Billing shall be accompanied by all pertinent source documentation to be presented to CDH by CITY on or about the first day of each month, allowing 15 days for payment on the part of CDH. COUNTY shall be entitled to retain from such funds such amount as is calculated as the direct costs (including, but not limited to, salaries, benefits, mileage, actual cost of materials, meals and other authorized expenses allowable under the Travel Code Section 13.0638 County of San Bernardino) incurred by COUNTY in implementing CITY'S AUTHORIZED PROJECTS.

12. WITHHOLDING OF FUNDS

COUNTY shall retain the right to withhold funds for any programs carried out by CITY, CITY'S Contractor, or CITY'S subcontractor upon giving written notice to CITY indicating that COUNTY has determined that CITY has not performed its obligations as stated in this Agreement in a satisfactory or timely manner consistent with federal regulations or policy. COUNTY shall notify CITY in writing of this determination, specifying the objection(s) to CITY'S performance. CITY shall then have a maximum of 10 days in which to remedy said deficiencies. Should approval of COUNTY not be obtained within said period, COUNTY shall have full authority to reallocate CITY'S CDBG program funding to other eligible activities, which can be implemented or to assume sole responsibility for carrying out any and/or all AUTHORIZED PROJECTS, upon written notice to CITY. Upon such notice, CITY agrees to cease all activity provided hereunder, as specified in said notice.

13. PROGRAM INCOME

Program income represents net income directly generated from the use of CDBG funds by CITY as a result of the activity funded under the terms of this Agreement. When such income is generated by an activity only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used. CITY shall retain the use of program income by returning program income to COUNTY and requesting project budget increases for activities authorized under this Agreement. Program income shall be returned to COUNTY within 30 days after: a) disposition or sale of real or personal property occurs or; b) cumulative program income reaches increments of \$1,000; or c) the end of each fiscal year. CITY shall include the reports required by Section 14, PROGRAM REPORTING AND RETENTION OF RECORDS, all sources and amounts of program income on a monthly and year-to-date basis.

Program income returned by COUNTY to CITY will be spent by CITY on only those costs authorized under this Agreement. All provisions of this Agreement shall apply to said use of program income funds. CITY shall account for the receipt and use of program income in such a way that program income is spent on AUTHORIZED PROJECTS before additional CDBG funds are spent.

Any program income on-hand when this Agreement expires or is received after such expiration, will be paid to COUNTY.

14. PROGRAM REPORTING AND RETENTION OF RECORDS

CITY agrees to prepare and submit financial, program progress, and other reports as required by HUD or COUNTY directives. CITY shall maintain such program, property, personnel, financial, statistical and other records, supporting documents, and accounts as are considered necessary by HUD or COUNTY to assure proper accounting for all Contract funds. Said records, documents and accounts are to be retained by CITY for a minimum of five years. The retention period starts from the date the COUNTY submits its annual performance and evaluation report, as prescribed in 24 CFR 91.520, in which the service under the terms of this Contract is reported on for the final time. Said COUNTY submission will follow CITY's final submission to COUNTY of reports identified under this paragraph. Records and accounts subject to litigation or audit must be maintained for five years or until the issue is resolved, whichever is longer.

Records that pertain to real estate transactions must be maintained for five years or the number of years that there is an outstanding obligation, whichever is longer. The starting date for retention of records on CDBG-purchased equipment begins at the end of the equipment's use, when it is disposed of or transferred. The retention period for records relating to program income begins on the last date of COUNTY fiscal year in which the income is earned. All CITY's records, with the exception of confidential client information, shall be made available to representatives of COUNTY and the appropriate federal agencies. CITY is required to submit data necessary to complete the Annual Grantee Performance Report in accordance with HUD regulations in the format and at the time designated by the CDH Director or his designee.

15. MONITORING

CDH Director or his designee will conduct periodic monitoring of CITY administration of AUTHORIZED PROJECTS. Monitoring will focus on the extent to which the CONSOLIDATED PLAN has been implemented and measurable goals achieved, effectiveness of project management, and impact of AUTHORIZED PROJECTS. Authorized representatives of COUNTY and HUD shall have the right of access to all activities and facilities operated by CITY under this Agreement. Facilities include all files, records, and other documents related to the performance of this Agreement. CITY will permit on-site inspection by COUNTY, and HUD representatives, and insure that its employees furnish such information, as in the judgment of COUNTY and HUD representatives, may be relevant to a question of compliance with contractual conditions and HUD directives, or the effectiveness, legality, and achievements of the program.

16. ACCOUNTING

CITY must establish and maintain, on a current basis, an adequate accrual accounting system in accordance with generally accepted accounting principles and standards.

17. AUDITS

CITY is required to arrange for an independent financial and compliance audit annually for each fiscal year during which federal funds are received under this Agreement as required by Circular A-128 pursuant to the Single Audit Act of 1984, Public Law 98-502. The results of the single audit must be submitted to COUNTY within 30 days of completion. Within 30 days of the submittal of said audit report, CITY shall provide a written response to all conditions or findings reported in said audit report. The response must examine each condition or finding and explain a proposed resolution, including a schedule for correcting any deficiency. All condition or finding correction actions shall take place within six months after CDH's receipt of the audit report. An audit may also be conducted by federal, state or local funding source agencies as part of the COUNTY's audit responsibilities. COUNTY and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of CITY. CITY's staff will cooperate fully with authorized auditors when they conduct audits and examinations of CITY's program. If indications of misappropriation or misapplication of the funds of this Agreement cause COUNTY to require a special audit, the cost of the audit will be encumbered and deducted from funds

allocated to CITY's CDBG AUTHORIZED PROJECTS. Should COUNTY subsequently determine that the special audit was not warranted, the amount encumbered will be restored to said CDBG AUTHORIZED PROJECT allocations. Should the special audit confirm misappropriation or misapplication of funds, CITY shall reimburse COUNTY the amount of misappropriation or misapplication from non-CDBG funding sources.

18. REVERSION OF ASSETS

Upon Agreement of termination, CITY shall transfer to COUNTY all CDBG funds on-hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.

All real property acquired or improved in whole or in part with CDBG funds in excess of \$25,000 under this Contract must continue in the use that provides the service benefits and national objectives, for which it was funded until five years after expiration of this Contract as set forth in 24 CFR 570.503, or such longer period of time as determined by COUNTY; or it must be disposed of in a manner resulting in a reimbursement to COUNTY in the amount of the current fair market value of the property, as determined by COUNTY, less any portion thereof attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to the property. This Section 18 shall survive the termination of this Contract.

19. TERMINATION AND TERMINATION COSTS

This Agreement may be terminated in whole or in part at any time by either party upon giving 30 days notice in writing to the other party. An agreement must be reached by both parties as to conditions for termination in compliance with the provisions of federal regulations at 24 CFR Part 85.44, Termination for Convenience. CDH is hereby empowered to give said notice subject to ratification by the COUNTY Board of Supervisors.

COUNTY may immediately terminate this Agreement upon the termination, suspension, discontinuation or substantial reduction in HUD CDBG funding for the Agreement activity or if for any reason the timely completion of the work under this Agreement is rendered improbable, infeasible or impossible. If CITY materially fails to comply with any term of this Agreement, COUNTY may take one or more of the actions provided under the federal regulation at 24 CFR Part 85.43, Enforcement, which includes temporarily withholding cash, disallowing non-compliant costs, wholly or partly terminating the award, withholding future awards, and other remedies that are legally available. In such an event, CITY shall be compensated for all services rendered and all necessarily incurred costs performed in good faith in accordance with the terms of this Agreement that have been previously reimbursed, to the date of said termination to the extent that CDBG funds are available from HUD.

20. PROJECT ACKNOWLEDGMENT

Should CITY determine that the funding sources or the names of responsible public officials be displayed on a completed building or significant project, such identification should be acknowledged on a plaque, permanently mounted in an appropriate location, made of bronze or other appropriate material, acknowledging the funding source as the Department of Housing and Urban Development, San Bernardino County Community Development Block Grant. The current Board of Supervisors and the members of the CITY Council shall also be identified. When multiple funding sources are utilized to construct a project, all funding sources shall be identified. The listing order of multiple funding sources identified on the plaque shall be the largest dollar amount first, the second largest dollar amount second, etc.

21. CONTRACT COMPLIANCE

CITY will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and Labor Surplus Area Firms (a firm located in an area of high unemployment) are used when possible in compliance with provisions of Title 24 code of federal regulations Part 85.36(e).

CITY shall comply with Executive Orders 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107, (Equal Employment Opportunity), Executive Orders 11625, 12138, 12432, 12250, and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act, and other applicable federal, state and COUNTY laws, regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

CITY shall make every effort to ensure that all projects funded wholly or in part by CDBG program funds shall provide equal employment and career advancement opportunities for minorities and women. In addition, CITY shall make every effort to employ residents of the area and shall keep a report of CITY staff positions that have been funded directly by, or as a result of this program.

22. DISCRIMINATION

No person shall, on the grounds of race, sex, creed, color, religion, or national origin, be excluded from participating in, be refused the benefits of, or otherwise be subjected to discrimination in any activities, programs, or employment by CITY.

23. STANDARDS OF CONDUCT

Pursuant to Office of Management and Budget Circular A-110 Attachment O and 24 CFR 570.611, Conflict of Interest, and 24 CFR Part 85.36, Procurement, CITY shall maintain a written code or standards of conduct that shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by federal funds. No employee, officer or agent of the CITY shall participate in selection, award, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent;
- b. Any member of his immediate family;
- c. His or her partner; or
- d. An organization, which employs, or is about to employ, any of the above, has financial or other interest in the firm selected for award.

CITY officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-Agreements.

CITY may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by state or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by CITY's officers, employees, or agents, or by contractors or their agents.

24. FORMER COUNTY OFFICIALS

CITY agrees to provide or has already provided information on former COUNTY Administrative Officials (as defined below) who are employed by or represent CITY. The information required includes a list of former COUNTY Administrative Officials, who terminated County employment within the last five years and are now officers, principals, partners, associates, or members of the business. The information also includes the employment with or representation of CITY. For purposes of this provision, "COUNTY Administrative Official" is defined as a member of the Board of Supervisors or such Officer's staff, COUNTY Administrative Officer or member of such Officer's staff, COUNTY Department or Group Head, Assistant Department or Group Head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

25. RELIGIOUS PROSELYTIZING OR POLITICAL ACTIVITIES

CITY agrees that it will not perform or permit any religious proselytizing or political activities in connection with the performance of this Agreement. Funds under this Agreement will be used exclusively for performance of the work required under this Agreement and no funds made available under this Agreement shall be used to promote any religious or political activities.

26. INDEMNIFICATION

CITY agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from and cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by COUNTY on account of any claim therefore, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities.

CITY shall indemnify, defend and hold harmless COUNTY and its respective authorized officers, employees, agents and volunteers from any liability, claims, losses, demands, and actions incurred by COUNTY as a result of the determination by HUD or its successor that activities under taken by each of CITY under the program(s) fail to comply with any laws, regulations or policies applicable thereto or that any funds billed by and disbursed to CITY under this Contract were improperly expended. This Section 26 shall survive the termination of this Contract.

27. SELF-INSURANCE

The CITY and the COUNTY are authorized self-insured public entities for purposes of general liability, automobile liability, professional liability and workers' compensation. CITY and COUNTY warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against any liabilities arising out of their performance regarding the terms and conditions of this agreement.

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28. AMENDMENTS: VARIATIONS

This writing, with attachments, embodies the whole of this Agreement of the parties hereto. There are no oral agreements contained herein. Except as herein provided, additions or variations of the terms of this Agreement shall not be valid unless made in the form of a written amendment to this Agreement formally approved and executed by both parties.

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

COUNTY OF SAN BERNARDINO

CITY OF MONTCLAIR

By: \_\_\_\_\_  
GARY C. OVITT, Chairman  
Board of Supervisors

By: \_\_\_\_\_  
PAUL M. EATON, Mayor

Dated: \_\_\_\_\_

APPROVED AS TO FORM. THE TERMS AND PROVISIONS OF THIS AGREEMENT ARE FULLY AUTHORIZED UNDER STATE AND LOCAL LAW AND THIS AGREEMENT PROVIDES FULL LEGAL AUTHORITY FOR COUNTY TO UNDERTAKE OR ASSIST IN UNDERTAKING ESSENTIAL COMMUNITY DEVELOPMENT AND HOUSING ASSISTANCE ACTIVITIES, SPECIFICALLY URBAN RENEWAL AND PUBLICLY ASSISTED HOUSING.

ATTEST:

By: \_\_\_\_\_  
DONNA JACKSON, City Clerk

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
MICHELLE D. BLAKEMORE for CDH  
Principal Assistant County Counsel

APPROVED AS TO FORM

By: \_\_\_\_\_  
DIANE E. ROBBINS, City Attorney

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

Dated: \_\_\_\_\_

DENA SMITH  
Clerk of the Board of Supervisors  
of the County of San Bernardino

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

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER AWARD OF CONTRACT TO WEST TEK, INC., IN THE AMOUNT OF \$233,700 FOR CONSTRUCTION OF THE PUBLIC WORKS CORPORATE YARD ABOVE GROUND FUEL TANK PROJECT	<b>DATE:</b> April 20, 2009
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b>
CONSIDER APPROVAL OF AGREEMENT NO. 09-30 WITH WEST TEK, INC.	<b>FILE I.D.:</b> EMR150
CONSIDER AUTHORIZATION OF A \$25,000 CONSTRUCTION CONTINGENCY	<b>DEPT.:</b> PUBLIC WORKS
CONSIDER APPROPRIATING \$260,000 FROM THE 2005 LEASE REVENUE BOND PROCEEDS FOR THE PUBLIC WORKS CORPORATE YARD ABOVE GROUND FUEL TANK PROJECT	

### **BUSINESS**

**PLAN:** STRATEGIC PRIORITY NO. 3, GOAL 3

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

**Construction of this project would satisfy a portion of Strategic Priority No. 3, Goal 3, as contained in Montclair's "Business Plan."**

**BACKGROUND:** The City of Montclair has operated a fueling facility at the City Yard for fueling City vehicles since the City Yard was originally constructed. Over the years requirements for operating fueling facilities, particularly those with underground storage tanks, have become increasingly stricter. Early last year the City was notified that a new California Air Resources Board regulation would go into effect April 1, 2009. This new regulation would require all fueling facilities, including those operated by government agencies, to install new or modify existing vapor recovery systems. This upgrade is the last of the scheduled Enhanced Vapor Recovery equipment upgrades required to date. However, history has shown that more changes will likely be required in the future.

In anticipation of both the required upgrade needed by April 1, 2009, and future upgrades likely to be required, the City identified in its Fiscal Years 2008-2012 Capital Improvement Program to remove its underground fuel storage tanks and replace them with above ground fuel storage tanks. The recently completed Police Department facility at Arrow Highway and Monte Vista Avenue included the installation of an above ground fuel storage tank and dispensing system, eliminating the need for the underground storage tanks at Fire Station 1. Station personnel now fuel at the new Police Department Facility. The proposed project will construct a similar above ground fuel storage tank and dispensing

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

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system at the City Yard and remove the existing underground fuel storage tanks at both Fire Station 1 and the City Yard.

On February 2, 2009, the City Council authorized staff to advertise for bids for the Public Works Corporate Yard Above Ground Fuel Tank Project. The new fuel tank and dispensers will be covered by a steel canopy and have fire sprinkler protection as required by the City's Municipal Code.

On April 2, 2009, the City Clerk received and opened six bids for the proposed work. The bid results are as follows:

<i><b>Contractor</b></i>	<i><b>Bid Amount</b></i>
<b>Engineer's Estimate</b>	<b>\$225,000.00</b>
West Tek, Inc.	\$233,700.00
Tafoya & Associates	\$245,721.00
Perks Construction, Inc.	\$249,315.00
Environmental Project Services	\$256,426.00
Fleming Environmental, Inc.	\$289,675.00
Metro Environmental	\$292,920.00

Following the bid opening, all proposals were reviewed for completeness and accuracy. The bid proposal of the apparent low bidder, West Tek, Inc., provided all the required documents. There was a minor issue with the low bidder's bid submittal. After discussion with the City Attorney, it has been determined to be insignificant. West Tek, Inc., submitted a bid via an overnight delivery service that was to be delivered prior to the 10:00 a.m. deadline. After giving the bid to the delivery service, West Tek, Inc., realized that certain documents had not been signed and an acknowledgment of receipt of Addendum No. 1 had not been included. West Tek, Inc., prepared a new bid package with the same dollar value and delivered it to the City prior to the 10:00 a.m. deadline. Following that submittal, the overnight delivery was received. Technically, West Tek, Inc., submitted two separate bids for the project, an apparent violation of the bid document's instructions to bidders stating that a bidder may only submit or have interest in a single bid. However, since both bids had the same dollar value, West Tek, Inc., was deemed the lowest responsible, responsive bidder for the project. After a reference check of West Tek, Inc., it appears as though the company has the personnel, equipment, and job experience necessary to complete this contract in accordance with the plans and specifications.

**FISCAL IMPACT:** The Fiscal Years 2008-2012 Capital Improvement Program included appropriations of \$175,000 and \$24,842 from the Facility Improvement Fund, funding derived from the General Fund, for the installation of an above ground fuel storage tank and the removal of the storage tanks at Fire Station 1. It is now proposed that the \$175,000 appropriation be returned to the Facility Improvement Fund and that those funds be replaced with an appropriation of \$260,000 from the 2005 Lease Revenue Bond Proceeds.

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

1. Award a contract to West Tek, Inc. in the amount of \$233,700 for construction of the Public Works Corporate Yard Above Ground Fuel Tank Project.
2. Approve Agreement No. 09-30 with West Tek, Inc.
3. Authorize a \$25,000 construction contingency.
4. Appropriate \$260,000 from the 2005 Lease Revenue Bond Proceeds for the Public Works Corporate Yard Above Ground Fuel Tank Project.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 09-31 WITH SAN BERNARDINO COUNTY TO RECEIVE \$7,500 IN NONMATCHING FUNDS FROM THE EMERGENCY MANAGEMENT PERFORMANCE GRANT PROGRAM	<b>DATE:</b> April 20, 2009 <b>SECTION:</b> AGREEMENTS <b>ITEM NO.:</b> <b>FILE I.D.:</b>
<b>BUSINESS PLAN:</b> N/A	<b>DEPT.:</b> FIRE

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 09-31 with San Bernardino County to receive \$7,500 in nonmatching funds from the Emergency Management Performance Grant (EMPG) Program.

**BACKGROUND:** The purpose of the EMPG Program is to increase the capabilities of local jurisdictions, which comprise the San Bernardino County Operational Area (OA), to plan for, respond to, and recover from major emergencies and disasters. The EMPG Program provides resources to the OA for the development and implementation of the Standardized Emergency Management System (SEMS)/National Incident Management System (NIMS) within the county. The program also supports the Operational Area Coordinating Council (OACC) with comprehensive emergency management planning and participation by county and cities/towns.

**FISCAL IMPACT:** Under the approved EMPG Program funding formula for Federal Fiscal Year 2008-09, the City would receive approximately \$7,500 as a result of execution of Agreement No. 09-31 with San Bernardino County.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 09-31 with San Bernardino County to receive \$7,500 in nonmatching funds from the Emergency Management Performance Grant Program.

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

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**SAN BERNARDINO COUNTY OPERATIONAL AREA**

**EMERGENCY MANAGEMENT PERFORMANCE GRANT PROGRAM (EMPG)**

**FY2008 NOTICE OF INTEREST**

1. Date of Filing: \_\_\_\_\_

2. Name of Jurisdiction: City of Montclair

3. **Statement of Available Funds:** The approved Emergency Management Performance Grant Program (EMPG) funding formula for FY2008 indicates the above named jurisdiction is eligible to approximately receive the following: \$ 7,427

4. It is the intent of the jurisdiction to:  **Accept**  **Reject** the funds for which it is eligible.

5. **Conditions of Acceptance:** In accepting the EMPG funds, the jurisdiction agrees to meet the required criteria noted in the *San Bernardino County Operational Area (OA), EMPG Program Criteria*, and match EMPG funding on a dollar-for-dollar basis.

The jurisdiction will provide its match by:

**Cash**                       **In-Kind**                       **Combination**

6. **Conditions of Rejection:** In rejecting EMPG funds, the jurisdiction understands that it will not receive any EMPG funds distributed to the OA during FY2008.

7. **Payment of Funds:** The jurisdiction understands that the OA Lead Agency will disperse EMPG funds on an annual basis, or as funds are dispersed from the State.

8. **Program Compliance:** The jurisdiction understands that continued eligibility is contingent upon meeting the required criteria in the *San Bernardino County OA EMPG Program Criteria* document.

9. **Authorized Signature:**

\_\_\_\_\_  
Primary Representative

\_\_\_\_\_  
Date

Mail to: San Bernardino County Fire Department/OES  
1743 Miro Way  
Rialto, CA 92376  
Attn: Jesus Felix

**SAN BERNARDINO COUNTY OPERATIONAL AREA  
EMERGENCY MANAGEMENT PERFORMANCE GRANT (EMPG)**

**FY08 EMPG PROGRAM CRITERIA**

**Program Purpose:**

To provide resources to San Bernardino County Operational Area (OA) for the development and implementation of the Standardized Emergency Management System (SEMS)/National Incident Management System (NIMS) within the County. To continue to support the Operational Area Coordinating Council (OACC) with comprehensive Emergency Management planning and participation by County and cities/towns.

**Eligible Jurisdictions:**

The County and any city/town in the OA may apply.

**Use of Funds:**

This Program is intended to focus on increasing the capabilities of local jurisdictions, which comprise the OA, to plan for, respond to, and recover from major emergencies and disasters.

The Emergency Management Performance Grant (EMPG) Program criteria and funding distribution has been based on a Federal Fiscal Year (FFY), October 1 through September 30. The FY08 EMPG has a 15 month performance period (April 1, 2008 to June 30, 2009). Eligibility to receive EMPG funds will be based on the following criteria:

**San Bernardino County Operational Area Criteria**

1. Be a signatory to the OA OACC Agreement.
2. File a Notice of Interest (NOI) form and Grant Assurances form with the OA Lead Agency by May 22, 2008.
3. Designate an Emergency Program Manager responsible for oversight of jurisdiction's program and to serve as the coordinator for SEMS/NIMS integration.
4. Attend four (4) of five (5) Operational Area Coordinating Council (OACC) meetings by a Primary or Alternate representative within the performance period (April 1, 2008 to June 30, 2009).
5. Match any State and Local Assistance (SLA)/Emergency Management Performance Grant (EMPG) funds received dollar-for-dollar in cash, in-kind or a combination thereof, allocated for Emergency Management programs and/or equipment dedicated within the jurisdiction.
6. For real disaster/emergency events or for drills/exercises, utilize the RIMS on-line system or fax the RIMS report to County OES.

**State OES Criteria**

1. Comply with NIMS requirements as established by Department of Homeland Security (DHS) by implementing SEMS in a manner consistent with NIMS.
2. Review and revise the jurisdiction's Emergency Operations Plan in accordance with the schedule established in the plan, and submit the revised plan to State OES at least every

- three years for their review according to published emergency plan criteria. Generally, SEMS requires EOP updates every three years unless formally altered by extensions.
3. Coordinate the businesses, private non-profits, volunteer organizations and tribal governments to establish and maintain emergency management roles and responsibilities in the emergency plan.
  4. Train personnel to perform the emergency management functions in the jurisdictions' emergency plan and to comply with SEMS and NIMS training requirements established for the current year.
  5. Participate in a disaster exercise that test the jurisdiction's emergency plan, emergency facilities and equipment. Conduct an annual EOC focused exercise (discussion, tabletop, functional, field) and/or training. Provide an on-going training program which demonstrates an understanding of NIMS/SEMS.
  6. Evaluate exercise(s) and emergency response and make improvements to the emergency management system based on recommendations established in after action reports. Prepare and submit an After Action Report (AAR) with a Corrective Actions Plan to both the Governor's Office of Emergency Services Southern Region office and San Bernardino County Fire Office of Emergency Services.
  7. Provide for a method to ensure the ability for 24/7 contact from County OES or State OES on emerging or active emergency activities related to emergency management.
  8. Participate in communities and programs to improve the ability to communicate with other agencies.

**How to Apply:**

All jurisdictions shall submit a Notice of Interest (NOI) form. The NOI will indicate the jurisdiction's acceptance or rejection of funding and will act as an application of understanding of the terms and conditions for receipt of funds.

**Payment of Funds:**

Jurisdictions who currently receive or are entitled to receive EMPG funds by virtue of their filing a NOI and Grant Assurances form will receive such funding on an annual basis. Distribution of funds will depend on receipt of dollars from the state and compliance with program criteria. All jurisdictions will be required to complete the Program Compliance Assurance Form which is due on July 17, 2009.

**Program Compliance Review:**

Accountability measures for all grantees will be based on the OA FY08 EMPG program criteria. The Steering Committee, established by the OACC, will review the program criteria annually and before disbursement of funds. If a local jurisdiction fails to achieve the annual eligibility requirements, the OA may withhold funding for that jurisdiction.

**Available EMPG Funds under this Grant for the OA:**

Total FY08 EMPG allocation \$320,158.



**SAN BERNARDINO COUNTY OPERATIONAL AREA  
 FY2008 EMPG COMPLIANCE ASSURANCE FORM  
 Page 2 of 3**

✓	#	State OES Criteria Description
	1.	<p>Comply with NIMS requirements as established by Department of Homeland Security (DHS) by implementing SEMS in a manner consistent with NIMS.</p> <p>Please describe your jurisdiction's NIMS compliance activities.</p>
	2.	<p>Review and revise the jurisdiction's Emergency Operations Plan in accordance with the schedule established in the plan, and submit the revised plan to State OES at least every three years for their review according to published emergency plan criteria. Generally, SEMS requires EOP updates every three years unless formally altered by extensions.</p> <p>EOP revised date:</p>
	3.	<p>Coordinate the businesses, private non-profits (PNP's), volunteer organizations and tribal governments to establish and maintain emergency management roles and responsibilities in the emergency plan.</p> <p>Please describe your jurisdiction's coordination between the business community, PNP's, volunteer groups, and other public safety entities.</p>
	4.	<p>Train personnel to perform the emergency management functions in the jurisdictions' emergency plan and to comply with SEMS and NIMS training requirements established for the current year.</p> <p>NIMS/SEMS Training Description:</p> <p style="text-align: center;">Date(s):</p> <p>NIMS/SEMS Training Description:</p> <p style="text-align: center;">Date(s):</p>

\* Text Fields are expandable as information is entered

**SAN BERNARDINO COUNTY OPERATIONAL AREA  
 FY2008 EMPG COMPLIANCE ASSURANCE FORM  
 Page 3 of 3**

5.	<p>Participate in a disaster exercise that test the jurisdiction's emergency plan, emergency facilities and equipment. Conduct an annual EOC focused exercise (discussion, tabletop, functional, field) and/or training. Provide an on-going training program which demonstrates an understanding of NIMS/SEMS.</p> <p>Exercise/Training Description:</p> <p style="text-align: center;">Date(s):</p> <p>Exercise/Training Description:</p> <p style="text-align: center;">Date(s):</p>
6.	<p>Evaluate exercise(s) and emergency response and make improvements to the emergency management system based on recommendations established in after action reports. Prepare and submit an After Action Report (AAR) with a Corrective Actions Plan to both the Governor's Office of Emergency Services (State OES) Southern Region office and San Bernardino County Fire Office of Emergency Services (County OES).</p> <p>AAR/Corrective Actions Plan Description:</p> <p style="text-align: center;">Submittal Date:</p>
7.	<p>Provide for a method to ensure the ability for 24/7 contact from County OES or State OES on emerging or active emergency activities related to emergency management.</p> <p>Please describe your jurisdiction's activities:</p>
8.	<p>Participate in communities and programs to improve the ability to communicate with other agencies.</p> <p>List communities and programs your jurisdiction is actively participating in:</p>

\* Text Fields are expandable as information is entered

**FY08 Emergency Management Performance Grant  
Assurances, Certifications, Terms, and Conditions**

**ASSURANCES**

The applicant hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including OMB Circulars A-87, A-102, A-133; Executive Order 12372 (intergovernmental review of federal programs); and 28 C.F.R. pts. 66 (administrative requirements for grants and cooperative agreements). The applicant also specifically assures and certifies that:

1. It has the legal authority to apply for federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.
2. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
3. It will give the awarding agency, the General Accounting Office, or the State of California, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance, and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
4. It will comply with all lawful requirements imposed by the awarding agency, specifically including any applicable regulations, such as 28 C.F.R. pts. 18, 22, 23, 30, 35, 38, 42, 61, and 63.
5. It will assist the awarding agency (if necessary) in assuring compliance with section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321).
6. It will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. § 10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Education Amendments of 1972 (20 U.S.C. §§1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); see Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).
7. It will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.), which govern the treatment of persons displaced as a result of federal and federally-assisted programs;
8. It will comply with requirements of 5 U.S.C. §§ 1501-08 and §§ 7324-28, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.
9. It will initiate and complete the work within the approved performance period after receipt of approval of the State of California.

10. It will comply with Standardized Emergency Management (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, Section 8607.1(e) and CCR Title 19, Sections 2445, 2446, 2447, and 2448.
11. It has complied with Homeland Security Presidential Directive #5, dated February 2003 which directed the establishment of a nationwide incident management system for all hazards, which is the National Incident Management System, or NIMS, and will continue to comply each year. Current compliance includes integration of NIMS into training, preparedness, and emergency plans.
12. It has requested through the State of California, federal financial assistance to be used to perform eligible work approved in the applicant's application for federal assistance. It will after the receipt of federal financial assistance, through the State of California, agree to the following:
  - a. To return to the State of California such part of the funds so reimbursed pursuant to the above numbered application, which are excess to the approved actual expenditures.
  - b. In the event the approved amount of the above numbered project application is reduced, the reimbursement applicable to the amount of the reduction will be promptly refunded to the State of California.
13. In general, grantees are not required to comport with the restrictions of the Buy American Act (41 U.S.C. 10a). However, grants authorized under the Stafford Act, including the EMPG program, must follow these standards. The Buy American Act requires that all materials purchased be produced in the United States, unless such materials are not available, or such a purchase would not be in the public interest.

## **CERTIFICATIONS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the State of California determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**: As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions found at [www.whitehouse.gov/omb/grants](http://www.whitehouse.gov/omb/grants).

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

## 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT):

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510

A. The applicant certifies that it and its principals:

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

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

## 3. CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS; AND DRUG FREE WORKPLACE REQUIREMENT: This certification, which is a required component of the on-line application, commits the applicant to compliance with the certification requirements under 28 CFR part 67, *Government-wide Debarment and Suspension (Non-procurement)*; 28 CFR part 69, *New Restrictions on Lobbying*; and 28 CFR part 83 *Government-wide Requirements for Drug-Free Workplace (Grants)*. All of these can be referenced at: [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/28cfrv2\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/28cfrv2_04.html).

#### 4. SWEATFREE CODE OF CONDUCT:

- a. All applicants contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the subgrant have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The applicant further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.
  - b. The applicant agrees to cooperate fully in providing reasonable access to the applicant's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).
5. DOMESTIC PARTNERS: For subgrants executed or amended after July 1, 2004, the applicant may elect to offer domestic partner benefits to the applicant's employees in accordance with Public Contract Code section 10295.3. However, the applicant cannot require an employee to cover the costs of providing any benefits which have otherwise been provided to all employees regardless of marital or domestic partner status.

#### TERMS AND CONDITIONS

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

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

*Current State Employees (Public Contract Code §10410):*

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

*Former State Employees (Public Contract Code §10411):*

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

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

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

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

2. LABOR CODE/WORKERS' COMPENSATION: Applicant needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and applicant affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. AMERICANS WITH DISABILITIES ACT: Applicant assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. APPLICANT NAME CHANGE: An amendment is required to change the applicant's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
6. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the applicant shall not be:
  - (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
  - (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
  - (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and applicant may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the applicant has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective jurisdiction to the assurances and certifications listed above.

<i>Jurisdiction (Printed)</i> City of Montclair	
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i> Paul M. Eaton, Mayor	
<i>Date Executed</i>	

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER APPROVAL OF AGREEMENT NO. 09-32 APPROVING THE DISADVANTAGED BUSINESS ENTERPRISE IMPLEMENTATION AGREEMENT	<b>DATE:</b> April 20, 2009
	<b>SECTION:</b> AGREEMENTS
	<b>ITEM NO.:</b>
	<b>FILE I.D.:</b> PUB112
	<b>DEPT.:</b> PUBLIC WORKS

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**REASON FOR CONSIDERATION:** Projects using federal funds require compliance with federal regulations that are not necessarily required on projects using local funding only. One of these regulations addresses Disadvantaged Business Enterprises (DBE). The City is required to adopt the Disadvantaged Business Enterprise Implementation Agreement.

**DISCUSSION:** On May 1, 2006, the California Department of Transportation (Caltrans) directed local agencies to implement a wholly Race-Neutral DBE Program in accordance with new race-neutral DBE policy directives. The directives were issued as a result of a decision from the Ninth Circuit Court of Appeals and guidelines promulgated by the Federal Highway Administration (FHWA) in response to that decision. The decision mandated that evidence of discrimination in the transportation contracting industry must be documented in order to implement a Race-Conscious DBE Program. After careful analysis, Caltrans and FHWA concluded that Caltrans, at that time, lacked sufficient evidence to satisfy the strict scrutiny and newly established evidentiary standards established by the Ninth Circuit Court to request a waiver from the U. S. Department of Transportation (USDOT) to continue its use of race-conscious measures (including establishing contract-specific numeric goals to affirmatively drive DBE participation and requiring bidders/proposers to demonstrate responsiveness to such as a condition of award) in meeting the state's Overall DBE Goal. In February 2009, FHWA overturned that decision and decided to go with a Race-Conscious Program to assure a level playing field on which DBEs can compete fairly for Caltrans assisted contracts.

In correspondence received from Caltrans Local Assistance Office on March 4, 2009, the City of Montclair is required to adopt the Disadvantaged Business Enterprise Program Implementation Agreement changing our program from a Race-Neutral program to a Race-Conscious program. Caltrans conducted a Disparity Study; in its findings, Caltrans identified four groups to be underutilized DBE Groups: African American, Asian Pacific American, Women, and Native American businesses. Caltrans requested a waiver as required by 49 CFR §26.15, with the USDOT Federal Highway Administration (FHWA) operating administration to resume implementing its Race-Conscious DBE Program with a limited application to the four identified underutilized DBE groups. Caltrans has received

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

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necessary approval to initiate implementation of a Race-Conscious DBE Program. Failure to comply with Caltrans' federal funding requirements would cause the City to lose federal funding, withhold approval of projects, or other action FHWA deems appropriate under the circumstances.

**FISCAL IMPACT:** City Council approval of the Disadvantaged Business Enterprise Program Implementation Agreement is required to ensure compliance with Caltrans' federal funding requirements, provisions, and financial responsibilities. Failure to do so will directly jeopardize the City's federal financial assistance.

**RECOMMENDATION:** Staff recommends the City Council adopt Agreement No. 09-32 approving the Disadvantaged Business Enterprise Program Implementation Agreement.

CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
DISADVANTAGED BUSINESS ENTERPRISE  
PROGRAM  
IMPLEMENTATION AGREEMENT  
FOR  
LOCAL AGENCIES

March 4, 2009

# CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE IMPLEMENTATION AGREEMENT

For the City/County of Montclair, hereinafter referred to as "RECIPIENT."

## I Definition of Terms

The terms used in this agreement have the meanings defined in 49 CFR § 26.5.

## II OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)

The RECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, the RECIPIENT will sign the California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement (hereinafter referred to as Agreement). The RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

It is the policy of the RECIPIENT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To create a level playing field on which DBE's can compete fairly for DOT-assisted contracts.
- To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.
- To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in DOT-assisted contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

## III Nondiscrimination (§26.7)

RECIPIENT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin. In administering the local agency components of the DBE Program Plan, the RECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

#### **IV Annual DBE Submittal Form (§26.21)**

The RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) by June 1 of each year for the following Federal Fiscal Year (FFY). This form includes an Annual Anticipated DBE Participation Level (AADPL), methodology for establishing the AADPL, the name, phone number, and electronic mailing address of the designated DBELO, and the choice of Prompt Pay Provision to be used by the RECIPIENT for the following FFY.

#### **V Race-Neutral Means of Meeting the Overall Statewide Annual DBE Goal (§26.51)**

RECIPIENT must meet the maximum feasible portion of its AADPL by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
  2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
  3. Providing technical assistance and other services;
  4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
  5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
  6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
  7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
  8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
  9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
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## **VI Race Conscious Means of Meeting the Overall Statewide Annual DBE Goal (§26.51(d))**

RECIPIENT must establish contract goals for Underutilized Disadvantaged Business Enterprises (UDBEs) to meet any portion of your AADPL you do not project being able to meet using race-neutral means. UDBEs are limited to these certified DBEs that are owned and controlled by African Americans, Native Americans, Women, and Asian Pacific Americans.

## **VII Quotas (§26.43)**

RECIPIENT will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

## **VIII DBE Liaison Officer (DBELO) (§26.25)**

RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the RECIPIENT, and ensures that the RECIPIENT is fully and properly advised concerning DBE Program Plan matters. [Specify resources available to the DBELO; e.g., the DBELO has a staff of two professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program.] The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment \_\_\_\_\_ to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

The DBELO is responsible for developing, implementing, and monitoring the RECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

## **IX Federal Financial Assistance Agreement Assurance (§26.13)**

RECIPIENT will sign the following assurance, applicable to and to be included in all DOT-assisted contracts and their administration, as part of the program supplement agreement for each project.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

## **X DBE Financial Institutions (§26.27)**

It is the policy of the RECIPIENT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO. The Caltrans' Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

## **XI Directory (§26.31)**

RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep).

## **XII Required Contract Clauses (§§26.13, 26.29)**

RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

### **A. CONTRACT ASSURANCE**

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as recipient deems appropriate.

[Note – This language is to be used verbatim, as is stated in §26.13(b). See Caltrans Sample Boiler Plate Contract Documents on the Internet at [www.dot.ca.gov/hq/LocalPrograms](http://www.dot.ca.gov/hq/LocalPrograms) under "Publications."]

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## **B. PROMPT PAYMENT**

### **Prompt Progress Payment to Subcontractors**

The local agency shall require contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **Prompt Payment of Withheld Funds to Subcontractors**

The local agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied by including either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **XIII Local Assistance Procedures Manual**

The RECIPIENT will advertise, award and administer DOT-assisted contracts in accordance with the most current published Local Assistance Procedures Manual (LAPM).

### **XIV Transit Vehicle Manufacturers (§ 26.49)**

If FTA-assisted contracts will include transit vehicle procurements, RECIPIENT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49.

### **XV Bidders List (§26.11(c))**

The RECIPIENT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/nonDBE status, age, and annual gross receipts of the firm.

### **XVI Reporting to the DLAE**

RECIPIENT will promptly submit a copy of the Local Agency Bidder/Proposer-UDBE Commitment (Consultant Contract), (Exhibit 10-O(1) "Local Agency Bidder/Proposer-DBE Commitment (Consultant Contract)") or Exhibit 15-G(1) "Local Agency Bidder-UDBE Commitment (Construction Contract) to the DLAE at the time of award of the consultant or construction contracts.

RECIPIENT will promptly submit a copy of the Local Agency Bidder-DBE Information (Exhibit 15-G(2) "Local Agency Bidder-DBE (Construction Contracts) – Information" or Exhibit 10-O(2) "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" of the LAPM) to the DLAE at the time of execution of consultant or construction contract.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" of the LAPM immediately upon completion of the contract for each consultant or construction contract.

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**XVII Certification (§26.83(a))**

RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program will participate as DBEs on DOT-assisted contracts.

**XVIII Confidentiality**

RECIPIENT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information consistent with federal, state, and local laws.

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

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

\_\_\_\_\_  
(Print Name and Title) ADMINISTERING AGENCY  
(Authorized Governing Body Representative)

Attest:

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

Approved as to Form

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

This California Department of Transportation's Disadvantaged Business Enterprise Program Implementation Agreement is accepted by:

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

\_\_\_\_\_  
[Signature of DLAE]

\_\_\_\_\_  
[Print Name of DLAE]

Distribution: (1) Original - DLAE  
(2) Signed copy by the DLAE - Local Agency

(Updated: March 4, 2009)

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF RESOLUTION NO. 09-2798 APPROVING THE LEGAL AUTHORITY ELEMENT OF THE SEWER SYSTEM MANAGEMENT PLAN	<b>DATE:</b> April 20, 2009
	<b>SECTION:</b> RESOLUTIONS
	<b>ITEM NO.:</b> 1
<b>BUSINESS PLAN:</b> N/A	<b>FILE I.D.:</b> SEW025
	<b>DEPT.:</b> PUBLIC WORKS

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**REASON FOR CONSIDERATION:** The State Water Resources Control Board has mandated under the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems Water Quality Order No. 2006-003-DWQ, a Sanitary Sewer Order that all public agencies with collection systems be regulated on the effective usage and maintenance of wastewater collection systems. This Sanitary Sewer Order requires each public agency with a collection system greater than one mile in length to develop and implement a Sewer System Management Plan (SSMP). The City Council is asked, pursuant to a requirement of the Sanitary Sewer Order, to consider approval of the Legal Authority Element of the SSMP.

**BACKGROUND:** Following the State Water Resources Control Board's adoption of the Statewide General Waste Discharge Requirement (GWDR) on May 2, 2006, sewer collection systems became the last major component of the SSMP to be regulated. Treatment plants have been regulated for some time. The GWDR applies to all public sewer collection system agencies in California that own or operate collection systems comprised of more than one mile of sewer line, which conveys untreated wastewater to a publicly owned sewage treatment facility and requires each agency to prepare an SSMP. An SSMP is a document that describes the activities each agency uses to manage their wastewater collection system effectively. Effective management of a wastewater collection system can include the following:

1. Maintenance of existing collection system infrastructure and the development of a plan for the rehabilitation/replacement of infrastructure
2. Prevention and reduction of sanitary sewer overflows (SSOs) and creation of an Emergency Response Plan for such events
3. Development and documentation of a FOG (Fats, Oils, and Grease) Program to prevent problems associated with the accumulation of grease in sewer lines
4. Establishment of legal authority for enforcement of the requirements made in the Sanitary Sewer Order and to ensure liability coverage

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

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5. Ensuring the protection of public health and the condition of receiving waters that can be affected by a Sanitary Sewer Overflow
6. Building public perception through public outreach and education events and establishing protocols for soliciting and responding to public input about collection system deficiencies

The SSMP serves as a guidance document to help an agency anticipate needed improvements and maintenance requirements for the collection system to increase the effectiveness in which it serves its users. Improvements and changes should be made to the living document as conditions of the collection system change.

The required elements of an SSMP are:

- Collection system management goals
- Organization of personnel, including the chain of command and communications
- Legal authority for permitting flows into the system, inflow/infiltration control of stormwater into the collection system
- Enforcement of proper sewer design, installation, testing standards, and inspection requirements for new and rehabilitated sewers
- Documentation of operations and maintenance activities to maintain the wastewater collection system
- Design and performance provisions
- Sanitary Sewer Overflow emergency response plan
- FOG Program to prevent problems associated with the accumulation of grease in sewer lines
- Collection system evaluation and capacity assurance program
- Monitoring, measurement, and modification plan for SSMP Program effectiveness
- Periodic internal SSMP audits (every two years)
- Establishment of an SSMP communication program

The Sewer System Management Plan assists in facilitating greater organization of existing assets and works toward achieving greater efficiency by outlining where improvements should be made to the collection system.

The Legal Authority Element of the SSMP requires that each public agency that owns and operates a wastewater collection system greater than one mile in length demonstrates, through sanitary sewer system use ordinances, service agreements, or other legally binding procedures, that it possesses the necessary legal authority to:

- a) Prevent illicit discharges into its sanitary sewer system, including Infiltration and inflow (I/I) from satellite wastewater collection systems and laterals, stormwater, unauthorized debris, etc.;
- b) Require proper design and construction of sewers and connections;
- c) Ensure access for maintenance, inspection, and repairs to publicly owned portions of laterals;
- d) Limit the discharge of FOG and other debris that may cause blockages; and
- e) Enforce violations of its sewer ordinances.

The Legal Authority Element is one of the most important sections of the SSMP. Without sufficient legal authority to own and operate a public wastewater collection system, an agency would not be able to effectively operate the system, verify that new sewers are constructed to standard, solve operation and maintenance problems, and reduce SSOs.

**FISCAL IMPACT:** Adoption of Resolution No. 09-2798 would create no fiscal impact for the City. Failure to adopt the Legal Authority Element of the SSMP, however, would likely result in monetary penalties being assessed against the City.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 09-2798 approving the Legal Authority Element of the Sewer System Management Plan.

**RESOLUTION NO. 09-2798**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MONTCLAIR APPROVING THE  
LEGAL AUTHORITY ELEMENT OF THE  
SEWER SYSTEM MANAGEMENT PLAN (SSMP)**

**WHEREAS**, the State Water Resources Control Board adopted the Statewide General Waste Discharge Requirement (GWDR) on May 2, 2006, requiring all public agencies with collection systems comprised of more than one mile of sewer line be regulated; and

**WHEREAS**, the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems - Water Quality Order No. 2006-0003-DWQ (Sanitary Sewer Order) requires all such agencies to develop and implement a Sewer System Management Plan (SSMP); and

**WHEREAS**, the Sewer System Management Plan is a document that describes the activities a public agency uses to manage the wastewater collection system effectively; and

**WHEREAS**, a requirement of the Sanitary Sewer Order is the adoption of a resolution by the governing body of the public agency certifying that the City of Montclair possesses the necessary legal authority to provide sewer services to the public, through its sewer use ordinance and agreements with other agencies.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Montclair does hereby approve the Sewer System Management Plan Legal Authority Element, a copy of said document being attached hereto as "Exhibit A" and by this reference made a part hereof.

**APPROVED AND ADOPTED** this XX day of XX, 2009.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Donna M. Jackson, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 09-2798 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, 2009, and that it was adopted by the following vote, to-wit:

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

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Donna M. Jackson  
City Clerk

## EXHIBIT A

This element of the Sewer System Management Plan (SSMP) discusses the City's Legal Authority, including its Municipal Code and agreements with other agencies. This section fulfills the Legal Authority State Water Resources Control Board (SWRCB) SSMP requirement.

### 3.1 Regulatory Requirements for the Legal Authority Element

The collection system agency's SSMP Legal Authority Element must identify, through its collection system use ordinance, service agreements, or other legally binding procedures, that it possesses the necessary legal authority to:

- (a) Prevent illicit discharges into its wastewater collection system (examples including chemical dumping, illegal connections, infiltration and inflow (I/I), unauthorized debris, storm water, etc.);
- (b) Require proper design and construction of sewers and connections;
- (c) Ensure access for maintenance, inspection, and repairs to publicly owned portions of laterals;
- (d) Limit the discharge of fats, oils, and grease (FOG) and other debris that may cause blockages; and
- (e) Enforce violations of its sewer ordinances.

### 3.2 Element 3 Legal Authority Appendix

Supporting documentation for Element 3 is located in Appendix B. This appendix contains the following documents:

- 1. City of Montclair Municipal Code Title 9 Chapter 9.20 Sewer System
- 2. Specifications for the Design and Construction of Public Works Facilities for the City of Montclair
- 3. Inland Empire Utilities Agency Regional Sewage Service Contract and Regional Pretreatment Agreement
- 4. City of Upland Sewer Service Agreements

### 3.3 Municipal Code

The legal authority required for the SSMP by the SWRCB is contained within the City's Municipal Code. The chapter of the Municipal Code that is dedicated to the sewer system is Title 9, Public Services and Public Places, Chapter 20 Sewer System. This chapter is included in full in Appendix B. Portions of this chapter are discussed in the following sub-sections as it pertains to the prevention of illicit discharges, proper design, and construction of sewers and connections, maintenance access, and enforcement measures. All discussion in the following sub-sections on the City's legal authority as required by the SSMP is based on the City's existing Municipal Code as of fall 2008.

## Prevention of Illicit Discharges

All measures prohibiting illicit discharges are included in Chapter 9.20 Sewer System. Some of the intended purposes of this chapter is to prevent the discharge of any pollutant into the sewers that would obstruct or cause damage to the collection system, interfere with treatment at the wastewater treatment plant owned and operated by Inland Empire Utilities Agency, or threaten harm to the environment or human health. Examples of discharges covered in the Municipal Code are included below. For the complete text of the ordinance, refer to the Municipal Code located in Appendix B.

- Stormwater and Inflow/Infiltration. Section **9.20.640 Limitations on point of discharge** prohibits any discharge into a manhole or other opening in a sewer unless the discharge has been approved by the City Engineer and appropriate discharge fees have been paid. Section **9.20.580 General discharge prohibitions (B 14)** prohibits any unpolluted water, including cooling water, storm water, subsurface water, and single-pass cooling water unless the discharge has been approved by the City Engineer and all applicable fees have been paid.
- Industrial Waste. **Article XIII Administration, Sections 9.20.720-730 Industrial user discharge permits** require that all industrial waste dischargers obtain a permit that prohibits all wastewater discharges in excess of the permit allowances stated within the permit. Section **9.20.800 Pretreatment required** states that all industrial users shall provide necessary pretreatment equipment as required to comply with all wastewater discharge limitations stated within the permit. **Article XIV Reporting Requirements** provides reporting standards for determining compliance with permit conditions. Section **9.20.610 Local concentration limitations** includes a list of the pollutant limitations for all other wastewater dischargers that do not have an approved Industrial Wastewater Discharge Permit with the City.
- Other Discharges. **Article X Sewer Discharge Regulations** outlines standards for discharge to the City's wastewater collection system. Section **9.20.580 General discharge prohibitions** prohibit any user to discharge any pollutant or wastewater which will pass through or interfere with the system or the regional treatment plant. This section further lists specific discharge prohibitions including gasoline, solvents, flammable or explosive materials, grease, garbage, bone, hair, blood, sand, stone or marble dust, rags, paper, wood, plastic, tar, asphalt, corrosive materials, toxic materials, dyes, radioactive wastes, etc.. Additional sections in Chapter 9.20 specify requirements for other discharges, including hospital/medical wastes, and water softening appliances.

## Proper Design and Construction of Sewers and Connections

Regulations pertaining to the design, construction, and inspection of connections, building sewers, and private sewer systems are included in Chapter 9.20 of the Municipal Code.

- Permit Required. Section **9.20.230 Construction permit required** mandates that a permit must be obtained prior to any type of construction being performed or connection is made to the sewer system.
- Design and Construction Requirements. Section **9.20.020 Scope (B)** requires that design and construction of the City sewer system shall be based on the “Specification for the Design and Construction of Public Works Facilities for the City of Montclair” document adopted by the Montclair City Council. Section **9.20.120 Dedication of sewers to public** states that no sewer shall be accepted for dedication by the City unless the sewer has been constructed in conformity with the requirements in Chapter 9.20 of the municipal code and the document known as “Specifications for the Design and Construction of Public Works Facilities for the City of Montclair.”
- Inspection and Testing. **Article III. Inspection of System Construction and Maintenance of System** requires that all building sewers be inspected by the City Engineer or the Director of Public Works.

### **Lateral Maintenance Access**

Section **9.20.200** requires that building sewers, building laterals, wastewater pretreatment systems, gravity-separation interceptors, and related appurtenances shall be maintained by the owners of the property. Property owners are responsible for maintaining the street and house lateral up to the main sewer line.

### **Limit Discharge of FOG and Other Debris**

As discussed under Element 7: Fats, Oils, and Grease (FOG) Control Program, Section **9.20.580 General discharge prohibitions (B) (2)** prohibits grease disposal to the City sewer system, and Section **9.20.690 Gravity separation interceptor** mandates the installation of a minimum 750-gallon grease interceptor if required by the City Engineer.

Discharge of debris is covered by Section **9.20.580 General discharge prohibitions** which among several listed items, prohibits the discharge of any waste that could create a nuisance, cause damage to the sewer system or interference with the system or the regional treatment plant. Section **9.20.640 Limitations on point of discharge** prohibits any discharge into a manhole or other opening in a sewer unless the discharge has been approved by the City Engineer and appropriate discharge fees have been paid.

### **Enforcement Measures**

Chapter 9.20 **Article XVI. Administrative Enforcement Remedies** includes enforcement measures for violations of provisions included in the chapter. Written notice is provided to the persons in violation, with an established time limit for correction. Further enforcement provisions include a hearing conducted by the Hearing Board, administrative penalties, liens, judicial enforcement including civil and criminal penalties, and disconnection from the public sewer system. The persons specified in the violation are liable to the City for expense, loss, or damages that have resulted from the occurrence of the violation.

### **3.4 Control of Inflow/Infiltration from Satellite Collection Systems**

A portion of the City of Upland's sewer service area discharges flow into the City of Montclair's collection system. Also, individual lots and parcels located in the County of San Bernardino have obtained Irrevocable Annexation Agreements in order to connect to the City of Montclair. Therefore, these entities could be considered to be accessory satellite collection systems to the City of Montclair's collection system. Currently there are no observed capacity problems due to inflow/infiltration (I/I) in the City's collection system (refer to Element 8: Capacity Management). However, the SSMP requires that the City must demonstrate that it has the necessary legal authority to control I/I into its sewer collection system, including contributions from satellite systems.

The City of Upland discharges flow to the City of Montclair pursuant to the Sewer Service Agreement dated October 6, 1986, enabling a discharge point located at Richton Avenue west of Central Avenue, and the Sewer Service Agreement for the Benson Avenue Sewer Diversion Project dated September 8, 2003. Both agreements specify discharge limitations and monitoring requirements for the connection points to the Montclair collection system. These agreements are summarized in Section 3.5, and are attached in Appendix B.

Connection points located in the County of San Bernardino are approved on an individual basis. Most county connections are residential connections made to the Montclair sewer system as a result of septic system failure. However, some connections are for commercial uses with small average daily flows, with no connections being permitted that would allow the contribution of wet weather flows.

### **3.5 Agreements with Other Agencies**

As specified in Section 3.3, the City's Municipal Code fulfills the SSMP requirement for legal authority. However, the City does have additional legal agreements with other agencies which are summarized in this section. The City's interagency agreements include:

- Chino Basin (IEUA) Regional Sewage Service Contract and the associated Regional Pretreatment Agreement (IEUA Regional Wastewater Ordinance No. 82)
- The City of Upland Sewer Service Agreement for the Central Avenue-Richton Interceptor
- The Interjurisdictional Pretreatment Agreement between the City of Montclair and the City of Upland Governing the Collection, Conveyance, and Disposal of Wastewater
- The Cooperative Agreement Between the Cities of Ontario, Upland, and Montclair for the Construction of the Benson Avenue Sewer Diversion Project

The City intends to create a consolidated sewer agreement with the City of Upland for usage of the City of Montclair collection system for the transmission of sewage to the

Inland Empire Regional Interceptors. The consolidated agreement, once completed, shall be listed in this section.

**Inland Empire Utilities Agency Regional Sewage Service Contract and the Regional Pretreatment Agreement (Regional Wastewater Ordinance No. 82)**

Inland Empire Utilities Agency's service area includes the cities of Chino, Chino Hills, Fontana, Montclair, Ontario, and Upland, and the service area of Cucamonga Valley Water District. These agencies, referred to as Regional Contracting Agencies (RCAs), entered into the Regional Sewage Service Contract with on April 12, 1984 (amended on October 19, 1994). Pursuant to this agreement, these RCAs consented to deliver all sewage collected by their respective collection systems to the Regional Sewerage System for transmission, treatment, and disposal. The RCAs in turn pay monthly sewer usage charges as calculated by Equivalent Dwelling Units (EDUs). The RCAs also provide Supplemental Capital Outlay Funds to IEUA to purchase capacity in the system and for the expansion of the Regional Sewer System. This is done through a Capital Capacity Reimbursement Account and periodic Capital Capacity Reimbursement Payments. Monthly reports of sewer building activity are provided to IEUA by the RCAs to determine the required amount of the quarterly Capital Capacity Reimbursement Payments.

The contract established a Regional Policy Committee to advise IEUA of the needs and views of the RCAs concerning IEUA's policies and activities associated with the operation of the Regional Sewerage System. The Regional Policy Committee is composed of one member and an alternate member from each Contracting Agency. A Regional Technical Committee was also established comprised of individuals knowledgeable in the design, construction, maintenance, and operation of sewage facilities. This committee also includes one member and an alternate from each RCA.

On December 7, 2005, IEUA adopted Regional Ordinance No. 82. The ordinance recognizes IEUA as the primary control authority over wastewater discharges within its service area. The agreement grants IEUA the authority to regulate the industrial users within the boundaries of the District whose facilities are tributary to the Regional Sewerage System. Additionally, IEUA has full enforceable legal authority as a Publicly Owned Treatment Works (POTW) to inspect, permit, and control indirect dischargers of nondomestic waste within the Regional System.

**The City of Upland Sewer Service Agreement for Central Avenue-Richton Interceptor, October 6, 1986**

The City of Montclair entered into an agreement with the City of Upland to convey sewage from the area bounded by Arrow Highway on the north, Benson Avenue on the east, Ninth Street on the south, and Central Avenue to the west, to the City of Montclair's sewer collection system at Richton west of Central Avenue. Montclair agreed to deliver the wastewater generated from the specified area in Upland to the Regional Wastewater Treatment Plant as contracted under the IEUA Regional Sewage Service Contract. Upland agreed to pay bimonthly sewer use charges and enforce Montclair's wastewater quality standards for sewer discharges. This agreement superseded related agreements made on April 1, 1985, and September 4, 1984.

Note: A significant portion of the area covered by the 1986 agreement has since been diverted to a new Upland facility that was constructed in the early 1990s. This facility is known as the West Upland Interceptor, and serves everything in Upland noted in the 1986 agreement north of the Pacific Electric right-of-way (excluding the small retail development on the east side of Central Avenue immediately south of the Pacific Electric right-of-way, which remains connected to the City of Montclair collection system).

### **Interjurisdictional Pretreatment Agreement between the City of Montclair and the City of Upland Governing the Collection, Conveyance, and Disposal of Wastewater**

Pursuant to the Sewer Use Agreement between the City of Montclair and the City of Upland dated October 6, 1986, Upland utilizes Montclair's wastewater collection and conveyance system for sewage originating in the area bounded by Arrow Highway to the north, Benson Avenue to the east, Ninth Street on the south and Central Avenue to the west. The Interjurisdictional Pretreatment Agreement established Upland's conditions for discharge to Montclair's collection system. All nondomestic wastewater dischargers were mandated to conform to the requirements in the Montclair municipal code pertaining to restrictions on the use of the sewer system and payment of fees. Wastewater dischargers in addition to being bound by the municipal code, are bound by all California State and Federal laws, and all rules and regulations governing wastewater dischargers. Also, no user was permitted to discharge nondomestic wastewater into the Montclair collection system unless the user had obtained a valid wastewater discharge permit issued by the City Engineer of Montclair. Monitoring requirements for the City of Upland were also established at the connection point to Montclair's sewer system at Richton west of Central Avenue pursuant to the parameters listed in Exhibit H of the IEUA Regional Sewage Service Contract. This wastewater analysis is to be submitted to Montclair every (6) months in May and November of each year. Sewer usage fees are required to be remitted to Montclair bimonthly in accordance to the October 6, 1986, Sewer Use Agreement.

### **Cooperative Agreement between the Cities of Ontario, Upland, and Montclair for the Construction of the Benson Avenue Sewer Diversion Project**

Prior to September 2003, the City of Upland sewer line located in Benson Avenue between 7<sup>th</sup> Street in Upland and 6<sup>th</sup> Street in the City of Ontario discharged to the Ontario sewer line in Benson Avenue. It was determined that the Ontario sewer line had a shortage of capacity. The City of Montclair had a sewer line located in Deodar Street, adjacent to the Upland/Ontario discharge point, with sufficient capacity to convey the Upland sewage flows. In fall of 2003, the three cities jointly participated in a project to divert the Upland sewer line in Benson Avenue to Deodar Street. Upland is required on a bimonthly basis to pay sewer treatment fees as routinely required by IEUA and maintain the sewer diversion line up to the point of connection to the Montclair sewer in Deodar Street.

Note: Since the approval of this last agreement, the City of Upland has constructed a sewer main line in 9<sup>th</sup> Street serving properties north of 9<sup>th</sup> Street to the Pacific Electric right-of-way between Benson and Central Avenues. The City of Upland has also constructed a sewer line extending under the Metrolink tracks to the northern property line of an industrial development at 5494 and 5512 Arrow Highway, ending at a connection to the City of Montclair sewer line within the development. This line, when further extended, will serve properties between 9<sup>th</sup> Street and the Metrolink tracks between Benson and Central Avenues.

**MINUTES OF THE REGULAR MEETING OF THE  
PUBLIC WORKS COMMITTEE HELD ON THURSDAY,  
FEBRUARY 19, 2009, AT 2:00 P.M. IN THE CITY  
HALL CONFERENCE ROOM, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

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

**II. ROLL CALL**

Present: Chairman Paulitz; Committee Member Eaton; Director of Redevelopment/Public Works Staats; Acting Police Chief Jones; City Engineer Hudson; Finance Director Beltran; Community Development Director Lustro; and Public Works Superintendent Orioli.

**III. APPROVAL OF MINUTES**

The Public Works Committee reviewed and approved the minutes of the Public Works Committee meeting of January 15, 2009.

**IV. PUBLIC COMMENT - None**

**V. TRAFFIC SAFETY/CIRCULATION ISSUES**

**A. Ontario Montclair School District Issues**

There was nothing new to report.

**B. Red Light Camera Enforcement**

• **Red Light Camera Violations and Citations**

Acting Police Chief Jones reported during 2008 a total of 2,592 violations occurred with a total of 1,269 citations issued, with a citation rate of 48 percent.

**VI. DEVELOPMENT PROJECTS UPDATE**

Community Development Director Lustro reported that plans for the Senior Center would be presented at the next Planning Commission meeting.

**VII. MAINTENANCE ACTIVITIES UPDATE FOR FEBRUARY**

The Maintenance Projects Update for February was included in the agenda for review.

## **VIII. CAPITAL PROJECTS UPDATE**

### **A. Mission Boulevard Improvement Project**

City Engineer Hudson reported that Phases 5 and 6 of the Mission Boulevard Improvements were still under construction because of recent rainy weather. The project is expected to be completed by the first week of April. The design for Phase 7 has been completed. Staff is waiting on the request for authorization from Caltrans to advertise and award.

The design plans for Phases 8 and 9 have been accelerated. Staff expects that SANBAG may make some additional funding available soon.

### **B. Ramona Avenue Grade Separation Project**

City Engineer Hudson reported that this project is behind schedule because of rain delays. Utility relocations are underway north of the railroad tracks. The new Kimberly Street will be opened within the next several weeks.

### **C. Monte Vista Avenue Grade Separation Project**

City Engineer Hudson reported that negotiations are still underway regarding the Ealy property. A conclusion to negotiations regarding the Dempsey property east of Monte Vista Avenue will be occurring shortly.

Staff also informed the Committee that Traffic Congestion Relief Program (TCRP) reimbursement requests are still being processed by the state.

### **D. Youth/Senior Center Facility**

Bids opened today with a total of 41 bidders. The low bid came in at \$2.58 million which was much lower than expected. Unfortunately staff may have to reject the 1st and 2nd lowest bidders as non-responsive.

### **E. Amherst Avenue Rehabilitation Project**

This project is located north of Holt Boulevard south of Kingsley Street. Bids were received the first part of February and came in below the estimated \$1.2 million. The low bid was under \$1 million.

### **F. Above-Ground Gasoline Storage Tanks at City Yard**

Bids for this project should open the third week of February.

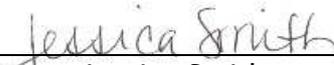
**F. Fremont Avenue Drainage Improvement Project**

Staff discussed funding for this project at a meeting held on Monday, February 16, 2009.

**XI. ADJOURNMENT**

At 2:33 p.m., Chairman Paulitz adjourned the Public Works Committee.

Submitted for Public Works Committee approval,

  
\_\_\_\_\_  
Jessica Smith  
Transcribing Secretary

**MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
APRIL 6, 2009, AT 7:35 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA**

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**I. CALL TO ORDER**

Mayor Eaton called the meeting to order at 7:35 p.m.

**II. ROLL CALL**

Present: Mayor Eaton; Council Member Ruh; City Manager McDougal;  
and Deputy City Manager/Director of Administrative Services  
Starr

Absent: None

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of  
March 2, 2009.**

Moved by Deputy City Manager/Admin. Services Director Starr,  
seconded by Council Member Ruh, and carried unanimously to  
approve the minutes of the Personnel Committee meeting of  
March 2, 2009.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

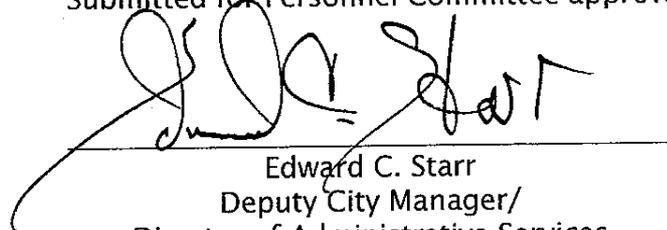
At 7:36 p.m., the Personnel Committee went into Closed Session  
regarding personnel matters related to appointments, resignations/  
terminations, and evaluations of employee performance.

At 7:59 p.m., the Personnel Committee returned from Closed Session.  
Mayor Eaton stated that no announcements would be made at this time.

**VI. ADJOURNMENT**

At 7:59 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr  
Deputy City Manager/  
Director of Administrative Services