

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

June 15, 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 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 - None

VI. PUBLIC COMMENT

This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded five minutes to address the City Council Members 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. Consider Adoption of Resolution No. 09-2799 Repealing Resolution No. 05-2584 and Revising the Schedule of Fines for Administrative Citations [CC]

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B. First Reading - Consider Adoption of Ordinance No. 09-909 Amending Chapters 6.02 and 6.12 of the Montclair Municipal Code Regulating Loud and Unreasonable Noises and Disturbances [CC]

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VIII. CONSENT CALENDAR

A. Approval of Minutes	
1. Minutes of Regular Joint Council/Agency/MHC Meeting of June 1, 2009 [CC/RDA/MHC]	
B. Administrative Reports	
1. Consider Receiving and Filing of Treasurer's Report [CC]	26
2. Consider Approval of Warrant Register and Payroll Documentation [CC]	27
3. Consider Receiving and Filing of Treasurer's Report [RDA]	28
4. Consider Approval of Warrant Register [RDA]	29
5. Consider Receiving and Filing of Treasurer's Report [MHC]	30
6. Consider Approval of Warrant Register [MHC]	31
7. Consider Setting a Public Hearing to Consider Resolution No. 09-2801 Requesting Local Agency Formation Commission Initiate Proceedings for City of Montclair Annexation No. 29 [CC]	32
8. Consider Cancellation of Automated Red Light Camera Enforcement Program with Nestor Traffic Systems, Inc. [CC]	39
9. Consider Authorization to Purchase One Bendix King VHF Portable Radio and Two Lapel Speaker Microphones from 49er Communications, Inc. [CC]	45
10. Consider Authorizing the City Manager to Negotiate, Award, and Sign a Construction Contract for the Construction of the Bleacher Storage and Reroofing of Various City Facilities Project for an Amount Not to Exceed \$700,000 [CC]	46
C. Agreements	
1. Consider Approval of Agreement No. 09-14 Amending Agreement No. 07-43 with AEI-CASC Engineering, Inc., for Water Quality Management Plan Check Services [CC]	48
2. Consider Approval of Agreement No. 09-40 with the City of Montclair, the City of Montclair Redevelopment Agency, and Mariposa Horticultural Enterprises, Inc., for Landscape-Maintenance Services of Median Islands, Parks, and Parkways [CC/RDA]	55
3. Consider Approval of Agreement No. 09-41 with West Coast Arborists for Tree-Maintenance Services [CC]	70
4. Consider Approval of Agreement No. 09-42 with California Landscape and Design, Inc., for Maintenance Services at the Montclair Skate Park [CC]	84

- 5. Consider Award of Contract to Sam Construction Co. in the Amount of \$47,770 for Construction of the 9916 Central Avenue Improvements Project [RDA]

Consider Redevelopment Agency Board of Directors' Approval of Agreement No. 09-48 with Sam Construction Co. [RDA]

Consider Authorization of a \$10,000 Construction Contingency [RDA] 92
- 6. Consider Approval of Agreement No. 09-49 with the County of San Bernardino for the Allocation and Expenditure of Justice Assistance Grant Program Funds [CC]

Consider Authorization for the City Manager to Sign the Agreement on Behalf of the Montclair City Council [CC] 94
- 7. Consider Approval of Agreement No. 09-50 with Nutrition Ink to Provide Nutrition-Education Services for the City's Senior Citizen Nutrition Program [CC] 98
- 8. Consider Approval of Agreement No. 09-51 with Catering Systems, Inc., to Provide Meals for the City's Senior Citizen Nutrition Program [CC] 102
- 9. Consider Approval of Agreement No. 09-52 with Liebert Cassidy Whitmore for Participation in the East Inland Empire Employment Relations Consortium [CC] 125

D. Resolutions

- 1. Consider Redevelopment Agency Board of Directors Adoption of Resolution No. 09-01, a Resolution of the City of Montclair Redevelopment Agency Authorizing the Expenditure of Agency Funds for Graffiti Abatement for Fiscal Year 2009-10 [RDA]

Consider City Council's Approval of Agreement Nos. 09-43, 09-44, 09-45, and 09-46 Approving Respective Promissory Note Nos. 09-01, 09-02, 09-03, and 09-04 Between the City of Montclair and the City of Montclair Redevelopment Agency [CC]

Consider Redevelopment Agency Board of Directors' Approval of Agreement Nos. 09-43, 09-44, 09-45, and 09-46 Approving Respective Promissory Note Nos. 09-01, 09-02, 09-03, and 09-04 Between the City of Montclair Redevelopment Agency and the City of Montclair [RDA]

Consider Redevelopment Agency Board of Directors Adoption of Resolution No. 09-02 Adopting the Fiscal Year 2009-10 Budget for the City of Montclair Redevelopment Agency [RDA]

(continued on next page)

Consider Redevelopment Agency Board of Directors' Approval of Agreement No. 09-47 Approving Promissory Note No. 09-01 Between the City of Montclair Redevelopment Agency and the Montclair Housing Corporation [RDA]	
Consider Montclair Housing Corporation Boar of Directors' Approval of Agreement No. 09-47 Approving Promissory Note No. 09-01 Between the Montclair Housing Corporation and the City of Montclair Redevelopment Agency [MHC]	
Consider Montclair Housing Corporation Board of Directors' Adoption of Resolution No. 09-01 Adopting the Fiscal Year 2009-10 Budget for the Montclair Housing Corporation [MHC]	128
2. Consider Adoption of Resolution No. 09-2802 Authorizing Approval of the Change in Population in San Bernardino County During 2008 for the Purpose of Calculating the Gann Spending Limit for Fiscal Year 2009-10 [CC]	142
3. Consider Adoption of Resolution No. 09-2803 Authorizing Approval of the Percentage Change in Montclair Nonresidential New Construction During Fiscal Year 2007-08 as the Final Fiscal Year 2007-08 Change in the Cost-of-Living Factor for Use in Calculating the Gann Spending Limit for Fiscal Year 2008-09 and Provisional Adoption of the Percentage Change in California Per Capita Personal Income During Calendar Year 2008 as the Change in the Cost-of-Living Factor For Fiscal Year 2008-09 for Use in Calculating the Gann Spending Limit for Fiscal Year 2009-10 [CC]	144
4. Consider Adoption of Resolution No. 09-2804 Establishing an Appropriations Limit for Fiscal Year 2009-10 Pursuant to Article 13-B of the California Constitution and to Section 7910 of the Government Code [CC]	148
5. Consider Adoption of Resolution No. 09-2805, a Resolution of the City Council of the City of Montclair Finding a Severe Fiscal Hardship Would be Experienced by the City of Montclair if Additional Local Property Tax Funds Were Borrowed and Additional Unfunded Mandates Were Adopted by the State of California [CC]	152
6. Consider Adoption of Resolution No. 09-2806 Adopting the City of Montclair Fiscal Year 2009-10 Annual Budget [CC]	156
7. Consider Adoption of Resolution No. 09-2807 Authorizing Submission of a Fiscal Year 2009-10 Funding Request Form for Beverage Container Recycling and Litter Cleanup to the California Department of Conservation, Division of Recycling [CC]	159

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

A. City Attorney/Agency Counsel

- 1. Closed Session Pursuant to Section 54956.8 of the Government Code Regarding Real Property Negotiations

Property: Assessor's Parcel No. Address

1011-012-08 5011 Brooks Street, Montclair
 Negotiating Parties: City and Basin Ventures-LA, Inc.

1011-012-04 10625 Monte Vista Avenue, Montclair
 Negotiating Parties: City and Delbert Darrell Foreman

1012-012-03 10635 Monte Vista Avenue, Montclair
 Negotiating Parties: City and Frank J. Lizarraga, Jr., et al.

Negotiators: Marilyn J. Staats, Director of Redevelopment and Public Works and Michael C. Hudson, City Engineer

Under Negotiation: Recommendations Regarding Acquisition of Easements on Subject Properties in Conjunction with the Monte Vista Avenue/Union Pacific Grade Separation Project

- 2. Closed Session Pursuant to Section 54957.6 of the Government Code Regarding Conference with Designated Labor Negotiators City Manager Lee C. McDougal and Deputy City Manager Edward C. Starr

Agency: City of Montclair

Employee Organizations: City Manager
 Management
 Montclair Fire Fighters Association
 Montclair Police Officers Association
 San Bernardino Public Employees Assoc.

B. City Manager/Executive Director

C. Mayor/Chairman

- 1. Announcement of Planning Commissioner Appointments

D. Council/Agency Board

E. Committee Meeting Minutes *(For Informational Purposes Only)*

- 1. Minutes of the Personnel Committee Meeting of June 1, 2009

XII. ADJOURNMENT OF REDEVELOPMENT AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS OF DIRECTORS

(At this time, the City Council will meet in Closed Session regarding real property negotiations and labor relations).

XIII. CLOSED SESSION ANNOUNCEMENTS

XIV. ADJOURNMENT OF CITY COUNCIL

The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, July 7, 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 June 11, 2009.

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 09-2799 REPEALING RESOLUTION NO. 05-2584 AND REVISING THE SCHEDULE OF FINES FOR ADMINISTRATIVE CITATIONS	DATE: June 15, 2009 SECTION: PUBLIC HEARINGS ITEM NO.: A FILE I.D.: FLP110 DEPT.: FIRE
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution No. 09-2799 repealing Resolution No. 05-2584 and revising the schedule of fines for administrative citations.

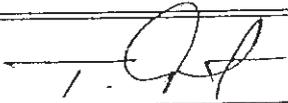
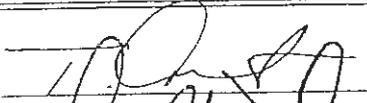
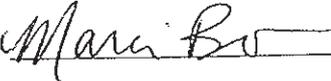
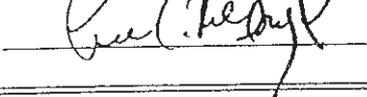
BACKGROUND: On August 3, 1998, the City Council adopted Ordinance No. 98-779 adding Chapter 1.04 of Title 1 of the Montclair Municipal Code establishing a process for imposing administrative fines for violations of the Montclair Municipal Code by means of an administrative citation. This process was created as a means to encourage property owners' compliance; deter future violations; and protect the health, safety, and welfare of the City's residents, businesses, and general public. Proposed Resolution No. 09-2799 would repeal Resolution No. 05-2584 and revise the schedule of fines for administrative citations.

Unless otherwise specified in Exhibit A to proposed Resolution No. 09-2799, the administrative fine for violations of the Montclair Municipal Code (and other technical codes adopted therein) enforced pursuant to the provisions of Chapter 1.04 of Title 1 of the Montclair Municipal Code shall be as follows:

- \$100 for the first offense
- \$200 for the second offense of the same provision within a 36-month period of time
- \$500 for the third or greater offense of the same provision within a 36-month period of time

FISCAL IMPACT: Potential revenues from the implementation of proposed Resolution No. 09-2799 are unknown.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 09-2799 repealing Resolution No. 05-2584 and revising the schedule of fines for administrative citations.

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

RESOLUTION NO. 09-2799

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MONTCLAIR REPEALING RESOLUTION
NO. 05-2584 AND REVISING THE SCHEDULE
OF FINES FOR ADMINISTRATIVE CITATIONS**

WHEREAS, on August 3, 1998, the City Council of the City of Montclair adopted Ordinance No. 98-779 (enacted as Chapter 1.04 of the Montclair Municipal Code) that establishes a process for imposing administrative/civil fines for violations of the Montclair Municipal Code (and other technical codes adopted therein) by means of an administrative citation; and

WHEREAS, Montclair Municipal Code Section 1.04.030(A) provides that the amount of the administrative fine for violations of the Montclair Municipal Code shall be set forth in a schedule of fines established by resolution of the City Council; and

WHEREAS, Montclair Municipal Code Section 1.04.030(B) requires that the schedule of fines provides for increased fines for repeat violations of the same code provision within a 36-month period of time by the same responsible person; and

WHEREAS, Montclair Municipal Code Section 1.04.030(C) requires that the schedule of fines shall specify the amount of late payment charges that will be assessed and imposed as a result of a failure by a citee to tender the requisite administrative fine within 30 calendar days of the citation; and

WHEREAS, the City of Montclair has determined that the presence of vacant, abandoned properties has detrimental effects upon the health, safety, and welfare of the City's residents, businesses, visitors, and the general public; and

WHEREAS, many vacant, abandoned properties (and structures thereon) are the responsibility of out-of-area or out-of-state lenders and trustees who, in many instances, fail to adequately maintain and secure these vacant properties; and

WHEREAS, on January 5, 2009, the City Council of the City of Montclair adopted Ordinance No. 08-906 (enacted as Chapter 10.46) regulating the registration and maintenance standards for abandoned and vacant distressed properties within the City; and

WHEREAS, the State of California has adopted and enacted Section 2929.3 of the California Civil Code authorizing governmental agencies to impose a civil fine of up to \$1,000 per day upon any owner of vacant residential property acquired through foreclosure proceedings who fails to maintain said property; and

WHEREAS, it is the intention of the City Council of the City of Montclair to develop a revised schedule of fines in order to protect the health, safety, and welfare of its residents, businesses, and general public.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby find and determine as follows:

Section 1. The Schedule of Administrative Fines as set forth in Exhibit A is hereby adopted and shall be applied effective June 15, 2009.

Section 2. A late payment charge of 100 percent shall be assessed on any fine that is not fully paid to the City within 30 calendar days of its imposition/issuance when it is not contested in accordance with the provisions of Section 1.04.050 of Chapter 1.04 of Title 1 of the Montclair Municipal Code, or if it is not fully paid to the City as specified in any decision of a hearing officer or a judicial officer to uphold or confirm the fine if contested in accordance with the provisions of Sections 1.04.050 and 1.04.130 of Chapter 1.04 of Title 1 of the Montclair Municipal Code.

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. 09-2799 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

SCHEDULE OF ADMINISTRATIVE FINES FOR VIOLATIONS OF THE MONTCLAIR MUNICIPAL CODE (AND OTHER CODES ADOPTED THEREIN)

Unless otherwise specified in the following schedule, the administrative fine for violations of the Montclair Municipal Code (and other codes adopted therein) enforced pursuant to the provisions of Chapter 1.04 of Title 1 of the Montclair Municipal Code shall remain as follows:

- \$100 for the first offense
- \$200 for the second offense of the same provision within a 36-month period of time
- \$500 for the third or greater offense of the same provision within a 36-month period of time

<i>Code Section</i>	<i>Description of Violation</i>	<i>First Offense</i>	<i>Second Offense</i>	<i>Third Offense</i>
Title 4 (Business Taxes, Licenses, and Regulations)				
Chapter 4.04 (Business Licenses Generally)				
MMC §4.04.020	Business license and fee	\$250	\$500	\$1,000
Chapter 4.08 (Distribution of Advertising Matter)				
MMC §4.08.020	Permit required	\$250	\$500	\$1,000
MMC §4.08.040	Business license required	\$250	\$500	\$1,000
Chapter 4.12 (Alarm Systems)				
MMC §4.12.040	Permit required	\$250	\$500	\$1,000
MMC §4.12.080	Separate permit required	\$250	\$500	\$1,000
MMC §4.12.100	Alarm system regulations	\$250	\$500	\$1,000
Chapter 4.16 (Ambulances)				
MMC §4.16.010	Permit required	\$1,000	\$2,500	\$5,000
MMC §4.16.130	Ambulance safety and emergency equipment	\$1,000	\$2,500	\$5,000
MMC §4.16.140	Ambulance personnel	\$1,000	\$2,500	\$5,000
MMC §4.16.150	Ambulance rates	\$1,000	\$2,500	\$5,000

Chapter 4.20 (Bingo Games)				
All Violations	Requirements and standards for Bingo games	\$1,000	\$2,500	\$5,000
Chapter 4.24 (Card Rooms)				
MMC §4.24.010	Gaming club prohibited	\$1,000	\$2,500	\$5,000
Chapter 4.28 (Closing-Out Sales)				
MMC §4.28.020	Permit required	\$1,000	\$2,500	\$5,000
MMC §4.28.050	Conduct of sale	\$1,000	\$2,500	\$5,000
MMC §4.28.060	Removal of signs and cleaning of premises	\$1,000	\$2,500	\$5,000
Chapter 4.40 (Dances)				
MMC §4.40.010	License required	\$1,000	\$2,500	\$5,000
MMC §4.40.090	Hours of dancing	\$1,000	\$2,500	\$5,000
MMC §4.40.110	Intoxicating liquor	\$1,000	\$2,500	\$5,000
Chapter 4.44 (Fortune Telling)				
MMC §4.44.020	Fraudulent practice unlawful	\$1,000	\$2,500	\$5,000
MMC §4.44.030	License, permit, and fees required	\$1,000	\$2,500	\$5,000
Chapter 4.48 (Hypnotism)				
MMC §4.48.020	License, permit, and fees required	\$1,000	\$2,500	\$5,000
Chapter 4.52 (Live Entertainment)				
MMC §4.52.020	Live entertainment permit required	\$1,000	\$2,500	\$5,000
MMC §4.52.030	Hours of live entertainment	\$1,000	\$2,500	\$5,000
MMC §4.52.100	Business license required - Adult business performer	\$1,000	\$2,500	\$5,000
MMC §4.52.130	Display of license/ID card by adult performer	\$1,000	\$2,500	\$5,000
MMC §4.52.140	Register of adult performers required	\$1,000	\$2,500	\$5,000
Chapter 4.53 (Adult Businesses)				
MMC §4.53.030	Business license required - Adult business	\$1,000	\$2,500	\$5,000

MMC §4.53.060	Adult business operating standards	\$1,000	\$2,500	\$5,000
MMC §4.53.090	Employment of and/or service to minors at adult business	\$1,000	\$2,500	\$5,000
Chapter 4.56 (Massage Establishments and Technicians)				
MMC §4.56.010	Permit required - Massage establishment and/or services	\$1,000	\$2,500	\$5,000
MMC §4.56.050	Massage facility requirements	\$1,000	\$2,500	\$5,000
MMC §4.56.070	Display of permit/photograph of massage technicians	\$1,000	\$2,500	\$5,000
MMC §4.56.090	Employee permit required - Employer liability	\$1,000	\$2,500	\$5,000
MMC §4.56.110	Records of patrons and technicians - Massage establishment	\$1,000	\$2,500	\$5,000
Chapter 4.64 (Private Patrol Services)				
MMC §4.64.010	Business license required	\$1,000	\$2,500	\$5,000
MMC §4.64.020	Uniforms	\$1,000	\$2,500	\$5,000
Chapter 4.68 (Taxicabs)				
MMC §4.68.010	Business license required - Taxicab operator	\$250	\$500	\$1,000
Title 5 (Animals)				
MMC §5.08.050	Harboring or keeping vicious dog	\$1,000	\$2,500	\$5,000
Title 6 (Health & Safety)				
Chapter 6.14 (Fireworks)				
MMC §6.14.020	Prohibition of fireworks	\$1,000*	\$2,500*	\$5,000*

*In addition to the fine referenced in this schedule, a citee shall be assessed, and shall be liable and responsible for the payment of, the actual costs associated with the collection, transportation, and disposal of any seized fireworks, in accordance with regulations duly adopted by the State Fire Marshal.

Chapter 6.28 (Environmental Health Code)				
All Violations	Uniform Environmental Health Code	\$1,000	\$2,500	\$5,000

Title 7 (Public Peace, Morals, and Welfare)				
Chapter 7.04 (Graffiti)				
MMC §7.04.060	Furnishing graffiti implements to minors	\$1,000	\$2,500	\$5,000
MMC §7.04.070	Sale of graffiti implements at swap meet/yard sale	\$250	\$500	\$1,000
MMC §7.04.080	Accessibility to graffiti implements	\$250	\$500	\$1,000
MMC §7.04.090	Maintenance of graffiti prohibited	\$250	\$500	\$1,000
Title 8 (Vehicles and Traffic)				
Chapter 8.16 (Designated Streets)				
MMC §8.16.020	Truck routes	Equal to penalty set forth in CVC §42030	Twice the penalty set forth in CVC §42030	Three times the penalty set forth in CVC §42030
Title 9 (Public Services and Public Places)				
Chapter 9.08 (Public Improvements)				
MMC §9.08.010	Public improvement permit required	\$1,000	\$2,500	\$5,000
Chapter 9.12 (Public Parks)				
MMC §9.12.040	Vandalism in parks	\$1,000	\$2,500	\$5,000
Chapter 9.20 (Sewer Systems)				
All Violations	Standards and requirements for construction, use, and maintenance of sewer systems	\$1,000	\$2,500	\$5,000
Chapter 9.24 (Storm Drain System)				
All Violations	Storm drain systems and illicit discharges	\$1,000	\$2,500	\$5,000
Title 10 (Buildings & Construction)				
Chapter 10.04 (Uniform Codes for the Abatement of Dangerous Buildings)				
All Violations	Dangerous buildings	\$500	\$2,500	\$5,000
Chapter 10.08 (Building Code)				
All Violations	Minimum building standards	\$500	\$2,500	\$5,000

Chapter 10.20 (Electrical Code)				
All Violations	Minimum electrical standards	\$500	\$2,500	\$5,000
Chapter 10.28 (Fire Code)				
All Violations	Fire and hazardous material protections	\$500	\$2,500	\$5,000
Chapter 10.32 (Housing Code)				
All Violations	Substandard buildings	\$250	\$500	\$1,000
Chapter 10.40 (Plumbing Code)				
All Violations	Substandard buildings	\$500	\$2,500	\$5,000
Chapter 10.46 (Abandoned and Vacant Property Registration and Maintenance)				
All Violations	Registration and maintenance requirements for distressed, abandoned, and vacant properties	\$1,000	\$2,500	\$5,000
Chapter 10.48 (Swimming Pools)				
All Violations	Minimum swimming pool standards	\$500	\$2,500	\$5,000
Chapter 10.52 (Temporary Structures)				
All Violations	Minimum standards for temporary structures	\$500	\$2,500	\$5,000
Title 11 (Zoning and Development)				
Chapter 11.18 (R-1 - Single-Family Residential)				
MMC §11.18.020	Prohibited uses	\$250	\$500	\$1,000
Chapter 11.20 (R-2 - Two-Family Residential)				
MMC §11.20.020	Uses permitted	\$250	\$500	\$1,000
Chapter 11.22 (R-3 - Residential Medium-High Density)				
MMC §11.22.020	Uses permitted	\$250	\$500	\$1,000
MMC §11.22.030	Conditional uses permitted	\$250	\$500	\$1,000
MMC §11.22.040	Prohibited uses	\$250	\$500	\$1,000
Chapter 11.24 (AP - Administrative Professional)				
All Violations	Use and development standards for AP zone	\$250	\$500	\$1,000

Chapter 11.26 (C-2 - Restricted Commercial)				
All Violations	Use and development standards for C-2 zone	\$250	\$500	\$1,000
Chapter 11.28 (C-3 - General Commercial)				
All Violations	Use and development standards for C-3 zone	\$250	\$500	\$1,000
Chapter 11.30 (MIP - Manufacturing Industrial Park)				
All Violations	Use and development standards for MIP zone	\$250	\$500	\$1,000
Chapter 11.32 (M-1 - Limited Manufacturing)				
All Violations	Use and development standards for M-1 zone	\$250	\$500	\$1,000
Chapter 11.34 (M-2 - General Manufacturing)				
All Violations	Use and development standards for M-2 zone	\$250	\$500	\$1,000
Chapter 11.36 (SL - Small-Lot, Detached-Housing Overlay)				
All Violations	Use and development standards for SL zone	\$250	\$500	\$1,000
Chapter 11.40 (Adult-Oriented Business)				
All Violations	Zoning criteria for adult-oriented businesses	\$1,000	\$2,500	\$5,000
Chapter 11.42 (Alcoholic Beverages - Regulations of Sale)				
All Violations	Zoning criteria for on-sale and off-sale liquor establishments	\$1,000	\$2,500	\$5,000
Chapter 11.44 (Amusement Game Arcades)				
All Violations	Zoning criteria for amusement game arcades	\$1,000	\$2,500	\$5,000
Chapter 11.48 (Children's Day-Care Facilities)				
All Violations	Zoning criteria for children's day-care facilities	\$1,000	\$2,500	\$5,000
Chapter 11.50 (Drive-In Businesses)				
All Violations	Zoning criteria for drive-in businesses	\$1,000	\$2,500	\$5,000
Chapter 11.52 (Foster Homes)				
All Violations	Zoning criteria for foster homes	\$1,000	\$2,500	\$5,000

Chapter 11.54 (Hazardous Waste Facilities)				
All Violations	Zoning criteria for hazardous waste facilities	\$1,000	\$2,500	\$5,000
Chapter 11.68 (Seasonal and Promotional Outdoor Sales)				
All Violations	Zoning criteria for seasonal and promotional outdoor sales	\$250	\$500	\$1,000
Chapter 11.70 (Service Stations)				
All Violations	Zoning criteria for service stations	\$1,000	\$2,500	\$5,000
Chapter 11.72 (Signs)				
All Violations	Zoning criteria for signs	\$250	\$500	\$1,000
Chapter 11.80 (Precise Plan of Design)				
MMC §11.80.010	Precise plan of design required	\$500	\$1,000	\$2,500
MMC §11.80.090	Violation of precise plan of design	\$500	\$1,000	\$2,500
California Civil Code				
CCC §2929.3	Maintenance of vacant residential property	\$1,000	\$1,000	\$1,000

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF ORDINANCE NO. 09-909 AMENDING CHAPTERS 6.02 AND 6.12 OF THE MONTCLAIR MUNICIPAL CODE REGULATING LOUD AND UNREASONABLE NOISES AND DISTURBANCES <u>FIRST READING</u>	DATE: June 15, 2009 SECTION: PUBLIC HEARINGS ITEM NO.: B FILE I.D.: ENV315 DEPT.: POLICE
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Ordinance No. 09-909 amending Chapters 6.02 and 6.12 of the Montclair Municipal Code regulating loud and unreasonable noises and disturbances.

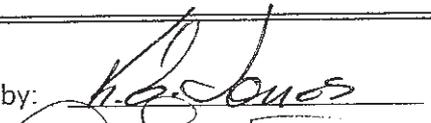
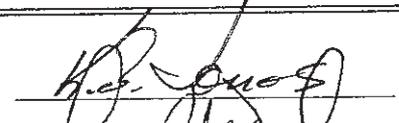
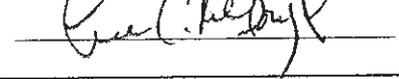
BACKGROUND: In 1992, the City updated its Noise Ordinance with a listing of prohibited noises that were more reflective of the technological and urbanization changes that occurred in Montclair over the previous 30 years.

One of the problems with the existing Montclair Noise Ordinance is the inability to recover financial resources incurred by responding to noise disturbances. Police and Fire Department personnel are frequently required to expend valuable City resources above and beyond those normally provided by responding a second time to loud or unusual noise disturbances after warning the responsible person of the unlawful behavior or conduct and after requesting the person to cause the termination of the disturbance.

Excessive, loud, and unreasonable noise is a serious hazard to public health and welfare and the quality of life. Residents have a right to and should be ensured an environment that is free from noise or disturbances which may jeopardize their health and welfare or degrade their quality of life. Proposed Ordinance No. 09-909 would allow the City to recover from those persons responsible for the noise disturbance the costs incurred by the City for the Police and/or Fire Department services as a result of a second response.

FISCAL IMPACT: Adoption of Ordinance No. 09-909 would create no fiscal impact at this time.

RECOMMENDATION: Staff recommends the City Council adopt the first reading of Ordinance No. 09-909 amending Chapters 6.02 and 6.12 of the Montclair Municipal Code regulating loud and unreasonable noises and disturbances.

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

ORDINANCE NO. 09-909

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MONTCLAIR AMENDING CHAPTERS 6.02
AND 6.12 OF THE MONTCLAIR MUNICIPAL CODE
REGULATING LOUD AND UNREASONABLE NOISES
AND DISTURBANCES**

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

WHEREAS, Section VII of Article XI of the California Constitution provides that a city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and,

WHEREAS, California Government Code Section 38771 provides that legislative bodies of cities may declare what constitutes a nuisance; and,

WHEREAS, the City Council of the City of Montclair finds that the City police and fire departments spend a significant amount of their time and resources responding to complaints of loud and unusual noise that disturbs the public peace, safety, and welfare; and,

WHEREAS, the City Council of the City of Montclair finds that Police and Fire Department personnel are frequently required to expend resources above and beyond those normally provided by responding a second time to loud or unusual noise disturbances after warning a responsible person of the unlawful behavior or conduct and after requesting that said person cause the termination of the disturbance because the responsible person(s) fail(s) to take adequate action to terminate the unlawful disturbance; and,

WHEREAS, the City Council of the City of Montclair finds that it would be appropriate to recover from those persons responsible for the noise disturbance the costs incurred by the City for the police and/or fire department services as a result of a second response to such an event in those situations in which such person or persons were duly warned that a second response fee would be assessed against them at the time of the initial response to the event.

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

SECTION I. Section 6.02.010 ("Definitions") of the Montclair Municipal Code is hereby amended to include the following:

Noise level shall mean the A-weighted sound pressure level as measured using the slow dynamic characteristic for sound level meters specified in ANSI/ASA S1.43-1997 (R2007), American National Standard Specifications for Integrating-Averaging Sound Level Meters, or latest revision.

SECTION II. Section 6.12.010 ("Excessive Noise Control") of the Montclair Municipal Code is hereby amended to read as follows:

Sec. 6.12.010 Excessive Noise Prohibited.

A. Notwithstanding any noise level specified within this Chapter, it is unlawful and a public nuisance for any person to cause, create, permit, maintain, or suffer any loud or unusual noise that unreasonably disturbs or interferes with the peace, comfort, quiet, health, or safety of any neighborhood or of any reasonable person of normal sensitivities.

B. The following factors shall be considered in determining whether a violation of the provisions of this Section exists shall include, but shall not be limited to, the following:

1. The volume of the noise.
2. The intensity of the noise.
3. The distance from the source of the noise from which the noise is plainly audible.
4. The time of day or night the noise occurs.
5. The duration of the noise.
6. Whether the noise is recurrent, intermittent, or constant.
7. The volume and intensity of the background/ambient noise.
8. The zoning classification of the property from which the noise emanates.
9. Whether the noise is produced or generated from commercial or non-commercial activity.
10. Whether the noise is an expected consequence or expected result from an otherwise lawful use of the property from which the noise emanates.
11. The number of persons affected by the noise.

C. A noise level reading measured pursuant to and in accordance with the provisions of this Chapter shall be deemed prima facie evidence of a violation of the provisions of this Section; however, a noise level reading is not required to demonstrate that a noise violates the provisions of this Chapter.

SECTION III. Subsection (B) of Section 6.12.020 ("Noise Level Measurement Criteria") of the Montclair Municipal Code is hereby repealed.

SECTION IV. Section 6.12.030 ("Exterior Noise Level Measurement") of the Montclair Municipal Code is hereby amended to read as follows:

Sec. 6.12.030 Exterior Noise Level Measurement.

Exterior noise levels made pursuant to the provisions of this Chapter shall be measured from the source of the noise or from the property line at a relative point closest to the source of the noise if lawful entry onto the property cannot be obtained.

SECTION V. Section 6.12.100 ("Noises Prohibited") of the Montclair Municipal Code is hereby amended to read as follows:

Sec. 6.12.100 Specific Noises Prohibited.

Notwithstanding any provision of this Chapter, the following specified acts are declared to be unlawful and a nuisance in violation of this Chapter:

C. Portable or Mobile Radios, Audio Equipment, or other Similar Devices. The operation of portable or mobile radios, audio equipment, or other similar devices designed or used for the amplification or reproduction of sound on any public or private property where the noise from such device is plainly audible at a distance of fifty (50) feet from the source of said noise.

G. Exhaust. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motorboat, or motor vehicle, except through a muffler device that effectively prevents loud or explosive noises therefrom.

H. Motor Vehicle Radios or Similar Sound Amplification Devices. In accordance with Montclair Vehicle Code Section 27007, the use or operation of any radio or sound amplification device in a vehicle which can be heard outside of the vehicle from fifty (50) or more feet when the vehicle is parked or being operated upon a highway, unless that system is being operated to request assistance or warn of a hazardous situation.

I. Motor Vehicle Alarms. The emission of an audible sound from an alarm located in a motor vehicle for a period in excess of ten (10) minutes. Notwithstanding the provisions of Montclair Vehicle Code Section 22651.5, the sound shall be calculated based upon the emission of the first audible sound, and end ten (10) minutes thereafter, notwithstanding any variation or delay in the emissions of audible sound.

In addition to other remedies, if a motor vehicle alarm emits an audible sound in excess of twenty (20) minutes, any police officer may have the vehicle summarily removed from any zone within the City to abate such nuisance in accordance with the provisions of Montclair Vehicle Code Section 22651.5 *et seq.*

j. Animals and Fowl. Any sound, bark, cry, or behavior from any fowl or animal (including, but not limited to, a dog) otherwise permitted to be kept within the City that disturbs or interferes with the peace, comfort, quiet, health, or safety of any neighborhood or of any reasonable person of normal sensitivities.

SECTION VI. Section 6.12.110 of the Montclair Municipal Code is hereby added to read as follows:

Sec. 6.12.110 Second Response Costs for Police Services.

A. Any person who causes, creates, permits, maintains, or suffers any loud or unusual noise on private property that unreasonably disturbs or interferes with the peace, comfort, quiet, health, or safety of any neighborhood or of any reasonable person of normal sensitivities, and that results in a response from the police and/or fire department within 24 hours after the issuance of a written warning to cease the disturbance shall be responsible for all costs incurred in response to the second or subsequent response ("Second Response Costs"), including, but not limited to, the following:

1. Salaries of the police officers and/or fire department personnel, at the salary then in effect for each classification of each individual officer, for a one-hour period of time or the actual amount of time spent responding to or remaining at the property where the disturbance was created, beginning when one or more police officer or fire department personnel leaves a location to go to the scene of the event and ending when all responding personnel are available for other duties, or, if their shifts are ended, when they are finished with those duties related to the event which they are required to complete before going off duty, whichever is greater. Such actual costs shall include wages and fringe benefits for the responding personnel and the sergeant or other superior directing them, including overtime if applicable.
2. Vehicle and equipment usage at such rates as established by resolution of the City Council.
3. Replacement cost of any material expended, including the cost of the recording medium if audio or video recording equipment is used.
4. The cost of any medical treatment to any police or fire department personnel.
5. The cost of repairing any damaged City equipment or property.

B. Second Response Costs shall not be assessed against a responsible person unless a written warning has first been issued advising said person that the loud or unusual noise violates applicable State or local laws and that the person would be responsible for any costs resulting from a second or subsequent response within 24 hours by police and/or fire department personnel.

C. A responsible person, as used in this Section, shall include, but shall not be limited to:

1. The person who is actually causing, creating, permitting, maintaining, or suffering any loud or unusual noise on private property in violation of this Chapter or other applicable law;

2. The person in charge of the premises from which a loud or unusual noise is being emanated in violation of the provisions of this Chapter or other applicable law;

3. The person responsible for any event that causes or generates a loud or unusual noise that violates the provisions of this Chapter or other applicable law; and/or,

4. The parents or guardians of any responsible person that is under the age of 18 years.

SECTION VII. Section 6.12.120 of the Montclair Municipal Code is hereby added to read as follows:

Sec. 6.12.120 Assessment and Payment of Second Response Costs.

A. Upon determining that a person is responsible for Second Response Costs pursuant to the provisions of this Chapter, the Chief of Police (or designee thereof) shall cause a Notice of Assessment on Second Response Costs to be served upon such person by depositing such Notice, first class, postage prepaid, with the United States Postal Service to the responsible person at the person's last known address. In addition to setting forth the amount of the Second Response Costs, such Notice shall also set forth the right of the responsible person to request administrative review by the City Manager (or designee thereof) in accordance with Section 1.08.010. A Notice of Assessment on Second Response Costs shall also warn the responsible person that failure to pay the Second Response Costs within thirty (30) calendar days may result in:

1. A delinquency penalty in the amount of ten percent (10%) of the Second Response Costs per month, up to an aggregate maximum of fifty percent (50%) of the Second Response Costs;

2. Interest at the rate of ten percent (10%) per annum of the Second Response Costs (exclusive of any delinquency penalties), from the date the costs first became delinquent until the date the costs are paid; and,

3. The recordation of a lien against the real property from which the disturbance emanated or the delay in issuance or renewal of any City license and/or permit in connection with the real property and/or business establishment from which the disturbance emanated.

B. Notwithstanding the provisions of Chapter 1.08, a Notice of Assessment on Second Response Costs is not appealable to the Planning

Commission or the City Council, and an Order to Comply issued by the City Manager or designee thereof is final and binding.

C. Second Response Costs shall be due and payable within thirty (30) calendar days of the issuance of the Notice of Assessment on Second Response Costs. All responsible persons shall be jointly and severally liable for all Second Response Costs. In the event of the failure of a responsible person assessed Second Response Costs to pay such fee within thirty (30) calendar days of the issuance of a Notice of Assessment on Second Response Costs, a delinquency penalty in the amount of ten percent (10%) of the Second Response Costs per month, up to an aggregate maximum of fifty percent (50%) of the Second Response Costs. In the event of the failure of a responsible person assessed Second Response Costs to pay such fee within thirty (30) calendar days of the issuance of a Notice of Assessment on Second Response Costs, interest shall accrue at the rate of ten percent (10%) per annum of the Second Response Costs (exclusive of any delinquency penalties), from the date the costs first became delinquent until the date the costs are paid.

D. Second Response Costs and other charges or fees imposed in accordance with this Chapter shall constitute a debt that may be collected in any manner allowed by law, including, but not limited to, the recordation of a lien (secured or unsecured) with the County Recorder's Office and/or California Franchise Tax Board "Inter-Agency Offset Program" (pursuant to Section 12419.10 of the California Government code). The City may also withhold issuance or renewal of any license, permit, or other entitlement for any property or business whenever an administrative penalty resulting from a code violation at said property or business remains unpaid. The City shall be entitled to recover its attorney fees and costs arising from an action to collect an administrative fine and other shares, fees, or costs imposed in accordance with this Chapter if it is the prevailing party and provided it made the election to seek attorney fees at the commencement of the action. A Citee shall be entitled to recover his or her attorney fees if the City made the election to seek attorney fees at the outset of the action and the Citee prevails thereon.

E. Second Response Costs shall also constitute restitution pursuant to Penal Code Sections 1202.4, 1203.1, and 1214, as well as pursuant to Welfare and Institutions Code Section 730.6.

SECTION VIII. Section 6.12.130 of the Montclair Municipal Code is hereby added to read as follows:

Sec. 6.12.130 Cumulative Penalties and Remedies.

A. Any person who causes, permits, or suffers a violation of any provision of this Chapter, is guilty of a misdemeanor violation punishable in accordance with Section 1.12.010 of this Code.

B. A violation of the provisions of this Chapter shall also be subject to an administrative fine or penalty in accordance with the provisions of Chapter 1.04 of this Code.

C. Nothing contained within this Chapter requires a police officer, fire department personnel, or other official authorized to enforce the provisions of this Chapter to issue a warning before issuing an administrative citation or criminal, misdemeanor citation, or before commencing any other action to seek the abatement of the noise disturbance.

D. This Chapter does not exclusively regulate loud, unusual, and/or unreasonable noises or disturbances within the City, and the remedies and penalties provided in this Chapter are in addition to other remedies and penalties authorized by this Code, or by the laws of the State of California or of the United States.

SECTION IX. 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 X. Effective Date.

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

SECTION XI. 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.

Mayor

ATTEST:

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. 09-909 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

Donna M. Jackson
City Clerk

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: June 15, 2009

SECTION: ADMIN. REPORTS

ITEM NO.: 1

BUSINESS

PLAN: N/A

FILE I.D.: FIN520

DEPT.: ADMIN. SVCS.

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 May 31, 2009.

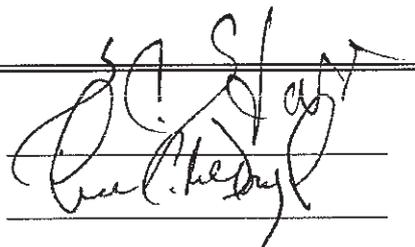
FISCAL IMPACT: Routine—report of City's cash and investments.

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

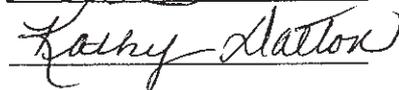
Prepared by:



Reviewed and
Approved by:



Proofed by:



Presented by:

AGENDA REPORT

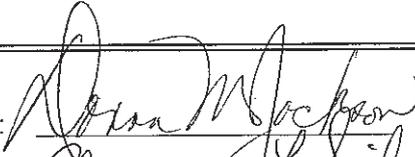
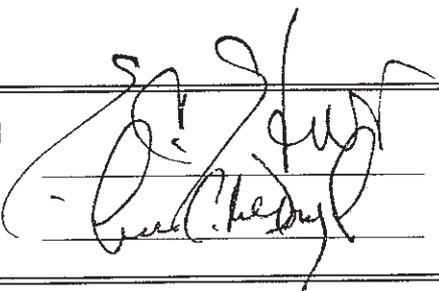
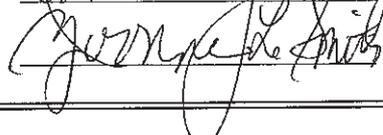
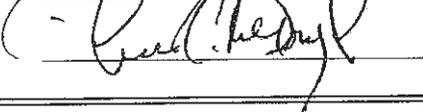
SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION	DATE: June 15, 2009
	SECTION: ADMIN. REPORT
	ITEM NO.: 2
BUSINESS PLAN: N/A	FILE I.D.: FIN540
	DEPT.: ADMIN. SVCS.

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

BACKGROUND: Mayor Pro Tem Dutrey has examined the Warrant Register dated June 15, 2009, and Payroll Documentation dated April 12, 2009, finds them to be in order and recommends their approval.

FISCAL IMPACT: The Warrant Register dated June 15, 2009, totals \$914,323.42. The Payroll Documentation dated April 12, 2009, totals \$629,544.64, with \$476,529.43 being the total cash disbursement.

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

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

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: June 15, 2009

SECTION: ADMIN. REPORTS

ITEM NO.: 3

FILE I.D.: FIN510

BUSINESS

PLAN: N/A

DEPT.: REDEVELOPMENT

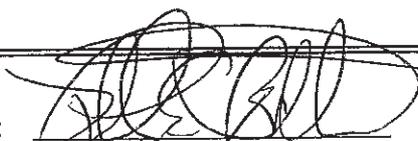
REASON FOR CONSIDERATION: State law requires the Agency Board of Directors to receive and file the Treasurer's Report.

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

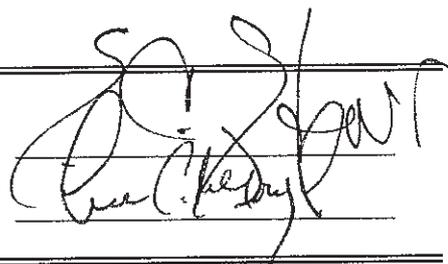
FISCAL IMPACT: Routine—report of the Agency's cash and investments.

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

Prepared by:



Reviewed and
Approved by:



Proofed by:

Kathy Alatorre

Presented by:

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER	DATE: June 15, 2009
	SECTION: ADMIN. REPORTS
	ITEM NO.: 4
BUSINESS PLAN: N/A	FILE I.D.: FIN530
	DEPT.: REDEVELOPMENT

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 05/01/09 - 05/31/09 in the amounts of \$26,259.63 for Project I; \$226.68 for Project II; \$2,221,499.98 for Project III; \$280,742.01 for Project IV; \$900,949.57 for Project V; and \$194,946.63 for Mission Boulevard Joint Redevelopment Project and finds it to be in order.

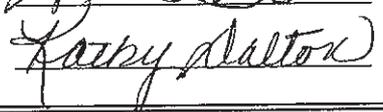
FISCAL IMPACT: Routine—report of Agency's obligations.

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

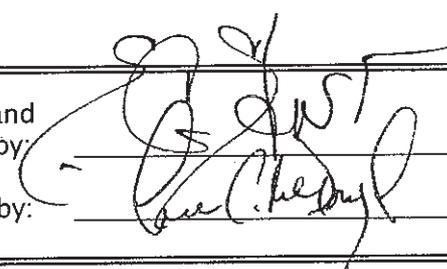
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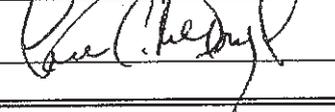
Proofed by:



Reviewed and
Approved by:



Presented by:



AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: June 15, 2009

SECTION: ADMIN. REPORTS

ITEM NO.: 5

**BUSINESS
PLAN:** N/A

FILE I.D.: FIN525

DEPT.: MHC

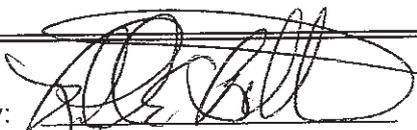
REASON FOR CONSIDERATION: State law requires the Montclair Housing Corporation Board of Directors to receive and file the Treasurer's Report.

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

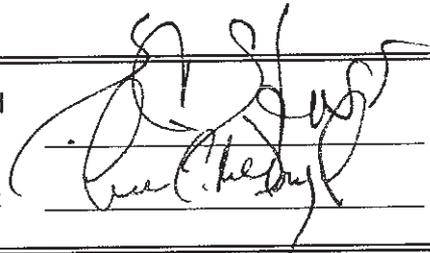
FISCAL IMPACT: Routine—report of the Montclair Housing Corporation's cash and investments.

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

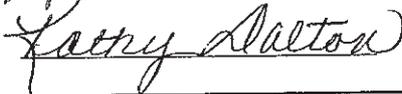
Prepared by:



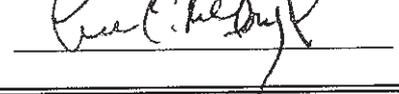
Reviewed and
Approved by:



Proofed by:



Presented by:



AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER	DATE: June 15, 2009
	SECTION: ADMIN. REPORTS
	ITEM NO.: 6
BUSINESS PLAN: N/A	FILE I.D.: FIN545
	DEPT.: MHC

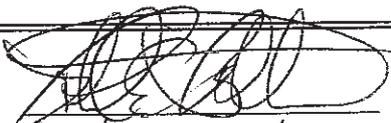
REASON FOR CONSIDERATION: State law requires the Montclair Housing Corporation Board of Directors to receive and file the Warrant Register.

BACKGROUND: Vice Chairman Dutrey has examined the Warrant Register dated 05/01/09 - 05/31/09 in the amount of \$278,518.97 for the Montclair Housing Corporation and finds it to be in order.

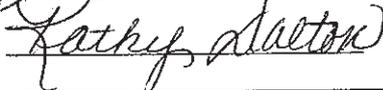
FISCAL IMPACT: Routine—report of Montclair Housing Corporation's obligations.

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

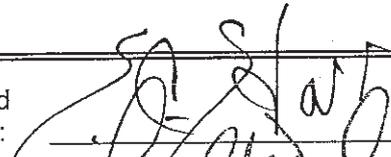
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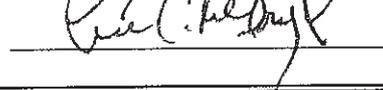
Proofed by:



Reviewed and
Approved by:



Presented by:



AGENDA REPORT

SUBJECT: CONSIDER SETTING A PUBLIC HEARING TO CONSIDER RESOLUTION NO. 09-2801 REQUESTING THE LOCAL AGENCY FORMATION COMMISSION INITIATE PROCEEDINGS FOR CITY OF MONTCLAIR ANNEXATION NO. 29	DATE: June 15, 2009 SECTION: ADMIN. REPORTS ITEM NO.: 7 FILE I.D.: LDA050-29
BUSINESS PLAN: STRATEGIC PRIORITY NO. 7	DEPT.: COMMUNITY DEV.

REASON FOR CONSIDERATION: Initiation of annexation proceedings requires public hearing review and approval by the City Council.

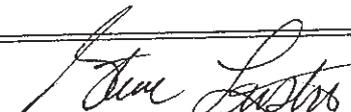
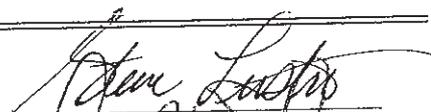
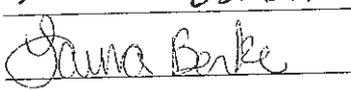
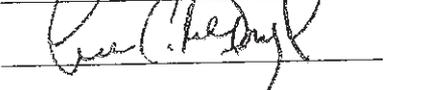
Annexation of unincorporated territory within the City's Sphere of Influence would satisfy a portion of Strategic Priority No. 7, as contained in Montclair's "Business Plan."

BACKGROUND: On March 20, 2006, the City Council approved the second reading of Ordinance No. 06-883 adopting the rezoning designation of approximately 370 acres of unincorporated County territory generally bounded by State Street on the north, Benson Avenue on the east, Phillips Boulevard on the south, and parcel lines and Pipeline Avenue on the west. The rezoning designations became effective on April 19, 2006. Should the City Council desire to pursue annexation of any portion of the subject areas following the rezoning process, the Local Agency Formation Commission (LAFCO) requires the City Council to adopt a Resolution of Initiation, which formally commences the annexation process through LAFCO.

The subject area is approximately 120 acres in size, reversed "L"-shaped and would include the area bounded by Mission Boulevard and Howard Street on the north, Benson Avenue on the east, Phillips Boulevard on the south, and Central Avenue and Vernon Avenue on the west. Excluded are approximately nine acres along the west side of Benson Avenue that was annexed to the City of Ontario in 1965 prior to the establishment of Spheres of Influence by LAFCO.

FISCAL IMPACT: If the City Council directs staff to initiate an application for Annexation No. 29, the LAFCO application fee of \$9,325 would be borne by the applicant.

RECOMMENDATION: Staff recommends the City Council set a public hearing for Monday, July 6, 2009, at 7:00 p.m. in the Council Chambers to consider adoption of Resolution No. 09-2801 requesting LAFCO to initiate proceedings for City of Montclair Annexation No. 29.

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

RESOLUTION NO. 09-2801

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MONTCLAIR REQUESTING
THE LOCAL AGENCY FORMATION COMMISSION
INITIATE PROCEEDINGS FOR CITY OF
MONTCLAIR ANNEXATION NO. 29**

WHEREAS, the City of Montclair desires to initiate proceedings pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, commencing with Section 56000 of the California Government Code for a reorganization to include annexation of property into the City of Montclair; and

WHEREAS, the area proposed to be annexed is approximately 120 acres in size, the boundaries of which are described in Exhibit A and illustrated in Exhibit B attached hereto and by this reference incorporated herein; and

WHEREAS, the subject area qualifies as an "island" pursuant to Section 56375.3 of the California Government Code and the policies adopted by the Local Agency Formation Commission (LAFCO) for San Bernardino County; and

WHEREAS, the subject area is defined as "inhabited" by the Local Agency Formation Commission by virtue of the fact that there are more than 12 registered voters within its boundaries; and

WHEREAS, upon concurrence from the affected districts, the proposed reorganization will include detachment from County Service Area 70; and

WHEREAS, the proposal is consistent with the City of Montclair Sphere of Influence as designated by LAFCO; and

WHEREAS, it is desired that the reorganization be subject to the normal terms and conditions imposed by LAFCO during such proceedings; and

WHEREAS, the reason for this reorganization is to facilitate development of a 4.42-acre site at the southwest quadrant of Mission Boulevard and Benson Avenue for a multitenant commercial project and to allow said development to connect to the City of Montclair's sanitary sewer system; and

WHEREAS, the City Council conducted a duly noticed public hearing on July 6, 2009, at which time all interested parties were provided an opportunity to give testimony for or against the issue.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby adopts this Resolution of Initiation requesting the Local Agency Formation Commission of the County of San Bernardino initiate proceedings for the annexation of territory as described in Exhibit A and illustrated in Exhibit B in the manner provided by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

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. 09-2801 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

LAFCO 31__
CITY OF MONTCLAIR ANNEXATION NO. 29
(SOUTHEAST ISLAND)

That portion of land within the southeast $\frac{1}{4}$ of Section 26, and the northeast $\frac{1}{4}$ of Section 35, Township 1 South, Range 8 West, San Bernardino Meridian, in the County of San Bernardino, State of California, described as follows:

Beginning at the intersection of the centerline improvements of Mission Boulevard, now 150 feet wide, with the easterly line of said Section 26, which is also the westerly corporate boundary of the City of Ontario;

Course 1. Thence leaving said intersection along said Section line and said corporate boundary of the City of Ontario having a bearing of South $0^{\circ}40'00''$ East, a distance of 344.98 feet, more or less, to an angle point in said corporate boundary of the City of Ontario, established by City of Ontario Annexation No. 122 (LAFCO 259);

Course 2. Thence westerly along the northerly boundary of said LAFCO 259 a distance of 666.73 feet to the westerly line of Lot 3, Block 19, Map of Monte Vista Tract No. 2, as recorded in Book 16 of Maps, Page 33, records of said County, said point also being the northwest corner of said LAFCO 259;

Course 3. Thence southerly along said westerly line of said Lot 3, the westerly line of Lot 6, Block 19, of said Monte Vista Tract No. 2, and said LAFCO 259 a distance of 643.49 feet to the southwest corner of said Lot 6, said point also being the southwest corner of said LAFCO 259;

Course 4. Thence easterly along the southerly line of said Lot 6 and its easterly prolongation, and the southerly boundary of said LAFCO 259 a distance of 666.73 feet to said easterly line of Section 26;

Course 5. Thence South $0^{\circ}40'00''$ East along said easterly line of Section 26 and said corporate boundary of the City of Ontario a distance of 1,728.60 feet, more or less, to the original centerline of Phillips Boulevard as shown in Map of Subdivision of part of Rancho Santa Ana del Chino, as recorded in Book 6 of Maps, Page 15, records of said County, said centerline also being the northerly boundary of said Rancho Santa Ana del Chino and an angle point in the corporate boundary of the City of Ontario;

Course 6. Thence South $85^{\circ}26'05''$ West along said original centerline of Phillips Boulevard, said northerly boundary of Rancho Santa Ana del Chino, and said corporate boundary of the City of Ontario a distance of 15.06 feet, more or less, to the northerly prolongation of the centerline of Benson Avenue (88 feet wide), said point also being an angle point in the corporate boundary of the City of Chino, established by Annexation No. 132 (LAFCO 2238);

Course 7. Thence leaving said corporate boundary of the City of Ontario along said original centerline of Phillips Boulevard having a bearing of South $85^{\circ}26'05''$ West, said northerly boundary of Rancho Santa Ana del Chino and said LAFCO 2238 to the northerly prolongation of the westerly line of Lot 3 of said Section 35, Township 1 South, Range 8 West, San Bernardino Meridian, said point also being the northwest corner of said LAFCO 2238 and the northeast corner of City of Chino Annexation No. 120 (LAFCO 2038);

Course 8. Thence continuing South 85°26'05" West along said original centerline of Phillips Boulevard, said northerly boundary of Rancho Santa Ana del Chino and said LAFCO 2038 a distance of 600 feet, more or less, to the original centerline of Central Avenue (70 feet wide) as shown on Parcel Map No. 3978 as recorded in Book 36, Page 33 of Parcel Maps, records of said County, said point also being on the existing corporate boundary of the City of Montclair established by City of Montclair Annexation No. 28 (LAFCO 3081);

Course 9. Thence leaving said corporate boundary of the City of Chino along said original centerline of Central Avenue having a bearing of North 0°44'25" West and said corporate boundary of the City of Montclair established by said LAFCO 3081 a distance of 277.37 feet, more or less, to the northeast corner of said LAFCO 3081, said point also being the southeast corner of City of Montclair Annexation No. 25 (LAFCO 2980);

Course 10. Thence continuing North 0°44'25" West along said original centerline of Central Avenue and said corporate boundary of the City of Montclair established by said LAFCO 2980 a distance of 330 feet to the northeast corner of said LAFCO 2980, said point also being the southeast corner of City of Montclair Annexation No. 14 (LAFCO 2021);

Course 11. Thence continuing North 0°44'25" West along said original centerline of Central Avenue and said corporate boundary of the City of Montclair established by said LAFCO 2021 a distance of 991.50 feet to the centerline of Howard Street as shown on Tract Map No. 16884 as recorded in Book 307 of Maps, Pages 20 through 22, records of said County;

Course 12. Thence leaving said corporate boundary of the City of Montclair along said centerline of Howard Street having a bearing of North 89°40'23" East a distance of 1,282.38 feet, more or less, to the centerline of Vernon Avenue as shown on Parcel Map No. 16511 as recorded in Book 205 of Parcel Maps, Pages 58 and 59, records of said County;

Course 13. Thence North 0°42'59" West along said centerline of Vernon Avenue a distance of 329.34 feet, more or less, to the easterly prolongation of the north line of Parcel 4 of said Parcel Map No. 16511, said prolongation also being the easterly prolongation of the south line of Lot 1 of Tract Map No. 16215 as shown in Book 289 of Maps, Pages 67 through 69, records of said County;

Course 14. Thence continuing North 0°42'59" West along said centerline of Vernon Avenue a distance of 748.03 feet, more or less, to the easterly prolongation of the north line of Lot 28 of said Tract No. 16215;

Course 15. Thence continuing North 0°42'59" West along said centerline of Vernon Avenue a distance of 240 feet, more or less, to the centerline improvements of said Mission Boulevard, now 150 feet wide;

Course 16. Thence North 89°59'56" East along said centerline improvements of Mission Boulevard a distance of 1,318.41 feet, more or less, to the **Point of Beginning**.

The above-described area of land contains 120.37 acres, more or less.

Prepared by:

MCH
Michael C. Hudson, P.E. 27955, Exp. 3/31/10

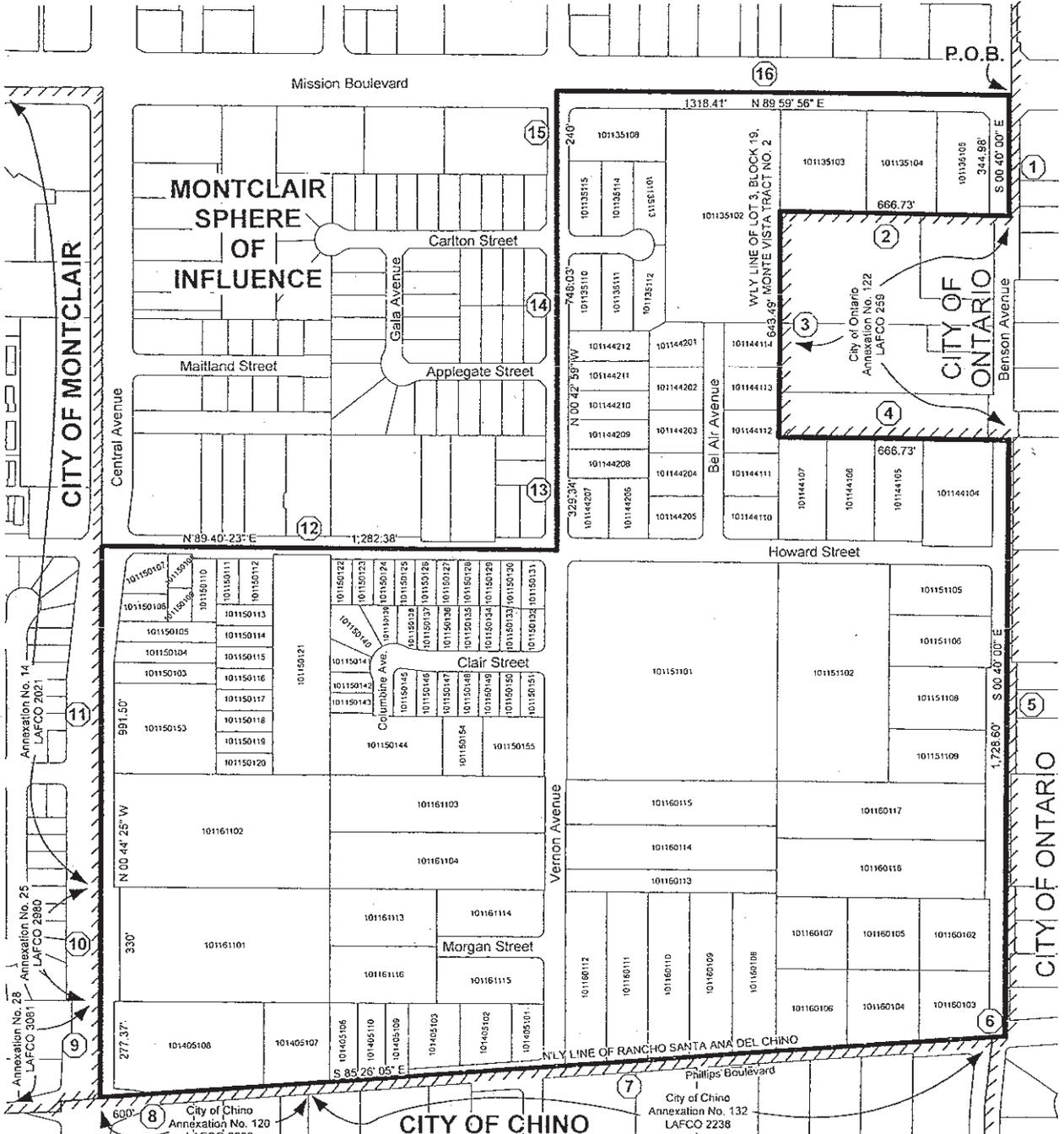
6.9.09
Date



This legal description was prepared from record information.

LAFCO 31XX

CITY OF MONTCLAIR ANNEXATION NO. 29



Annexation No. 14
LAFCO 2021

Annexation No. 25
LAFCO 2980

Annexation No. 28
LAFCO 3081

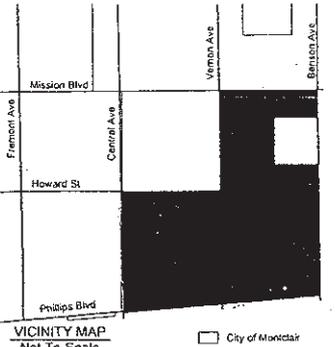
Annexation No. 120
LAFCO 2038

Annexation No. 132
LAFCO 2238

- ANNEXATION AREA
- EXISTING CITY LIMITS
- COURSE NO.
- PARCEL LINES

1 inch = 300 feet

TOTAL ACREAGE: +/- 120.37



PREPARED BY:
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CITY ENGINEER
CITY OF MONTCLAIR
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MONTCLAIR, CA 91763
(TEL) 909-633-3441
(FAX) 909-621-1584

CITY OF MONTCLAIR

LAFCO 31XX
CITY OF MONTCLAIR ANNEXATION NO. 29

LOCATED N. OF PHILLIPS BLVD., W. OF BENSON AVE.
A PORTION OF LAND WITHIN THE SOUTHEAST 1/4 OF SECTION 26, AND THE
NORTHWEST 1/4 OF SECTION 35, TOWNSHIP 1 SOUTH, RANGE 8 WEST,
SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA

AFFECTED AGENCY CITY OF MONTCLAIR
SHEET 1
OF 1 SHEETS
June 1, 2009

AGENDA REPORT

SUBJECT: CONSIDER CANCELLATION OF AUTOMATED RED LIGHT CAMERA ENFORCEMENT PROGRAM WITH NESTOR TRAFFIC SYSTEMS, INC.	DATE: June 15, 2009 SECTION: ADMIN. REPORT ITEM NO.: 8 FILE I.D.: PDT605 DEPT.: POLICE
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: The City Council is requested to consider cancellation of the City's Automated Red Light Camera Enforcement Program with Nestor Traffic Systems, Inc.

BACKGROUND: At the May 4, 2009 City Council workshop, Mayor Pro Tem Dutrey requested an item be placed on this evening's agenda related to disposition of the City's Automated Red Light Camera Enforcement Program. Expense and overhead costs of the program greatly exceed what the City's General Fund can afford during the current economic downturn. Accordingly, a decision should now be made on disposition of the program.

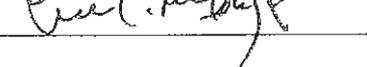
On September 4, 2001, the City of Montclair entered into a five (5) year agreement (Agreement No. 01-101) with Nestor Traffic Systems, Inc., to monitor red traffic light violations at the following intersections:

- Central Avenue and Holt Boulevard (two approaches)
- Central Avenue and Moreno Street (four approaches)

In April 2002, the City of Montclair amended the Agreement with Nestor Traffic Systems, Inc., to increase monitoring to three approaches at Central Avenue and Holt Boulevard.

The automated red light enforcement system was installed; and on June 4, 2003, the mandated warning period for red light enforcement was concluded and violators were issued citations. Montclair's Annual Report on the red light enforcement system can be found in Attachment A.

One of the primary reasons for installing the Automated Red Light Camera Enforcement Program at specific intersections was to reduce the number of traffic collisions from drivers driving through red stoplights. A comparison was made between the numbers of traffic collisions calls for service before the system was installed and after the system was

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

installed. The results of the comparison showed the red light enforcement program had no dramatic decrease in traffic collisions at the intersections where the system was operating (see Attachment B).

In July 2008, the City of Montclair amended the Agreement with Nestor Traffic Systems, Inc. Nestor installed, at no cost to the City, brand new high-resolution digital enforcement cameras (the "Evaluation Cameras") at one intersection (two approaches) designated by the City. The City had 90 days to evaluate the clarity of violator images, and the City would realize at least a 50 percent monthly issuance rate on the number of "Citable Violations" to the number of "Citations Issued."

"Citable Violations" are all violations captured during a calendar month minus violations discarded for reasons beyond Nestor's reasonable control (such as missing or obstructed license plates, disguised or obstructed driver image, mismatch between vehicle or driver image and the Department of Motor Vehicles records). Nestor met their stated 50 percent monthly issuance rate however; the number of citable violations has been decreasing (see Attachment A).

Nestor guaranteed a price per approach of not more than \$3,000 provided the City collects less than \$21,000 in a month from citations issued; in that case, the City would be liable only for the amount actually collected in such month. It is the intent of this clause that the parties will true up accounts on an annual basis, but that the City will never be required during any 12-month period of the Agreement to pay Nestor more than the City has received from citation collections. This is considered a cost-neutral contract.

Assistant Finance Director's Comments

When the automated red light enforcement program was presented to the City Council, the main focus was public safety. Also presented to the City Council was the anticipation that the red light enforcement program would eventually be self-supportive. As presented, this program offered the City a mechanism for increased public safety with the ability to sustain the program over the term of the contract. The red light enforcement program was established in a separate fund, the Automated Traffic Enforcement Fund, to allow for ease of tracking, monitoring, and prevent any direct impact to the General Fund—the main operating fund of the City.

The activity for Fiscal Year 2008-09 reflects ten months of revenue received to date with expenditures including seven Nestor payments.

Since inception, the red light enforcement program has consistently failed in its ability to financial sustain the program over the length of the contract. During the first year of operations, the program had a loss of \$287,697 with program revenues received of only \$62,431 with expenditures of \$350,128. Each of the subsequent fiscal years after the initial year of the program continued the trend of losses with expenditures exceed revenues anywhere from \$41,674 to \$135,731.

The failure of the program to generate sufficient money to offset the expenditures has left the Automated Traffic Enforcement Fund with a deficit that continues to grow year after year. The fund began with a deficit after its first year of operations of \$287,697, and it has grown to its current level of \$450,605 over the six years of operations. The only exception to growth of the deficit of Automated Traffic Enforcement Fund was experienced in Fiscal Year 2007-08, when Nestor reimbursed the City for using the wrong rate on the existing contract.

It is important to note that termination of the red light enforcement program contract with Nestor would not eliminate the deficit; it would simply stop the deficit from continuing to grow. At some point in time, the deficit would have to be absorbed by another City fund in order to eliminate the deficit (see Attachment C).

City Attorney's Comments

The original contract entered into with Nestor provided for payment to Nestor of \$99.26 per citation, with a minimum amount of \$4,083.75 per approach per month. With seven approaches, the cost to the City was \$28,586.25 per month. The term of this contract was five years; and it expired in June 2008.

A new contract is in the process of being negotiated. As drafted by Nestor, the proposed contract provides for a fee of \$3,000 per approach per month, or \$21,000 per month. The proposed contract also includes a "cost-neutral" provision, which provides that the City would not be required to pay Nestor more than it receives from citation collections.

Although the cost-neutral provision ensures the City's costs would never exceed what it receives in revenues each month, the legality of such a provision is in serious doubt. In 2004, the State Legislature added a provision to the Vehicle Code prohibiting the payment for red light enforcement services to be based upon either the number of citations issued or a percentage of revenue generated. In addition, last year an Orange County Superior Court dismissed a citation issued by the City of Fullerton because the payment provision was a "cost-neutral" provision, which the court determined violated state law and gave the system operator an incentive to ensure that sufficient revenues are generated to cover the monthly fee. As it is likely that other courts will follow suit, the payment provision in the proposed contract should be a monthly flat fee. Staff calculated a proposed flat fee based upon the expenses incurred by the City in the last 12-month period, taking into consideration the cost of an officer's time in reviewing issued citations. It was determined that our "break-even" number based upon the last 12 months is \$6,229.00 per month, although there is no guarantee that our average monthly revenue generated would equal or exceed that number. Nestor has stated that the lowest fee it is willing to accept is \$9,800 per month, an amount in excess of \$3,000 per month over the estimated average revenues.

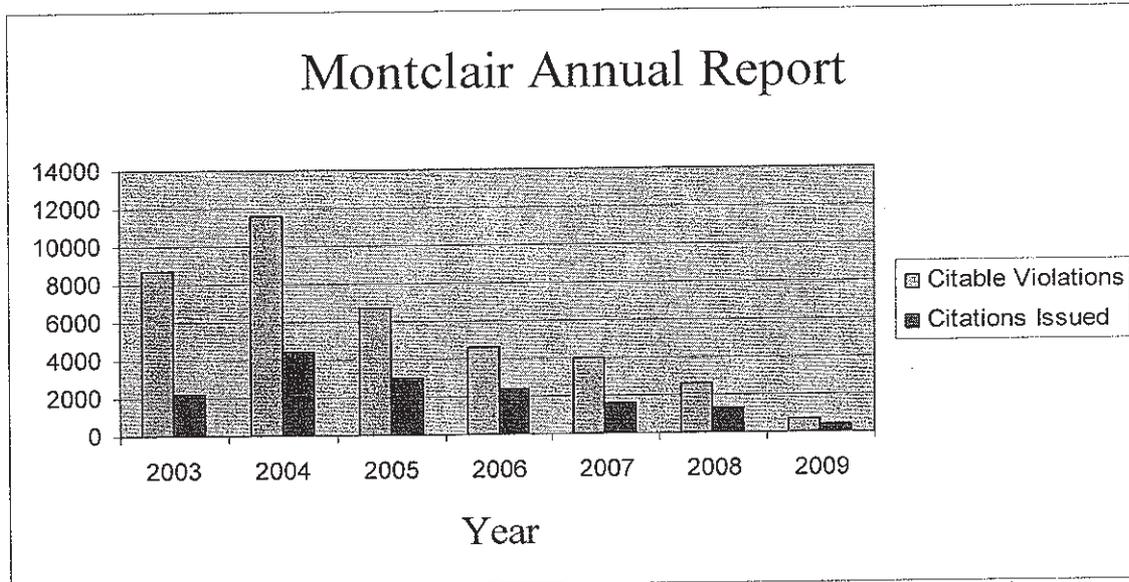
The City recently learned Nestor Traffic System, Inc., has gone into receivership in the State of Rhode Island effective June 3, 2009.

FISCAL IMPACT: Revenues expected to be generated by the Automated Red Light Camera Enforcement Program during Fiscal Year 2009-10 are estimated to be \$125,000, and the approximate Fiscal Year 2009-10 appropriation for the program is \$252,000. The difference of \$127,000 added to the Automated Traffic Enforcement Fund's present deficit balance of \$450,605 would result in a total deficit amount of approximately \$577,605 should the Nestor program be continued through Fiscal Year 2009-10.

RECOMMENDATION: Staff recommends the City Council cancel the Automated Red Light Camera Enforcement Program with Nestor Traffic Systems, Inc.

ATTACHMENT A
Montclair Annual Report

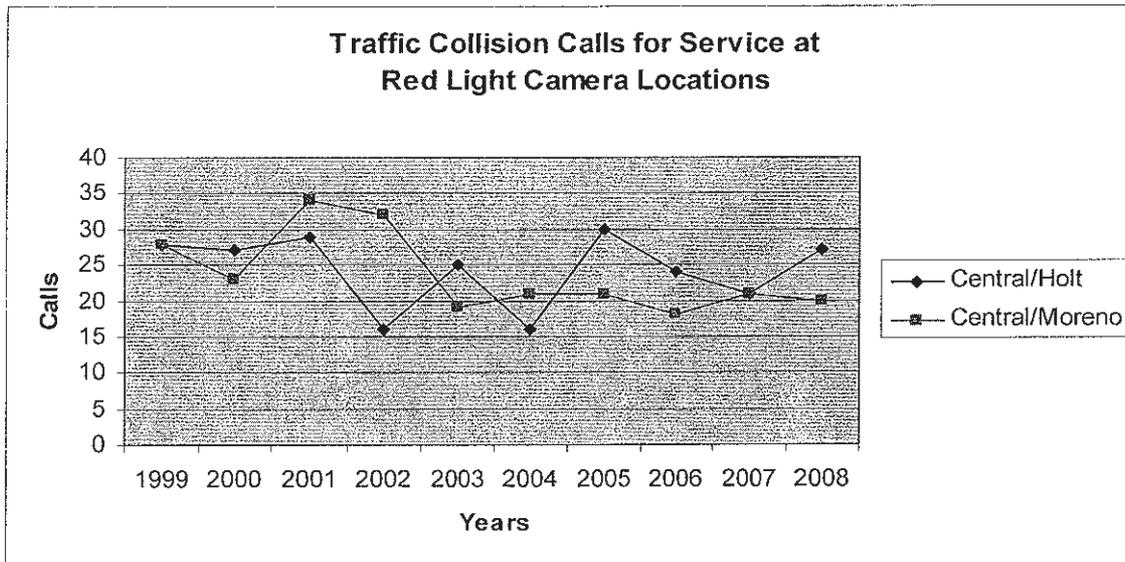
Year	2003	2004	2005	2006	2007	2008	2009
Citable Violations	8652	11637	6670	4605	3997	2585	676
Citation Issued	2221	4383	2972	2406	1592	1267	380



ATTACHMENT B

Total Number of Traffic Collision Calls for Service at Red Camera Light Locations

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Central/ Holt	28	27	29	16	25	16	30	24	21	27
Central/ Moreno	28	23	34	32	19	21	21	18	21	20



ATTACHMENT C

CITY OF MONTCLAIR
Automated Traffic Enforcement
Life-To-Date Analysis
Fund 1112

	FY 02-03/FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08	FY 08-09
Fund Balance, beg 7/1	\$ -	(\$287,697.39)	(\$398,672.40)	(\$440,672.40)	(\$576,403.44)	(\$388,557.93)
Revenues	\$62,430.55	\$234,692.77	\$303,359.16	\$181,383.02	\$125,361.67	\$64,375.28
Reimb. Expenditures					\$229,519.84	
Less: Expenditures						
Southern CA EDISON	(\$1,722.63)	(\$2,632.78)	(\$2,324.16)	(\$3,645.41)	(\$3,812.20)	(\$4,076.86)
Nestor Traffic System	(\$342,995.47)	(\$343,035.00)	(\$343,035.00)	(\$313,468.65)	(\$163,223.80)	(\$122,345.69)
Other Costs	(\$5,409.84)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Ending Fund Balance, end 6/30	(\$287,697.39)	(\$398,672.40)	(\$440,672.40)	(\$576,403.44)	(\$388,557.93)	(\$450,605.20)

Profit(Loss):
 Red Light Rev less Exp. (\$287,697.39) (\$110,975.01) (\$42,000.00) (\$135,731.04) (\$41,674.33) (\$62,047.27)
 Increase(Decrease)
 Fund Balance-Change (\$110,975.01) (\$42,000.00) (\$135,731.04) \$187,845.51 (\$62,047.27)

AGENDA REPORT

SUBJECT: CONSIDER AUTHORIZATION TO PURCHASE ONE BENDIX KING VHF PORTABLE RADIO AND TWO LAPEL SPEAKER MICROPHONES FROM 49ER COMMUNICATIONS, INC.	DATE: June 15, 2009 SECTION: ADMIN. REPORTS ITEM NO.: 9 FILE I.D.: EQS215 DEPT.: FIRE
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of one Bendix King VHF portable radio and two lapel speaker microphones from 49er Communications, Inc.

BACKGROUND: The Fire Department uses Bendix King VHF radios for communication with Los Angeles County Fire Department as well as for communication on mutual-aid strike team assignments. As a result of the recent update to the automatic-aid contract with Los Angeles County Fire Department (that now includes the southern area of the City), there is a need for additional portable radios on Medic Engine 152. The procurement of an additional radio would result in improved communication and safety on emergency calls. The additional lapel speaker microphones would enhance the ability to hear radio traffic that might be missed otherwise because of excessive noise in the emergency environment.

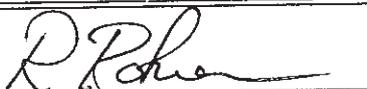
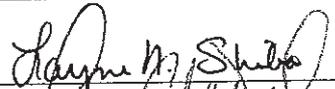
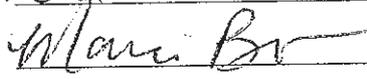
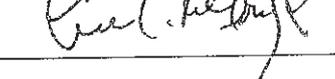
Staff received the following bid quotations for a Bendix King VHF portable radio and two lapel speaker microphones:

<i>Vendor</i>	<i>Bid Amount</i>
49er Communications, Inc.	\$1,634.88
KR Nida Companies	\$1,685.91
P & W Paging & Wireless Service Center	\$1,703.50

Based on the three bids received, the Fire Department recommends the radio equipment be purchased from the apparent low bidder, 49er Communications, Inc.

FISCAL IMPACT: The cost to purchase one Bendix King VHF portable radio and two lapel speaker microphones from 49er Communications, Inc., is \$1,634.88. Should the City Council approve this item, \$1,634.88 would be transferred from Maintenance - Communications Account No. 1001-4533-52020-400 to Materials - Communications Account No. 1001-4533-51310-400 to pay for the equipment.

RECOMMENDATION: Staff recommends the City Council authorize the purchase of one Bendix King VHF portable radio and two lapel speaker microphones from 49er Communications, Inc.

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

AGENDA REPORT

SUBJECT: CONSIDER AUTHORIZING THE CITY MANAGER TO NEGOTIATE, AWARD, AND SIGN A CONSTRUCTION CONTRACT FOR CONSTRUCTION OF THE BLEACHER STORAGE AND REROOFING OF VARIOUS CITY FACILITIES PROJECT FOR AN AMOUNT NOT TO EXCEED \$700,000	DATE: June 15, 2009
	SECTION: AGREEMENTS
	ITEM NO.: 10
BUSINESS PLAN: STRATEGIC PRIORITY NO. 4 AND 5	FILE I.D.: HSV151
	DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: The Public Contract Code establishes requirements for cities advertising and awarding public works projects. One requirement is that the projects must be publicly bid. If no bids are received, the legislative body may have the project done without further compliance with this particular requirement. Agreements for construction contracts require City Council approval, although the approval may also be delegated to a City official.

Construction of this project would satisfy a portion of Strategic Priority No. 4 and 5, as contained in Montclair's "Business Plan."

BACKGROUND: On April 6, 2009, the City Council authorized staff to advertise and seek bids for the Bleacher Storage Project. This project includes remodeling of the ceramics room in the Community Center to provide a bleacher storage area; new lighting in the gymnasium portion of the Community Center to provide a more energy-efficient lighting system; and electrical improvements in the Community Center to add additional electrical capacity and eliminate circuit overloads. On May 4, 2009, the City Council authorized staff to advertise and seek bids for the reroofing of various City-owned buildings and to combine this project with the Bleacher Storage Project. The bid date for the combined project was set for May 18 but was later extended to May 28, 2009.

No bids were received for this project by the 10:00 a.m. deadline on May 28, 2009. A bid did arrive approximately one hour late from a bidder who thought the deadline was 11:00 a.m. The City accepted delivery of the bid but informed the bidder that the City was under no obligation to further consider the bid or award the construction contract to that company. The company could be considered nonresponsive for failing to have the bid submitted by the specified deadline.

The Public Contract Code requires cities to advertise most public works projects and, if the project is to be awarded, to award the project to the lowest responsible, responsive bidder. Section 20166 of the Public Contract Code states in part: "If no bids are received, the legislative body may have the project done without further complying with this chapter." Since no bids were received by the specified deadline, the City now has the ability to negotiate a contract with a qualified contractor to perform the work in accordance with the advertised project.

Prepared by: <u><i>M. Seale</i></u>		Reviewed and Approved by: <u><i>M. STAATS</i></u>
Proofed by: <u><i>Lee My</i></u>		Presented by: <u><i>Lee My</i></u>

During the advertising process, the project seemed to have a lot of interest. The pre-bid job walk was well attended and plan holders made additional visits to the various work sites to further familiarize themselves with the project. There were more than a dozen plan holders on the date that bids were scheduled to be opened. After the scheduled bid opening, calls were made to various plan holders who were asked why they hadn't bid the job. The general consensus was the work was mostly roofing. Roofing contractors who could bid the job as general contractors didn't want to do so because of the building modifications that were part of the contract. Nonroofing general contractors didn't want to bid the work because most of the work was roofing-related.

The project could be readvertised as it is currently packaged, but the result is likely to be the same: few or no bidders. The project could be split into two projects, one completely limited to reroofing and the other limited to the modifications in the Community Center. Repackaging the work as two projects would cause a delay of at least three months. That would not be a problem with the reroofing work, although staff would likely recommend that it be delayed even further so that it does not conflict with the proposed construction of the Senior Center. The delay could pose a problem with the Community Center work. In anticipation of the Community Center work being done in late June and July, no building reservations have been taken for these months. It would be necessary to extend the reservation moratorium through September and October and cancel reservations that may have already been made between August and October.

Staff has already begun discussing the project as advertised with three contractors, including the contractor who submitted the late bid. Assuming the City Council concurs with staff recommendation, the City would be able to maintain the schedule set for this project.

FISCAL IMPACT: The City Council has previously appropriated \$808,000 for reroofing various City facilities and the installation of two accessible doors in City Hall. Some of the reroofing and both of the doors are being addressed as part of the Youth Center Remodel Project, leaving \$415,000 available for roofing. The actual reroofing cost is expected to be between \$400,000 and \$500,000. The cost for the modifications to the Community Center is estimated at \$150,000 and will be funded by 2005 Lease Revenue Bond proceeds. It is anticipated that a contract can be negotiated for under \$700,000.

RECOMMENDATION: Staff recommends the City Council authorize the City Manager to negotiate, award, and sign a construction contract for construction of the Bleacher Storage and Reroofing of Various City Facilities Project for an amount not to exceed \$700,000.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-14 AMENDING AGREEMENT NO. 07-43 WITH AEI-CASC ENGINEERING, INC., FOR WATER QUALITY MANAGEMENT PLAN-CHECK SERVICES	DATE: June 15, 2009 SECTION: AGREEMENTS ITEM NO.: 1 FILE I.D.: STD200 DEPT.: PUBLIC WORKS
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: Agreement No. 07-43 with AEI-CASC Engineering, Inc., for Water Quality Management Plan (WQMP) check services expires on June 30, 2009. The City Council is requested to consider approval of Agreement No. 09-14 with AEI-CASC Engineering, Inc., to continue WQMP-check services.

BACKGROUND: As the City Council is aware, WQMPs have been required for developments in San Bernardino County since 2004. The City has been providing the review and approval of these WQMPs since November of that year. In April 2006, the Regional Water Quality Control Board notified the City of a change in the requirements for WQMPs as they are applied to the City of Montclair. WQMPs for many Montclair projects will need to address "Hydraulic Conditions of Concern" (HCOC).

Under the direction of the Regional Water Quality Control Board, most developers are required to address HCOC issues in their WQMPs. The HCOC requirement, together with other concerns, means the WQMP must be prepared by, or under the direction of, a registered civil engineer, which is the responsibility of the developer. The City, in turn, must have a registered civil engineer review and approve the information provided. AEI-CASC Engineering, Inc., employs the appropriate personnel to review the WQMPs.

At its meeting of May 7, 2007, the City Council approved Agreement No 07-43 with AEI-CASC Engineering, Inc., for WQMP-check services. The Agreement was for a two-year term and could be renewed for an additional two years by mutual consent of both parties. Proposed Agreement No. 09-14 would commence on July 1, 2009, and would remain in effect until June 30, 2011.

FISCAL IMPACT: Plan-check fees have been established by the City Council for review of WQMPs. It is the responsibility of developers to pay for the cost of their WQMP reviews. This review process is self-supporting with the application of plan-check fees being used to pay for work performed by the City's consulting engineer. In addition, AEI-CASC Engineering, Inc., does not charge the maximum rate established for plan checks and is not requesting an increase for plan check services.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-14 amending Agreement No. 07-43 with AEI-CASC Engineering, Inc., for Water Quality Management Plan-check services.

Prepared by: <u>Joseph Romo</u>	Reviewed and Approved by: <u>M. STARRS</u>
Proofed by: <u>Jessica Smith</u>	Presented by: <u>Joe Chedoke</u>

AGREEMENT NO. 09-14
AMENDMENT TO AGREEMENT NO. 07-43 WITH
AEI-CASC ENGINEERING
FOR
ENGINEERING CONSULTING SERVICES

This is the second amendment to the initial Agreement No. 06-77 by and between the City of Montclair, California, a municipal corporation, ("City") and AEI-CASC Engineering, Inc. ("Consultant"), dated the 16th day of June. It is hereby agreed to amend Agreement No. 07-43 dated July 17, 2006, as follows:

1. TERM

This contract shall commence on July 1, 2009, and terminate on June 30, 2011. This contract may be amended to further extend the term an additional two years if mutually agreeable to both parties.

2. SERVICES

No changes

3. PERFORMANCE

No changes

4. CITY MANAGEMENT

The City's NPDES Coordinator shall represent the City in all matters pertaining to the coordination and administration of this consulting contract, including the review and approval of all products submitted by Consultant, but not including the authority to enlarge the Scope of Services to be performed or change the compensation due to Consultant. The City's City Manager shall be authorized to act on the City's behalf and to execute all necessary documents that enlarge the Scope of Services to be performed or change Consultant's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The City agrees to pay Consultant monthly in accordance with the payment rates and terms and the schedule of payment as set forth in a new Exhibit B attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Payment shall be made on a time and materials basis for a total not exceed \$80,000 per year.

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

amounts and in the manner as agreed to by City Manager and Consultant at the time the City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement but in no event shall total compensation exceed Ten Thousand Dollars (\$10,000). Any additional work in excess of this amount shall be approved by the City Council.

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

Sections 6 through 23

No changes

IN WITNESS THEREOF, the parties hereto execute this Agreement as of the day and year first set forth above.

CITY OF MONTCLAIR

AEI-CASC ENGINEERING, INC.

By: _____
Mayor

By: _____
Title:

ATTEST:

Date: _____

City Clerk

By: _____
Title:

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

Exhibit A

Water Quality Management Plan (WQMP) Plan Check and Related Services

Scope of Services

Task 1 – WQMP Plan Checking

Consultant shall review WQMPs submitted to the City. The purpose of the review is to determine each WQMP's general conformance with the document, "San Bernardino County Stormwater Program – Model Water Quality Management Plan Guidance" (SBCFCD, June 9, 2005) (Guidance Document), with development practices acceptable to the City (City Practices), and with the generally accepted standards and practices for urban runoff quality management in California (Industry Practices).

WQMP reviews may require review of supporting documentation including but not limited to environmental documents, conditions of approval, grading plans, project plans, hydrology reports, drainage reports, and other documentation submitted by the Applicant.

Consultant comments on WQMPs will be conveyed to the WQMP preparer in the form of "redlines" on documents and plans, and when required, via written narratives. When a WQMP is determined to conform to the Guidance Document, City Practices, and Industry Practices, Consultant shall transmit an written WQMP Approval Recommendation to the City: said WQMP Approval Recommendations may include conditions related to the approval. Applicants shall be instructed to return redline comments with subsequent resubmittals of the WQMP.

WQMP plan check comments shall be routed through the City of Montclair within 10 work days following receipt of the WQMP and supporting documentation.

Task 2 – Meetings

Consultant shall meet and confer with the City to discuss WQMPs on an as-needed basis (e.g., when a WQMP proposes BMPs in the public right-of-way). Consultant shall meet and confer with development Applicants and WQMP preparers when requested by an Applicant/Preparer and approved by the City. The purpose of meeting and conferring with an Applicant/Preparer shall be to provide general guidance on WQMP preparation or to clarify WQMP redline comments. Meetings may be in person or via teleconference: in person meetings shall take place at the City, at the AEI-CASC office in Colton, or at another mutually agreeable location approved by the City.

Task 3 – Project Coordination

Consultant shall maintain a log showing the status of WQMPs submitted for review. The log shall show the date the WQMP was received, the date redline comments were returned, the City's project tracking number, and the status of the WQMP (e.g., approved, revise/resubmit). The WQMP log shall be transmitted to the City monthly or when requested. Consultant shall invoice the City monthly. The invoice shall detail the time and expenses expended broken down by project.

Terms

WQMP Reviews

Consultant shall conduct WQMP and related document reviews on a time and expense basis in accordance with the rates in Exhibit B. WQMP reviews typically involve one or more of the following staff: Environmental Analyst I/II; Project Engineer; Senior Project Engineer; Clerical; and Engineering Director. AEI-CASC rates are updated annually in January.

The time required for a WQMP review is variable, and depends on factor such as complexity of the project, willingness of the applicant to incorporate BMPs into the project, preparer's knowledge of water quality control practices and local requirements, and conditions such as Hydrologic Conditions of Concern (HCOCs). Consultant's experience has been that reviews require 5 to 12 hours per review, and that two to four reviews are required to result in a document ready for the approval recommendation.

Materials to be provided by the City

The City shall provide Consultant with materials related to the WQMP review process including but not limited to City engineering plans, drainage plans, storm drain plans, and other plans and reports needed to support the WQMP reviews.

Service Statement

AEI-CASC has developed a broad based expertise in the NPDES regulatory requirements and, as such, provides consulting services to a multitude of clientele including developers/builders, industrial facility owners/operators, contractors and public agencies.

AEI-CASC is committed to providing all of our clients with practical and cost-effective consulting services to assist them in achieving compliance with water quality regulations. AEI-CASC does not accept assignments, and will terminate our services, where the client's objective is to evade regulatory compliance or to obfuscate non-compliance.

At times AEI-CASC may be in the position of providing consulting services to multiple entities within a jurisdiction (such as document preparation for a contractor or industrial facility owner and inspection services for the local agency). In such instances, AEI-CASC will:

- Not accept assignments that pose a direct conflict of interest
- Advise clients of such known specific occurrences, when we have coincident compliance interests
- Assign separate staff to each client when we have coincident compliance interests

###

**AEI-CASC ENGINEERING, INC.
dba AEI-CASC CONSULTING
HOURLY FEE RATE SCHEDULE**

Exhibit B

January 1, 2007

The following rates shall apply to services provided on a time-and-material basis. Rates reflected are hourly.

<u>General</u>		<u>Construction Management</u>	
President/Principal	\$180.00	Resident Engineer	\$132.00
Clerical/Miscellaneous Office Work	\$65.00	Assistant Resident Engineer	\$122.00
		Senior Field Inspector	\$104.00
		Field Inspector 1	\$89.00
		Field Inspector 2	\$98.00
<u>Civil</u>		<u>Planning</u>	
Engineering Director	\$149.00	Planning Director	\$143.00
Senior Project Manager/ Project Manager	\$141.00	Project Manager	\$130.00
Assistant Project Manager/Senior Project Engineer	\$122.00	Senior Planner	\$122.00
Senior Designer/Project Engineer/Calculator	\$113.00	Planner	\$108.00
Design Engineer/Designer	\$108.00	Assistant Planner	\$93.00
CADD Designer	\$99.00		
Senior CADD Drafter	\$92.00		
CADD Drafter	\$70.00		
		<u>Survey</u>	
		Three Person Survey/GPS Crew	\$263.00
		Two Person Survey/GPS Crew	\$237.00
		One Person Survey/GPS Crew	\$206.00
		Senior Project Manager/ Project Manager	\$141.00
		Survey Analyst	\$113.00
		<u>Other</u>	
		Litigation Consultant/Expert Witness	\$363.00
		Computer Time	\$33.00
<u>Water Quality Services</u>			
Engineering Director	\$149.00		
Senior Project Manager/ Project Manager	\$141.00		
Assistant Project Manager/Senior Project Engineer	\$122.00		
Scientist	\$115.00		
Design Engineer	\$108.00		
Senior Field Inspector	\$104.00		
Environmental Analyst I	\$89.00		
Environmental Analyst II	\$98.00		
Field Inspector I	\$89.00		
Field Inspector II	\$98.00		
Two Person Sampling Crew	\$194.00		

REIMBURSABLE EXPENSES

The following expenses will be billed at cost plus 15%:

- **Reproduction Services:** Includes blueprinting, copying, printing and plotting. In-house plots will be billed at \$6.00 per sheet for each client set and for a final in-house review set. The client is welcome to contract directly with an outside reprographic firm for those services not provided in-house.
- **Rental Equipment and Fees:** Any equipment rental and any fees advanced by our firm including plan check and filing fees.
- **Commercial Delivery Services:** Including Express Mail, Federal Express, UPS and independent courier services.
- **In-House Pick-Up and Delivery Services:** These services provided by our firm will be reimbursed at \$45.00 per hour. In addition, mileage will be billed at \$.55 per mile with no markup.
- **Travel Expenses:** Mileage to and from the job site will be billed at a rate of \$.55 per mile with no markup and travel time for survey crews will be billed at \$90.00 per hour, per man, each-way. Airfare will be billed at cost plus 15%.
- **Per Diem:** Per diem for overnight stays will be billed at \$134 per day, per man.
- **Waiver of Subrogation:** If the client requires a *Waiver of Subrogation for Workman's Compensation Insurance*, the client will be required to pay the additional insurance premium for this request. The approximate amount for the waiver is \$250.00.

NOTE: Invoicing will be submitted on a monthly, progressive cycle.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-40 BY AND BETWEEN THE CITY OF MONTCLAIR, THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY, AND MARIPOSA HORTICULTURAL ENTERPRISES, INC., FOR LANDSCAPE-MAINTENANCE SERVICES OF MEDIAN ISLANDS, PARKS, AND PARKWAYS	DATE: June 15, 2009 SECTION: AGREEMENTS (JT) ITEM NO.: 2 FILE I.D.: STA500 DEPT.: PUBLIC WORKS/RDA
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: Agreement No. 08-53 with Mariposa Horticultural Enterprises, Inc., for landscape maintenance of median islands, parks, and parkways expires on June 30, 2009. The City Council and Redevelopment Agency Board of Directors are requested to consider approval of Agreement No. 09-40 with Mariposa Horticultural Enterprises, Inc., to continue landscape-maintenance services of these areas. Proposed Agreement No. 09-40 is attached for review and consideration by the Council.

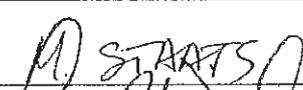
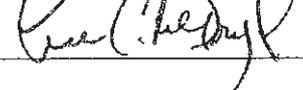
BACKGROUND: At its meeting of June 18, 2007, the City Council approved Agreement No. 07-63 with Mariposa Horticultural Enterprises, Inc., for landscape-maintenance services of median islands, parks, and parkways. The Agreement was for a one-year period and could be renewed annually up to five years with the consent of the City Council, Redevelopment Agency Board, and Mariposa Horticultural Enterprises, Inc. The second renewal year of Agreement No. 07-63 begins in Fiscal Year 2009-10.

The City annually pays \$285,780 for landscape-maintenance services; and an additional \$12,000 has been budgeted by the City for miscellaneous repairs to the median islands and irrigation systems in the event of traffic accidents and the need to repair and/or replace controllers, valves, and similar items as needed. In addition, the Redevelopment Agency budget contains \$2,100 for maintenance costs associated with the former Neighborhood Partnership Housing Services house located at 9916 Central Avenue.

The City is adding the new Mission Boulevard landscaping (Phases 5 and 6) from east of Monte Vista Avenue to Ada Avenue for an annual cost of \$28,152.

With the exception of the new Mission Boulevard landscape costs, Mariposa Horticultural Enterprises, Inc., understands the City's ongoing financial challenges and is not requesting a rate increase for Fiscal Year 2009-10.

FISCAL IMPACT: The cost to provide landscape-maintenance services of median islands, parks, and parkways is \$313,932. An additional \$12,000 (not included in the contract amount) is anticipated for repairs to the median islands and irrigation systems. The funds to provide these services are included in the Public Works Fiscal Year 2009-10

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

Parks Division Budget. The Redevelopment Agency Fiscal Year 2009-10 Budget includes approximately \$2,100 for maintenance costs associated with the Redevelopment Agency-owned property at 9916 Central Avenue.

RECOMMENDATION: Staff recommends the City Council and Redevelopment Agency Board of Directors approve Agreement No. 09-40 by and between the City of Montclair, the City of Montclair Redevelopment Agency, and Mariposa Horticultural Enterprises, Inc., for landscape-maintenance services of median islands, parks, and parkways.

**AN AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR,
THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY,
AND MARIPOSA HORTICULTURAL ENTERPRISES, INC.,
FOR MEDIAN ISLAND, PARK, AND PARKWAY MAINTENANCE**

THIS AGREEMENT, made and entered into this 1st day of July, 2009, by and between the **City of Montclair**, a Municipal Corporation, County of San Bernardino, State of California, hereinafter referred to as "**CITY**"; the **City of Montclair Redevelopment Agency**, a body corporate and politic, hereinafter referred to as "**AGENCY**"; and **Mariposa Horticultural Enterprises, Inc.**, hereinafter referred to as "**CONTRACTOR**."

WITNESSETH:

SECTION I

The **CONTRACTOR**, in consideration of the promises of the **CITY/AGENCY** hereinafter set forth, hereby agrees to furnish all tools, equipment, materials, labor, and transportation necessary to perform and complete the terms of this Agreement and to faithfully perform and maintain in a good and workmanlike manner the maintenance services on the areas as set forth and listed in this Agreement.

SECTION II

This Agreement is for a period of one (1) year from the date herein above set forth subject to the right of either party to cancel without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

SECTION III

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner for the total monthly sum of \$23,641, with payments to be made on the 15th day of each and every calendar month, during the term of this agreement, which will be paid the **CONTRACTOR** for all work and services to be performed pursuant to this Agreement. **CONTRACTOR** shall pay prevailing wages in accordance with the laws of the State of California.

Payment of additional services requested, in writing, by **CITY/AGENCY** and not included in the scope of services as set forth in the Agreement shall be performed by the **CONTRACTOR** at the rate of \$35.00 per hour. This hourly rate is negotiable annually and shall include labor, equipment, overhead, and profit. Any and all work done under this Section of this Agreement will be with prior written approval from the **CITY/AGENCY**. If prior written approval is not obtained by the **CITY/AGENCY**, no payment will be approved. Charges for additional services shall be invoiced on a monthly basis and shall be paid by the **CITY/AGENCY** within a reasonable time after said invoices are received by the **CITY/AGENCY**.

SECTION IV

The CONTRACTOR shall defend, indemnify, and save harmless the CITY/AGENCY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by the CONTRACTOR of any and all legal costs and attorney's fees in any manner arising out of any negligent or intentional or willful acts or omissions of the CONTRACTOR or any of its agents, servants, employees, or licensees in the performance of this Agreement including, but not limited to, all consequential damages to the maximum extent permitted by law.

SECTION V

The CONTRACTOR shall furnish a Certificate of Deposit as surety in the amount equal to one (1) month maintenance cost in the name of the City of Montclair with all interest payments to the CONTRACTOR. The certificate shall remain in force for the term of this Agreement. If the CONTRACTOR requests a price increase as outlined in Section III, the CONTRACTOR must furnish a Certificate of Deposit with the new amount in the name of the City of Montclair with interest payments to the CONTRACTOR. The Certificate of Deposit must be on file with the Public Works Superintendent before the CONTRACTOR will be permitted to begin his maintenance operations.

SECTION VI

The CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to the CITY/AGENCY nor shall the CONTRACTOR allow any employee to commence work on the maintenance services subject to this Agreement until all insurance required has been obtained. The CONTRACTOR shall take out and maintain, at all times during the term of this Agreement, the policies of insurance as set forth hereinafter.

SECTION VII

Workers' Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish the CITY/AGENCY a Certificate of Insurance as proof that it has taken out full Workers' Compensation Insurance for all persons whom it may employ directly or through subcontractors in carrying out the work specified herein in accordance with the State of California.

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

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

SECTION VIII

Throughout the term of this Agreement, at the CONTRACTOR'S sole cost and expense, the CONTRACTOR shall keep, or cause to be kept, in full force and effect for the mutual benefit of the CITY/AGENCY and the CONTRACTOR comprehensive, broad form, general public liability, and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from the CONTRACTOR'S activities, providing protection of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person and Three Million Dollars (\$3,000,000) for any one accident or occurrence and at least One Million Dollars (\$1,000,000) for property damage.

SECTION IX

All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California and policies required under Section VIII shall name, as additional insured, the CITY/AGENCY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured, and all subcontractors waive the right of subrogation against the CITY/AGENCY, its elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by the CITY/AGENCY; and (3) they cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to the CITY/AGENCY by certified mail. The CONTRACTOR shall furnish the CITY/AGENCY with copies of all such policies promptly upon receipt of them or certificate evidencing the insurance. The CONTRACTOR may effect for its own account insurance not required under this Agreement.

SECTION X

The CONTRACTOR shall, before any work begins, obtain and maintain the following: City of Montclair Business License, State of California Contractor's License (C27), and all State of California Pest Control Licenses and categories necessary to complete the provisions of this Agreement.

SECTION XI

The Public Works Superintendent, or his/her designated representative, shall be the judge of all work performed and shall approve all material provided by the CONTRACTOR before it is used. If the work is not satisfactory, the Public Works Superintendent, or his/her designated representative, may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due or payable to the CONTRACTOR for or during any time of such suspension or after termination.

It is further agreed that in the event the CONTRACTOR fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality or fails to prosecute the work or any part thereof, the Public Works Superintendent or his/her designated representative shall so certify to the City Manager of the CITY, and if thereafter the CONTRACTOR, for a period of ten (10) days after receipt of a written

demand from the Public Works Superintendent or his/her designated representative, fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality and to prosecute said work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said ten (10) days, fails to continue to do so, then the CITY/AGENCY may exclude the CONTRACTOR from the premises or any portion thereof, together with all materials and equipment thereon, and may complete the work contemplated by this Agreement or any portion of said work either by furnishing the tools, equipment, materials, labor, or transportation necessary therefore or by letting the unfinished portion of said work or the portion taken over by the CITY/AGENCY shall be a charge against the CONTRACTOR and may be deducted from any money due or becoming due to the CONTRACTOR for the CITY/AGENCY, or the CONTRACTOR may be compelled to pay the CITY/AGENCY the amount of said charge or the portion thereof unsatisfied. As used herein, the term "premises" shall include those areas and sites as set forth in SECTION XIII hereof.

SECTION XII

SPECIFIC

A. Trees, Plants, Shrubbery

1. All plants and shrubbery shall be properly irrigated, pruned, and shaped in season to produce the best possible effect and growth condition.
2. Tree trimming, planting, and staking shall be completed by the CITY/AGENCY.
3. The CITY/AGENCY may make periodic soil analyses to determine soil amendment requirements (gypsum, sulfur, iron chelates, etc.) as well as fertilization demands, and the Contractor is required to make the necessary applications within two weeks of notification. In lieu of soil tests, the CITY/AGENCY may require the CONTRACTOR to provide an all-purpose fertilizer for application.

B. Lawns

1. To comply with the Federal Clean Water Act and City of Montclair Municipal Code Section 9.24 – Storm Drain System, employees from said contractor shall be trained in Stormwater Best Management Practices. No blowing and/or depositing of grass clippings, leaves, or any other yard waste out into the street and catch basins.
2. All lawn areas will be mowed and edged weekly. As work is completed, the clippings, trimmings, weeds, and other extraneous materials shall be removed, leaving the lawns in a neat and attractive condition. The CONTRACTOR is responsible for cost of disposing such material.
3. All lawns shall be fed with commercial fertilizer supplied by the CONTRACTOR two times each year. Time of application of fertilizer shall be as specified by the CITY/AGENCY. Prior to fertilizing, the CONTRACTOR shall first mow the lawn to the appropriate height.

Selective weedkiller supplied by the CONTRACTOR, shall be applied to provide complete dandelion, crabgrass, or other weed control. Chemicals used shall meet Department of Food and Agriculture regulations. The CONTRACTOR is liable for misuse.

4. All lawns shall be verticut, mowed to one inch, seeded, and covered with top dressing. Seed and top dressing will be furnished by CONTRACTOR upon approval by the CITY/AGENCY.
5. All lawns shall be mowed between 2 and 2-1/2 inches.
6. All landscape areas will be monitored and treated for Gopher Control by the CONTRACTOR as needed. The CONTRACTOR, at no additional cost to the CITY/AGENCY, shall furnish chemicals and licenses necessary for Gopher Control.

C. Replacements

1. Any plant material that may expire from normal causes shall be replaced and replanted with a like or more desirable species without additional cost to the CITY/AGENCY.
2. Any plantings, cobblestone or stamped concrete areas, or portions of the irrigation systems that are damaged by vehicles, vandalism, or other means beyond the CONTRACTOR'S control shall be repaired and/or replaced by the CITY/AGENCY.

D. Irrigation System

1. Sprinkler heads shall be adjusted and kept clean to provide the best possible coverage. Missing, broken, worn, or sprinkler heads damaged while performing the duties pursuant to the Agreement shall be immediately replaced by CONTRACTOR to allow continuous irrigation without additional cost to the CITY/AGENCY.
2. Automatic irrigation controllers, remote control valves, and sprinkler heads will be properly checked and adjusted by the CONTRACTOR weekly.

The CONTRACTOR shall be responsible for immediately notifying City whenever a sprinkler system is not working properly. The CONTRACTOR shall be responsible for all repairs, upon approval by the CITY/AGENCY, at a flat rate of \$35.00 per hour plus costs of the materials needed. Repairs to damage caused by the CONTRACTOR'S operation, shall be borne by CONTRACTOR.

E. Debris

1. As work in any area is completed, the clippings, trimmings, and weeds shall be removed and the area shall be left in a neat and attractive condition. The CONTRACTOR is responsible for the cost of disposing all clippings, trimmings, and weeds.

F. Cobblestone Concrete, Bomanite, and Stamped Concrete Areas

1. All cobblestone, stamped concrete, bomanite, and concrete areas shall be weeded and kept free of papers and other extraneous material on a weekly basis.

G. Management and Supervision

1. The sites defined by this Agreement shall be closely inspected by the CONTRACTOR'S Maintenance Superintendent to ensure proper work procedures are followed.
2. Monthly maintenance reports by CONTRACTOR'S Maintenance Superintendent shall be submitted for CITY'S/AGENCY'S information.
3. The landscape maintenance will be scheduled first to meet the requirements of the landscape and secondly to fit the working procedures of the CITY/AGENCY.

SECTION XIII

The areas to be maintained are listed below; however, they are general site descriptions and are to be considered inclusive, not precise:

A. Moreno Street Landscaping (six islands)—one island east of Central Avenue, one island west of Monte Vista Avenue, the other four islands between Central and Monte Vista Avenues

Two of these islands are cobblestone only; the remaining islands are landscaped with lawns, trees, shrubs, cobblestone, and stamped concrete. The area to be maintained is approximately 7,970 square feet.

B. Monte Vista Avenue Landscaping (six islands) located from north of Richton Street to and including one island south of the I 10-Freeway

These islands are landscaped with lawn, trees, shrubs, stamped concrete, bomanite, and cobblestone. The lawn area to be maintained is approximately 19,060 square feet.

C. San Jose Street Landscaping (one island) located west of Monte Vista Avenue

This island is landscaped with lawn, trees, and stamped concrete. The lawn area to be maintained is approximately 800 square feet.

D. Central Avenue Landscaping (33 islands) located north of Richton Street and Phillips Boulevard

Some islands are landscaped with lawn, shrubs, trees, stamped concrete, and cobblestone. The lawn area to be maintained is approximately 131,195 square feet.

E. Mills Avenue Landscaping, (12 islands) located between Moreno Street and Holt Boulevard

These islands are landscaped with lawn, trees, bomanite and cobblestone. The lawn area to be maintained is approximately 38,910 square feet.

F. Holt Boulevard Landscaping (17 islands and three parkways) located between Benson Avenue and Mills Avenue

The islands and parkways are landscaped with lawn, shrubs, stamped concrete, and trees. The area to be maintained is approximately 104,400 square feet.

G. San Bernardino Street Landscaping (five islands and one parkway) located from Mills Avenue east to 4500 San Bernardino Street

The islands are landscaped with lawn, trees, and cobblestone. The lawn area to be maintained is approximately 6,200 square feet. A parkway is located on the south side of San Bernardino Street from the Flood Control Channel Bridge to approximately 350 lineal feet east. The parkway is landscaped with six (6) tree wells.

H. Benson Avenue (two islands) located between Moreno Street and Arrow Highway

The islands are landscaped with shrubbery, trees, and cobblestone paving. The area to be maintained is 9,600 square feet.

I. Central Avenue Overpass

The landscaped areas on the Central Avenue overpass shall include the northwest quadrant, the southwest quadrant and the southeast quadrant. The areas, which are planted with trees and shrubbery, total approximately 58,000 square feet.

J. Palo Verde Street, (three islands), located between Monte Vista Avenue and Marion Avenue

These islands are landscaped with shrubbery, trees, and bomanite. The area to be maintained is approximately 11,178 square feet.

K. Monte Vista Avenue Underpass between Arrow Highway and Richton Street

The area includes the slopes on the east and west sides of the street. It is landscaped with trees, shrubs, and groundcover. The area to be maintained is approximately 46,700 square feet.

L. Richton Street Parkway located from Monte Vista Avenue to a point 1,600 feet east.

The area to be maintained is located approximately 12 feet behind the sidewalk on the north and south sides of the street. The area is landscaped with lawn,

trees, and shrubs. The area to be maintained is approximately 34,320 square feet.

M. Phillips Boulevard Parkway between Ramona and Buckskin Avenues

The parkway is located behind the sidewalk on the north side of the street. It is landscaped with trees and shrubs. The area to be maintained is approximately 3,150 square feet.

N. Ramona Avenue Tree Wells located from Phillips Boulevard to a point 650 feet north of Howard Street

The tree wells are located on the east side of the street and include 53 tree wells and trees. The area to be maintained is approximately 477 square feet.

O. Ramona Avenue Tree Wells located from a point 360 feet north of Merle Street to a point 510 feet south of Howard Street

The tree wells are located on the west side of the street and include 25 tree wells and trees. The area to be maintained is approximately 225 square feet.

P. San Bernardino Street Tree Wells located from a point 170 feet west of Rosewood Street to a point 175 feet east of Rosewood Street

The tree wells are located on the south side of the street and include 6 tree wells and trees. The area to be maintained is approximately 54 square feet.

Q. San Bernardino Street Tree Wells located from San Bernardino Court to a point 380 feet west of Rosewood Street

The tree wells are located on the north side of the street and include 18 tree wells and trees. The area to be maintained is approximately 162 square feet.

R. San Bernardino Street Parkway located between Fremont and Monte Vista Avenues

The area is located on the south side of the street. It includes the sidewalk, tree wells, and trees. The area to be maintained is approximately 9,920 square feet.

S. Redevelopment Agency-owned house at 9916 Central Avenue

The area to be maintained consists of concrete, vines, trees, groundcover, and native shrubs in the front and rear yards. The area to be maintained is approximately 1,500 square feet.

T. Walkway located between Yale and Palo Verde Streets

The walkway is located east of 5634 Yale Street and travels between Yale and Palo Verde Streets. The area includes sidewalk only and is approximately 3,792 square feet.

U. Walkway located at Rudisill Street and Amherst Avenue

The area is located east of 4383 Rudisill Street and travels between Amherst Avenue and the San Antonio Channel. The area includes sidewalks, trees, and shrubs. The area to be maintained is approximately 500 square feet.

V. Montclair Transcenter Platform

The area to be maintained is located south of the second platform addition and on the north side at the east and west end of the platform as well as the tunnel under the first and second platforms. This area is landscaped with various shrubs and is approximately 20,500 square feet.

W. Storm Drain Channel located north of the I-10 Freeway

The open-face channel is located north of the I-10 Freeway and runs from Monte Vista Avenue to a point 730 feet west and from Monte Vista Avenue to a point 1,562 feet east. The maintenance includes removal of weeds and debris from the channel.

X. Freedom Plaza

The site is located at the northeast corner of Palo Verde Street and Monte Vista Avenue. The area includes trees, shrubs, and groundcover around an existing monument. It is approximately 20,500 square feet. It also includes the landscaped area around the caboose. This area includes trees, shrubs, and groundcover. It is approximately 1,000 square feet.

Y. Alley Planters located between the 5300 blocks of Yale and Cambridge Streets

The planters are located in the north and south ends of the alley. There are two planters, each landscaped with trees and shrubs. The total area to be maintained is approximately 500 square feet.

Z. Parkway on the east side of Ramona Avenue, north and south of Canary Court

The area includes cobblestone and pine trees. The total area to be maintained is 1,925 square feet.

AA. Undeveloped property at the southeast corner of Ramona Avenue and State Street

The area is undeveloped and is 5.4 acres in size.

BB. Benson Avenue Parkway, located on the west side of Benson Avenue from the I-10 Freeway to San Jose Street

The parkway is landscaped with Oleander bushes. The total area to be maintained is 3,000 square feet.

CC. Mission Boulevard Median Islands and Parkways from the east to west City Limits

The areas to be maintained consist of trees, shrubs, groundcover, and undeveloped areas. The area to be maintained is approximately 220,000 square feet.

DD. Palo Verde Street Landscape located on the north side of Palo Verde Street between Mills Avenue and the San Antonio Channel

The area includes trees, shrubs, groundcover, and wood chips. The area to be maintained is approximately 22,470 square feet,

EE. Trash Collection

Empty trash containers and pick up trash from the ground at the following locations weekly unless otherwise indicated:

Alma Hofman Park (twice per week, Monday and Friday), 5201 Benito Street
Civic Center, 5111 Benito Street
Essex Park, 4295 Howard Street
Golden Girls Park, 4594 San Bernardino Street
Kingsley Park, 5575 Kingsley Street
MacArthur Park, 5450 Deodar Street
Mini Park #1, 9120 Monte Vista Avenue
Mini Park #2, 4682 Highland Street
Moreno Vista Park, 4675 Moreno Street
Saratoga Park, 5397 Kingsley Street
Sunrise Park, 5500 Princeton Street
Sunset Park, 4351 Orchard Street
Montclair Transcenter (twice per week, Monday and Friday), 5091 Richton Street
Freedom Plaza, 4902 Palo Verde Street
I-10 Freeway on- and off-ramps on Central and Monte Vista Avenues

FF. Olive Street Parkway located on the south side of Olive Street east of Vernon Avenue

The parkway is landscaped with shrubs and groundcover. The total area to be maintained is 3,275 square feet.

GG. Fox Homes Parkway located on the southeast corner of Ramona Avenue and Mission Boulevard

The parkway is landscaped with shrubs, groundcover, and trees. The total area to be maintained is 5920 square feet.

HH. Richmond American Homes Parkway located on the west side of Monte Vista Avenue south of the I-10 Freeway west of Monte Vista Avenue

The parkway is landscaped with shrubs, groundcover, trees, and decomposed granite. The total area to be maintained is 19,740 square feet.

II. Pacific Electric Bike Trail located from Monte Vista Avenue west to the west City limits

The area will be landscaped with shrubs and trees. The area to be maintained is 21,560 square feet.

JJ. Ramona Avenue Landscaping (two islands), one island north of Mission Boulevard and one island south of Mission Boulevard

These islands are landscaped with trees, shrubs, and stamped concrete. Each median island is approximately 4,000 square feet.

KK. Richton Street Parking Lot located at 4800 Richton Street

The parking lot is landscaped around the perimeter with trees, shrubs, and groundcover and is approximately 2,800 square feet.

LL. Montclair Police Department Facility

The Montclair Police Department facility is located at 4870 Arrow Highway. The landscape at this facility includes, various trees and shrubs. The total area to be maintained is approximately 76,665 square feet. The area also includes maintenance of the drainage basin.

MM. 5100 Block of Saddleback Street Parkway

The parkway is landscaped with trees and lawn. The area to be maintained is approximately 1,050 square feet.

NN. Plaza Landscape at the northeast corner of Monte Vista Avenue and San Jose Street

The parkway is landscaped with trees and lawn. The area to be maintained is approximately 8,400 square feet.

OO. Plaza Landscape at the southwest corner of Central Avenue and Moreno Street

The parkway is landscaped with trees and lawn. The area to be maintained is approximately 6,400 square feet.

SECTION XIV

In the event that additional areas require maintenance services, such areas may be added to this Agreement at a negotiated price; however, during the period of time the CONTRACTOR is negotiating a cost to maintain the new areas, it is the

CONTRACTOR'S responsibility to provide maintenance service to any area in question. In the event a maintenance area is deleted from this Agreement, the contract price for that area shall be deducted from the negotiated price.

SECTION XV

MISCELLANEOUS PROVISIONS

- A. **Assignment.** No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by the CONTRACTOR without the written consent of the CITY/AGENCY.
- B. **Independent Contractor.** The parties hereto agree that CONTRACTOR and its employees, officers, and agents are independent contractors under this Agreement, and shall not be construed for any purpose whatsoever to be employees of the CITY/AGENCY.
- C. **Compliance With Laws.** The CONTRACTOR shall comply with all applicable laws in performing its obligations under this Agreement.
- D. **Discrimination.** The CONTRACTOR agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONTRACTOR agrees to comply with all County, State, and Federal laws related to equal employment opportunity rights.
- E. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- F. **Attorney's Fees.** In the event that any legal proceeding is instituted to enforce any term or provisions of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorney's fees and costs from the opposing party in an amount to be determined by the court to be reasonable.
- G. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any other party that is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing, signed by all parties.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first set forth herein above.

Contractor:

MARIPOSA HORTICULTURAL ENTERPRISES, INC.

_____	_____	_____
Name	Title	Date
City:		
CITY OF MONTCLAIR		

By: _____	_____
Paul M. Eaton Mayor	Date

ATTEST:

By: _____	_____
Donna M. Jackson City Clerk	Date

Agency:

**CITY OF MONTCLAIR
REDEVELOPMENT AGENCY**

By: _____	_____
Paul M. Eaton Chairman	Date

ATTEST:

By: _____	_____
Donna M. Jackson Secretary	Date

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-41 WITH WEST COAST ARBORISTS FOR TREE-MAINTENANCE SERVICES	DATE: June 15, 2009 SECTION: AGREEMENTS ITEM NO.: 3 FILE I.D.: STA700 DEPT.: PUBLIC WORKS
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: Agreement No. 08-46 with West Coast Arborists for tree-maintenance services expires on June 30, 2009. The City Council is requested to consider approval of Agreement No. 09-41 with West Coast Arborists to continue tree-maintenance services. Proposed Agreement No. 09-41 is attached for review and consideration by the Council.

BACKGROUND: At its meeting of June 20, 2005, the City Council approved Agreement No. 05-77 with West Coast Arborists for tree-maintenance services. The Agreement was for a one-year period and could be renewed annually up to four years with the consent of both the City and West Coast Arborists. The fourth renewal year of Agreement No. 05-77 begins in Fiscal Year 2009-10.

In consideration of the City's ongoing financial challenges, West Coast Arborists is not requesting a rate increase for Fiscal Year 2009-10. A description of items and costs contained in Agreement No. 09-41 is as follows:

<i>Item</i>	<i>Description</i>	<i>Unit</i>	<i>Cost</i>
1	Tree trimming	Each	\$ 45.00
2	Tree and stump removal	Inch	\$ 16.00
3	Stump-only removal	Inch	\$ 4.90
4	Tree planting, 15-gallon	Each	\$118.00
5	Tree planting, 24-inch box	Each	\$244.00
6	Root pruning	Foot	\$ 7.50
7	Three-man crew rental	Hour	\$118.50
8	Emergency crew rental	Hour	\$250.00

West Coast Arborists has continually provided quality tree-trimming and other tree-related services to the City since October 2000. The company was responsive to staff's requests and has established an Internet-based inventory of all City trees at no additional cost. Public Works staff uses the inventory in its annual tree-trimming program. The

Prepared by: <u>Maria Queli</u>	Reviewed and Approved by:	<u>M. STATS</u>
Proofed by: <u>Jessica Smith</u>	Presented by:	<u>Greg (The Dog)</u>

inventory provides information related to tree location, tree species, work history, and the value of each tree.

FISCAL IMPACT: The cost to provide tree-maintenance services is not expected to exceed \$72,900 during Fiscal Year 2009-10. Funds for this purpose are included in the Public Works Fiscal Year 2009-10 Tree Division Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-41 with West Coast Arborists for tree-maintenance services.

AGREEMENT NO. 09-41

**AN AGREEMENT BY AND BETWEEN THE CITY OF
MONTCLAIR AND WEST COAST ARBORISTS
FOR TREE MAINTENANCE SERVICES**

THIS AGREEMENT made and entered into this 1st day of July, 2009, by and between the **CITY OF MONTCLAIR**, a municipal corporation, County of San Bernardino, State of California, hereinafter referred to as "**CITY**" and **West Coast Arborist** hereinafter referred to as "**CONTRACTOR**."

WITNESSETH:

SECTION I

The **CONTRACTOR**, in consideration of the promises of the **CITY** hereinafter set forth, hereby agrees to furnish all tools, equipment, materials, labor and transportation necessary to perform and complete the terms of this Agreement and to faithfully perform and maintain in a good and workmanlike manner the maintenance services on the areas as set forth and listed in this Agreement.

SECTION II

This Agreement is for a period of one (1) year from the date herein above set forth and can be renewed annually up to two (2) years with the consent of the City and the Contractor, subject to the right of either party to cancel without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

SECTION III

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner. Contractor shall pay prevailing wages in accordance with the laws of the State of California. Payment for work completed will be based on the following schedule:

	<u>Unit Prices</u>	<u>Unit Description</u>
Tree Trimming	\$45.00	Each
Palm Tree Trimming	\$45.00	Each
Complete Tree & Stump Removal	\$16.00	Diameter Inch
Stump Removal	\$4.90	Diameter Inch

Root Pruning	\$7.50	Each (foot)
Tree Planting		
15 gallon	\$118.00	Each
24 inch box	\$244.00	Each
Crew Rental 3 men, aerial unit, dump truck and chipper	\$118.50	Hour
Emergency Work Call Out	\$250.00	Hour

Payment will be made on the 15th day of each and every calendar month during the term of this agreement, which will be paid to the Contractor for all work and services to be performed pursuant to the Agreement.

Payment of additional services requested, in writing, by City, and not included in the scope of services as set forth in this Agreement, shall be negotiated on an item-by-item basis. Any additional services cost will include labor, equipment, overhead and profit.

Any and all work done under this Section of this Agreement will be with prior written approval from the CITY. If prior written approval is not obtained by the CONTRACTOR, no payment will be approved. Charges for additional services shall be invoiced on a monthly basis and shall be paid by the CITY within a reasonable time after said invoices are received by the CITY.

SECTION IV

The CONTRACTOR shall defend, indemnify and save harmless the CITY, its elected and appointed officials, officers, agents and employees from all liability from loss, damage or injury to persons or property, including the payment by the CONTRACTOR of any and all legal costs and attorney's fees, in any manner arising out of any negligent or intentional or willful acts or omissions of the CONTRACTOR or any of its agents, servants, employees or licensees in the performance of this Agreement, including, but not limited to, all consequential damages to the maximum extent permitted by law.

SECTION V

The CONTRACTOR shall furnish a Certificate of Deposit as surety in the amount equal to \$6,750 in the name of the City of Montclair with all interest payments to the CONTRACTOR. The certificate shall remain in force for the term of this Agreement. If the Contractor requests a price increase as outlined in Section III, the Contractor must furnish a Certificate of Deposit with the new amount in the name of the City of Montclair with interest payments to the CONTRACTOR. The Certificate of Deposit must

be on file with the Public Works Superintendent before the CONTRACTOR will be permitted to begin his operations.

SECTION VI

The CONTRACTOR shall neither commence work under this Agreement, until it has obtained all insurance required hereunder in a company or companies acceptable to the CITY, nor shall the CONTRACTOR allow any employee to commence work on the maintenance services subject to this Agreement until all insurance required has been obtained. The CONTRACTOR shall take out and maintain, at all times during the term of this Agreement, the policies of insurance as set forth hereinafter.

SECTION VII

Workers' Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish the CITY a Certificate of Insurance as proof that it has taken out full Workers' Compensation Insurance for all persons whom it may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the State of California.

In accordance with the provisions of California Labor Code S3700, every employer shall secure the payment of compensation to his employees. The CONTRACTOR shall, prior to commencing work, sign and file with the CITY a certification as follows:

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

SECTION VIII

Throughout the term of this Agreement, at the CONTRACTOR'S sole cost and expense, the CONTRACTOR shall keep, or cause to be kept, in full force and effect, for the mutual benefit of the CITY and the CONTRACTOR, comprehensive, broad form, general public liability and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from the CONTRACTOR'S activities, providing protection of at least One Million Dollars (\$1,000,000) for any one person Three Million Dollars (\$3,000,000) per accident or occurrence for bodily injury or death, and at least One Million Dollars (\$1,000,000) for property damage.

SECTION IX

All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California and policies required under Section VIII shall name, as additional insured, the CITY, its elected officials, officers, employees and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured and all subcontractors waive the right of subrogation against the CITY, its elected officials, officers, employees and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by the CITY; and (3) they cannot be canceled or materially changed except after (30) days written notice by the insurer to the CITY by certified mail.

The CONTRACTOR shall furnish the CITY with copies of all such policies promptly upon receipt of them, or, certificate evidencing the insurance. The CONTRACTOR may effect for its own account insurance not required under this Agreement.

SECTION X

The Public Works Superintendent, or their designated representative, shall be the judge of all work performed by the CONTRACTOR. If the work is not satisfactory, the Public Works Superintendent or their designated representative, may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due or payable to the CONTRACTOR for or during any time of such suspension or after termination.

It is further agreed that in the event the CONTRACTOR fails to prosecute the work or any part thereof contemplated by this Agreement, the Public Works Superintendent, or their designated representative, shall so certify to the City Manager of the CITY, and if thereafter the CONTRACTOR, for a period of five (5) days, after written notice continues to fail to do so, then the CITY may exclude the CONTRACTOR from the premises or any portion thereof, and may complete the work contemplated by this Agreement or any portion of said work by letting the unfinished portion of said work, or the portion taken over by the CITY, the cost of which shall be a charge against the CONTRACTOR, and may be deducted from any money due or becoming due to the CONTRACTOR from the CITY, or the CONTRACTOR may be compelled to pay the CITY the amount of said charge, or the portion thereof unsatisfied.

SECTION XI

SPECIFIC

A. SCOPE OF WORK

The work shall consist of furnishing all materials, labor, equipment and incidentals necessary for pruning and removal of street and park trees in accordance with the Contractor's request for proposal (RFP).

1. **WORKING HOURS:** All work shall be performed between the hours of 7:00 A.M. and 5:00 P.M., Monday through Friday. No weekend or holiday work shall be permitted unless authorized by the Public Works Superintendent.
2. **PUBLIC SAFETY AND COOPERATION:** All work shall be conducted in such a manner as to cause the least possible interference with, or annoyance to others and maintain safe conditions at all times while work operation are in progress.
3. **INSPECTION BY THE CITY:** The City shall inspect all work performed under this contract for compliance to the specifications and report any deficiencies to the Contractor.
4. **DAMAGE TO PROPERTY:** The Contractor shall not damage any public or private property as a result of the work specified. Any damage resulting from the Contractor's work shall be repaired, restored or replaced in kind within twenty-four (24) hours.
5. **CERTIFIED ARBORIST:** The Contractor shall employ a full-time, permanent Certified Arborist, as accredited by the International Society of Arboriculture at the time of proposal submittal, bid award and for the duration of the Agreement.

The Certified Arborist shall be responsible for the Contractor's employees performing the work as specified herein, daily inspections of the work site and supervision of the Contractor's employees. The Certified Arborist shall represent the Contractor regarding any disputes that may arise with the City, public and the Contractor's employees.

6. **WORKMANSHIP:** All work shall be completed in a timely and workmanlike manner. The Contractor shall provide qualified tree workers trained according to the tree care standards accepted by

the International Society of Arboriculture and the National Arborists Association.

All work shall be performed in a safe manner in compliance with the American National Safety Institute, (ANSI) Z133.1 safety standards for tree care operations as published by American National Safety Institute, Inc., 1430 Broadway, New York, NY 10018.

The Contractor shall provide qualified tree workers certified to perform tree work near energized primary and secondary electrical distribution lines. The Contractor shall comply with the Electrical Safety Orders issued by the State of California, Occupational Health and Safety Administration (Cal/OSHA) including all amendments and revisions.

7. MEASUREMENT AND PAYMENT: The unit prices called for in the Agreement shall be full compensation for all labor, materials and equipment necessary to complete the work as specified.

No further compensation shall be made unless authorized by the Public Works Superintendent or the designated representative.

8. NOTIFICATION TO RESIDENTS: The Contractor shall notify all affected residents and businesses of tree pruning and removal operations twenty-four (24) hours before the start of work. The Contractor is responsible for posting "temporary no-parking" signs at least twenty-four (24) hours before using any parking lanes for tree trimming operations. Every effort shall be made by the Contractor to minimize the duration of driveway blocking. Further, the Contractor shall provide access to each residential or commercial establishment each evening.

9. TRAFFIC AND SAFETY REQUIREMENTS: Any contractor performing work in a public right-of-way or parks, shall conduct his operations so as to cause the least possible obstruction and inconvenience to public traffic and pedestrians, and take all necessary measures to maintain an adequate traffic flow to prevent accidents and to protect the work site.

All traffic controls shall be in accordance with the Manual of Traffic Controls for Construction and Maintenance Work Zones, Published by State of California, Department of Transportation (Caltrans). All traffic devices, safety lights, and flagmen shall be provided by the Contractor.

Prior to the partial or complete closing of any lanes, streets or intersections, the Contractor shall get approval from the Public Works Superintendent.

B. COMPLETE TREE PRUNING SPECIFICATIONS:

All trees shall be pruned only in such a manner as to maintain the natural structure, form, health and appearance of the tree species. Tree pruning shall consist of the total removal of those dead and living branches as may menace the health, strength and natural form of the tree. Specifically, mature trees shall be pruned in such a manner as to:

1. Prevent branch and foliage interference with the requirements of safe public passage. Over residential streets, limbs shall be maintained gradually from eight (8) feet at the curb to seventeen (17) feet over traffic lanes. Over arterial streets, limbs shall be maintained at a maximum height of fourteen (14) feet from grade to wood.

Over sidewalks, limbs shall be maintained at a height of seven (7) feet from the grade to wood.

2. Remove all dead and dying branched and branch stubs that are ½ inch or larger.
3. Remove all broken or loose braches.
4. Remove any live branches which interfere with the tree's structural strength and healthful development, which will include the following:
 - Limbs which rub and abrade a more important branch.
 - Limbs of weak structure which are not important to the framework of the tree.
 - Limbs which, if allowed to grow, would wedge apart the junction of more important branches.
 - Branches near the end of a limb which will produce more weight or offer more resistance to wind that the limb are able to support.
 - Undesirable sucker and water sprout growth giving specific attention not to nick or damage the sprout "burl".

- Selective removal of one or more developing leaders where multiple branch growth exists near the end of broken or stubbed limbs.
 - Selective removal of limbs obstructing buildings or other structures, streetlights or traffic signs.
5. Cut back ends of branches and reduce weight where excessive overburden appears likely to result in breakage of supporting limbs.
 6. On mature trees only, clear water sprout or sucker growth to a minimum height of eight (8) feet above ground level.
 7. Maintain a balanced appearance when viewed from the opposite side of the street immediately opposite the tree.
 8. Remove all vines entwined in trees and on tree trunks. Vine tendrils shall be removed without injury to the trees.
 9. Clear all branches and foliage within four (4) to six (6) feet of primary electrical lines.
 10. When pruning cuts are made to a side limb, the remaining limb shall possess a basal thickness of at least 1/3 the diameter of the cut. Such cuts shall be considered proper only when the remaining limb is vigorous enough to maintain adequate foliage to produce wood growth capable of callusing the pruning cut within a reasonable amount of time.
 11. All final pruning cuts shall be made in such a manner so as to favor the earliest possible covering of the wound by natural callus growth. Flush cuts shall be made and the branch collar shall not be removed.
 12. Tree limbs shall be removed and controlled in such a manner as to cause no damage to other parts of the tree, or to other plants or property.
 13. All tools used on a tree known to contain an infectious tree disease shall be properly disinfected immediately before and after completing work on the tree. All significant pest, disease or structural weakness or defects observed by the Contractor while performing this work shall be promptly reported to the City.

14. All pruning tools and saws used for tree pruning shall be kept sharpened at all times to result in final cut with an non-abrasive wood surface and secure bark. All trees six (6) inches in diameter (DBH) or less shall be pruned with hand tools only. Chain saws will not be permitted on any trees with six (6) inches or less (DBH).
15. Whenever pruning cuts are made, while removing limbs too large to hold securely in one hand during the curing operation, the limb shall be cut off first, one (1) to two (2) feet beyond the intended final cut. Then the final cut shall be made in a manner to prevent the tearing of bark and wood.
16. Live, healthy limbs with a diameter of three (3) inches or greater shall not be removed without prior approval from the Public Works Superintendent.
17. No more than twenty (20) percent of live wood may be removed from the crown of any tree. The exception to this is Live Oaks, which are limited to no more than ten (10) percent.
18. Any extraneous metal, wire, rubber or other material interfering with the natural growth of the tree shall be removed.
19. The use of climbing spurs or spike shoes is strictly prohibited except in the case of aerial rescue.
20. All pruning shall be performed in such a manner as to encourage and promote the natural growth and shape of the tree species. The Contractor shall not perform any of the following procedures:
 - The severe cutting back of growing tips including topping, dehorning, heading back, pollarding, hat racking.
 - Flush cutting where a cut is made even with the surface with the trunk or limb, removing the branch collar and branch bark ridge.
 - Stub cutting where branch removal results in the base of the branch removed protruding more than approximately $\frac{1}{4}$ inch beyond the zone of the branch collar and branch bark ridge.
 - Removal of all the inner branches and foliage also know as lion tailing.

C. REMOVALS

Removals of trees shall be completed in the safest and most efficient manner possible while providing minimal inconvenience to the resident. Removals shall include the total removal of all brush, surface roots, and stumps.

Stumps may be removed in whole by digging out each individual stump or by grinding the stump to a minimum of twelve (12) inches below the top of the curb. In each instance, the areas shall be backfilled and graded to conform to the surrounding area. Whenever a tree is removed, the Contractor is responsible for notifying Dig Alert at 1-800-227-2600, two (2) days before digging. Stumps must be removed within two (2) days of the date that the tree is removed.

D. DISPOSAL OF TREE BRANCHES, BRUSH AND STUMPS

All tree branches, brush, and stumps produced as a result of the Contractor's operations shall be reduced, reused, recycled, and/or transformed whenever possible.

1. Reducing will include, but not limited to, chipping, grinding, and/or shredding. Disposal at a landfill is acceptable only if the material is accepted by the landfill for use as alternate daily cover.
2. Reusing shall include, but not limited to, using chipped, ground, and/or shredded tree materials as mulch.
3. Recycling shall include, but not limited to, chipped, ground, or shredded tree material used to produce compost utilizing either a low or high technology.
4. Transformation will include, but not limited to, burning green waste, such as tree wood chips, for the purpose of producing energy.

Work sites shall be cleaned on a daily basis with no limbs, brush or debris left overnight.

SECTION XII

MISCELLANEOUS PROVISIONS

- A. **Assignment.** No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by the CONTRACTOR without the written consent of the CITY.
- B. **Independent Contractor.** The parties hereto agree that CONTRACTOR and its employees, officers, and agents are independent contractors under this Agreement, and shall not be construed for any purpose whatsoever to be employees of the CITY.
- C. **Compliance With Laws.** The CONTRACTOR shall comply with all applicable laws in performing its obligations under this Agreement.
- D. **Discrimination.** The CONTRACTOR agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONTRACTOR agrees to comply with all County, State, and Federal laws relating to equal employment opportunity rights.
- E. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Stat of California.
- F. **Attorney's Fees.** In the event that any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount to be determined by the Court to be reasonable.
- G. **Entire Agreement.** This Agreement supersedes any and all other agreements either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any other party which is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing, signed by all parties.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first set forth hereinabove.

**CONTRACTOR:
WEST COAST ARBORIST**

BY: _____
Patrick Mahoney, PRESIDENT

CITY OF MONTCLAIR

BY: _____
Paul M. Eaton, MAYOR

ATTEST: _____
Donna Jackson, CITY CLERK

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-42 WITH CALIFORNIA LANDSCAPE AND DESIGN, INC., FOR MAINTENANCE SERVICES AT THE MONTCLAIR SKATE PARK	DATE: June 15, 2009 SECTION: AGREEMENTS ITEM NO.: 4 FILE I.D.: PRK370 DEPT.: PUBLIC WORKS
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: Agreement No. 08-45 with California Landscape and Design, Inc., for Montclair Skate Park maintenance services expires on June 30, 2009. The City Council is requested to consider approval of Agreement No. 09-42 with California Landscape and Design, Inc., to continue maintenance services at the skate park. Proposed Agreement No. 09-42 is attached for review and consideration by the Council.

BACKGROUND: At its meeting of December 19, 2005, the City Council approved Agreement No. 05-158 with California Landscape and Design, Inc., for maintenance of the Montclair Skate Park. The Agreement was for an 18-month period and could be renewed annually up to five (5) years with the consent of both the City and California Landscape and Design, Inc. The third renewal year of Agreement No. 05-158 begins in Fiscal Year 2009-10.

California Landscape and Design, Inc., constructed the Montclair Skate Park and was the only vendor to submit a proposal when Requests for Proposals for skate park maintenance services were advertised in November 2005. California Landscape and Design, Inc., has provided dependable service since the skate park was opened and has been responsive to the City's maintenance requirements. In consideration of the City's ongoing financial challenges, California Landscape and Design, Inc., is not requesting a rate increase for Fiscal Year 2009-10.

FISCAL IMPACT: The cost to provide maintenance services during Fiscal Year 2009-10 is \$41,400. Funds for this purpose are included in the Public Works Fiscal Year 2009-10 Parks Division Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-42 with California Landscape and Design, Inc., for maintenance services at the Montclair Skate Park.

Prepared by: <u>Mans Oubi</u>	Reviewed and Approved by: <u>M. STAAITS</u>
Proofed by: <u>Jessica Smith</u>	Presented by: <u>Lee (The Day)</u>

**AN AGREEMENT BY AND BETWEEN THE CITY
OF MONTCLAIR AND CALIFORNIA LANDSCAPE
AND DESIGN, INC., FOR MAINTENANCE OF THE
MONTCLAIR SKATE PARK**

THIS AGREEMENT made and entered into this 1st day of July, 2009, by and between the **City of Montclair**, a Municipal Corporation, County of San Bernardino, State of California, hereinafter referred to as "**CITY**"; and **California Landscape and Design, Inc.**, hereinafter referred to as "**CONTRACTOR**."

WITNESSETH:

SECTION I

The **CONTRACTOR**, in consideration of the promises of the **CITY** hereinafter set forth, hereby agrees to furnish all tools, equipment, materials, labor, and transportation necessary to perform and complete the terms of this Agreement and to faithfully perform and maintain in a good and workmanlike manner the maintenance services on the area as set forth and listed in this Agreement.

SECTION II

This Agreement is for a period of one (1) year from the date herein above set forth and can be renewed annually up to four (4) years with the consent of the **CITY** and the **CONTRACTOR**, subject to the right of either party to cancel without cause by giving a minimum of thirty (30) days' written notice to the other of such cancellation.

SECTION III

All of the work and services to be performed pursuant to this Agreement shall be performed in a good and workmanlike manner for the total monthly sum of \$3,450, with payments to be made on the 15th day of each and every calendar month during the term of this agreement, which will be paid the **CONTRACTOR** for all work and services to be performed pursuant to this Agreement. **CONTRACTOR** shall pay prevailing wages in accordance with the laws of the State of California.

Payment of additional services requested, in writing, by **CITY** and not included in the scope of services as set forth in the Agreement, shall be performed by the **CONTRACTOR** at the rate of \$20.00 per hour. This hourly rate is negotiable annually and shall include labor, equipment, overhead, and profit. Any and all work done under this Section of this Agreement will be with prior written approval from the **CITY**. If prior written approval is not obtained by the **CITY**, no payment will be approved. Charges for additional services shall be invoiced on a monthly basis and shall be paid by the **CITY** within a reasonable time after said invoices are received by the **CITY**.

SECTION IV

The **CONTRACTOR** shall defend, indemnify, and save harmless the **CITY**, its elected and appointed officials, officers, agents, and employees from all liability from

loss, damage, or injury to persons or property, including the payment by the CONTRACTOR of any and all legal costs and attorney's fees, in any manner arising out of any negligent or intentional or willful acts or omissions of the CONTRACTOR or any of its agents, servants, employees, or licensees in the performance of this Agreement including, but not limited to, all consequential damages to the maximum extent permitted by law.

SECTION V

The CONTRACTOR shall furnish a Certificate of Deposit as surety in the amount equal to one (1) month's maintenance cost in the name of the City of Montclair with all interest payments to the CONTRACTOR. The certificate shall remain in force for the term of this Agreement. If the CONTRACTOR requests a price increase as outlined in Section III, the CONTRACTOR must furnish a Certificate of Deposit with the new amount in the name of the City of Montclair with interest payments to the CONTRACTOR. The Certificate of Deposit must be on file with the CITY before the CONTRACTOR will be permitted to begin his maintenance operations.

SECTION VI

The CONTRACTOR shall not commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to the CITY nor shall the CONTRACTOR allow any employee to commence work on the maintenance services subject to this Agreement until all insurance required has been obtained. The CONTRACTOR shall take out and maintain, at all times during the term of this Agreement, the policies of insurance as set forth hereinafter.

SECTION VII

Workers' Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish the CITY a Certificate of Insurance as proof that it has taken out full Workers' Compensation Insurance for all persons whom it may employ directly or through subcontractors in carrying out the work specified herein in accordance with the State of California.

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

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

SECTION VIII

Throughout the term of this Agreement, at the CONTRACTOR'S sole cost and expense, the CONTRACTOR shall keep, or cause to be kept, in full force and effect, for

the mutual benefit of the CITY and the CONTRACTOR, comprehensive, broad form, general public liability, and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from the CONTRACTOR'S activities, providing protection of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person and Three Million Dollars (\$3,000,000) for any one accident or occurrence and at least One Million Dollars (\$1,000,000) for property damage.

SECTION IX

All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California and policies required under Section VIII shall name, as additional insured, the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured, and all subcontractors waive the right of subrogation against the CITY, its elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by the CITY; and (3) they cannot be canceled or materially changed except after (30) days' written notice by the insurer to the CITY by certified mail. The CONTRACTOR shall furnish the CITY with copies of all such policies promptly upon receipt of them or with a certificate evidencing the insurance. The CONTRACTOR may effect for its own account insurance not required under this Agreement.

SECTION X

The CONTRACTOR shall, before any work begins, obtain and maintain the following: City of Montclair Business license and a State of California Contractor's License (C27).

SECTION XI

The Public Works Superintendent, or his/her designated representative, shall be the judge of all work performed and shall approve all material provided by the CONTRACTOR before it is used. If the work is not satisfactory, the Public Works Superintendent or his/her designated representative may suspend the Agreement for any period of time or terminate the Agreement as set forth herein. No sums shall be due or payable to the CONTRACTOR for or during any time of such suspension or after termination.

It is further agreed that in the event the CONTRACTOR fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality, or fails to prosecute the work or any part thereof, the Public Works Superintendent or his/her designated representative shall so certify to the City Manager of the CITY, and if thereafter the CONTRACTOR, for a period of ten (10) days after receipt of a written demand from the Public Works Superintendent or his/her designated representative, fails to furnish tools, equipment, materials, labor, or transportation in the necessary quantity or quality and to prosecute said work and all parts thereof in a diligent and workmanlike manner or after commencing to do so within said ten (10) days fails to continue to do so, then the CITY may exclude the CONTRACTOR from the premises or any portion thereof, together with all materials and equipment thereon, and may

complete the work contemplated by this Agreement or any portion of said work either by furnishing the tools, equipment, materials, labor or transportation necessary therefor, or by letting the unfinished portion of said work or the portion taken over by the CITY shall be a charge against the CONTRACTOR and may be deducted from any money due or becoming due to the CONTRACTOR for the CITY, or the CONTRACTOR may be compelled to pay the CITY the amount of said charge or the portion thereof unsatisfied. As used herein, the term "premises" shall include the area as set forth in SECTION XII hereof.

SECTION XII

SPECIFIC

The Montclair Skate Park is located at 5201 Benito Street, Montclair California, 91763. The skate park is approximately 18,000 square feet in size. The maintenance area includes all signs, concrete surfaces, wrought-iron fence, and block wall in and around the Skate Park as well as the concrete, trash receptacle, bike rack, and two benches outside the south entrance to the Skate Park.

A. Opening and Closing

1. The skate park is open to the public 365 day per year. The skate park is to be opened at 8:00 a.m. every day and closed at 10:00 p.m. every night. If the skate park cannot be opened because of inclement weather or damage, the CONTRACTOR shall place a sign stating, 'Closed due to Weather' or 'Closed for Repairs' (both supplied by the CITY), at the entrance to the skate park and shall notify the Public Works Superintendent or his designee as soon as possible.
2. If the CITY should determine to open or close the skate park in order to perform any repairs by City staff, the CITY will then either open and/or close the skate park and notify the CONTRACTOR as soon as possible. Should repairs be necessary, the CITY shall place a sign stating, 'Closed for Repairs,' at the entrance to the skate park.

B. Daily Safety Inspection

1. Each morning before the skate park is opened to the public, the CONTRACTOR shall perform a safety inspection of the site. The inspection shall include checking the concrete surfaces for liquid spills, chips, spalling, etc., and the metal coping and handrails for any hazardous defects. If the CONTRACTOR discovers defects that would cause a safety hazard to patrons, the skate park should not be opened until the hazard is repaired. If the skate park cannot be opened for these reasons, the CONTRACTOR shall notify the Public Works Superintendent or his designee as soon as possible.

C. Site Cleanup

1. Before the skate park is opened each day, the CONTRACTOR shall pick up and dispose of all debris and clean any gum, liquid spills, dirt, or other foreign materials from the concrete surfaces.
2. The CONTRACTOR shall pressure wash all concrete surfaces each Monday before opening the skate park to the public.

D. Graffiti Removal

1. Before opening the skate park each day, the CONTRACTOR shall remove any graffiti (including self-adhesive stickers) from the concrete surfaces, signs, light poles, trash receptacles, park benches, wrought-iron fence, and block wall. In removing graffiti, the CONTRACTOR shall use chemicals and methods that will not cause damage to any of the surfaces from which the graffiti is being removed.

E. Block Wall

1. The Contractor shall paint the block wall on the west and south sides of the skate park annually at a time mutually agreed upon by the CITY and the CONTRACTOR.
2. The CITY shall be responsible for any structural repairs to the block wall.

F. Wrought-Iron Fence

1. The Contractor shall paint the wrought-iron fence on the west, north, east, and south sides of the skate park annually at a time mutually agreed upon by the CITY and the CONTRACTOR.
2. The CITY shall be responsible for any structural repairs to the wrought-iron fence.

G. Spine

1. The CONTRACTOR shall be responsible for painting the spine red twice each year at a time mutually agreed upon by the CITY and the CONTRACTOR.

H. Concrete Repair

1. The CONTRACTOR shall repair, as part of this Agreement, all chips and spalls in the concrete surfaces that present a hazard to patrons of the skate park.

I. Metal

1. The CONTRACTOR shall repair, as part of this agreement, all chips, gouges, cracks, and bending in the metal surfaces on the railing, box edges, and coping that present a hazard to patrons of the skate park.

J. Management and Supervision

1. The site defined by this Agreement shall be closely inspected by the CONTRACTOR'S Maintenance Superintendent to ensure proper work procedures are followed.
2. Monthly maintenance reports by CONTRACTOR'S Maintenance Superintendent shall be submitted for CITY'S information.

SECTION XIII

MISCELLANEOUS PROVISIONS

- A. Assignment.** No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by the CONTRACTOR without the written consent of the CITY.
- B. Independent Contractor.** The parties hereto agree that CONTRACTOR and its employees, officers, and agents are independent contractors under this Agreement and shall not be construed for any purpose whatsoever to be employees of the CITY.
- C. Compliance With Laws.** The CONTRACTOR shall comply with all applicable laws in performing its obligations under this Agreement.
- D. Discrimination.** The CONTRACTOR agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONTRACTOR agrees to comply with all County, State, and Federal laws related to equal employment opportunity rights.
- E. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- F. Attorney's Fees.** In the event that any legal proceeding is instituted to enforce any term or provisions of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorney's fees and costs from the opposing party in an amount to be determined by the court to be reasonable.
- G. Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any other party that is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing, signed by all parties.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first set forth hereinabove.

Contractor:

CALIFORNIA LANDSCAPE AND DESIGN, INC.

(Name, Title)

Date

City:

CITY OF MONTCLAIR

Paul M. Eaton
Mayor

Date

ATTEST:

Donna M. Jackson
City Clerk

Date

AGENDA REPORT

SUBJECT: CONSIDER AWARD OF CONTRACT TO SAM CONSTRUCTION CO. IN THE AMOUNT OF \$47,770 FOR CONSTRUCTION OF THE 9916 CENTRAL AVENUE IMPROVEMENTS PROJECT	DATE: June 15, 2009
	SECTION: AGREEMENTS
	ITEM NO.: 5
CONSIDER REDEVELOPMENT AGENCY BOARD OF DIRECTORS' APPROVAL OF AGREEMENT NO. 09-48 WITH SAM CONSTRUCTION CO.	FILE I.D.: RDA685
	DEPT.: RDA
CONSIDER AUTHORIZATION OF A \$10,000 CONSTRUCTION CONTINGENCY	

BUSINESS PLAN: N/A

REASON FOR CONSIDERATION: Awards of contracts and agreements require approval by the Redevelopment Agency Board of Directors.

BACKGROUND: On April 6, 2009, the Redevelopment Agency Board of Directors authorized staff to advertise for bids for the 9916 Central Avenue Improvement Project. The project is intended to improve the conditions of the Redevelopment Agency-owned property located at 9916 Central Avenue, the site of the former Neighborhood Partnership Housing Services Administration Office. It is anticipated that the property would be used by the Human Services Division to carry out certain programs.

The improvements to the single-family residence would consist of several exterior improvements including a patio structure with new foundation, relocation of existing utilities, and extension of sidewalk and landing on the northeast corner of the property in compliance with the Americans with Disabilities Act (ADA).

On June 4, 2009, the City Clerk received and opened ten bids for the proposed improvement project, the results of which are listed on the following page.

Prepared by: <u>mascoll</u>	Reviewed and Approved by:	<u>M. STARRS</u>
Proofed by: <u>Alle Mj</u>	Presented by:	<u>Gene (The Boy)</u>

<i>Bidder</i>	<i>Bid Amount</i>
Sam Construction Co.	\$ 47,770.00
TSR Construction and Inspection	\$ 51,200.00
Martin Mayerfeld	\$ 51,350.00
Desert Ranger Construction	\$ 52,900.00
W.S. Construction Co.	\$ 59,800.00
Malcon Civils, Inc.	\$ 65,000.00
Two Brothers Construction Company	\$ 74,400.00
Engineer's Estimate	\$ 75,000.00
Damon, Inc.	\$ 83,600.00
Union Construction Co.	\$104,000.00
Caltec Corp.	\$106,000.00

Following the bid opening, all proposals were reviewed for completeness and accuracy. The bid proposal of the apparent low bidder, Sam Construction Co., provided all the required documents and was deemed the lowest responsible, responsive bidder for the project. After a reference check of Sam Construction Co., 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 9916 Central Avenue Improvement Project has been included in the Montclair Housing Corporation Fiscal Year 2008-09 Budget.

RECOMMENDATION: Staff recommends the Redevelopment Agency Boards of Directors take the following actions:

1. Award a contract to Sam Construction Co. in the amount of \$47,770 for the 9916 Central Avenue Improvement Project.
2. Approve Agreement No. 09-48 with Sam Construction Co.
3. Authorize a \$10,000 construction contingency.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-49 WITH THE COUNTY OF SAN BERNARDINO FOR THE ALLOCATION AND EXPENDITURE OF JUSTICE ASSISTANCE GRANT PROGRAM FUNDS	DATE: June 15, 2009
	SECTION: AGREEMENTS
	ITEM NO.: 6
	FILE I.D.: PDT362
CONSIDER AUTHORIZATION FOR THE CITY MANAGER TO SIGN THE AGREEMENT ON BEHALF OF THE MONTCLAIR CITY COUNCIL	DEPT.: POLICE

BUSINESS PLAN: N/A

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 09-49 with the County of San Bernardino for the allocation and expenditure of Justice Assistance Grant (JAG) Program funds.

BACKGROUND: The Police Department has been notified it is eligible to receive a \$27,451 JAG award. The JAG Program requires that the state's allocation for municipal agencies in the region be distributed and administered directly through San Bernardino County. The San Bernardino County Board of Supervisors, acting in its capacity as JAG Program Administrator, shall disburse appropriate grant allocations to eligible jurisdictions, less a 5 percent administrative fee as allowable under JAG guidelines. Such appropriations must be made within 60 days of receipt of grant funds by the Program Administrator. Current JAG funding is separate from that under Agreement No. 09-26, which would be provided under the American Recovery Act.

JAG moneys are for the exclusive use of law enforcement services and programs. These moneys shall supplement existing services and shall not be used to supplant any existing funding for law enforcement services.

The Acting Police Chief is requesting that current funding be appropriated to patrol overtime.

FISCAL IMPACT: Approval of Agreement No. 09-49 would result in a \$26,078 JAG Program grant fund allocation to the Police Department Fiscal Year 2009-10 Budget. The San Bernardino County Board of Supervisors, acting in its capacity as JAG Program Administrator, would retain a 5 percent administrative fee of \$1,373.

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

1. Approve Agreement No. 09-49 with the County of San Bernardino for the allocation and expenditure of Justice Assistance Grant Program funds.
2. Authorize the City Manager to sign the Agreement on behalf of the Montclair City Council.

Prepared by: _____

Judy Z...

Reviewed and
Approved by: _____

[Signature]

Proofed by: _____

Susan H...

Presented by: _____

[Signature]

INTERLOCAL AGREEMENT
BETWEEN THE TOWN OF APPLE VALLEY AND THE CITIES OF ADELANTO, BARSTOW,
CHINO, CHINO HILLS, COLTON, FONTANA, HESPERIA, HIGHLAND, MONTCLAIR,
ONTARIO, RANCHO CUCAMONGA, REDLANDS, RIALTO, SAN BERNARDINO,
TWENTYNINE PALMS, UPLAND, VICTORVILLE,
AND THE COUNTY OF SAN BERNARDINO, CA

CONCERNING DISTRIBUTION OF THE
2009 JUSTICE ASSISTANCE GRANT AWARD

This Agreement is made and entered into this _____ day of _____, 2009, by and between THE COUNTY OF SAN BERNARDINO, acting by and through its governing body, the Board of Supervisors (hereinafter referred to as "COUNTY"), and the aforementioned TOWN (hereinafter referred to as "TOWN") and named CITIES (hereinafter referred to as "CITIES"), acting by and through their respective governing bodies, the Town Council and City Councils, all of whom are situated within the County of San Bernardino, State of California, as follows:

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of all parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, the COUNTY agrees to release to TOWN and CITIES their respective grant allocation from the JAG Award within sixty (60) days upon receipt of funds, less five percent (5%) for administrative fees, as reflected on Appendix 1 here attached and hereby incorporated by reference as part of this agreement; and COUNTY agrees to use the five percent (5%) of JAG award funds received from TOWN and CITIES under this agreement for administrative fees toward the administration of TOWN's and CITIES' programs during the entire permissible duration of said programs; and TOWN and CITIES agree to deposit their JAG award funds into a separate trust account in accordance with JAG guidelines; and TOWN and CITIES each agree to the five percent (5%) reduction of their respective grant allocation from the JAG award, as reflected on Appendix 1 for administrative fees toward the administration of this program; and additionally the TOWN and CITIES each agree that it is their responsibility to ensure these funds are expended in accordance with JAG guidelines, and that the interest generated from such funds shall be solely applied and expended in accordance with these same JAG guidelines; and

WHEREAS, the TOWN, CITIES and COUNTY believe it to be in their best interests to reallocate the JAG funds,

NOW THEREFORE, the COUNTY and TOWN and CITIES agree as follows:

Section 1.

COUNTY agrees to release to TOWN and CITIES their respective grant allocation from the JAG Award within sixty (60) days upon receipt of funds, less five percent (5%) for administrative fees, as reflected in Appendix 1 here attached and hereby incorporated by reference as part of this Agreement, and; COUNTY agrees to use the five percent (5%) of JAG award funds received from TOWN and CITIES under this agreement for administrative fees toward the administration of the TOWN's and CITIES' programs during the entire permissible duration of said programs.

Section 2.

TOWN and CITIES agree to deposit their JAG award funds into a separate trust account in accordance with the JAG guidelines; and TOWN and CITIES agree to the five percent (5%) reduction of their respective grant allocation from the JAG award, as reflected in Appendix 1, for administrative fees toward the administration of this program, and; TOWN and CITIES each agree that it is their responsibility to ensure these funds are expended in accordance with JAG guidelines and that all interest generated from such funds shall be solely applied and expended in accordance with these same JAG guidelines.

Section 3.

TOWN and CITIES agree to provide COUNTY with sufficient timely information as necessary within five business days after receiving written request from COUNTY to meet JAG requirements for quarterly and annual financial and performance reports.

Section 4.

Nothing arising from this Agreement shall impose any liability for claims or actions against COUNTY other than what is authorized by law.

Section 5.

Nothing arising from this Agreement shall impose any liability for claims or actions against TOWN and/or CITIES other than what is authorized by law.

Section 6.

Each party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable to any other party to this Agreement for any claim or action arising from the services provided under this Agreement.

Section 7.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 8.

By entering into this Agreement, the parties do not intend to create any obligations, either express or implied, other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF MONTCLAIR, CA

COUNTY OF SAN BERNARDINO, CA

City Manager

GARY C. OVITT
Chairman, County Board of Supervisors

ATTEST:

ATTEST:

City Clerk

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

City Attorney

APPROVED AS TO FORM:

*RUTH E. STRINGER
County Counsel

by: _____
Steven J. Singley, Deputy

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-50 WITH NUTRITION INK TO PROVIDE NUTRITION-EDUCATION SERVICES FOR THE CITY'S SENIOR CITIZEN NUTRITION PROGRAM	DATE: June 15, 2009 SECTION: AGREEMENTS ITEM NO.: 7 FILE I.D.: HSV105 DEPT.: COMMUNITY DEV.
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 09-50 with Nutrition Ink to provide nutrition-education services for the City's Senior Citizen Nutrition Program.

BACKGROUND: At its meeting of June 1, 2009, the City Council approved Agreement No. 09-39 with the San Bernardino County Department of Aging and Adult Services to provide a Senior Citizen Nutrition Program for participants aged 60 and over. Agreement No. 09-39 requires that the City of Montclair provide nutrition-education services to program participants. Agreement No. 09-50 proposes that Nutrition Ink would perform the following services on a quarterly basis:

- ✓ Plan, organize, and conduct orientation and in-service educational training programs for staff and volunteers to be used in conducting nutrition-education classes for Senior Citizen Nutrition Program participants
- ✓ Monitor the nutrition site
- ✓ Evaluate and monitor food preparation and, if needed, make recommendations for improvements
- ✓ Recommend and monitor standards for sanitation, safety, and security of the food service

In addition, Nutrition Ink would review and analyze menus monthly or as needed and develop, maintain, and use pertinent record systems in relation to the needs of the program. The term of Agreement No. 09-50 is July 1, 2009, through June 30, 2010.

FISCAL IMPACT: The annual fee of \$1,845 would be paid with funds that have already been allocated in Agreement No. 09-39.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-50 with Nutrition Ink to provide nutrition-education services for the City's Senior Citizen Nutrition Program.

Prepared by: <u>M. Richter</u>	Reviewed and Approved by:	<u>Steve Luster</u>
Proofed by: <u>Christine Smedley</u>	Presented by:	<u>Paul Chesney</u>

NUTRITION INK AGREEMENT

1. OBJECTIVE:

To provide consultation to City of Montclair Senior Citizen's Program (Agency/Contractor) regarding nutrition provider requirements as outlined in Title 22, Division 1.8 of the California Department of Aging Regulations.

2. TERMS OF AGREEMENT:

This is to certify that City of Montclair Senior Citizen's Program has engaged the services of *NUTRITION INK* (Sub-Contractor) for its Nutrition consultation to one (1) site.

This service is effective July 1, 2009 through June 30, 2010

3. RESPONSIBILITIES OF SUB-CONTRACTOR:

- A. Performs Site Monitoring quarterly.
- B. Evaluates and monitors food preparation, making recommendations for a conformance level that will provide nutritionally adequate, acceptable quality food - quarterly.
- C. Plans, organizes and conducts orientation and in-service educational programs for Staff and volunteers quarterly and develops in conjunction with Contractor, the staff training plan and annual schedule. Contractor will send this schedule to the County by September 3, 2009.
- D. Recommends and monitors standards for sanitation, safety and security in food service quarterly.
- E. Reviews and analyzes menus monthly or as needed, unless provided and signed by RD at approved caterer.
- F. Develops, maintains and uses pertinent record systems related to the needs of the organization.
- G. Develops, uses and evaluates educational materials related to services provided quarterly along with an annual schedule.
- H. Maintains effective verbal and written communications and public relations inter- and intra-departmentally.

4. RESPONSIBILITIES OF AGENCY/CONTRACTOR

- A. Identify person designated as supervisor or designee.
- B. Provide a general orientation for the dietitian to the Agency including its staff, policies, recording systems.
- C. Provide suitable space, equipment and materials.
- D. Make records available.
- E. Sends Monthly Menu 2-3 weeks prior to the start of the following month for review and analysis.
- F. Agrees not to hire or contract with a Nutrition Ink Dietitian for a period of one year from termination of this contract unless facility pays RD's annual salary as buyout fee.

5. COPIES of subcontracts, licenses and insurance memoranda and/or letters of understanding shall be on file with the Contractor. Contractor shall be responsible to ensure all subcontractors meet the insurance requirements and for monitoring the insurance requirements in accordance with Article III, Section N.

6. The Sub-Contractor shall indemnify, defend and save harmless the Contractor and the County, its officers, agents and employees from any and all claims and losses accruing to or resulting from any contractors, subcontractors, material men, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials or supplies in connection with any activities performed for which funds from this Contract were used and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the subcontractor in the performance of this Contract.

7. The Sub-Contractor shall complete all reporting and expenditure documents requested by Contractor. These reporting and expenditure documents shall be sent to the Contractor in a timely manner and at intervals as determined by Contractor.

8. Sub-Contractor shall maintain all records and books pertaining to the delivery of services under this

Contract and demonstrate accountability for Contract performance. Said records shall be kept and maintained at 3164 W. Ramsey St., Banning, Ca. 92220.

9. Sub-Contractor shall notify Contractor in writing of any change in mailing address, telephone or fax numbers and/or physical location within ten (10) days of the change.

- (1). Indemnification - The Sub-Contractor agrees to indemnify, defend and hold harmless the Contractor and County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising from Sub-Contractor's acts, errors or omissions and for any costs or expenses incurred by the Contractor on account of any claim therefore, except where such indemnification is prohibited by law.
- (2). Insurance - Without in any way affecting the indemnity herein provided and in addition thereto, the Sub-Contractor shall secure and maintain throughout the term of the Contract the following types of insurance with minimum limits as shown:
 - a. Sub-Contractor will maintain Worker's Compensation - in amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of the Sub-Contractor and all risks to such persons under this Contract.
 - b. Professional Liability - Professional liability insurance shall have limits of at least \$1,000,000 per claim or occurrence.
- (3). Proof of coverage - Sub-Contractor shall immediately furnish certificates of the required insurance policies to contractor evidencing the insurance coverage, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (3) days prior written notice to Contractor, and Sub-Contractor shall maintain such insurance from the time Sub-Contractor commences performance of services hereunder until the termination of the Contract. Within sixty (60) days of the commencement of this Contract, the Sub-Contractor shall furnish copies of the policies.

10. HIPAA Law:

The Sub-Contractor recognizes and acknowledges that, by virtue of entering into this Agreement and providing services to Institution, hereunder, Sub-Contractor will have access to certain information of Institution that is confidential and constitutes valuable, special and unique property of Institution. Sub-Contractor agrees that they will at no time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Institution's express written consent, except pursuant to their duties hereunder, any confidential or proprietary information of Institution, including, but not limited to, information which concerns Institution's participants, cost, prices and treatment methods at any time used, developed or made by Institution, and which is not otherwise available to the public. Sub-Contractor shall not disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Institution in writing, any participant or medical record information regarding Institution's participants, and Sub-Contractor shall comply will all federal and state laws and regulations, and all rules, regulations, and policies of Institution, regarding the confidentiality of such information. In addition, if necessary, Sub-Contractor agrees to assist in judicial proceedings any effort to obtain access to such records or information except such access as is expressly permitted by the aforementioned federal regulations.

11. Elderly Abuse. In accordance with W & I 15630 (a) all employees of the sub-contractor are mandated reporters of elder and dependent adult abuse. Mandated reporters are required to report all instances of physical abuse of elderly and dependent adults and may report other types of abuse.

12. Sub-Contractor Service Costs:

Nutrition Education and materials plus yearly plan	\$500
Site Monitoring quarterly.....	\$720
Staff Training quarterly.....	\$500
Mileage.....	\$125
Total.....	\$1845

(951) 849-5150 (951) 849-4799 Fax	Federal Tax I.D. Number 20-4651795
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SUBCONTRACTOR

NUTRITION INK

By:

Merijane Malouin, R.D.

DATED: _____

CITY

CITY OF MONTCLAIR

By:

Paul M. Eaton
Mayor

DATED: _____

ATTEST:

Donna M. Jackson
City Clerk

DATED: _____

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-51 WITH CATERING SYSTEMS, INC., TO PROVIDE MEALS FOR THE CITY'S SENIOR CITIZEN NUTRITION PROGRAM

DATE: June 15, 2009

SECTION: AGREEMENTS

ITEM NO.: 8

FILE I.D.: HSV105

BUSINESS

PLAN: N/A

DEPT.: COMMUNITY DEV.

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 09-51 with Catering Systems, Inc., to provide meals for the City's Senior Citizen Nutrition Program for a term of one year beginning July 1, 2009.

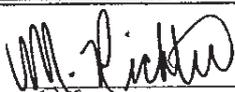
BACKGROUND: The City of Montclair is currently contracting with the San Bernardino County Department of Aging and Adult Services (DAAS) to operate a Senior Citizen Nutrition Program at the Montclair Community Center. The Human Services Division is managing and operating the nutrition program with grant funds awarded by DAAS.

The Human Services Division would like to continue subcontracting with Catering Systems, Inc., for nutrition program meal service. The company has been providing meals for the program since December 1999. Program participants and staff have been pleased with the catering service's performance. Catering Systems, Inc., continues to provide an enhanced menu at a reasonable cost.

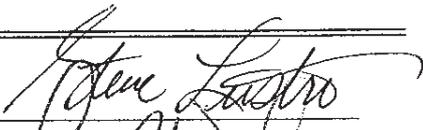
Should the Council approve Agreement No. 09-51, Catering Systems, Inc., would continue to deliver prepared meals every weekday. Catering Systems, Inc., would charge the City \$3.60 per meal, which is an increase of \$.10 per meal. The cost increase is based on an escalation in both food and supply costs. Catering Systems, Inc., is one of the few companies qualified to provide nutritious meals funded under the Older Americans Act that delivers to San Bernardino County programs.

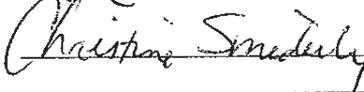
The following chart shows the suggested donation for meals in surrounding cities. The cities of Claremont and Pomona receive subsidies from their cities' General Funds and the Los Angeles County Area Agency on Aging.

<i>City</i>	<i>Donation</i>	<i>Provider</i>
Pomona	\$1.75	Morrison's
Claremont	\$2.00	Morrison's
Chino	\$2.50	Oldtimers Foundation
Rancho Cucamonga	\$2.50	Oldtimers Foundation
Ontario	\$2.50	Oldtimers Foundation
Upland	\$2.50	Oldtimers Foundation

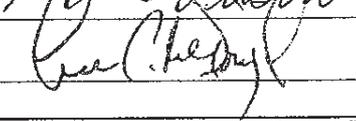
Prepared by: 

Reviewed and Approved by:



Proofed by: 

Presented by:



Montclair's current suggested donation is \$1.75 per meal, which is one of the lowest in the surrounding communities. The United States Department of Agriculture will subsidize each meal in the amount of \$.72 as authorized by Title III of the Older Americans Act. For Fiscal Year 2009-10, the additional funding for the meal cost would be paid through participant donations and funding from Agreement No. 09-39 with the San Bernardino County Department of Aging and Adult Services that was approved by the City Council on June 1, 2009.

The term of Agreement No. 09-51 is July 1, 2009, through June 30, 2010.

FISCAL IMPACT: There would be direct fiscal impact to the City's General Fund associated with providing an estimated 17,000 meals for the Senior Citizen Nutrition Program during Fiscal Year 2009-10.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-51 with Catering Systems, Inc., to provide meals for the City's Senior Citizen Nutrition Program.

FOOD SERVICE AGREEMENT

THIS AGREEMENT, executed in Montclair, California, is made by and between the City of Montclair, a California Municipal Corporation, hereinafter referred to as the "Contractor," and Catering Systems, Inc., hereinafter referred to as the "Subcontractor."

WHEREAS, the Contractor and the County of San Bernardino Department of Aging and Adult Services, hereinafter referred to as "County," have entered into an Agreement which authorizes the Contractor to provide certain services, said City Agreement being No. 09-51 dated June 15, 2009; and

WHEREAS, the aforesaid Agreement provides that the Contractor may subcontract for certain professional services subject to prior County approval; and

WHEREAS, the Contractor desires to engage the Subcontractor to provide professional services as detailed elsewhere in this Agreement; and

WHEREAS, the Subcontractor desires to perform and provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Contractor and the Subcontractor agree as follows:

AGREEMENT

Section 1. Statement of Work and Schedule

The Subcontractor shall perform and provide the services set forth in the Food Service Specifications, which is attached hereto as "Attachment 1" and by this reference incorporated herein. The rights and obligations of the parties to this Agreement shall be subject to and governed by said Food Service Specifications as well as by the general provisions herein.

Section 2. Representatives of the Parties and Service of Notice

The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands, and communications shall be given are as follows:

- A. The representative of the Contractor shall be, unless otherwise stated in the Agreement:

Marcia Richter, Assistant Director of Human Services
City of Montclair
5111 Benito Street
Montclair, California 91763
(909) 625-9453

- B. The representative of the Subcontractor shall be:

Lordwin Dsouza
Catering Systems, Inc.
2512 East Fender Avenue, Suite E
Fullerton, California 92831
(714) 278-9294

Section 3. Compensation to the Subcontractor

The Contractor shall pay to the Subcontractor an amount not to exceed \$3.60 per meal for approximately 68 meals per day for complete and satisfactory performance of the terms of this Agreement. The Subcontractor shall be paid for providing services set forth in this Agreement. Payment shall be made on a bimonthly basis.

Section 4. Time of Performance

The term of this Agreement shall commence July 1, 2009, and terminate June 30, 2010, provided that said term is subject to the provisions of Section 14, "Indemnity, Liability, and Insurance Requirements," and Section 18, "Termination," and the availability of Federal funds through the County.

There are 251 serving days during Fiscal Year 2009-10 including the following holidays and special occasions:

Independence Day - July 3, 2009
Labor Day - September 7, 2009
Veterans Day - November 11, 2009
Thanksgiving (two days) - November 26 and 27, 2009
Christmas Eve and Day - December 24 and 25, 2009
New Year's Eve and Day - December 31, 2009, and January 1, 2010
Martin Luther King's Birthday - January 18, 2010
Presidents Day - February 15, 2010
Memorial Day - May 31, 2010

Section 5. Notices, Demands, and Communications

- A. Formal notices, demands, and communications to be given hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, return receipt requested, and shall be deemed effective as the date of mailing.
- B. Such notices, demands, or communications shall be addressed as set forth below:
1. For the Contractor:

Marcia Richter, Assistant Director of Human Services
City of Montclair
5111 Benito Street
Montclair, California 91763
(909) 625-9453

2. For the Subcontractor:

Lordwin Dsouza
Catering Systems, Inc.
2512 East Fender Avenue, Suite E
Fullerton, California 92831
(310) 619-1218

- C. If the name of the person designated to receive the notices, demands, or communications or the address of such person is changed, written notice shall be given, in accord with this Section, within five (5) working days of said change.

Section 6. Audit Records and Bonding

- A. The Subcontractor shall maintain financial records and reports related to funds received under this Agreement.
- B. The Subcontractor shall maintain books, records, documents, and other accounting procedures and practices, which reflect all costs of any nature, including cost of raw food and labor costs, expended in the performance of this Agreement.
- C. These records shall be subject to audit or inspection by duly authorized County, State, or Federal personnel.
- D. The Subcontractor shall maintain all books, records, and other documents relative to this Agreement for three (3) years after final payment or audit by the United States Department of Health and Human Services, the California Department of Aging, and County for five years if no audit occurred.
- E. The Subcontractor shall provide to the Contractor, on an annual fiscal year basis, a statement that all persons handling funds received or disbursed by this Agreement are covered by Fidelity Insurance.
- F. The Subcontractor shall provide, on an annual basis, an official copy of the Certified Public Accountant audit, which shall be conducted following generally accepted audit practices, to determine that there has been a proper accounting for and use of contract funds. All records of the Subcontractor bearing upon food purchases, storage, and food preparation directly related to said program under this Agreement shall be made available to the Contractor upon request.
- G. The Subcontractor shall furnish reports as required by the Contractor, County, California Department of Aging, and the U.S. Administration on Aging.
- H. Subcontractors shall use standardized recipes which meet Hazard Analysis requirements and which shall be available to Contractor and County.
- I. The Subcontractor shall supply raw food and labor costs to the Contractor as needed.
- J. The Subcontractor shall permit periodic monitoring of contracted activities by Contractor, Centralized Dietary Services, County, State, or Federal personnel.

Section 7. Amendments to Agreement

Any changes in the terms of this Agreement, including changes in the scope of services to be performed by the Subcontractor and any increase or decrease in amount of compensation which are agreed to by the Contractor and the Subcontractor, shall be incorporated into this Agreement by a written amendment properly executed by both parties. Prior written approval shall be received from County.

Section 8. Permit and Licenses

The Subcontractor shall hold valid permits, license, certificates, and other documents as are required by the State, County, City, or other governmental or regulatory bodies to legally engage in and perform the services to be provided under this Agreement, such as public health license, Orange County Inspection Reports, annual Fire Inspection Certificates, and other documents attached for County's approval. The Subcontractor shall notify the Contractor immediately of any suspension, termination, lapses, nonrenewals, or restrictions of required licenses, certificates, or other documents that may be cause for termination of this Agreement.

Section 9. Conflict of Interest

- A. The Subcontractor, during the period to be covered by this Agreement, shall have no interest, direct or indirect, with respect to the Contractor that could create a conflict of interest.
- B. No member, officer, or employee of the Contractor and no official, officer, or employee of the County who exercises any responsibilities or functions with respect to the Contractor during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- C. The Subcontractor warrants that no person has been employed to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Contractor the right to terminate this contract or, at the discretion of the Contractor, to deduct from the Subcontractor's fees the amount of such commission, percentage, brokerage, or contingent fees.

Section 10. Independent Contractor Status of the Subcontractor

The parties agree that the performance of the Subcontractor's services hereunder shall be in the capacity of an Independent Contractor and that no employees of the Subcontractor have been, are, or shall be employees of the Contractor or County by virtue of this Agreement, and the Subcontractor shall so inform each employee organization and each employee who is hired or retained under this Agreement.

Section 11. Assignment or Transfer of Interest

The Subcontractor shall not assign or transfer any interest in this Agreement, except that claims for moneys due or to become due from the Contractor under this Agreement may be assigned to a bank, trust company, or other financial institution.

Section 12. Applicable Sections of Agreement between County and the Contractor

The Contractor and the Subcontractor agree that all conditions set forth in the Agreement between the County and the Contractor, as applicable in the performance of this Agreement, are hereby included herein by reference as though set forth herein in full. Referenced sections are available at the Contractor and County for review during normal business hours.

Section 13. Discrimination Prohibited

- A. The Subcontractor shall not discriminate against any employee or person served on account of race, color, sex, religious background, ancestry, national origin, or disability in its performance of this contract and hereby agrees to comply with all Federal, State, and County laws or regulations pertaining hereto including the Americans With Disabilities Act and applicable Civil Rights Acts.
- B. It is expressly understood that upon receipt of evidence of such discrimination, the Contractor shall have the right to terminate said contract.
- C. Affirmative Action: A written affirmative action plan, embodying both (1) goals and timetables of minority manpower utilization; and (2) specific affirmative action steps directed at increasing minority utilization by means of applying good faith efforts to carry out such steps, is to be included.

Section 14. Indemnity, Liability, and Insurance Requirements

- A. The Subcontractor agrees to defend, indemnify, and hold harmless the Contractor and the County, their officers, employees, and assigns, against any and all claims arising from acts, omissions, or negligence of the Subcontractor, its officers, or employees in the performance of this Agreement. The Subcontractor shall defend any suit against the Contractor and County alleging personal injury, sickness, or disease arising out of meals served at the project sites (or home delivered) provided food is served one hour after delivery (or eaten immediately after home delivery).
- B. The Contractor shall promptly notify the Subcontractor in writing of any claims against the Contractor or Subcontractor and, in the event of a suit being filed, the Contractor shall promptly forward to the Subcontractor all papers in connection therewith. The Contractor shall not incur any expenses or make any settlement without the Subcontractor's consent. However, if Subcontractor refuses or neglects to defend any such suit, the Contractor may defend, adjust, or settle any such claim, and the cost of such defense, adjustment, or settlement, including reasonable attorney's fees, shall be charged to the Subcontractor.
- C. The Subcontractor shall furnish proof in the form of a hand-signed certificate of insurance that he/she carries insurance in the minimum amounts listed below prior to commencement of performance under this Agreement. Such coverage shall be maintained currently effective until receipt of final payment under the terms of this Agreement.

1. Comprehensive General \$1,000,000 combined Single Liability
[including (CSL) minimum Product Liability]
 2. Professional Liability \$1,000,000 per occurrence
- D. Comprehensive Auto Liability (owned and nonowned)
1. Bodily Injury \$ 100,000 each person
\$ 300,000 each accident
\$ 300,000 aggregate products
 2. Property Damage \$ 50,000 each accident
\$ 250,000 aggregate operations
\$ 250,000 aggregate protection
\$ 250,000 aggregate products
\$ 250,000 aggregate contractual
- E. Worker's Compensation. The statutory limit shall be in accordance with Sections 3700 and 3800 of the Labor Code of the State of California.
- F. Additional Insured. The City of Montclair and County of San Bernardino shall be named as additional insured on all policies or certificates.
- G. Cancellation Notice. A 30-day Notice of Cancellation shall be mailed to the Contractor and County, 686 East Mill Street, San Bernardino, California 92415.
- H. In the event any new or additional meal locations are started, the insurance carrier shall name all new or additional sites as insured under the policy.
- I. Failure on the part of the Subcontractor to procure or maintain required insurance shall constitute a material breach of Agreement and Contractor may immediately terminate or suspend this Agreement.

Section 15. Compliance with Statutes and Regulations

- A. In the performance of this Agreement, the Subcontractor shall obey all laws of the United States, the State of California, and the ordinances, regulations, policies, codes, and provisions of County.
- B. The Subcontractor shall conform to the nutrition requirements under Title III-C of the Older Americans Act of 1965, as amended, including providing the minimum Title III-C requirement per person of one third of the Recommended Daily Dietary Allowance (RDA).
- C. The Subcontractor shall comply with the California Uniform Retail Food Facilities Law (CURFFL). The Hazard Analysis (HACCP) requirements and San Bernardino County Department of Aging and Adult Services Policy and Procedures for Senior Nutrition Sites.

Section 16. Federal, State and Local Taxes

Federal, State, and local taxes shall be the responsibility of the Subcontractor as an independent contractor and not as a Contractor employee.

Section 17. Renewal Options

This Agreement is for one year only. It is optional on the part of the Contractor to renew the Agreement if desired. However, all agreements must be put out to bid during the County RFP period. Contractors must publicly bid on subsequent project year food contract. Bids will be awarded based on cost, capacity to provide service, proven competency and quality of product, proximity of meal locations, or other justifiable reasons.

Section 18. Termination

The Contractor may terminate this Agreement at any time within the period of its duration upon not less than thirty (30) days' written notice by the Contractor to the Subcontractor or immediately for cause. The Subcontractor may terminate this contract upon not less than thirty (30) days' written notice to the Contractor. Notice shall be provided as in Section 5 herein.

In addition, the contract may be terminated because of lack of funds, repeated citations by County, and failure to make corrective actions required by County. In the event funds to finance this contract, or part of this contract, become unavailable, the obligations of each party hereunder may be terminated upon no less than ten days' written notice to the other party. Said notice shall be delivered by certified mail, telegram, or in person. County shall be the final authority as to the availability of Federal or State funds. Waivers of breach of any provision of the contract shall not be construed to be a modification of the terms of the contract.

Section 19. Negotiation of Disputes

Any disputes of law or fact between the Contractor and the Subcontractor shall be settled between the parties concerned in such a manner that it will not delay or adversely affect the performance of the Contractor. Should any questions still remain unresolved, the dispute will be submitted to the Director of the Area Agency on Aging or his designee to render a decision. Said decision will be binding upon the Contractor and the Subcontractor.

Section 20. Prior Approval of Subcontracts

The Subcontractor shall not enter into any subcontracts, for all or part of the services contemplated under this Agreement, without obtaining prior written approval of the Contractor and the Area Agency on Aging, which shall then be made a part of the original Agreement. No subcontracts shall be approved which would incur an obligation higher than the original agreed-upon price.

Section 21. Fair Labor Standards Compliance

Subcontractor agrees to indemnify, defend, and hold harmless the County of San Bernardino and the Contractor, its agents, officers, and employees from any and all

liability including, but not limited to, wages, overtime party, liquidated damages, penalties, court costs, and attorney's fees arising under any wage and hour law including, but not limited to, the Federal Fair Labor Standards Act for services performed by the Subcontractor's employees for which the Contractor or the County of San Bernardino may be found jointly or solely liable.

Section 22. Citizenship Laws

Subcontractor and Contractor warrant their full compliance with all laws regarding employment of aliens and others and that all their employees performing services hereunder meet the citizenship or alien status requirements contained in Federal Immigration Reform and Control Act of 1986. Subcontractor and Contractor shall obtain from all covered employees services hereunder all verification and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. Subcontractor and Contractor shall retain such documentation for all covered employees for the period prescribed by law. Subcontractor and Contractor shall indemnify, defend, and hold harmless the County, its officers, and employees from employer sanctions and any other liability which may be assessed against Subcontractor and Contractor of County or both in connection with any alleged violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this contract.

Section 23. Subcontractor Staffing Requirements

To assure that meals are prepared in a safe, sanitary environment in compliance with the California Health and Safety Code, the San Bernardino County Department of Aging and Adult Services Policies and Procedures, and Contracts Management Manual, the Subcontractor shall comply with the following requirements:

The Subcontractor shall hire a part-time Registered Dietitian (minimum 20 hours a week) who possesses a Bachelor's degree and/or Master's degree in Nutrition/Dietetics with an institutional food service management emphasis from an accredited college or university for supervision of the food services operation within the catering company and/or central kitchen.

Or

The Subcontractor shall hire a qualified Food Service Manager who possesses a Bachelor of Science degree in Food and Nutrition with emphasis on food service management or restaurant management from an accredited college or university, plus two (2) years' professional experience as a food service supervisor; no less than six (6) years of experience in the food service industry at a supervising level can be substituted for the four-year degree requirements. The Subcontractor must submit to the Contractor the registration identification number and expiration date of Registered Dietitian along with complete verifiable résumés of the Registered Dietitian or Food Service Manager for County's approval.

The County may, at its sole discretion, waive this requirement or, for repeated deficiencies of noncompliance, require the Subcontractor to fill both positions and/or to expand the required positions to full-time positions.

Section 24. Date of Execution

The parties hereto agree that the first party to execute this Agreement shall enter the date executed in the blank provided herein on both duplicate originals, which date shall be the date this Agreement is made provided, however, the term shall be for the period set forth in Section 4 herein.

Section 25. Complete Agreement

This Agreement, Appendices, if applicable, and Attachment 1 contain the full and complete Agreement between the two parties. No verbal agreement or conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first set forth above.

Subcontractor:

CATERING SYSTEMS, INC.

Lordwin Dsouza

Date

Date

City:

CITY OF MONTCLAIR

Paul M. Eaton
Mayor

Date

ATTEST:

Donna M. Jackson
City Clerk

Date

ADDENDUM

OTHER REQUIREMENTS (Contractor's Option)

"Penalties for discrimination in employment - Any contractor who shall be found in violation of the nondiscrimination provisions of the State of California Fair Employment Practice Act or similar provisions of federal law or executive order in the performance of any contract with the City, thereby shall be found in material breach of such contract and thereupon the City shall have power to cancel or suspend the contract, in whole or in part, or to deduct from the amount payable to such contractor the sum of \$25 for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract, both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this section."

"Penalties for violation of affirmative action provisions - Any contractor who shall be found in violation of the agreement to pursue an affirmative course of action, or in violation of any provision of the affirmative action guidelines pertaining to the contract, shall be found in material breach of such contract and thereupon the City shall have power to cancel or suspend the contract, in whole or in part, or to deduct from the amount payable to such contractor the sum of \$250 for each calendar day during which the contractor is found to have been in noncompliance, damages for said breach of contract, or both."

FOOD SERVICE SPECIFICATIONS

Between
City of Montclair
and
Catering Systems Inc.

STATEMENT OF WORK AND SCHEDULE

During the time of performance as set forth herein, the Subcontractor shall furnish all food, labor and equipment necessary to prepare and deliver individual meals and/or bulk food for persons 60 years of age and older, in compliance with the Title III Congregate and Home-delivered Nutrition standards as described in Federal, State, and County regulatory statutes; the California Health and Safety Codes, more specifically the California Uniform Retail Food Facilities Law (CURFFL) as amended January 1, 1996, the Older Americans Act (OAA), Amendment of 1992, and the San Bernardino County Department of Aging and Adult Services (DAAS).

To assure that meals are prepared in a safe, sanitary environment, in compliance with the California Health and Safety Code, the DAAS Policies and Procedures and Contracts Management Manual, the Subcontractor shall comply with the following requirements:

The Subcontractor shall hire a part-time Registered Dietitian (minimum 20 hours a week) who possesses a Bachelor's degree and/or Master's Degree in Nutrition/Dietetic with an institutional food service management emphasis from an accredited college or university, for supervision of the food services operation within the catering company and/or central kitchen, or

The Subcontractor shall hire a qualified Food Service Manager who possess a BS degree in Food and Nutrition with emphasis on food service management or restaurant management from an accredited college or university, plus two (2) years professional experience as a food service supervisor; no less than six (6) years of experience in the food service industry at a supervising level can be substituted for the 4 year degree requirements

The Subcontractor must submit, to the Contractor, the registration I.D. number and expiration date of the Registered Dietitian along with complete verifiable resumes of the Registered Dietitian or Food Service Manager for the County's DAAS approval.

The County may, at its sole discretion, waive this requirement or for repeated deficiencies of non-compliance, require the Subcontractor to fill both positions, and/or to expand the required positions to full time positions.

1. **NUMBER OF MEALS**

The maximum requirement is estimated at 68 meals per day, Monday through Friday.

	TOTAL ANNUAL MEALS	CATERED COST OF MEAL
Monday-Friday	68	\$3.60
Saturday	NA	
Sunday	NA	
Box Lunches	NA	
Breakfast	NA	
Frozen Meals	NA	
Other Food Items	NA	
Total Annual Meals	17,000	\$61,200

2. **DELIVERY**

a. The meals shall be delivered as follows:

Meal Location	Approx. # Meals	Time Food Preparation Completed	Time Food Leaves Kitchen	Time Food Arrives At Site
Montclair Community Cntr. 5111 Benito Av. Montclair, CA	68	10:00 a.m.	10:30 a.m.	11:00 a.m.

- b. The Contractor reserves the right to add or delete meal sites or designate alternate meal locations, as appropriate, subject to approval by DAAS.
- c. The Contractor may change the days and time of delivery and service by giving the Subcontractor seven (7) days notice.
- d. The Contractor may change the number of meals to be delivered to any of the meal locations by notifying the Subcontractor by 10:00 a.m. the day prior to delivery.
- e. The Subcontractor shall deliver the meals no more than 60 minutes prior to or 30 minutes after the agreed upon serving time.

- f. Box lunch delivery time may be as early as 9:00 a.m. as long as appropriate holding facilities are available for perishable food items and meals are transported under appropriate packing, heating and cooling temperature requirements.
- g. The Contractor reserves the right to require Subcontractor to deliver food on all holidays that food service is needed.
- h. The contractor shall serve foods for congregate meals; within two (2) hours after food preparation has been completed.

3. **DELIVERY SERVICE SPECIFICATIONS**

- a. Meals are to be delivered in (bulk/individual) prepackaged servings.
- b. The Subcontractor shall supply the following food service items.

ITEM (List)	SPECIFICATIONS
Disposable Plates Rectangular	5-compartment
Disposable Bowls	8 oz. soup bowls
Disposable Flatware	Bulk or pre-packaged, good quality
Napkins	Good quality
Table Covering	Paper placemats
Disposable Cups	8 oz. cups when milk is sent in bulk
Other	Straws, Plastic gloves, boxes or bags as needed for box lunches

- c. The Subcontractor shall provide all serving trays and utensils, warming, refrigerating and freezing equipment, where necessary, for the maintenance of proper temperatures as specified herein, and shall provide servicing of the equipment and/or replacement (depending on needs of Project).
- d. All food must be packaged and transported under conditions that will ensure temperature control to prevent bacterial contamination, spillage, and/or infestation. All hot foods should be packaged individually or in bulk containers to ensure a minimum delivery temperature of 145°F. All cold foods must be packaged to ensure a maximum delivery temperature of 40 F. All foods intended to be delivered frozen shall be packaged so as to maintain a hard frozen state until such food reaches point of delivery,

Temperature of bulk and home-delivered meals must be taken daily at the end of production/packaging and on delivery at the nutrition site by the Subcontractor and Contractor. Hot and cold foods must be

placed immediately into insulated hot and cold transport equipment upon completion of packing.

Daily written documentation of temperature logging/monitoring must be kept by Subcontractor and will be subject to audit by the centralized dietary services and the DAAS nutritionist.

The sites shall be assumed correct on shortages unless the caterer proves them wrong. All calls regarding shortages and food replacement will be communicated by the Contractors office.

- e. Meals must be delivered in refrigerated trucks and/or approved for bulk insulated containers for hot pack and cold pack. Delivery standards shall comply with applicable local health department regulations.
- f. Food and supplies must be packed and handled in a sanitary manner so as to assure absence of contamination and spillage.
- g. The program may require replacement of any cold food that is received on site at above 45 F and any hot food that falls below 140 F.
- h. Food shortages and/or spoiled foods that are reported to the caterer by agree time of delivery must be replaced or the enclosed deduction schedule will be utilized.
- i. Packing of food for delivery to the sites will be negotiated as mutually acceptable to the Contractor and Subcontractor. Sites may differ on packaging of some items due to available site equipment and time/distance.
- j. The Subcontractor shall be responsible for cleaning and care of equipment returned to his facility each day.
- k. The Subcontractor shall place food in areas designated by meal location managers.
- l. Food shall be transported no longer than 60 minutes after packaging.
- m. Food shall be kept in heat retaining equipment no longer than 60 minutes prior to serving.
- n. Each delivery shall be accompanied by a delivery slip, in triplicate, designating number of meals and supplies delivered. Project Director or designated person will sign receipt, if in order, and one copy shall be left with same.

- o. Instructions shall be attached to each food product delivered indicating name of meal location, number of servings, size of servings, and size of utensil to be used in serving.
- p. Cake, cornbread, and casserole dishes, i.e. meatloaf, lasagna, tuna noodle casserole shall be pre-scored by the Subcontractor for the appropriate number of servings.
- q. All Subcontractor delivery equipment shall be removed from the meal location by the next service day. Contractor is not responsible after this time.
- r. The Subcontractor shall provide a back-up delivery system in the event of vehicle breakdown.
- s. Electrical items required to be provided herein shall have the UNDERWRITERS LABORATORY approval and meet all current OSHA and COSHA laws and regulations. Subcontractor shall provide Contractor with a current copy of the health certificate and any corrected deficiencies with bid. To ensure that all regulations are followed the Subcontractor must have a qualified food service manager or part-time registered dietitian (20 hours week) or staff who will assure that meals are prepared in a safe and sanitary condition throughout the meal service operation.
- t. Authorized representatives of the Contractor, County, centralized dietary services, State, and Federal shall have the right to inspect food preparation, storage, and packaging sites during the term of the contract.

4. MEAL STANDARDS

- a. A Chemical analysis of any food delivered by the Subcontractor may be requested by the Contractor or DAAS at any time. The Subcontractor agrees to cooperate in having the analysis done. If the analysis discloses that the food does not comply with required meal specifications, the Subcontractor shall be liable for the cost of this analysis and meals served to seniors out of compliance.
- b. The Subcontractor shall be liable for meals that do not meet the nutritional standards and requirements, are spoiled or unwholesome at time of delivery, are incomplete or insufficient in number ordered, or are delivered after the time specified by the Contractor. In the event the Subcontractor fails to deliver complete meals, other foods, or supplies as agreed upon, the Contractor may provide a substitute meal with emergency meals of supplies purchased from other places and charge the cost of the purchased

meal to the Subcontractor. The replacement cost shall not exceed 100 percent of the contract catered meal cost.

- c. If any portion of a meal other than the entree is delivered in an unacceptable condition, such as incorrect temperature (potentially hazardous)* less than contracted portion, spoiled or too late, the Subcontractor shall be liable for the cost of that portion. If the entree is unacceptable, the Subcontractor shall be liable for the cost of the entire meal. In order to ensure conformance to the above, the delivery driver shall remain at the site until the food is checked by the location manager. All shortages shall be noted on delivery slip for proper crediting.

5. MENUS

- a. All menus shall be in compliance with Title III-C meal pattern requirements.
- b. A 3 month cycle menu shall be used that is written once yearly.
- c. The Contractor has the responsibility for menu writing with input from the Project Council and Subcontractor. The menu shall be approved by the centralized dietary services dietitian.
- d. The Contractor is responsible for typing and duplicating the menu.
- e. All menus must be signed by the Project Director, Project Council Chairman or designee, the centralized dietary services dietitian, and certified by the DAAS nutritionist prior to the start of the menu cycle.
- f. The Project Director or centralized dietary services dietitian shall submit all menu substitutions by the Subcontractor at least 2 days prior to the serving date. The subcontractor may, however, in an emergency situation, make menu substitutions on verbal approval of the Project Director or centralized dietary services dietitian, with a written notice to follow for documentation.
- g. Provisions shall be made by the Subcontractor to provide in-service training regarding food sanitation and safety for their food service staff. Documentation of such training shall be submitted to the Contractor. DAAS may require the Contractor, based upon major finding of non-compliance items in food and safety, to provide additional food service training.

* See definition of Potentially Hazardous Food, DAAS Contract Management for Service Providers.

6. **MEAL PATTERN SPECIFICATIONS**

- a. All food must be of the highest quality standard and conform to USDA requirements. It must be prepared in a manner to preserve optimum flavor and appearance while retaining nutrients and food value. Special consideration should be given to tenderness of meat because of the age of our participants. The Subcontractor is responsible for assuring its high quality before it is sent to the meal sites.

TITLE III - MEAL PATTERN:

Meat or meat alternates	3-oz. edible portion of whole meats (exclusive of bone, fat gristle, etc.). Specification for all processed pre-formed meat must be approved by the DAAS nutritionist before adding to menu. 2-1/2 oz edible portion of meat/meat alternate in casserole dishes.
Vegetable/Fruits	2-1/2 c servings each (exclusive of dessert)
Juice*	1/2 cup Vitamin C fortification required to satisfy Vitamin C requirement. If concentrated juice is used, the juice does not meet the vegetable/fruit requirement
Starch or alternate	1 slice bread or 1/2-cup serving cooked starch such as rice, pasta, etc. Selections made from whole grains are preferred.
Fortified Margarine or Butter	1 teaspoon
Dessert*	1-1/2 cup or fresh fruit equivalent
Milk or Milk Product	8 fluid oz. serving or calcium equivalent Non-fat or low fat dairy products desired

1. In the preparation of all meals, the Subcontractor shall use a minimum of simple sugars. Each meal shall not exceed 1100 mg. sodium and shall be low in fat (standard is no more than 30% or less of total calories)
2. Special diets, specifically low sodium, low fat, and sugar free shall be provided as specified (optional).
3. 100% milk shall be available in a variety of types, including non-fat, low fat.
4. Subcontractor shall provide all condiments which are normally served with specific menus, including, but not limited to, salt, pepper, salad dressing, tartar sauce, mustard, catsup, cream, sugar, and garnishes such as lemon slices and parsley. (As agreed upon)
5. Ground beef may be used no more often than twice a week and must be in solid form such as meat loaf or salisbury steak for one of the servings. The fat content cannot exceed 15%.
6. Textured vegetable protein may be used at no greater amount than 30% of the total protein.
7. Meat alternates (dried beans, peas, lentils, nuts, nut butters) shall not be served more often than one time per week.
8. Desserts such as fruits, high nutrient density desserts shall be served throughout the week in one-half (1/2)-cup portions. High calorie desserts such as plain gelatin desserts, cake, pie, cookies and similar foods shall also be included but are to be limited to once per week. Milk-based dessert may be served once per week. A dessert consisting of 50% fruit (fruited jello, etc.) may be served once a week.
9. Different fruits will be served at least two days a week for dessert. Whole fresh fruit in season shall be served at least once during each week. Canned fruit will be water packed or packed in its own juice.

b. Minimum grades for all foods shall be as follows:

1. Beef: USDA Grade A choice
2. Pork: USDA Number 1 (as defined in S R.A., Number 171, U.S. Standards and Grades of Pork Carcasses)
3. Lamb: USDA choice
4. Poultry: USDA Grade A to be used for all fresh or frozen poultry products, Necks, backs, wings alone shall not be used prior approval of the Project Director or project designee. Reconstructed roll products are not acceptable. (optional)
5. Variety Meats: Grade Number 1 from USDA Government inspected plants.
6. Dairy Products: Following is to be used as minimum specifications for all graded dairy products:
 - a. Eggs, fresh USDA or State Graded A
 - b. Cheese, USDA Grade A, non-processed cheese
 - c. Milk, low fat, shall be available
7. Fish and seafood must be fresh or frozen and be a nationally distributed brand packed under continuous inspection of the U.S. Department of Interior.
8. Canned fruits and juices: USDA Grade A (Fancy) and Grade B (Choice) are to be used for all graded fruits and fruit juices. Grade C (Standard) may be used for pie and cobbler production only.
9. Fresh fruits: USDA Fancy to USDA No. 1 to be used for all graded fresh fruits as a minimum standard.
10. Fresh vegetables: USDA Fancy and No. 1 to be used for all graded fresh vegetables as a minimum standard.
11. Frozen fruits and vegetables: USDA Grade A is to be used for all graded frozen fruits and vegetables as a minimum standard.

c. Meal Component/Nutrient Analysis

1. A meal component /nutrient analysis of the entire menu cycle conducted and/or approved by a Registered Dietitian shall be done to ensure compliance with the Older Americans Act (OAA), Section 339, and California Regulations, Title 22, Division 1.8, Chapter 4, Article 5, Section 7638.5.

Computerized Nutrient Analysis Requirements:

Although not required, use of computerized nutrient analysis is strongly recommended and will help ensure and verify the nutritional adequacy of meals. The goal of assessing nutrient intakes of groups is to determine the prevalence of inadequate or excessive nutrient intakes within a particular group of individuals. While meal patterns serve as a basic framework for menu planning, providers are encouraged to use computerized nutrient analysis because it provides specific information on nutrients the menu may **not** be providing. The information that a menu is not supplying all of the desired nutrients will guide the development of future menus. As required menu elements are expanded, it is more difficult to meet all of the requirements on a daily basis. Elderly Nutrition Programs should focus on:

- Vitamin A
- Vitamin C
- Protein
- Fat
- Sodium
- Fiber

Not all nutrient guidelines will be met with each meal. However, areas that do not meet the requirements should be the focus of future menu revisions and nutrition education.

The following nutrients should be included in the analysis when the computerized nutrient analysis method is used: calories; protein; carbohydrates; total fat; saturated fat; total fiber; vitamins A, C, D, E, K, thiamin, riboflavin, niacin, B6, folate, B12, calcium, chromium, copper, iron, magnesium, sodium, and zinc. In addition to meeting one-third of the Dietary Reference Intakes, the menus should also follow the Dietary Guidelines for Americans .

2. Menu cycle shall be analyzed on a regular basis and documentation maintained for DAAS review.

7. **SUPPLIES SPECIFICATION PROCEDURES**

The Subcontractor shall provide disposable table service based upon the supplies specification included. These supplies shall be ordered and delivered weekly at each site. A minimum of one week's supply on hand at all times. The Contractor shall supply order forms and monitor supply usage.

The Subcontractor shall furnish, as part of supplies, the cleaning and other miscellaneous supplies (see Supplies Specification Sheet). These supplies will be ordered as needed. The Contractor shall supply order forms and monitor supply usage. (This is subject to negotiations.)

EVALUATION OF SUBCONTRACTOR

The Contractor and centralized dietary services dietitian shall evaluate the Subcontractor's performance to determine if the Agreement is in compliance in meeting requirements. All evaluations must be sent to the DAAS nutritionist.

RECEIPTS AND INVOICES PROCEDURES

1. The Subcontractor shall issue daily delivery receipts to each site.
2. After the close of each week, the Subcontractor will furnish to the program an invoice of meals ordered by the program, the previous week. The Contractor will pay such invoices for the prior week within 30 days after receipt of same invoice or as agreed between the Contractor and Subcontractor.

DEDUCTION PROCEDURE

1. The Subcontractor shall deliver meals which meet Title III-C menu regulations. If the Subcontractor fails to deliver all menu items, or appropriate substitute items and/or the program rejects food; the Subcontractor shall be reimbursed as outlined in #4 Meal Standards.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-52 WITH LIEBERT CASSIDY WHITMORE FOR PARTICIPATION IN THE EAST INLAND EMPIRE EMPLOYMENT RELATIONS CONSORTIUM	DATE: June 15, 2009 SECTION: AGREEMENTS ITEM NO.: 9 FILE I.D.: PER250 DEPT.: ADMIN. SVCS.
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: The City's current Agreement with Liebert Cassidy Whitmore for participation in the East Inland Empire Employment Relations Consortium (ERC) is scheduled for renewal on July 1, 2009.

BACKGROUND: For the past 21 years, the City of Montclair has participated in the Liebert Cassidy Whitmore ERC. The City's participation entitles elected officials and employees to receive five 1-day group training sessions, unlimited free telephone consultations with the law firm's attorneys, and a monthly employment-relations newsletter. Participating agencies may also receive specialized training for an added cost. This Agreement is scheduled for renewal for the period July 1, 2009, through June 30, 2010.

FISCAL IMPACT: The annual fee for participation in the Consortium would remain at \$2,407. Funds to cover the cost of the training sessions and consulting services are included in the Fiscal Year 2009-10 Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-52 with Liebert Cassidy Whitmore for participation in the East Inland Empire Employment Relations Consortium.

Prepared by:

Gary E. Chao

Reviewed and
Approved by:

Proofed by:

Kathy Aalto

Presented by:

[Signature]
[Signature]

AGREEMENT FOR SPECIAL SERVICES

This Agreement is entered into between the CITY OF MONTCLAIR, A Municipal Corporation, hereinafter referred to as "City," and the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation, hereinafter referred to as "Attorney."

WHEREAS City has the need to secure expert training and consulting services to assist City in its relations and negotiations with its employee organizations; and

WHEREAS City has determined that no less than thirteen (13) public agencies in the East Inland Empire area have the same need and have agreed to enter into identical agreements with Attorney; and

WHEREAS Attorney is specially experienced and qualified to perform the special services desired by the City and is willing to perform such services;

NOW, THEREFORE, City and Attorney agree as follows:

Attorney's Services:

During the year beginning July 1, 2009, Attorney will provide the following services to City (and the other aforesaid public agencies):

1. Five (5) days of group training workshops covering such employment relations subjects as management rights and obligations, negotiation strategies, employment discrimination and affirmative action, employment relations from the perspective of elected officials, performance evaluation (administering evaluations), grievance and discipline administration for supervisors and managers, planning for and responding to concerted job actions, current court, administrative and legislative developments in personnel administration and employment relations, etc., with the specific subjects covered and lengths of individual workshop presentations to be determined by City and the other said local agencies.

It is expressly understood that the material used during these presentations, including written handouts and projected powerpoints are provided solely for the contracted workshops. This agreement warrants there will be no future use of Liebert Cassidy Whitmore material in other trainings or formats without the expressed written permission of Liebert Cassidy Whitmore. Any such use will constitute a violation of this agreement and copyright provisions.

2. Availability of Attorney for City to consult by telephone.
3. Providing of a monthly newsletter covering employment relations developments.

Fee:

Attorney will provide these special services to City for a fee of Two Thousand Four Hundred Seven Dollars (\$2,407.00), payable in one payment prior to August 1, 2009. The fee, if paid after August 1, 2009 will be \$2,507.00.

Said fee will cover Attorney's time in providing said training and consultative services and the development and printing of written materials provided to attendees at the training programs.

Additional Services:

Attorney shall, as and when requested by City, make itself available to City to provide representational, litigation, and other employment relations services. The City will be billed for the actual time such representation services are rendered, including reasonable travel time, plus any necessary costs and expenses authorized by the City.

The range of hourly rates for Attorney time is from One Hundred Sixty to Two Hundred Ninety Dollars (\$160.00 - \$290.00) per hour for attorney staff and from One Hundred to One Hundred Thirty Dollars (\$100.00 - \$130.00) per hour for services provided by paraprofessional staff. Attorneys and paraprofessional staff bill their time in minimum units of one-tenth of an hour. Communications advice (telephone, voice-mail, e-mail) is billed in a minimum increment of three-tenths (.30) of an hour.

Independent Contractor:

It is understood and agreed that Attorney is and shall remain an independent contractor under this Agreement.

Term:

The term of this Agreement is twelve (12) months commencing July 1, 2009. The term may be extended for additional periods of time by the written consent of the parties.

Condition Precedent:

It is understood and agreed that the parties' aforesaid rights and obligations are contingent on no less than thirteen (13) local agency employers entering into a substantially identical Agreement with Attorney on or about July 1, 2009.

Dated: 11-1-09

LIEBERT CASSIDY WHITMORE
A Professional Corporation

By 

Dated: _____

CITY OF MONTCLAIR
A Municipal Corporation

By _____
Paul M. Eaton, Mayor

Dated: _____

By 127
Donna M. Jackson, City Clerk

AGENDA REPORT

SUBJECT: CONSIDER REDEVELOPMENT AGENCY BOARD OF DIRECTORS' ADOPTION OF RESOLUTION NO. 09-01, A RESOLUTION OF THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AUTHORIZING THE EXPENDITURE OF AGENCY FUNDS FOR GRAFFITI ABATEMENT FOR FISCAL YEAR 2009-10

DATE: June 15, 2009

SECTION: RESOLUTIONS

ITEM NO.: 1

FILE I.D.: FIN220

DEPT.: RDA/MHC

CONSIDER CITY COUNCIL'S APPROVAL OF AGREEMENT NOS. 09-43, 09-44, 09-45, AND 09-46 APPROVING RESPECTIVE PROMISSORY NOTE NOS. 09-01, 09-02, 09-03, AND 09-04 BETWEEN THE CITY OF MONTCLAIR AND THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY

CONSIDER REDEVELOPMENT AGENCY BOARD OF DIRECTORS' APPROVAL OF AGREEMENT NOS. 09-43, 09-44, 09-45, AND 09-46, APPROVING RESPECTIVE PROMISSORY NOTE NOS. 09-01, 09-02, 09-03, AND 09-04 BETWEEN THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND THE CITY OF MONTCLAIR

CONSIDER REDEVELOPMENT AGENCY BOARD OF DIRECTORS ADOPTION OF RESOLUTION NO. 09-02 ADOPTING THE FISCAL YEAR 2009-10 BUDGET FOR THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY

CONSIDER REDEVELOPMENT AGENCY BOARD OF DIRECTORS' APPROVAL OF AGREEMENT NO. 09-47 APPROVING PROMISSORY NOTE NO. 09-01 BETWEEN THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND THE MONTCLAIR HOUSING CORPORATION

CONSIDER MONTCLAIR HOUSING CORPORATION BOARD OF DIRECTORS' APPROVAL OF AGREEMENT NO. 09-47 APPROVING PROMISSORY NOTE NO. 09-01 BETWEEN THE MONTCLAIR HOUSING CORPORATION AND THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY

CONSIDER MONTCLAIR HOUSING CORPORATION BOARD OF DIRECTORS' ADOPTION OF RESOLUTION NO. 09-01 ADOPTING THE FISCAL YEAR 2009-10 BUDGET FOR THE MONTCLAIR HOUSING CORPORATION

BUSINESS PLAN: N/A

Prepared by:

M. Staats
James Smith

Reviewed and Approved by:

M. Staats
James Smith

Proofed by:

Presented by:

REASON FOR CONSIDERATION: The series of items presented for consideration by the City Council, Redevelopment Agency Board of Directors, and the Montclair Housing Corporation Board of Directors involve actions necessary to adopt and implement the Redevelopment Agency and Montclair Housing Corporation Budgets for Fiscal Year 2009-10. Pursuant to Section 33606 of the California Health and Safety Code, a redevelopment agency must adopt an annual budget containing specific information by fund.

The Fiscal Year 2009-10 Budget proposes to reimburse the City for expenses related to graffiti abatement within redevelopment project areas. Prior to the reimbursement for this expense, the Redevelopment Agency Board of Directors is requested to consider Resolution No. 09-01 authorizing the reimbursement for Fiscal Year 2009-10.

BACKGROUND: The Fiscal Year 2009-10 Preliminary Budgets for the Redevelopment Agency and Montclair Housing Corporation were submitted to the respective Boards of Directors on June 4, 2009.

Health and Safety Code Section 33420.3 authorizes redevelopment agencies to finance the removal of graffiti from public or private property within redevelopment project area boundaries. In order to utilize this statute, a redevelopment agency must adopt findings that removal of graffiti within redevelopment project areas will assist in the elimination of blight within each designated redevelopment project area. Therefore, the Redevelopment Agency Board of Directors is requested to adopt Resolution No. 09-01 authorizing the expenditure of funds for graffiti abatement.

As the Redevelopment Agency Board of Directors, City Council Members, and Montclair Housing Corporation Board Members know, the Redevelopment Agency borrows funds from the City for operating expenses and repays the borrowed funds to the City annually with accrued interest. The City Council is requested to approve Agreement Nos. 09-43, 09-44, 09-45, and 09-46, which are respective Redevelopment Promissory Note Nos. 09-01, 09-02, 09-03, and 09-04. The Redevelopment Agency Board of Directors is then requested to approve Agreement Nos. 09-43, 09-44, 09-45, and 09-46. These Agreements compose the Promissory Notes for the Fiscal Year 2009-10 Redevelopment Agency Operating Budget.

The Redevelopment Agency Board of Directors is requested to approve Resolution No. 09-02 adopting the Fiscal Year 2009-10 Budget for the City of Montclair Redevelopment Agency.

The Redevelopment Agency Board of Directors is requested to approve Agreement No. 09-47. Agreement No. 09-47 is Promissory Note 09-01 issued by the Montclair Housing Corporation. Pursuant to the terms of Promissory Note 09-01, the Redevelopment Agency would lend the Montclair Housing Corporation \$200,000 from the Housing Fund for various improvements to single-family homes owned by the Agency and leased to the Montclair Housing Corporation. The Montclair Housing Corporation is requested to approve Agreement No. 09-47 approving the terms of Promissory Note 09-01.

The Montclair Housing Corporation Board of Directors is requested to approve the Annual Budget for the Montclair Housing Corporation. The expenses related to the Montclair Housing Corporation involve operation and maintenance of 28 properties. The properties that the Montclair Housing Corporation are responsible for include 15 single-family homes and 76 multifamily dwelling units.

FISCAL IMPACT: It is estimated that the Fiscal Year 2009-10 Redevelopment Agency Budget would provide for a decrease in total balance of \$30,371,391 during Fiscal Year 2009-10.

RECOMMENDATION: Staff recommends the City Council, Redevelopment Agency Board of Directors, and Montclair Housing Corporation Board of Directors take the following actions related to the Fiscal Year 2009-10 Redevelopment Agency Annual Budget and Montclair Housing Corporation Annual Budget:

1. Redevelopment Agency Board of Directors' adoption of Resolution No. 09-01, a Resolution of the City of Montclair Redevelopment Agency authorizing the expenditure of Agency funds for graffiti abatement.
2. City Council's approval of Agreement Nos. 09-43, 09-44, 09-45, and 09-46 approving respective Promissory Note Nos. 09-01, 09-02, 09-03, and 09-04 between the City of Montclair and the City of Montclair Redevelopment Agency.
3. Redevelopment Agency Board of Directors' approval of Agreement Nos. 09-43, 09-44, 09-45, and 09-46 approving respective Promissory Notes Nos. 09-01, 09-02, 09-03, and 09-04 between the City of Montclair Redevelopment Agency and the City of Montclair.
4. Redevelopment Agency Board of Directors' adoption of Resolution No. 09-02 adopting the Fiscal Year 2009-10 Budget for the City of Montclair Redevelopment Agency.
5. Redevelopment Agency Board of Directors' approval of Agreement No. 09-47 approving Promissory Note No. 09-01 between the City of Montclair Redevelopment Agency and the Montclair Housing Corporation.
6. Montclair Housing Corporation Board of Directors' approval of Agreement No. 09-47 approving Promissory Note No. 09-01 between the City of Montclair Housing Corporation and the City of Montclair Redevelopment Agency.
7. Montclair Housing Corporation Board of Directors' adoption of Resolution No. 09-01 adopting the Fiscal Year 2009-10 Budget for the Montclair Housing Corporation.

RESOLUTION NO. 09-01

**A RESOLUTION OF THE CITY OF MONTCLAIR
REDEVELOPMENT AGENCY AUTHORIZING THE
EXPENDITURE OF AGENCY FUNDS FOR GRAFFITI
ABATEMENT FOR FISCAL YEAR 2009-10**

WHEREAS, the City of Montclair Redevelopment Agency (the "Agency") is a duly constituted redevelopment agency under the laws of the State of California and pursuant to such laws is responsible for redevelopment of the redevelopment project areas (the "Redevelopment Project Areas") within the City of Montclair (the "City"); and

WHEREAS, the City has established a graffiti abatement program which has been funded, in part, by Community Development Block Grant ("CDBG") funds for the purposes of the elimination and removal of graffiti within the City; and

WHEREAS, the California Community Redevelopment Law was amended by the Legislature in 1994 to provide that a redevelopment agency may take any actions that the redevelopment agency determines are necessary to remove graffiti from public or private property within a redevelopment project area upon making a finding that, because of the magnitude and severity of the graffiti within the redevelopment project area, the action is necessary to effectuate the purposes of the redevelopment plan and that the action will assist with the elimination of blight as defined in Health and Safety Code Section 33031; and

WHEREAS, the expenditure of Agency funds for the funding of the City's graffiti abatement program, in an amount directly attributable to the cost of graffiti abatement completed within the Redevelopment Project Areas, is in the best interests of the Agency and the City and the health, safety, and welfare of its residents and in accord with the public purposes and provisions of applicable State and local law requirements.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the City of Montclair Redevelopment Agency hereby finds and determines as follows:

Section 1. That the magnitude and severity of graffiti within the Redevelopment Project Areas necessitates the expenditure of funds for the removal of graffiti in order to effectuate the purposes of the Redevelopment Plans and to eliminate blight within the Redevelopment Project Areas.

Section 2. The Agency approves the expenditure of Agency funds for the purposes of funding the City's graffiti abatement program for Fiscal Year 2009-10 in an amount that is directly attributable to the cost of the graffiti abatement that is completed within the Redevelopment Project Areas.

APPROVED AND ADOPTED this XX day of XX, 2009.

Chairman

ATTEST:

Secretary

I, Donna M. Jackson, Secretary of the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. 09-01 was duly adopted by the Redevelopment Agency Board of Directors at a regular meeting thereof 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
Secretary

AGREEMENT NO. 09-43

CITY OF MONTCLAIR REDEVELOPMENT AGENCY

PROMISSORY NOTE 09-01

July 1, 2009

City of Montclair Redevelopment Project Area No. 1, after this date, hereby agrees to pay the City of Montclair the sum not to exceed Thirty Seven Thousand Dollars (\$37,000), with interest thereupon at a rate of twelve percent (12%) per annum (or the maximum rate of interest which a redevelopment agency is permitted by law to pay) from initiation and thereafter until paid.

The obligation of the City of Montclair Redevelopment Agency for Project Area No. 1 herein is and shall constitute an indebtedness of said Project Area for the purpose of carrying out the redevelopment project for Redevelopment Project Area No. 1, which shall be payable out of property taxes (tax increment) levied in said Project Area No. 1 and allocated to the Agency under Subdivision (b) of Section 33670 of the State of California Health and Safety Code and out of such other funds of the Project Area as may be available therefor.

IN WITNESS WHEREOF, this Note has been executed this 1st day of July, 2009.

**CITY OF MONTCLAIR REDEVELOPMENT
AGENCY**

By: _____
Paul M. Eaton
Chairman

ATTEST:

Donna M. Jackson
Secretary

AGREEMENT NO. 09-44

CITY OF MONTCLAIR REDEVELOPMENT AGENCY

PROMISSORY NOTE 09-02

July 1, 2009

City of Montclair Redevelopment Project Area No. III, after this date, hereby agrees to pay the City of Montclair the sum not to exceed Two Million Dollars (\$2,000,000), with interest thereupon at a rate of twelve percent (12%) per annum (or the maximum rate of interest which a redevelopment agency is permitted by law to pay) from initiation and thereafter until paid.

The obligation of the City of Montclair Redevelopment Agency for Project Area No. III herein is and shall constitute an indebtedness of said Project Area for the purpose of carrying out the redevelopment project for Redevelopment Project Area No. III which shall be payable out of property taxes (tax increment) levied in said Project Area No. III and allocated to the Agency under Subdivision (b) of Section 33670 of the State of California Health and Safety Code and out of such other funds of the Project Area as may be available therefor.

IN WITNESS WHEREOF, this Note has been executed this 1st day of July, 2009.

**CITY OF MONTCLAIR REDEVELOPMENT
AGENCY**

By: _____
Paul M. Eaton
Chairman

ATTEST:

Donna M. Jackson
Secretary

AGREEMENT NO. 09-45

CITY OF MONTCLAIR REDEVELOPMENT AGENCY

PROMISSORY NOTE 09-03

July 1, 2009

City of Montclair Redevelopment Project Area No. IV, after this date, hereby agrees to pay the City of Montclair the sum not to exceed Six Hundred Fifty Thousand Dollars (\$650,000), with interest thereupon at a rate of twelve percent (12%) per annum (or the maximum rate of interest which a redevelopment agency is permitted by law to pay) from initiation and thereafter until paid.

The obligation of the City of Montclair Redevelopment Agency for Project Area No. IV herein is and shall constitute an indebtedness of said Project Area for the purpose of carrying out the redevelopment project for Redevelopment Project Area No. IV, which shall be payable out of property taxes (tax increment) levied in said Project Area No. IV and allocated to the Agency under Subdivision (b) of Section 33670 of the State of California Health and Safety Code and out of such other funds of the Project Area as may be available therefor.

IN WITNESS WHEREOF, this Note has been executed this 1st day of July, 2009.

**CITY OF MONTCLAIR REDEVELOPMENT
AGENCY**

By: _____
Paul M. Eaton
Chairman

ATTEST:

Donna M. Jackson
Secretary

AGREEMENT NO. 09-46

CITY OF MONTCLAIR REDEVELOPMENT AGENCY

PROMISSORY NOTE 09-04

July 1, 2009

City of Montclair Redevelopment Project Area No. V, after this date, hereby agrees to pay the City of Montclair the sum not to exceed Two Hundred Thousand Dollars (\$200,000), with interest thereupon at a rate of twelve percent (12%) per annum (or the maximum rate of interest which a redevelopment agency is permitted by law to pay) from initiation and thereafter until paid.

The obligation of the City of Montclair Redevelopment Agency for Project Area No. V herein is and shall constitute an indebtedness of said Project Area for the purpose of carrying out the redevelopment project for Redevelopment Project Area No. V, which shall be payable out of property taxes (tax increment) levied in said Project Area No. V and allocated to the Agency under Subdivision (b) of Section 33670 of the State of California Health and Safety Code and out of such other funds of the Project Area as may be available therefor.

IN WITNESS WHEREOF, this Note has been executed this 1st day of July, 2009.

**CITY OF MONTCLAIR REDEVELOPMENT
AGENCY**

By: _____
Paul M. Eaton
Chairman

ATTEST:

Donna M. Jackson
Secretary

RESOLUTION NO. 09-02

**A RESOLUTION OF THE CITY OF
MONTCLAIR REDEVELOPMENT AGENCY
ADOPTING THE FISCAL YEAR 2009-10
BUDGET FOR THE CITY OF MONTCLAIR
REDEVELOPMENT AGENCY**

WHEREAS, the Executive Director has submitted to the Board of Directors of the City of Montclair Redevelopment Agency the Preliminary Budget for Fiscal Year 2009-10 including all proposed expenditures, estimated revenues, and estimated fund balances; and

WHEREAS, a copy of the Preliminary Budget is on file in the Agency Secretary's office for inspection by the public; and

WHEREAS, the Agency Board of Directors has duly reviewed the Preliminary budget at an adjourned joint meeting open to the public held on June 15, 2009.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the City of Montclair Redevelopment Agency does hereby adopt the Preliminary Budget as the Annual Budget for Fiscal Year 2009-10.

BE IT FURTHER RESOLVED that funds are automatically reappropriated into the Fiscal Year 2010-11 Budget for all outstanding purchase orders and unexecuted contracts as of June 30, 2010, for which a valid appropriation exists.

BE IT FURTHER RESOLVED that funds are automatically reappropriated into the Fiscal Year 2010-11 Budget for all capital improvement projects included in the adopted Budget that have not been completed as of June 30, 2010.

APPROVED AND ADOPTED this XX day of XX, 2009.

Chairman

ATTEST:

Secretary

I, Donna M. Jackson, Secretary of the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. 09-02 was duly adopted by the Redevelopment Agency Board of Directors at a regular meeting thereof 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
Secretary

AGREEMENT NO. 09-47

MONTCLAIR HOUSING CORPORATION

PROMISSORY NOTE 09-01

July 1, 2009

The Montclair Housing Corporation, after this date, hereby agrees to pay the City of Montclair Redevelopment Agency the sum not to exceed Two Hundred Thousand Dollars (\$200,000), with interest thereupon at a rate of five percent (5%) per annum from initiation and thereafter until paid.

The obligation of the Montclair Housing Corporation herein is and shall constitute an indebtedness of the Montclair Housing Corporation for the purpose of carrying out the housing rehabilitation of the Redevelopment Agency-owned properties.

IN WITNESS WHEREOF, this Note has been executed this 1st day of July, 2009.

**CITY OF MONTCLAIR REDEVELOPMENT
AGENCY**

By: _____

Paul M. Eaton
Chairman

ATTEST:

Donna M. Jackson
Secretary

RESOLUTION NO. 09-01

**A RESOLUTION OF THE MONTCLAIR
HOUSING CORPORATION ADOPTING THE
FISCAL YEAR 2009-10 BUDGET FOR THE
MONTCLAIR HOUSING CORPORATION**

WHEREAS, the President has submitted to the Board of Directors of the City of Montclair Housing Corporation the Preliminary Budget for Fiscal Year 2009-10 including all proposed expenditures, estimated revenues, and estimated fund balances; and

WHEREAS, a copy of the Preliminary Budget is on file in the Montclair Housing Corporation Secretary's office for inspection by the public; and

WHEREAS, the Montclair Housing Corporation has duly reviewed the Preliminary Budget at an adjourned joint meeting open to the public held on June 15, 2009.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Montclair Housing Corporation hereby adopts the Preliminary Budget as the Annual Budget for Fiscal Year 2009-10.

BE IT FURTHER RESOLVED that funds are automatically reappropriated into the Fiscal Year 2010-11 Budget for all outstanding purchase orders and unexecuted contracts as of June 30, 2010, for which a valid appropriation exists.

BE IT FURTHER RESOLVED that funds are automatically reappropriated into the Fiscal Year 2009-10 Budget for all capital improvement projects included in the adopted Budget that have not been completed as of June 30, 2010.

APPROVED AND ADOPTED this XX day of XX, 2009.

Chairman

ATTEST:

Secretary

I, Donna M. Jackson, Secretary of the Montclair Housing Corporation, DO HEREBY CERTIFY that Resolution No.09-01 was duly adopted by the Montclair Housing Corporation Board of Directors at a regular meeting thereof, 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
Secretary

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 09-2802 AUTHORIZING APPROVAL OF THE CHANGE IN POPULATION IN SAN BERNARDINO COUNTY DURING 2008 FOR THE PURPOSE OF CALCULATING THE GANN SPENDING LIMIT FOR FISCAL YEAR 2009-10

DATE: June 15, 2009

SECTION: RESOLUTIONS

ITEM NO.: 2

FILE I.D.: FIN225

BUSINESS PLAN: N/A

DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: Government Code Section 7901 requires cities to annually adopt resolutions selecting a change-in-population factor for purposes of calculating the Gann Spending Limit. The City Council is requested to consider adoption of Resolution No. 09-2802 for this purpose.

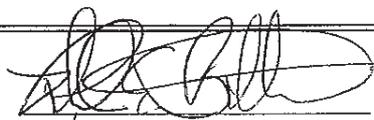
BACKGROUND: The passage of Proposition 111 in June 1990 requires cities to annually select a change-in-population factor for the purpose of calculating the Gann Spending Limit. For this purpose, Government Code Section 7901 permits cities to select either the change in population within their jurisdictions or within the county in which they are located. This selection must be done by a recorded vote of the governing body of each city.

The change in population in San Bernardino County during 2008 was 0.79 percent compared to a 0.47 percent change for the City of Montclair. Because it is in the City's best interest to establish the highest possible Gann Spending Limit, staff suggests the City Council choose the percentage change in population within San Bernardino County during 2008 as the change-in-population factor to be used in calculating the limit.

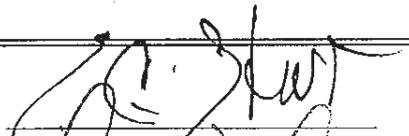
FISCAL IMPACT: Authorizing approval of the change in population in San Bernardino County during 2008 for the purpose of calculating the Gann Spending Limit for Fiscal Year 2009-10 would create no fiscal impact for the City.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 09-2802 authorizing approval of the change in population in San Bernardino County during 2008 for the purpose of calculating the Gann Spending Limit for Fiscal Year 2009-10.

Prepared by:



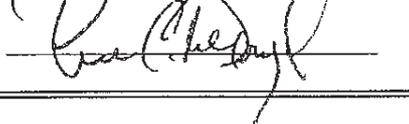
Reviewed and Approved by:



Proofed by:



Presented by:



RESOLUTION NO. 09-2802

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING APPROVAL OF THE CHANGE IN POPULATION IN SAN BERNARDINO COUNTY DURING 2008 FOR THE PURPOSE OF CALCULATING THE GANN SPENDING LIMIT FOR FISCAL YEAR 2009-10

WHEREAS, California Government Code Section 7901 requires a city to calculate its Gann Spending Limit by choosing either the change in population within its jurisdiction or the change in population within the county in which it is located; and

WHEREAS, the selection of the change in population must be accomplished by a recorded vote of the governing body; and

WHEREAS, the change in population in San Bernardino County during 2008 was 0.79 percent compared to a 0.47 percent change in population within the City of Montclair; and

WHEREAS, it is in the City's best interest to establish the highest possible Gann Spending Limit.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby approves the change in population in San Bernardino County during 2008 as its change in population factor to be used in calculating the Gann Spending Limit for Fiscal Year 2009-10.

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. 09-2802 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

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 09-2803 AUTHORIZING APPROVAL OF THE PERCENTAGE CHANGE IN MONTCLAIR NONRESIDENTIAL NEW CONSTRUCTION DURING FISCAL YEAR 2007-08 AS THE FINAL FISCAL YEAR 2007-08 CHANGE IN THE COST-OF-LIVING FACTOR FOR USE IN CALCULATING THE GANN SPENDING LIMIT FOR FISCAL YEAR 2008-09 AND PROVISIONAL ADOPTION OF THE PERCENTAGE CHANGE IN CALIFORNIA PER CAPITA PERSONAL INCOME DURING CALENDAR YEAR 2008 AS THE CHANGE IN THE COST-OF-LIVING FACTOR FOR FISCAL YEAR 2008-09 FOR USE IN CALCULATING THE GANN SPENDING LIMIT FOR FISCAL YEAR 2009-10

DATE: June 15, 2009
SECTION: RESOLUTIONS
ITEM NO.: 3
FILE I.D.: FIN225
DEPT.: ADMIN. SVCS.

BUSINESS PLAN: N/A

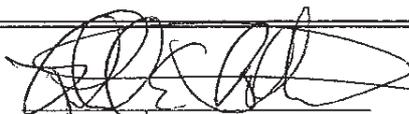
REASON FOR CONSIDERATION: Article 13-B of the California Constitution requires cities to annually adopt a resolution selecting a change in the cost-of-living factor for purposes of calculating the Gann Spending Limit. The City Council is requested to consider adoption of Resolution No. 09-2803 for this purpose.

BACKGROUND: Upon the passage of Proposition 111 in June 1990, Article 13-B of the California Constitution was amended requiring cities to select one of the following as the change in the cost-of-living factor to be used in calculating the Gann Spending Limit.

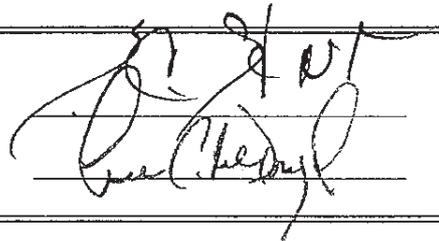
1. The percentage change in California per capita personal income from the preceding year.
2. The percentage change in the local assessment roll attributable to nonresidential new construction.

Gann Spending Limit - Fiscal Year 2008-09. The Gann Spending Limit for Fiscal Year 2008-09 was adopted last June on a provisional basis. This action was taken because San Bernardino County was unable to provide staff with the information necessary to calculate the limit based upon the change in the local assessment roll attributable to nonresidential new construction. Therefore, the limit was based upon the percentage change in California per capita personal income, which was 4.29 percent. During May 2009, San Bernardino County informed staff that the percentage change in nonresidential new construction within Montclair during Fiscal Year 2007-08 was

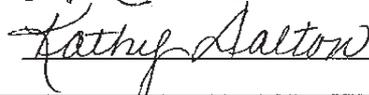
Prepared by:



Reviewed and Approved by:



Proofed by:



Presented by:

6.9697 percent. Since it is to the City's advantage to set as high a spending limit as possible, staff suggests the Council adopt the percentage change in nonresidential new construction during Fiscal Year 2007-08 as the final Fiscal Year 2007-08 change in the cost-of-living factor to be used in calculating the Gann Spending Limit for 2008-09.

Gann Spending Limit – Fiscal Year 2009-10. The County will not be able to provide current assessment roll information until well into next fiscal year; and because the limit must be adopted prior to June 30, 2009, staff suggests the Council provisionally adopt the percentage change in California per capita personal income during Calendar Year 2008 as the change in the cost-of-living factor for Fiscal Year 2008-09, which will be used in calculating the Gann Spending Limit for Fiscal Year 2009-10.

The Council's adoption of the change in the cost-of-living factors suggested above would result in a Gann Spending Limit for Fiscal Year 2009-10 of \$277,599,059. Proposed Resolution No. 09-2804 adopting the limit will be considered by the Council in the next agenda item.

FISCAL IMPACT: The Council's adoption of Resolution No. 09-2803 would create no fiscal impact for the City.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 09-2803 authorizing approval of the percentage change in Montclair nonresidential new construction during Fiscal Year 2007-08 as the final Fiscal Year 2007-08 change in the cost-of-living factor for use in calculating the Gann Spending Limit for Fiscal Year 2008-09 and provisional adoption of the percentage change in California per capita personal income during Calendar Year 2008 as the change in the cost-of-living factor for Fiscal Year 2008-09 for use in calculating the Gann Spending Limit for Fiscal Year 2009-10.

RESOLUTION NO. 09-2803

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING APPROVAL OF THE PERCENTAGE CHANGE IN MONTCLAIR NONRESIDENTIAL NEW CONSTRUCTION DURING FISCAL YEAR 2007-08 AS THE FINAL FISCAL YEAR 2007-08 CHANGE IN THE COST-OF-LIVING FACTOR FOR USE IN CALCULATING THE GANN SPENDING LIMIT FOR FISCAL YEAR 2008-09 AND PROVISIONAL ADOPTION OF THE PERCENTAGE CHANGE IN CALIFORNIA PER CAPITA PERSONAL INCOME DURING CALENDAR YEAR 2008 AS THE CHANGE IN THE COST-OF-LIVING FACTOR FOR FISCAL YEAR 2008-09 FOR USE IN CALCULATING THE GANN SPENDING LIMIT FOR FISCAL YEAR 2009-10

WHEREAS, Article 13-B of the California Constitution requires a city to calculate its Gann Spending Limit by choosing a change in cost-of-living factor based on either (1) the percentage change in California per capita personal income from the preceding year; or (2) the percentage change in the local assessment roll from the preceding year for the jurisdiction attributable to the addition of nonresidential new construction; and

WHEREAS, the selection of the change in cost-of-living factor must be accomplished annually by a recorded vote of the governing body; and

WHEREAS, the change in the cost-of-living factor used as a basis for calculating the existing Gann Spending Limit was adopted by the City Council on a provisional basis; and

WHEREAS, the City believes that selecting the final change in the Fiscal Year 2007-08 cost-of-living factor based upon the percentage change in nonresidential new construction during Fiscal Year 2007-08 will result in a Gann Spending Limit more favorable to the City; and

WHEREAS, the County of San Bernardino is currently unable to provide the City with information necessary to determine the change in the local assessment roll attributable to the addition of nonresidential new construction for Fiscal Year 2008-09; and

WHEREAS, the Gann Spending Limit is subject to audit and in accordance with Article 13-B of the California Constitution must be established prior to the beginning of the fiscal year.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby approves the percentage change in Montclair nonresidential new construction during Fiscal Year 2007-08 as the final Fiscal Year 2007-08 change in the cost-of-living factor used in calculating the Gann Spending Limit for Fiscal Year 2008-09 and provisionally adopts the percentage change in California per capita personal income during Calendar Year 2008 as the change in the cost-of-living factor

for Fiscal Year 2008-09 for use in calculating the Gann Spending Limit for Fiscal Year 2009-10.

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. 09-2803 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

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 09-2804 ESTABLISHING AN APPROPRIATIONS LIMIT FOR FISCAL YEAR 2009-10 PURSUANT TO ARTICLE 13-B OF THE CALIFORNIA CONSTITUTION AND TO SECTION 7910 OF THE GOVERNMENT CODE	DATE: June 15, 2009
	SECTION: RESOLUTIONS
	ITEM NO.: 4
	FILE I.D.: FIN225
BUSINESS PLAN: N/A	DEPT.: ADMIN. SVCS.

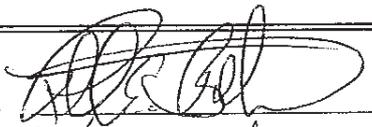
REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution No. 09-2804 establishing an appropriations limit for Fiscal Year 2009-10.

BACKGROUND: Government Code Section 7910 requires a city council to establish, by resolution, the city's appropriations limit (Gann Spending Limit) for the following fiscal year pursuant to Article 13-B of the California Constitution. The limit, which restricts the amount of taxes that can be spent during the year, is based upon the limit for the preceding year as adjusted for changes in population and the cost of living.

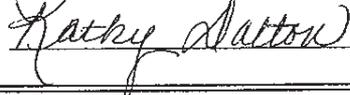
The passage of Proposition 111 in June 1990 requires each city to choose either the percentage change in population within its jurisdiction as its change-in-population factor or the percentage change in population within the county in which it is located. Cities must also now select either the percentage change in California's per capita personal income or the percentage change in the local assessment roll attributable to nonresidential new construction as its change in cost-of-living factor.

Earlier this evening, the City Council adopted Resolution No. 09-2802 approving the change in population in San Bernardino County during 2008 as the change-in-population factor to be used in calculating the Fiscal Year 2009-10 appropriations limit. The Council also adopted Resolution No. 09-2803 establishing the change in Montclair nonresidential new construction during Fiscal Year 2007-08 as the final change in the cost-of-living factor for Fiscal Year 2007-08 for use in calculating the final appropriations limit for Fiscal Year 2008-09. Concurrently, the Council provisionally selected the change in California per capita personal income during 2008 as the change in cost-of-living factor for Fiscal Year 2008-09 for use in calculating the appropriations limit for Fiscal Year 2009-10. The Council was requested to consider selecting the change in California per capita personal income because the appropriations limit must be adopted prior to the beginning of the fiscal year and information necessary for selecting the change in the local assessment roll attributable to nonresidential new construction for Fiscal Year 2008-09 is currently unavailable.

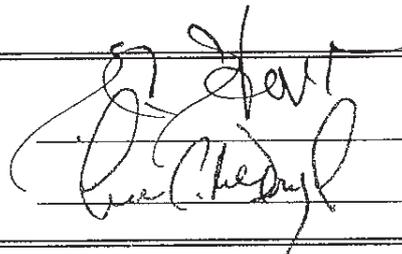
Prepared by:



Proofed by:



Reviewed and
Approved by:



Presented by:



The change in population within San Bernardino County during 2008 was 0.79 percent. The change in Montclair nonresidential new construction during Fiscal Year 2007-08 was 6.9697 percent. The change in California per capita personal income during 2008 was 0.62 percent. Based on these adjustment factors, the City's appropriations limit for Fiscal Year 2009-10 is \$277,599,059, as established by Resolution No. 09-2804.

FISCAL IMPACT: The Council's adoption of Resolution No. 09-2804 would authorize the City to spend all tax revenues received, up to \$277,599,059.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 09-2804 establishing an appropriations limit for Fiscal Year 2009-10 pursuant to Article 13-B of the California Constitution and to Section 7910 of the Government Code.

RESOLUTION NO. 09-2804

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MONTCLAIR ESTABLISHING
AN APPROPRIATIONS LIMIT FOR FISCAL
YEAR 2009-10 PURSUANT TO ARTICLE 13-B
OF THE CALIFORNIA CONSTITUTION AND
TO SECTION 7910 OF THE GOVERNMENT
CODE**

WHEREAS, Article 13-B of the California Constitution limits the appropriations budget of a local government, which is financed by taxes to the appropriations limit (Gann Spending Limit) of the prior fiscal year as adjusted by the change in population and the change in cost-of-living; and

WHEREAS, Government Code Section 7910 requires that the governing body of each local jurisdiction shall, by resolution, annually establish its appropriations limit for the following fiscal year pursuant to Article 13-B of the California Constitution; and

WHEREAS, at a meeting held on June 15, 2009, City Council selected the change in cost-of-living and change in population factors to be used in determining the appropriations limit for Fiscal Year 2009-10; and

WHEREAS, the City of Montclair has determined that said appropriations limit for Fiscal Year 2009-10 is \$277,599,059, and documentation supporting calculation of the limit is available to the public as required by Government Code Section 7910.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby establishes an appropriations limit in the amount of \$277,599,059 for Fiscal Year 2009-10 pursuant to Article 13-B of the Constitution of the State of California and Government Code Section 7910.

BE IT FURTHER RESOLVED that said appropriations limit herein established may be changed as deemed necessary by resolution of the City Council.

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. 09-2804 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

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 09-2805, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR FINDING A SEVERE FISCAL HARDSHIP WOULD BE EXPERIENCED BY THE CITY OF MONTCLAIR IF ADDITIONAL LOCAL PROPERTY TAX FUNDS WERE BORROWED AND ADDITIONAL UNFUNDED MANDATES WERE ADOPTED BY THE STATE OF CALIFORNIA	DATE: June 15, 2009 SECTION: RESOLUTIONS ITEM NO.: 5 FILE I.D.: STG060 DEPT.: ADMIN. SVCS.
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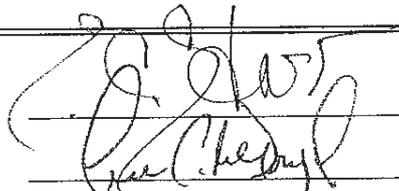
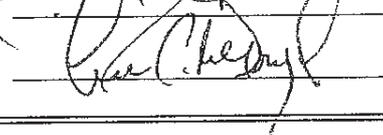
BUSINESS

PLAN: N/A

REASON FOR CONSIDERATION: At the June 1, 2009 regular joint meeting, Mayor Pro Tem Dutrey requested the City Council consider adoption of a Resolution finding that the City of Montclair would experience a financial hardship if the State of California borrows property tax and other local revenues from the City to balance the state budget. Resolution No. 09-2805 is presented for consideration of the City Council regarding this request.

BACKGROUND: As the City Council may be aware, the State of California Fiscal Year 2009-10 Budget estimates a revenue deficit of \$24.3 billion. This amount is one-quarter of the State General Fund. As one proposed strategy to reduce the state budget deficit, the California Department of Finance announced that it proposed the Governor implement the provisions of Proposition 1A (2004) and borrow over \$2 billion in local property taxes from cities, counties, and special districts. In order to start that process, the Governor would have to issue a proclamation declaring the existence of a "severe fiscal hardship." The Legislature would then have to implement a loan program by passing urgency legislation identifying how the loan would be repaid, with interest. More recently, the state has discussed taking the Gas Tax subventions provided to local governments as well. The state has also appealed the decision of a Sacramento Superior Court in *CRA v. State of California*, which found the state had violated the Constitution when it required redevelopment agencies to pay \$350 million to the Educational Revenue Augmentation Fund for Fiscal Year 2008-09.

The current economic crisis and past actions by the state have already placed enormous financial pressures on the City of Montclair and other California cities to keep spending in line with declining local revenue. This financial pressure from the state, combined with shrinking local revenue, has caused the City to consider and/or implement many strategies to lower costs including cuts to services and programs, furloughs of City employees, and decreased maintenance and operations of public facilities. If implemented, the loss of property tax and other state subventions would impose a severe hardship on Montclair

Prepared by: <u>M. Staats</u>	Reviewed and Approved by:	
Proofed by: <u>Kathy Dalton</u>	Presented by:	

and other cities in the state. Many cities, such as Montclair, find themselves with little left to cut from their operating budgets.

According to the League of California Cities (LCC), since the early 1990s, the state has already utilized \$8.6 billion in property tax revenue due to cities statewide to fund the state budget. The LCC reports that in Fiscal Year 2007-08 alone, the state used \$895 million in property tax revenue due to California cities to fund the state budget. If the new state proposals were implemented to borrow property tax and suspend payment of Gas Tax revenues to cities, cities' fiscal problems would compound and worsen in Montclair and in other cities across the state. Implementing the state proposals would also only deepen the state's structural deficit and current inability to live within a balanced budget. The City, in contrast, must have a balanced budget in accordance with state law.

FISCAL IMPACT: The Department of Finance's proposal regarding property tax could result in a one-time temporary loss of approximately \$707,000 in annual revenue to the City of Montclair General Fund. In addition, the takeaway of Gas Tax revenue to the City would result in a loss of approximately \$700,000 annually. The proposed loss to the Redevelopment Agency pursuant to the Governor's last proposal for Fiscal Year 2008-09 was approximately \$900,000. The state proposed that this Redevelopment Agency payment become permanent. The appeal of the court decision preventing this loss is pending.

RECOMMENDATION: Staff recommends the City Council consider adoption of Resolution No. 09-2805 finding a severe financial hardship would be experienced by the City of Montclair if additional local property tax funds were borrowed and additional unfunded mandates were adopted by the State of California.

RESOLUTION NO. 09-2805

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR FINDING A SEVERE FISCAL HARDSHIP WOULD BE EXPERIENCED BY THE CITY OF MONTCLAIR IF ADDITIONAL LOCAL PROPERTY TAX FUNDS WERE BORROWED AND ADDITIONAL UNFUNDED MANDATES WERE ADOPTED BY THE STATE OF CALIFORNIA

WHEREAS, on May 5, 2009, the California Department of Finance announced it had proposed to the Governor that the state borrow over \$2 billion in local property taxes from cities, counties, and special districts to balance the state budget; and

WHEREAS, according to the League of California Cities (LCC), since the early 1990s, the State of California has utilized \$8.6 billion in property tax revenues due to cities statewide to fund the state budget (even after deducting public safety program payments to cities); and

WHEREAS, the LCC further reports that in Fiscal Year 2007-08 alone, the state used \$895 million in property tax revenues due to California's cities to fund the state budget after deducting public safety program payments; and

WHEREAS, the LCC also shares that an additional \$350 million in local redevelopment funds due to cities were utilized by the state to fund its budget in Fiscal Year 2008-09; and

WHEREAS, the current economic crisis and past actions by the state have already placed enormous financial pressure on the City of Montclair to keep spending in line with declining local government revenue. The effects of state actions would result in cuts to key services and programs, potential layoffs and furloughs of City employees, and decreased maintenance and operations of public facilities; and

WHEREAS, if implemented, the California Department of Finance proposal would impose a severe fiscal hardship on the City of Montclair, which finds itself with little left to cut from its Budget; and

WHEREAS, implementing the proposal would only deepen the state's structural deficit and its current inability to live within a balanced budget.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby adopt Resolution No. 09-2805 finding a severe fiscal hardship would be experienced by California's cities if additional local property tax funds were borrowed and additional unfunded mandates were adopted by the State of California.

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. 09-2805 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

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 09-2806 ADOPTING THE CITY OF MONTCLAIR FISCAL YEAR 2009-10 ANNUAL BUDGET	DATE: June 15, 2009 SECTION: RESOLUTIONS ITEM NO.: 6 FILE I.D.: FIN240 DEPT.: CITY MGR.
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: Pursuant to state law, the governing body of a local government agency is required to annually adopt an Operating Budget. The City Council is requested to consider adoption of Resolution No. 09-2806 to formally adopt the City of Montclair Fiscal Year 2009-10 Annual Budget.

BACKGROUND: The City Council reviewed the Fiscal Year 2009-10 Preliminary Budget earlier this evening at the adjourned joint meeting.

In addition to providing a formal means to adopt the Annual Budget, Resolution No. 09-2806 includes the following fiscal-control provisions:

- The automatic reappropriation of funds into the Fiscal Year 2010-11 Budget to finance outstanding encumbrances as of June 30, 2010.
- The automatic reappropriation of funds into the Fiscal Year 2010-11 Budget to finance capital improvement projects and grants that were not completed during Fiscal Year 2009-10.

The Council's adoption of Resolution No. 09-2806 would provide for a total Estimated Revenue Budget, including transfers-in, of \$33,260,111, and a total Appropriations Budget, including transfers-out, of \$37,425,707.

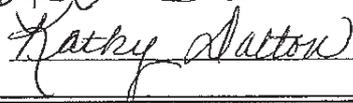
FISCAL IMPACT: It is estimated the Fiscal Year 2009-10 Preliminary Budget would provide for a decrease in total unreserved fund balances/retained earnings of \$4,100,931 during Fiscal Year 2009-10.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 09-2806 adopting the City of Montclair Fiscal Year 2009-10 Annual Budget.

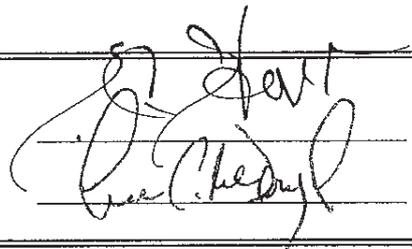
Prepared by:



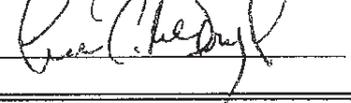
Proofed by:



Reviewed and
Approved by:



Presented by:



RESOLUTION NO. 09-2806

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MONTCLAIR ADOPTING THE
FISCAL YEAR 2009-10 BUDGET**

WHEREAS, the City Manager has submitted to the City Council of the City of Montclair the proposed budget for Fiscal Year 2009-10 including all proposed expenditures, estimated revenues and estimated fund balances; and

WHEREAS, a copy of the proposed budget is on file in the City Clerk's office for inspection by the public; and

WHEREAS, the City Council has duly reviewed the proposed budget at a meeting open to the public on June 15, 2009.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby adopts the proposed budget as the Annual Budget for Fiscal Year 2009-10.

BE IT FURTHER RESOLVED that funds are automatically reappropriated into Fiscal Year 2010-11 for all outstanding purchase orders and unexecuted contracts as of June 30, 2010, for which a valid appropriation exists.

BE IT FURTHER RESOLVED that funds are automatically reappropriated into Fiscal Year 2010-11 for all capital improvement projects included in the adopted budget that have not been completed as of June 30, 2010.

BE IT FURTHER RESOLVED that funds are automatically reappropriated into Fiscal Year 2010-11 for all grants included in the adopted budget that have not been completed as of June 30, 2010.

BE IT FURTHER RESOLVED that Department Heads and their designees are authorized to transfer funds between object codes within the Services and Supplies Budget provided the funding source remains the same.

BE IT FURTHER RESOLVED that except for personnel cost-of-living adjustments, which are governed by approved memorandums of understanding and agreements, all expenditures from the Contingency Account must be expressly authorized by the City Council.

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. 09-2806 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

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 09-2807 AUTHORIZING SUBMISSION OF A FISCAL YEAR 2009-10 FUNDING REQUEST FORM FOR BEVERAGE CONTAINER RECYCLING AND LITTER CLEANUP TO THE CALIFORNIA DEPARTMENT OF CONSERVA- TION, DIVISION OF RECYCLING	DATE: June 15, 2009 SECTION: RESOLUTIONS ITEM NO.: 7 FILE I.D.: REF275-02 DEPT.: ADMIN. SVCS.
BUSINESS PLAN: N/A	

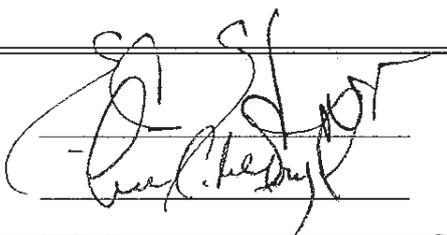
REASON FOR CONSIDERATION: Pursuant to Section 14581(a)(4)(E) of the California Beverage Container Recycling and Litter Reduction Act, the California Department of Conservation's Division of Recycling is required to distribute moneys to eligible cities and counties for beverage container recycling and litter cleanup activities. Funds are made available on a per capita basis, and cities must submit funding request forms on an annual basis.

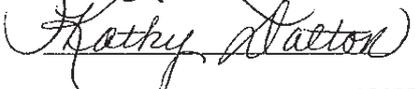
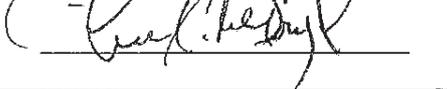
BACKGROUND: The City of Montclair is eligible to receive funds in the amount of \$9,612 from the Department of Conservation, Division of Recycling, for beverage container recycling and litter reduction. Eligible participants are required to complete a "Funding Request Form" detailing the recycling and/or litter-reduction activities for which funds will be expended. A Resolution identifying the individual authorized by the City to receive and expend funds from the Division of Recycling and carry out required activities must be submitted with the Funding Request Form.

Funding received from this grant must be used for activities related to beverage container recycling and/or litter reduction and must be approved by the Department of Conservation. Proposed activities would include recycling at community events and the development of educational and promotional materials related to beverage container recycling and litter cleanup.

FISCAL IMPACT: The City of Montclair is eligible to receive grant funds in the amount of \$9,612 for Fiscal Year 2009-10.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 09-2807 authorizing submission of a Fiscal Year 2009-10 Funding Request Form related to beverage container recycling and litter cleanup to the California Department of Conservation, Division of Recycling.

Prepared by: 	Reviewed and Approved by: 
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Proofed by: 	Presented by: 
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RESOLUTION NO. 09-2807

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING SUBMISSION OF A FISCAL YEAR 2009-10 FUNDING REQUEST FORM FOR BEVERAGE CONTAINER RECYCLING AND LITTER CLEANUP TO THE CALIFORNIA DEPARTMENT OF CONSERVATION, DIVISION OF RECYCLING

WHEREAS, the people of the State of California have enacted the California Beverage Container Recycling and Litter Reduction Act that provides funds to cities and counties for beverage container recycling and litter cleanup activities; and

WHEREAS, the California Department of Conservation's Division of Recycling has been delegated the responsibility for the administration of the program within the state, setting up necessary procedures for cities and counties or their designees under the program; and

WHEREAS, pursuant to Section 14581(a)(4)(E) of the California Beverage Container Recycling and Litter Reduction Act, the eligible participant must submit a Funding Request Form by the due date and time in order to request funding from the Department of Conservation's Division of Recycling.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby determine and order as follows:

Section 1. The City Council authorizes submittal of a Funding Request Form to the California Department of Conservation's Division of Recycling. The Junior Accountant or the City of Montclair is hereby authorized and empowered to execute, in the name of the City of Montclair, all necessary forms hereto for the purpose specified in Section 14581(a)(4)(E) of the California Beverage Container Recycling and Litter Reduction Act and provide information regarding operation of beverage container recycling and litter cleanup activities in the City of Montclair to the California Department of Conservation's Division of Recycling upon request.

Section 2. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

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. 09-2807 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

California Department of Conservation
 Division of Recycling
 Community Outreach Branch
 June 09, 2009

Funding Request Form Summary

City/County: Montclair
Eligible Amount: \$9,612

Contact for Funding Request Form

Mrs. Janet Kulbeck
 Junior Accountant
 City of Montclair
 5111 Benito Street

Montclair, CA 91763-
Phone: (909) 625-9411 ext.
Fax: (909) 621-1584 ext.
Email: jkulbeck@ci.montclair.ca.us

Project Description

Our primary emphasis will be on promotional and educational materials to increase public awareness about recycling. Keeping our community informed about why they should recycle, what they can recycle and how products can be made out of recycled items.

Supermarket site restriction: No

Selected Activities

Amount

Beverage Container Collection Programs

\$3,607

Schools

Elementary

Community Events

Fairs

Equipment / Supplies

Recycling Bins / Liners / Bags

Advertising / Promotional

\$3,605

Promotional Items Billboards / Signs

Print Ads / Flyers / Posters

Litter Clean-up

\$1,500

Community Events

Personnel

\$900

Recycling Coordinator Other (Grant Administrator)

Grand Total

\$9,612

These funds may not be used for activities unrelated to beverage container recycling or litter reduction. [Public Resources Code 14581.(a)(4)(C)]

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
JUNE 1, 2009, AT 8:45 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Eaton called the meeting to order at 8:45 p.m.

II. ROLL CALL

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

III. APPROVAL OF MINUTES

**A. Minutes of the Regular Personnel Committee Meeting of
May 18, 2009.**

Moved by Deputy City Manager/Administrative Services Director
Starr, seconded by Council Member Ruh, and carried unanimously
to approve the minutes of the Personnel Committee meeting of
May 18, 2009.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

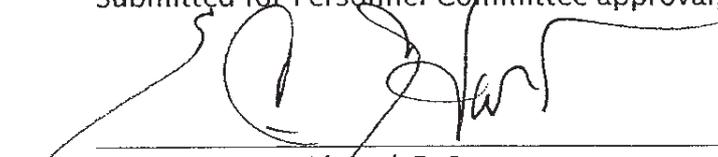
At 8:46 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 9:00 p.m., the Personnel Committee returned from Closed Session.
Mayor Eaton stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 9:00 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



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