

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

September 8, 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 - None

VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Minutes of Regular Joint Council/Agency/MHC Meeting of August 17, 2009 [CC/RDA/MHC]

B. Administrative Reports

- | | |
|---|----|
| 1. Consider Redevelopment Agency Board of Directors' Annual Review of the City of Montclair Redevelopment Agency Exterior Housing Improvement Program and Approval of Certain Recommendations [RDA] | 4 |
| 2. Consider Authorization to Advertise for Bid Proposals for the Mission Boulevard Improvement Phase 7 Project [CC] | 7 |
| 3. Consider Authorization to Advertise for Bid Proposals for Construction of the Montera Elementary School Soccer Field Project [CC] | 8 |
| 4. Consider Amending the Fiscal Years 2009-2013 Capital Improvement Program Adding the Mills Avenue Alley Improvement Project [CC] | |
| Consider Authorization to Advertise for Bid Proposals for the Mills Avenue Alley Improvement Project [CC] | |
| Consider Authorizing the City Manager to Award and Sign a Construction Contract for the Mills Avenue Alley Improvement Project to the Lowest Responsible, Responsive Bidder [CC] | 9 |
| 5. Consider "No Action" on Alcoholic Beverage Permit Application - 7-Eleven, Inc. [CC] | 12 |
| 6. Consider "No Action" on Alcoholic Beverage Permit Application - Central Avenue Market [CC] | 13 |
| 7. Consider Approval of Warrant Register and Payroll Documentation [CC] | 14 |

C. Agreements

- | | |
|--|----|
| 1. Consider Approval of Agreement No. 09-79 Amending Agreement No. 08-06 with WLC Architects for the Design of the Montclair Youth Center [CC] | 15 |
| 2. Consider Approval of Agreement No. 09-80 Amending Agreement No. 08-16 with WLC Architects for the Design of the Montclair Senior Center [CC] | 22 |
| 3. Consider Approval of Agreement No. 09-82 with San Bernardino County to Receive Approximately \$7,225 in Nonmatching Funds from the Emergency Management Performance Grant Program [CC] | 29 |
| 4. Consider Approval of Agreement No. 09-84, an Exclusive Right to Negotiate Agreement by and between the City of Montclair Redevelopment Agency and National Community Renaissance of California Regarding Property Located at 4113 Kingsley Street [RDA] | 31 |
| 5. Consider Approval of Agreement No. 09-85, a Settlement Agreement between the City of Montclair and David Farrell Fikel [CC] | 35 |
| 6. Consider Approval of Agreement No. 09-86 with the California Department of Education to Provide Summer After-School Programs [CC] | 45 |

- 7. Consider Approval of Agreement No. 09-87, a Purchase and Sale Agreement with Robert D. Kessler and Sira Kessler, Trustees of the Kessler Family Living Trust, Under Declaration of Trust Dated September 12, 2007, for Property Located at 4790 Mission Boulevard in the City of Montclair [CC]

Consider Authorizing City Manager to Execute Agreement No. 09-87 [CC] 49

D. Resolutions

- 1. Consider Adoption of Resolution No. 09-2812 Adopting a Measure I Six-Year Capital Improvement Program [CC]

Consider Adoption of Resolution No. 09-2813 Adopting a Five-Year Capital Project Needs Analysis [CC] 63

- 2. Consider Adoption of Resolution No. 09-2814 Determining the Status of Local Safety Employee David Farrell Fikel [CC]

69

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

- A. City Attorney/Agency Counsel
- B. City Manager/Executive Director
- C. Mayor/Chairman
- D. Council/Agency Board
- E. Committee Meeting Minutes (*For Informational Purposes Only*)

- 1. Minutes of the Code Enforcement Committee Meeting of August 17, 2009 74

- 2. Minutes of the Personnel Committee Meeting of August 17, 2009 76

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

The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, September 21, 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 September 3, 2009.

AGENDA REPORT

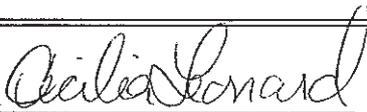
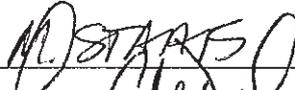
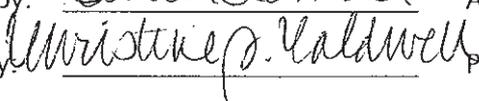
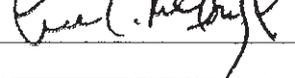
SUBJECT: CONSIDER REDEVELOPMENT AGENCY BOARD OF DIRECTORS' ANNUAL REVIEW OF THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY EXTERIOR HOUSING IMPROVEMENT PROGRAM AND APPROVAL OF CERTAIN RECOMMENDATIONS	DATE: September 8, 2009
	SECTION: ADMIN. REPORTS
	ITEM NO.: 1
BUSINESS PLAN: N/A	FILE I.D.: RDA720
	DEPT.: REDEVELOPMENT

REASON FOR CONSIDERATION: The Real Estate Committee requested an evaluation of the City of Montclair Redevelopment Agency Exterior Housing Improvement Program (EHIP). The Redevelopment Agency Board of Directors is requested to consider certain alterations to the EHIP program recommended by the Real Estate Committee reflecting an evaluation of the program with reference to maintenance requirements and water conservation.

BACKGROUND: As the Redevelopment Agency Board of Directors will recall, EHIP is designed to provide rehabilitation grants in an amount up to \$7,000 for owner-occupied residences and \$3,000 for nonowner-occupied residences for exterior improvements to single-family homes in Montclair. Improvements provided pursuant to the program include labor and materials for the exterior painting of the dwelling (to include fascia repairs), general clean-up, landscape improvements, and installation of an automatic irrigation system. The program offers two landscape choices. One choice involves the use of turf and the other choice involves only the use of drought-tolerant plantings. However, in cases where turf is selected, staff almost always reduces the amount of turf by installing landscaped edges with drought-tolerant plantings. Participants in EHIP cannot exceed low- to moderate-income limits. Covenants, Conditions, and Restrictions (CC&Rs) are recorded on the property for a five-year period to ensure that the Agency-funded improvements are satisfactorily maintained. To date, EHIP has completed improvements to 325 homes.

Staff has been sensitive to the urgency of water conservation efforts and the guidelines for mandatory water conservation issued by Monte Vista Water District. In addition, staff realizes that issues of job loss and the poor economy impact homeowners' ability to maintain their landscape. On June 16, 2009, the Real Estate Committee met to consider a report concerning EHIP. The report prepared by staff, entitled "Evaluation of the Exterior Housing Improvement Program," has been included in the agenda packet for review.

The information provided in the report includes only the 144 EHIP homes where CC&Rs are still applicable. The report indicates that 92 percent of the 144 homes that utilized EHIP remain in good condition. The report also details some of the changes staff has made to operations of the program including:

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

- A reduction in the amount of turf planted in each yard by creating landscaped borders.
- Upgrade of the irrigation system specifications to include more water-efficient irrigation systems such as micro drip systems.
- The encouragement of participants in selecting drought-tolerant plantings by providing them with pictures of various types of flora.
- The distribution of booklets and handout information to participants regarding proper maintenance of landscape materials and maintenance of landscape irrigation systems.

The Real Estate Committee evaluated the information provided by staff and recommended the following changes to EHIP for implementation:

- Include rain sensors with the installation of EHIP irrigation system.
- Reduce the amount of turf area installed to 50 percent or less and continue use of drought-tolerant plantings.
- Use only warm season versus cool season turf.
- Discontinue installation of EHIP landscape during July, August, and September when plantings would require more water to become established.
- Develop a pilot program for 20 EHIP recipients willing to eliminate turf from their landscape design plan and agreeing to other conditions.

Staff has noted that most cases of improper maintenance of EHIP properties involve plants and shrubs rather than turf. Staff believes that maintenance problems have occurred because turf only requires mowing and immature plantings require maintenance and weed control. The program initially installs weed-inhibiting materials. However, these weed inhibitors do not last indefinitely. It appears that some EHIP participants with maintenance problems still remain unfamiliar with plantings versus weeds, despite the education staff has provided. Initially, plantings require more maintenance than turf until plantings become mature. Therefore, when considering a pilot program to eliminate turf, it becomes important to make sure the EHIP recipient understands that drought-tolerant does not mean a "no-maintenance" yard.

The guidelines for a recommended pilot program include the following conditions:

- The recipients would receive \$10,000 per grant. The additional moneys would allow the Agency to provide enhanced landscape plantings and incorporate hardscape such as decomposed granite which are not feasible within the \$7,000 EHIP grant.
- The recipients would be required to complete landscape classes offered by Chino Basin Water Conservation District, Monte Vista Water District, or another program approved by staff.
- The CC&Rs would be extended from five years to seven years because recipients would be receiving \$3,000 more than the normal program.

- The EHIP Agreement would also incorporate a forgivable loan provision for the \$3,000. The amount of the loan repayment would decline by one seventh per year or approximately \$429 per year for each year the property is maintained. At the end of seven years, the loan would be forgiven if the property was maintained.

FISCAL IMPACT: The Redevelopment Agency Board of Directors approved funding for EHIP in the Fiscal Year 2009-10 Redevelopment Agency Budget. The cost of the recommended changes to the program would be incorporated within the \$350,000 budgeted amount.

RECOMMENDATION: Staff recommends the Redevelopment Agency Board of Directors approve the recommendations to the Exterior Housing Improvement Program.

AGENDA REPORT

SUBJECT: CONSIDER AUTHORIZATION TO ADVERTISE FOR BID PROPOSALS FOR THE MISSION BOULEVARD IMPROVEMENT PHASE 7 PROJECT	DATE: September 8, 2009 SECTION: ADMIN. REPORTS ITEM NO.: 2 FILE I.D.: SSP178
BUSINESS PLAN: STRATEGIC PRIORITY NO. 3, GOAL 3	DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: Advertising for bid proposals is subject to City Council approval.

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

BACKGROUND: The Fiscal Years 2008-2012 Capital Improvement Program has identified funding for various phases of the Mission Boulevard Improvement Project. The work is intended to enhance the appearance and improve the ridability of Mission Boulevard.

The Mission Boulevard Improvement Phase 7 Project would commence where Phase 3 improvements ended, approximately 300 feet west of Ramona Avenue, and continue westerly through the Pipeline Avenue intersection. The project work would include median islands with landscaping and irrigation; pavement reconstruction; addition of curb, gutter, and sidewalk; striping; signal modifications at Mission Boulevard and Pipeline Avenue; and street lighting.

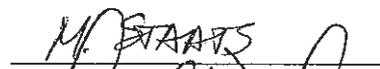
FISCAL IMPACT: The cost of advertising this project should not exceed \$3,500. The project cost estimate is currently \$1.6 million. This project would use approximately \$500,000 of federal High Priority Project funds. Remaining costs would be funded by the Redevelopment Agency and Measure I.

RECOMMENDATION: Staff recommends the City Council authorize staff to advertise for bid proposals for the Mission Boulevard Improvement Phase 7 Project.

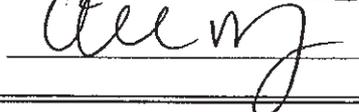
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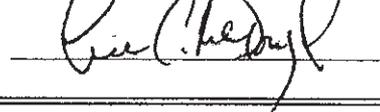
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Approved by:



Proofed by:



Presented by:



AGENDA REPORT

SUBJECT: CONSIDER AUTHORIZATION TO ADVERTISE FOR BID PROPOSALS FOR CONSTRUCTION OF THE MONTERA ELEMENTARY SCHOOL SOCCER FIELD PROJECT	DATE: September 8, 2009 SECTION: ADMIN. REPORTS ITEM NO.: 3 FILE I.D.: PRK375 DEPT.: PUBLIC WORKS
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BUSINESS PLAN: STRATEGIC PRIORITY NOS. 4 AND 5	
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REASON FOR CONSIDERATION: Advertising for bid proposals is subject to City Council approval.

Construction of this project would satisfy a portion of Strategic Priority Nos. 4 and 5, as contained in Montclair's "Business Plan."

BACKGROUND: The Fiscal Years 2008-2012 Capital Improvement Program includes funding for the construction of a youth soccer field at Montera Elementary School. Modifications to the existing playground include removable goal posts, handicap-accessible walkways, drinking fountains, new access gates, and landscape and irrigation modifications.

Construction of the new soccer field is expected to begin in November 2009, with an expected completion date in December 2009.

FISCAL IMPACT: The project is entirely funded by the 2000 Parks Bond Act - Youth Soccer/Baseball Grant. The cost of advertising this project should not exceed \$3,500.

RECOMMENDATION: Staff recommends the City Council authorize staff to advertise for bid proposals for construction of the Montera Elementary School Soccer Field Project.

Prepared by: _____

M. S. [Signature]

Reviewed and
Approved by: _____

M. STANIS [Signature]

Proofed by: _____

Ally [Signature]

Presented by: _____

AGENDA REPORT

SUBJECT: CONSIDER AMENDING THE FISCAL YEARS 2009-2013 CAPITAL IMPROVEMEMENT PROGRAM ADDING THE MILLS AVENUE ALLEY IMPROVEMENT PROJECT	DATE: September 8, 2009
CONSIDER AUTHORIZATION TO ADVERTISE FOR BID PROPOSALS FOR THE MILLS AVENUE ALLEY IMPROVEMENT PROJECT	SECTION: ADMIN. REPORTS
CONSIDER AUTHORIZING THE CITY MANAGER TO AWARD AND SIGN A CONSTRUCTION CONTRACT FOR THE MILLS AVENUE ALLEY IMPROVEMENT PROJECT TO THE LOWEST RESPONSIBLE, RESPONSIVE BIDDER	ITEM NO.: 4
	FILE I.D.: GRT050
	DEPT.: PUBLIC WORKS

BUSINESS PLAN: N/A

REASON FOR CONSIDERATION: Advertising for bid proposals is subject to City Council approval.

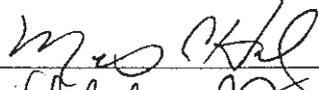
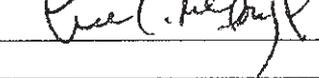
BACKGROUND: The Mills Avenue Alley Improvement Project is intended to provide pavement and drainage improvements to an existing alley generally located in the area bounded by Mills Avenue on the west, Orchard Street on the north, Oakglen Avenue on the east, and Evert Street on the south, as shown on the attached drawing. Improvements include removal and replacement of the existing asphalt concrete, construction of a concrete ribbon gutter, installation of Americans with Disabilities Act compliant pedestrian ramps, and asphalt pavement markings.

Because of the time required for advertising and the deadline for getting Community Development Block Grant funding for the project, staff is requesting the City Manager be authorized to award the construction contract to the lowest responsible, responsive bidder and sign the construction contract.

FISCAL IMPACT: Community Development Block Grant funds, supplemented with American Recovery and Reinvestment Act of 2009 funds through San Bernardino County, are being used to fund this project. The total project cost is estimated to be under \$240,000. There is no local match requirement. The cost of advertising this project should not exceed \$3,000.

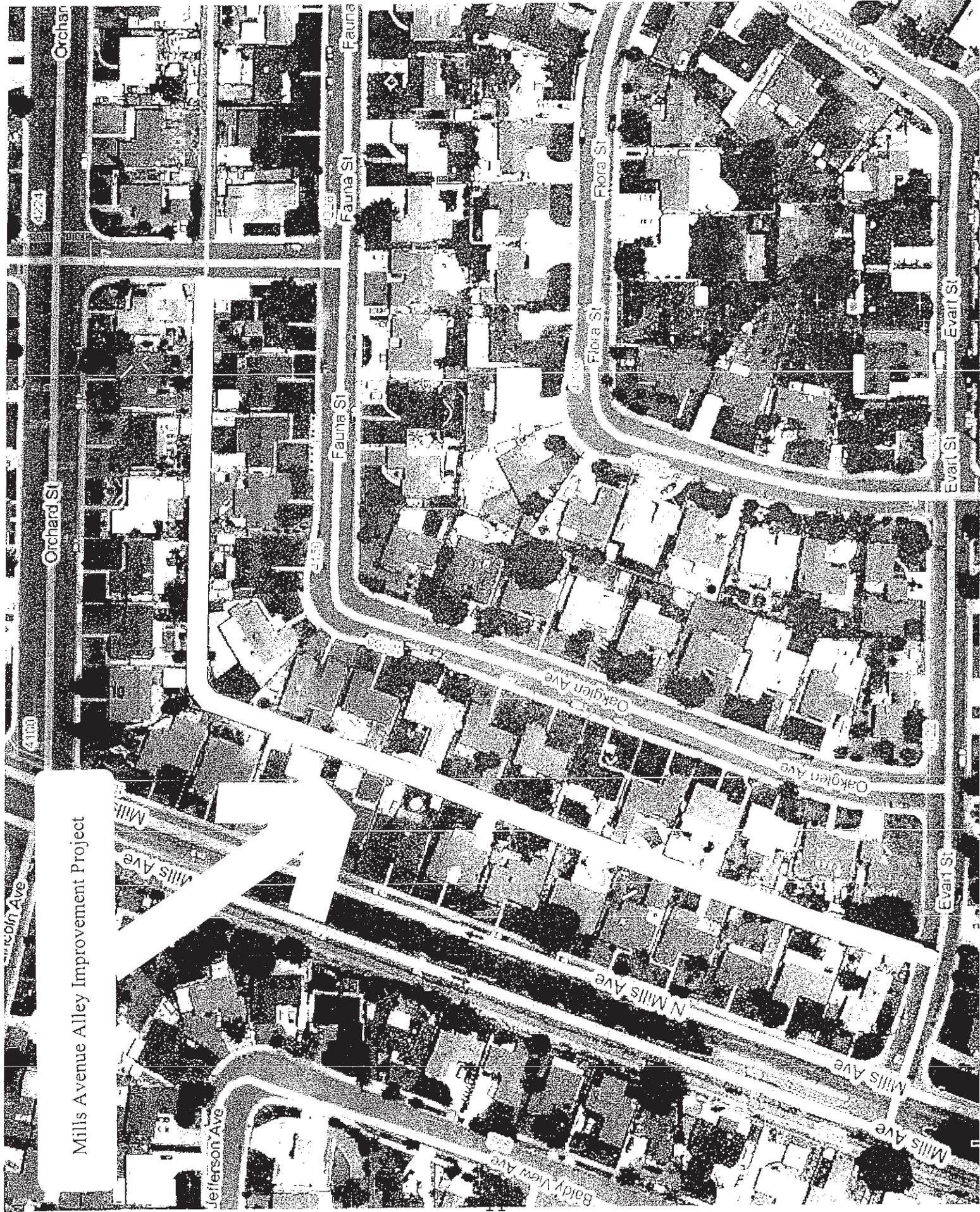
RECOMMENDATION: Staff recommends the City Council take the following actions:

1. Amend the Fiscal Years 2009-2013 Capital Improvement Program adding the Mills Avenue Alley Improvement Project.

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

2. Authorize staff to advertise for bid proposals for the Mills Avenue Alley Improvement Project.
3. Authorize the City Manager to award and sign the construction contract for the Mills Avenue Alley Improvement Project to the lowest responsible, responsive bidder.

Mills Avenue Alley Improvement Project



AGENDA REPORT

SUBJECT: CONSIDER "NO ACTION" ON ALCOHOLIC BEVERAGE PERMIT APPLICATION - 7-ELEVEN, INC.

DATE: September 8, 2009

SECTION: ADMIN. REPORTS

ITEM NO.: 5

BUSINESS PLAN: N/A

FILE I.D.: FLP025

DEPT.: ADMIN. SVCS.

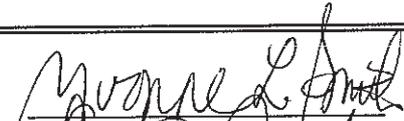
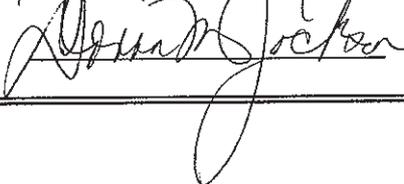
REASON FOR CONSIDERATION: Applications for Alcoholic Beverage Licenses are routinely presented to the City Council for review.

BACKGROUND: Mr. Frank S. Gambina, Vice President, and Mr. Steve Bonville, Assistant Secretary, 7-Eleven, Inc., have applied for an "Off-Sale Beer and Wine" license for 7-Eleven, 4875 Mission Boulevard, Units 1 and 2, Montclair, California.

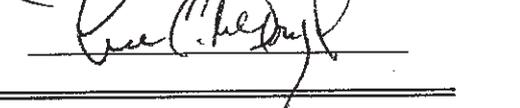
FISCAL IMPACT: No fiscal impact

RECOMMENDATION: Staff recommends the City Council take "No action" on the California Department of Alcoholic Beverage Control Application for Alcoholic Beverage License(s) for 7-Eleven, 4875 Mission Boulevard, Units 1 and 2, Montclair, California.

Prepared by:

Reviewed and
Approved by:

Proofed by:

Presented by:

AGENDA REPORT

SUBJECT: CONSIDER "NO ACTION" ON ALCOHOLIC BEVERAGE PERMIT APPLICATION - CENTRAL AVENUE MARKET

DATE: September 8, 2009

SECTION: ADMIN. REPORTS

ITEM NO.: 6

FILE I.D.: FLP025

BUSINESS

PLAN: N/A

DEPT.: ADMIN. SVCS.

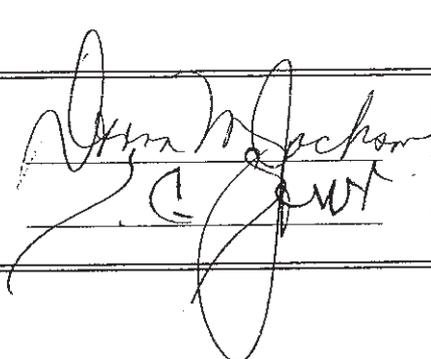
REASON FOR CONSIDERATION: Applications for Alcoholic Beverage Licenses are routinely presented to the City Council for review.

BACKGROUND: Mr. Jasubha Mayurdhvajsinh, Harhar Mahadev Corporation, has applied for an "Off-Sale Beer and Wine" license for Central Avenue Market, 10132 Central Avenue, Montclair, California.

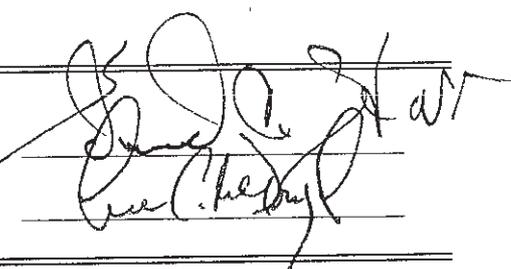
FISCAL IMPACT: No fiscal impact

RECOMMENDATION: Staff recommends the City Council take "No action" on the California Department of Alcoholic Beverage Control Application for Alcoholic Beverage License(s) for Central Avenue Market, 10132 Central Avenue, Montclair, California.

Prepared by:



Reviewed and
Approved by:



Proofed by:

Presented by:

AGENDA REPORT

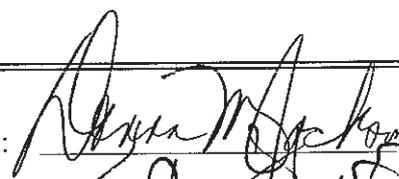
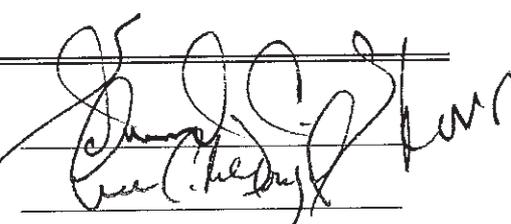
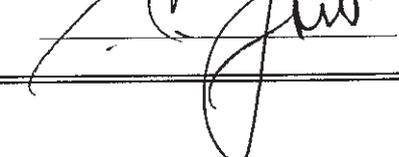
SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION	DATE: September 8, 2009
	SECTION: ADMIN. REPORT
	ITEM NO.: 7
BUSINESS PLAN: N/A	FILE I.D.: FIN540
	DEPT.: ADMIN. SVCS.

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 September 8, 2009, and Payroll Documentation dated June 21, 2009, finds them to be in order and recommends their approval.

FISCAL IMPACT: The Warrant Register dated September 8, 2009, totals \$2,248,670.57. The Payroll Documentation dated June 21, 2009, totals \$637,807.84, with \$569,050.07 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 APPROVAL OF AGREEMENT
NO. 09-79 AMENDING AGREEMENT
NO. 08-06 WITH WLC ARCHITECTS FOR
THE DESIGN OF THE MONTCLAIR YOUTH
CENTER

DATE: September 8, 2009

SECTION: AGREEMENTS

ITEM NO.: 1

FILE I.D.: HSV151

BUSINESS

PLAN: STRATEGIC PRIORITY NO. 3, GOAL 3

DEPT.: PUBLIC WORKS

REASON FOR CONSIDERATION: Agreements and amendments to agreements with the City require City Council approval.

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

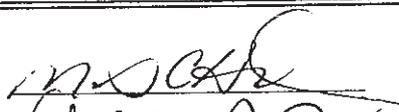
BACKGROUND: With the completion of the new Police Department facility at Monte Vista Avenue and Arrow Highway, the previous facility housing these services was vacated. The City retained WLC Architects to design an adaptive reuse of this facility as a Youth Center. The Youth Center would occupy the easterly two-thirds of the building. Agreement No. 08-06 with WLC Architects defined the scope of services to be provided by the architect and the compensation to be provided for those services.

As the design progressed, the City asked WLC Architects to look at the feasibility of using the westerly portion of the building to house the City's Information Technology Division of the Administrative Services Department and the City's NPDES staff of the Public Works Department. As a result of this feasibility study, the City directed WLC Architects to provide the additional design services required and incorporate this work into the final construction documents. The design for the adaptive reuse of the facility, including the additional work for the westerly portion of the building, was completed last November and the project was advertised for bids.

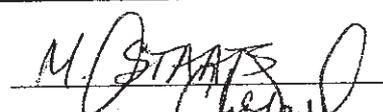
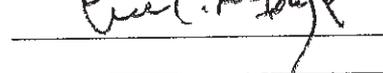
On January 5, 2009, staff reported that bids had been received, opened, and read. After doing so, the apparent low bidder rescinded his bid due to a clerical error. After further review of the next two bids, it was determined that those bids were nonresponsive. Staff recommended that the City Council reject all bids and readvertise after clarifying certain bid requirements. On February 19, 2009, the City Clerk received and opened 41 bids for the proposed remodel work, and on March 2, 2009, the City Council awarded the remodeling contract to KPRS Construction Services, Inc.

Agreement No. 09-79 amending the original contract with WLC Architects provides compensation for the additional design required for the westerly portion of the building, a small amount of landscaping added to the contract, some structural review issues, and

Prepared by:




Reviewed and
Approved by:

Proofed by:

Presented by:

costs associated with readvertising the project.

FISCAL IMPACT: It was noted in the January 5, 2009 staff report that recommended rejection of bids and readvertising the project that the cost associated with readvertising could be as much as \$50,000. In fact, the cost (\$31,400) was actually much less. WLC Architects has requested the following:

Original Fee:	\$396,850
Fee Increase:	
IT/NPDES Buildout	\$23,278
Reimbursables (Readvertising)	31,400
Landscape Design	3,930
Structural Review	1,500
<hr/>	
Total Increase	\$60,108

No additional appropriation of funds is required. The Youth Center improvements are funded by revenue generated from the Transactions and Use Tax approved by the Montclair voters in November 2004.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-79 amending Agreement No. 08-06 with WLC Architects for the design of the Montclair Youth Center.

CITY OF MONTCLAIR
AMENDMENT TO AGREEMENT NO. 08-06
WITH WLC ARCHITECTS
FOR
MODIFICATION TO SCOPE OF SERVICES FOR
YOUTH CENTER IMPROVEMENTS

This agreement is made and entered into this ____ day of _____, 2009, by and between the CITY OF MONTCLAIR, a municipal corporation ("City") and WLC Architects, a California Corporation ("Consultant"), and collectively ("Parties").

RECITALS

WHEREAS, Parties have previously entered into Agreement No. 08-06 on July 1, 2007, for the design and preparation of plans and bid documents for the City of Montclair Youth Center and conceptual design for the City of Montclair Senior Center at Alma Hofman Park; and

WHEREAS, Paragraph 2. of Agreement No. 08-06 identified the work to be done as "Exhibit A-Scope of Services" in that agreement; and

WHEREAS, Parties mutually desire to modify the scope of services by adding the work described in the attached Exhibit "A-1," and

WHEREAS, Consultant represents that it is qualified to perform such services and is willing to perform such professional services as hereinafter defined.

NOW, THEREFORE, IT IS AGREED by and between City and Consultant as follows:

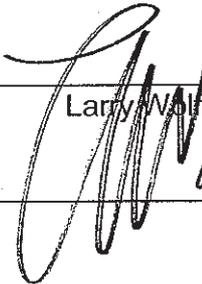
AGREEMENT

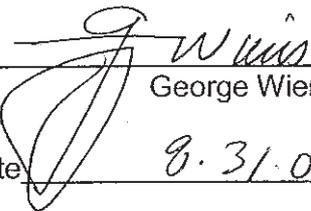
1. Modify Scope of Services by adding the attached Exhibit "A-1" to Exhibit "A" of Agreement No. 08-06.
2. Modify Paragraph 5., Section (a) to wit:
 - (a) The City agrees to pay to Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit "C" to Agreement No. 08-06 based upon actual time spent on the tasks identified in Exhibit "A" to Agreement No. 08-06, a maximum sum not to exceed \$396,850.00. The City further agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit "C" to Agreement No. 08-06 based upon actual time spent on the tasks identified in Exhibit "A-1" to this Agreement a maximum sum not to exceed \$60,108. This sum shall cover the cost of all staff time and all other direct and indirect costs or fees, including the work of employees, consultants, and subcontractors to CONSULTANT. Payment to CONSULTANT, by CITY, shall be made on a "time and material basis" in accordance with the Schedule set forth in Exhibit "C-1".
3. All other terms of Agreement No. 08-06 shall remain the same and be incorporated herein as though fully set forth.

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

CONSULTANT:

WLC ARCHITECTS

By 
Larry Wolff/CEO
Date 08/28/09

By 
George Wiens/CFO
Date 8.31.09

CITY:

CITY OF MONTCLAIR

Paul M. Eaton/Mayor
Date _____

ATTEST:

Donna M. Jackson/City Clerk
Date _____

APPROVED AS TO FORM:

Diane E. Robbins/City Attorney

EXHIBIT "A-1"

SCOPE OF SERVICES

1. By Proposal Dated November 12, 2008:
 - a. Add design and preparation of plans for relocation of IT Division of Administrative Services Department from City Hall to the new Youth Center.
 - b. Add design and preparation of plans for new trash enclosure for use in the Civic Center Complex.
 - c. Add design and preparation of plans for miscellaneous improvements, including"
 - Additional Accessible Parking
 - Monument Sign and Double Detector Check Assembly
 - Relocate Gas Line into City Hall
 - Fencing Around New South Parking Lot
 - Breezeway Lighting
 - Redesign of Activity Patio Cover

2. By Proposal Dated February 23, 2009:
 - a. Add additional bid document reproduction associated with rebidding the Youth Center Project.
 - b. Add additional bid document distribution associated with rebidding the Youth Center Project.

3. By Proposal Dated August 24, 2009:
 - a. Add additional bid document distribution associated with rebidding the Youth Center Project.
 - b. Add Landscape/Irrigation Plan for South Parking lot
 - c. Structural Analysis at Gridline 15 additional cores to be back charged to the contractor.

EXHIBIT "C-1"
Additional Services Schedule
City of Montclair Youth Center Project

Youth Center Additional Design Services

IT/NPDES Improvements (Authorized November 12, 2008)	\$23,278
Reimbursables (Authorized February 23, 2009)	\$9,900
Reimbursables	\$21,500
Landscape Design (RJM Design Group) South Parking Lot	\$3,930
Structural Review (R. M. Byrd Structural Engineer) Wall Analysis Grid Line 15	\$1,500
<hr/> Total	<hr/> \$60,108

Revised Hourly Charge Rate

WLC Team Hourly Rates

Frank Cuomo, AIA, Senior Associate, Project Architect	\$185.00
Billy Maurer, Project Team	\$95.00
Technical Drafting/Word Processing	\$95.00

WLC Consulting Team Hourly Rates

Principal Design or Engineering Professional	\$150.00
Associate/Senior Design or Engineering Professional	\$120.00
Licensed Design or Engineering Professional	\$90.00
Project Manager	\$85.00
Word Processing/Technical Resources	\$55.00

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-80 AMENDING AGREEMENT NO. 08-16 WITH WLC ARCHITECTS FOR THE DESIGN OF THE MONTCLAIR SENIOR CENTER	DATE: September 8, 2009 SECTION: AGREEMENTS ITEM NO.: 2 FILE I.D.: HSV151
BUSINESS PLAN: STRATEGIC PRIORITY NO. 3, GOAL 3	DEPT.: PUBLIC WORKS

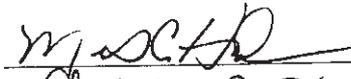
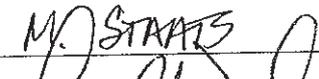
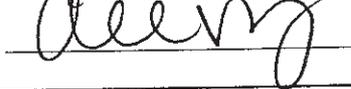
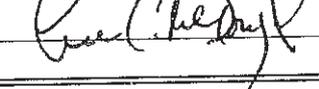
REASON FOR CONSIDERATION: Agreements and amendments to agreements with the City require City Council approval.

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

BACKGROUND: The City previously entered into Agreement No. 08-06 with WLC Architects to provide design and construction drawings for the conversion of the former City of Montclair Police Department building into a Youth Center. The agreement also included preliminary planning for a new Senior Center. On May 5, 2008, the City entered into Agreement No. 08-16 with WLC Architects to provide design and construction drawings for the new Senior Center. This agreement included investigating various design schemes including an "add-on" to the Community Center, a remodeling of the Community Center, and a "stand-alone" facility. A conceptual design recommending a "stand-alone" facility was presented to the City Council on December 1, 2008, and was approved.

One of the original concepts considered for the Senior Center was to convert the gymnasium in the Community Center. During the conceptual design phase it was determined that the conversion would not be in the City's best interest. Not only should the gymnasium remain, portable bleacher seating should be provided for spectators. It was further determined that the pottery room in the Community Center could be reduced in size and used for bleacher storage. This work required a structural analysis of the concrete "tilt-up" wall to determine the appropriate location to install a door. The architect was directed to prepare construction drawings for this additional work. The architect was also directed to combine this work with another project included and funded in the City's Capital Improvement Program that would reroof the remaining buildings in the Civic Center Complex, Fire Station No. 2, and the City Yard building.

With the continued use of the gymnasium as a sports facility rather than a Senior Center, staff determined that it was appropriate to address some electrical deficiencies in the Community Center, including the replacement of the gymnasium lighting with something more energy efficient and quieter. The existing lighting is suitable for sporting activities when the ambient noise level is high, but poorly suited for events featuring speakers such as the State of the City Address or other assemblies.

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

The design of the new Senior Center required the preparation of a Water Quality Management Plan (WQMP), a requirement of all development in San Bernardino County for the last four years. While the WQMP was included as part of WLC Architects' original contract, it had been assumed that storm water runoff treatment could be adequately addressed through landscaping. The WQMP report determined that, while landscaping would be an appropriate treatment method, there would not be adequate contact time with the landscaping proposed. A better solution required the use of a sump pump and diverting flow back into Alma Hofman Park. This concept was not part of the original design.

The Bleacher Storage and Reroofing Project followed a different schedule than the Senior Center and was advertised as a separate project. Consequently, an additional set of bid documents were required as well as advertising costs separate from the Senior Center.

Agreement No. 09-80 amending the original contract with WLC Architects provides compensation for the additional design and advertising costs required for the Bleacher Storage and Reroofing Project, a small amount of landscape design that was required, and the additional design required to comply with the requirements of the approved WQMP.

FISCAL IMPACT: WLC Architects has requested the following:

Original Fee:	\$578,620
Fee Increase:	
Bleacher Storage/Reroofing/Sump Pump	\$24,310
Reimbursables (Advertising)	5,000
Total Increase	\$29,310

No additional appropriation of funds is required. The Senior Center and Bleacher Storage improvements are funded by revenue generated from the Transactions and Use Tax approved by the Montclair voters in November 2004.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-80 amending Agreement No. 08-16 with WLC Architects for the design of the Montclair Senior Center.

CITY OF MONTCLAIR
AMENDMENT TO AGREEMENT NO. 08-16
WITH WLC ARCHITECTS
FOR
MODIFICATION TO SCOPE OF SERVICES FOR
SENIOR CENTER IMPROVEMENTS

This agreement is made and entered into this ____ day of _____, 2009, by and between the CITY OF MONTCLAIR, a municipal corporation ("City") and WLC Architects, a California Corporation ("Consultant"), and collectively ("Parties").

RECITALS

WHEREAS, Parties have previously entered into Agreement No. 08-16 on May 5, 2007, for the design and preparation of plans and bid documents for the City of Montclair Senior Center at Alma Hofman Park; and

WHEREAS, Paragraph 2. of Agreement No. 08-16 identified the work to be done as "Exhibit A-Scope of Services" in that agreement; and

WHEREAS, Parties mutually desire to modify the scope of services by adding the work described in the attached Exhibit "A-1," and

WHEREAS, Consultant represents that it is qualified to perform such services and is willing to perform such professional services as hereinafter defined.

NOW, THEREFORE, IT IS AGREED by and between City and Consultant as follows:

AGREEMENT

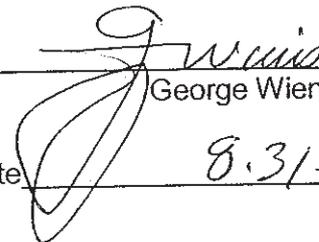
1. Modify Scope of Services by adding the attached Exhibit "A-1" to Exhibit "A" of Agreement No. 08-16.
2. Modify Paragraph 5., Section (a) to wit:
 - (a) The City agrees to pay to Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit "C" to Agreement No. 08-16 based upon actual time spent on the tasks identified in Exhibit "A" to Agreement No. 08-16, a maximum sum not to exceed \$578,620.00. The City further agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit "C" to Agreement No. 08-16 based upon actual time spent on the tasks identified in Exhibit "A-1" to this Agreement a maximum sum not to exceed \$29,310.00. This sum shall cover the cost of all staff time and all other direct and indirect costs or fees, including the work of employees, consultants, and subcontractors to CONSULTANT. Payment to CONSULTANT, by CITY, shall be made on a "time and material basis" in accordance with the Schedule set forth in Exhibit "C-1".
3. All other terms of Agreement No. 08-16 shall remain the same and be incorporated herein as though fully set forth.

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

CONSULTANT:

WLC ARCHITECTS

By 
Larry Wolff/CEO
Date 08/28/09

By 
George Wiens/CFO
Date 8.31.09

CITY:

CITY OF MONTCLAIR

Paul M. Eaton/Mayor
Date _____

ATTEST:

Donna M. Jackson/City Clerk
Date _____

APPROVED AS TO FORM:

Diane E. Robbins/City Attorney

EXHIBIT "A-1"

SCOPE OF SERVICES

By Proposal Dated August 24, 2009

- a. Architectural services for bid documents for the Bleacher Storage and Reroofing Project at the Civic Center
- b. WQMP wet well design and additional grading plan for Benito Street demonstration garden.
- c. Structural engineering for the wall opening in tilt-up wall panel for new door for bleacher storage.
- d. Electrical engineering for new induction lighting for gymnasium.
- e. Landscaping associated with Additive Alternate 1.
- f. Additional reproduction costs for added roofing and bleacher project.

EXHIBIT "C-1"
 Additional Services Schedule
 City of Montclair Senior Center Project

Senior Center Additional Design Services

Architectural Fees-Bleacher Storage/Reroofing/Bidding	\$6,970
Civil Engineering (Madole & Associates) WQMP Sump Pump	\$10,400
Landscape Design (RJM Design Group)	\$2,940
Structural Review (R. M. Byrd Structural Engineer)	\$2,000
Electrical Design (A & F Electrical Engineers)	\$2,000
Reimbursables (Advertising)	\$5,000
Total	\$29,310

Revised Hourly Charge Rate

WLC Team Hourly Rates

Frank Cuomo, AIA, Senior Associate, Project Architect	\$185.00
Billy Maurer, Project Team	\$95.00
Technical Drafting/Word Processing	\$95.00

WLC Consulting Team Hourly Rates

Principal Design or Engineering Professional	\$150.00
Associate/Senior Design or Engineering Professional	\$120.00
Licensed Design or Engineering Professional	\$90.00
Project Manager	\$85.00
Word Processing/Technical Resources	\$55.00

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT
NO. 09-82 WITH SAN BERNARDINO
COUNTY TO RECEIVE APPROXIMATELY
\$7,225 IN NONMATCHING FUNDS FROM
THE EMERGENCY MANAGEMENT
PERFORMANCE GRANT PROGRAM

DATE: September 8, 2009

SECTION: AGREEMENTS

ITEM NO.: 3

FILE I.D.: EMR100

BUSINESS

PLAN: N/A

DEPT.: FIRE

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 09-82 with San Bernardino County to receive approximately \$7,225 in nonmatching funds from the Emergency Management Performance Grant (EMPG) Program.

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

FISCAL IMPACT: Should the City Council approve Agreement No. 09-82, the City would receive approximately \$7,225 under the approved EMPG Program funding formula for Federal Fiscal Year 2009-10.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-82 with San Bernardino County to receive approximately \$7,225 in nonmatching funds from the Emergency Management Performance Grant Program.

Prepared by: _____

T. Christ

Reviewed and
Approved by: _____

T. Christ

Proofed by: _____

Marcie B...

Presented by: _____

Gene Ched...

SAN BERNARDINO COUNTY OPERATIONAL AREA

EMERGENCY MANAGEMENT PERFORMANCE GRANT PROGRAM (EMPG)

FY2009 NOTICE OF INTEREST

1 Date of Filing: _____

2 Name of Jurisdiction. City of Montclair

3 **Statement of Available Funds:** The approved Emergency Management Performance Grant Program (EMPG) funding formula for FY2009 indicates the above named jurisdiction is eligible to approximately receive the following: \$ 7,225.

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

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

The jurisdiction will provide its match by:

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

6 **Conditions of Rejection:** In rejecting EMPG funds, the jurisdiction understands that it will not receive any EMPG funds distributed to the OA during FY2009.

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

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

9 **Authorized Signature:**

Primary Representative

Date

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-84, AN EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND NATIONAL COMMUNITY RENAISSANCE OF CALIFORNIA REGARDING PROPERTY LOCATED AT 4113 KINGSLEY STREET	DATE: September 8, 2009 SECTION: AGREEMENTS ITEM NO.: 4 FILE I.D.: RDA720 DEPT.: REDEVELOPMENT
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BUSINESS

PLAN: Strategic Priority No. 2, Goal 3

REASON FOR CONSIDERATION: The Redevelopment Agency purchased the property located at 4113 Kingsley Street with the conceptual plan of constructing dwelling units for special needs individuals with certain physical or developmental disabilities. Staff has discussed collaborating with National Community Renaissance of California (National CORE) for development of a Special Needs Housing Project. National CORE is experienced in providing and managing special needs housing units. A map depicting the location of 4113 Kingsley Street is attached as Exhibit A. Agreement No. 09-84 is included in the agenda packet for consideration.

Redevelopment Agency Board of Directors consideration of an Exclusive Right to Negotiate Agreement would be the Redevelopment Agency's first step toward initiation of any proposed Special Needs Housing Project. The Exclusive Right to Negotiate Agreement would set out a period of time in which the Redevelopment Agency would negotiate terms of an agreement and analyze the feasibility of a proposed development. Agreement No. 09-84 has been prepared by Redevelopment Agency Special Counsel and is included in the agenda packet for consideration by the Redevelopment Agency Board of Directors.

Approving an Exclusive Right to Negotiate Agreement by and between the City of Montclair Redevelopment Agency and National CORE would satisfy a portion of Strategic Priority No. 2, Goal 3, as contained in Montclair's "Business Plan."

BACKGROUND: As the Redevelopment Agency Board of Directors is aware, in 2003 the Housing Improvement Task Force identified the area generally located between Mills Avenue, Kingsley Street, Amherst Avenue, and Holt Boulevard as the San Antonio Gateway area. The Housing Improvement Task Force proposed various housing types and densities for the area. As a result of the City Council's approval of the recommendations of the Housing Improvement Task Force, the San Antonio Gateway area included land-use planning for multifamily housing, senior housing, and single family housing. To date, the City has seen many of the proposed housing developments come to fruition. A 106-unit

Prepared by: <u>M. STAATS</u>	Reviewed and Approved by:	<u>M. STAATS</u>
Proofed by: <u>Christine P. Caldwell</u>	Presented by:	<u>Christine P. Caldwell</u>

single family housing project is being developed by Taylor Morrison. The Redevelopment Agency participated with National CORE in development of the 75-unit San Antonio Vista Apartment Project. National CORE is in the process of constructing the 85-unit senior project and applications for occupancy are now being accepted. In addition, an application for tax credits has been submitted to the California Debt Limit Allocation Committee for the affordable 50-unit multifamily project to be located on the southeast corner of Mills Avenue and Kingsley Street.

The property, located at 4113 Kingsley Street, is located in the San Antonio Gateway area at the southwest corner of Kingsley Street and Pradera Avenue. The property serves as an entry corner for the Montclair Meadows Foundation Area and the San Antonio Vista Apartments. Furthermore, the property lies directly east of the site slated for the 50-unit multifamily National CORE project to be constructed upon the approval of tax credit financing. The Redevelopment Agency Board of Directors authorized the acquisition of the one half acre property at 4113 Kingsley Street on January 20, 2009. At the time the property was acquired, staff held preliminary discussions with National CORE to determine its interest in considering the site for special needs housing. Development of a Special Needs Housing Project is of interest to National CORE. National CORE has developed similar projects in the past and has partnered with the Ontario Pomona Association for Retarded Citizens (OPARC) on previous occasions regarding tenancy and social service needs.

As an initial step in development of a partnership between the Redevelopment Agency and National CORE regarding development of a Special Needs Housing Project, an Exclusive Right to Negotiate Agreement had been prepared for consideration by the Redevelopment Agency Board of Directors. The more salient terms of Agreement No. 09-84 include the following points:

- The Redevelopment Agency and National CORE would agree to study and explore the development, construction, and operation by National CORE of an affordable Special Needs Housing Project on the subject site until July 1, 2010. During the negotiating period, National CORE and the Agency would agree to draft and complete a Disposition and Development Agreement. The Disposition and Development Agreement would provide for Redevelopment Agency financial participation in the proposed project. If the Agency and National CORE cannot agree on terms prior to July 1, 2010, the Agreement would automatically terminate.
- The proposed project contemplates the construction of approximately 18 affordable apartment units for special needs persons with developmental, physical, or other disabilities. The housing development would be compatible with the other projects currently planned or under construction by National CORE.
- Within 120 days following execution of Agreement No. 09-84, National CORE would submit the following documentation to the Redevelopment Agency or City:
 1. A detailed description of the project.
 2. Preliminary site plans, floor plans, and design concepts for the project.
 3. Estimates of income and a pro forma statement of costs related to development of the proposed project.

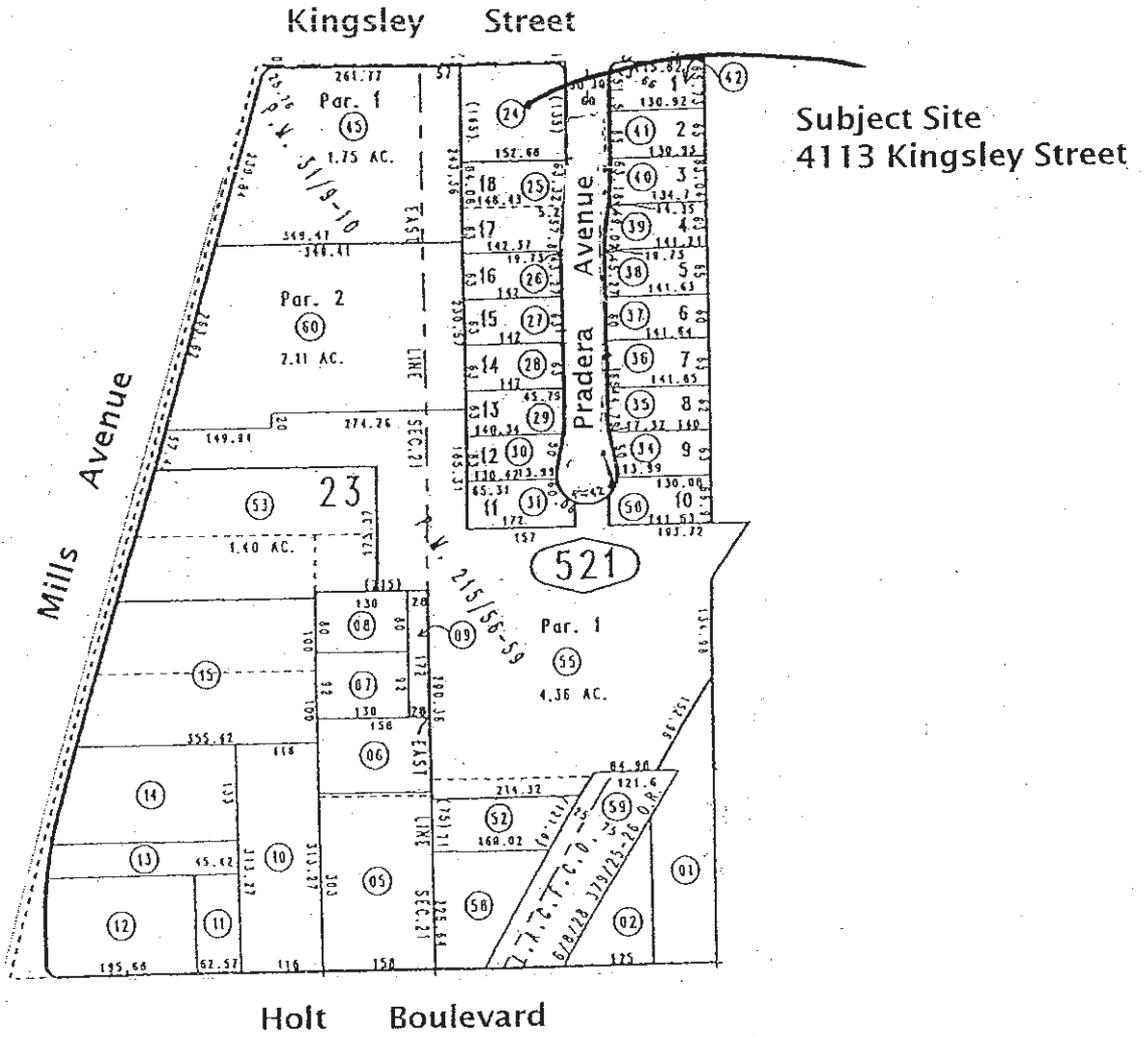
4. Descriptions of the proposed methods and amount of project financing.

- Within 30 days after National CORE submits all of the required documentation, the Redevelopment Agency or City would notify National CORE of its approval or disapproval of such submittals.
- In consideration of the nonprofit status of National CORE and working in partnership with the Redevelopment Agency to initiate another high-quality Development in the San Antonio Gateway, the parties agree that the Redevelopment Agency would provide National CORE with a predevelopment loan in an amount of approximately \$252,000. The predevelopment loan would be used by National CORE to fund entitlement costs, any required soils investigations, engineering, architectural design, appraisal costs, and other related costs. These costs are not used to reimburse National CORE's administrative or overhead expenses. These predevelopment costs would become part of the residual receipts loan that National CORE would repay to the Redevelopment Agency in the event the project moves forward. If the Agreement is terminated or does not proceed for any reason other than National CORE's uncured default, the Redevelopment Agency would forgive the predevelopment loan.
- National CORE may not assign any or all portions of the proposed Agreement without the written consent of the Redevelopment Agency.

FISCAL IMPACT: Should the Redevelopment Agency Board of Directors approve Agreement No. 09-84, the Redevelopment Agency would be committed to pay approximately \$252,000 in predevelopment loan costs to National CORE. The Redevelopment Agency Fiscal Year 2009-10 Budget contains adequate funding to finance the loan for predevelopment costs.

RECOMMENDATION: Staff recommends the Redevelopment Agency Board of Directors approve Agreement No. 09-84, an Exclusive Right to Negotiate Agreement by and between the City of Montclair Redevelopment Agency and National Community Renaissance of California regarding property located at 4113 Kingsley Street.

Exhibit A



AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT
NO. 09-85, A SETTLEMENT AGREEMENT
BETWEEN THE CITY OF MONTCLAIR AND
DAVID FARRELL FIKEL

DATE: September 8, 2009

SECTION: AGREEMENTS

ITEM NO.: 5

FILE I.D.: PER600

BUSINESS

PLAN: N/A

DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 09-85, a Settlement Agreement regarding the civil lawsuit filed by David F. Fikel against the City of Montclair.

BACKGROUND: David Farrell Fikel was hired as a Firefighter on July 29, 2002. During a training exercise on August 10, 2002, a falling ladder caused injury to Mr. Fikel's left thumb and hand. He underwent physical therapy and surgery for his injury and returned to work in a modified-duty capacity based on the physician's identified work restrictions. On August 11, 2004, Mr. Fikel was involved in an automobile accident, which resulted in him experiencing lower back pain. For the majority of his employment, Mr. Fikel has worked in a modified-duty capacity because of the injuries to his thumb, hand, and lower back. In March 2004, Mr. Fikel applied for an industrial disability retirement with the California Public Employees' Retirement System (CalPERS).

Following is a summary of Mr. Fikel's reported injuries:

<i>Date of Injury</i>	<i>Description of Injury</i>
8.10.02	Employee injured his left thumb/hand when a ladder fell and struck him during a training exercise.
8.11.04	Employee experienced lower back pain after being involved in an automobile accident when an individual backed into his City-provided vehicle.
11.14.05	Employee claimed a continuous trauma injury to his lower back as a result of performing his modified-duty assignments.

On June 20, 2008, Mr. Fikel filed a civil lawsuit against the City of Montclair with the following complaints:

- Disability discrimination
- Retaliation

Prepared by:

Gary P. Chandler

Reviewed and
Approved by:

[Signature]

Proofed by:

Kathy Hutton

Presented by:

[Signature]

- Failure to take all reasonable steps to prevent workplace discrimination and retaliation
- Retaliation in violation of public policy
- Conversion
- Breach of contract
- Breach of the implied covenant of good faith and fair dealing
- Injunctive relief

Mr. Fikel's complaint alleges that the City treated him differently than similarly situated employees who did not suffer from a disability. Some examples that he cites as evidence of this differential treatment include remaining in a probationary status during his entire employment, not receiving annual performance appraisals, not receiving annual step increases, and action not being taken by the City on his industrial disability retirement application with CalPERS.

In August 2008, Attorney Bruce Barsook from the law firm Liebert Cassidy Whitmore filed a Demurrer and a motion to strike Mr. Fikel's unverified complaints. In October 2008, a judge dismissed four of the complaints in the lawsuit, although allowed his allegations of disability discrimination, retaliation, failure to prevent workplace discrimination, and injunctive relief to remain. Mr. Fikel was ordered to file a First Amended Complaint, which he did, and the period of evidentiary discovery took place in preparation for the matter to proceed to trial.

In June 2009, a mediation hearing was held between the City of Montclair and Mr. Fikel in an attempt to resolve the issues leading to his lawsuit and to avoid the matter going to trial. The mediation concluded with both parties agreeing to the following terms:

- Mr. Fikel agreed to resolve all his Workers' Compensation claims through a Compromise and Release.
- The City would pay Mr. Fikel \$35,000 to settle his lawsuit and Workers' Compensation claims.
- The City would process and approve Mr. Fikel's application for industrial disability retirement with CalPERS.

The early litigation budget estimates from Attorney Barsook for pretrial investigations, the Demurrer, discovery, and filing of a Motion for Summary Judgment was \$100,000 to \$150,000. His estimate for trial preparation and trial (should the case go that far) is from \$75,000 to \$150,000 including preparation of witnesses, pretrial motions and briefs, pretrial conferences, and trial time. To date, the legal fees for defending this lawsuit have amounted to \$70,785.45.

FISCAL IMPACT: Approval of Agreement No. 09-85 would authorize a payment of \$35,000 for settlement of David F. Fikel's lawsuit and Workers' Compensation cases.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-85, a Settlement Agreement between David Farrell Fikel and the City of Montclair.

**GENERAL AND SPECIAL RELEASE AND SETTLEMENT AGREEMENT BETWEEN
DAVID FIKEL AND THE CITY OF MONTCLAIR**

This GENERAL AND SPECIAL RELEASE AND SETTLEMENT AGREEMENT ("AGREEMENT") is entered into by and between DAVID FIKEL ("FIKEL") and the CITY OF MONTCLAIR ("CITY"); (collectively, the "Parties").

WHEREAS, FIKEL is employed by the CITY as a Firefighter;

WHEREAS, FIKEL filed a civil lawsuit against the CITY in the Superior Court of California, County of San Bernardino, Case Number CIVRS806064;

WHEREAS, FIKEL filed the following Workers' Compensation claims against the CITY: 1) WCAB No. ANA 0383507; 2) WCAB No. ANA 0394627 and 3) WCAB No. ANA 0394626;

WHEREAS, the purpose of this AGREEMENT is to settle and compromise all disputes and controversies existing between the CITY and FIKEL arising out of the matters described in the lawsuit, FIKEL's employment with the CITY, and/or arising from any other facts or causes existing on or prior to the execution date of this AGREEMENT, whether known or unknown, including without limitation those described in more detail hereafter;

WHEREAS, it is the intent of all parties to this AGREEMENT that they wish to resolve all claims between them, including, but not limited to San Bernardino Superior Court Case No. CIVRS806064 and all Workers' Compensation claims filed by FIKEL, both pending and previously settled, and claims for future medical care on both pending and previously settled claims, as described above. It is acknowledged and agreed by the parties that settlement of FIKEL's claims shall not exceed \$35,000, jointly and severally (specific allocations, as agreed to by the parties, are detailed in paragraph 6a below). It is further acknowledged and agreed by the parties that settlement of said Workers' Compensation claims by COMPROMISE AND RELEASE are being processed by legal counsel not signatories to this AGREEMENT. The parties understand that resolution of the Workers' Compensation claims can only occur with the

approval of the Workers' Compensation Appeals Board (hereinafter "WCAB") of a COMPROMISE AND RELEASE (regarding each claim filed by FIKEL). The parties agree and acknowledge however, that this AGREEMENT is of no force and/or effect unless or until said WCAB claims are disposed. Failure to dispose of said WCAB claims shall result in this AGREEMENT being considered null and void, and

WHEREAS, CITY and FIKEL wish to finally settle and resolve all actual or potential grievances, disputes, controversies, claims and actions between them in order to make their peace and avoid the uncertainties of litigation, investigation or review, and the expenses and costs incident thereto.

NOW, THEREFORE, FIKEL and the CITY covenant and agree as follows:

1. The Parties hereto do hereby and forever release and discharge each other and any past and/or present parent, subsidiary and/or affiliated entities, as well as all direct or indirect successors, officers, officials, directors, council members, heirs, predecessors, assigns, agents, insurers, employees, spouse (as to FIKEL), attorneys and representatives of the other party, and each of them, past and present, from any and all causes of action, actions, costs, judgments, liens, indebtedness, damages, losses, claims, liabilities, and demands of whatsoever kind or character, known or unknown, suspected to exist or not suspected to exist, anticipated or not anticipated, whether or not heretofore brought before any state or federal court or before any state or federal agency or other governmental entity, (including, but not limited to, *David Fikel v. City of Montclair*, San Bernardino Superior Court Case Number CIVRS806064 and the Workers' Compensation claims listed above) and from all claims arising from or related or attributable in whole or in part, to FIKEL's employment relationship with the CITY as well as any other relationship with the CITY and from any grievance or other dispute actual or potential, between the parties, as described in the recitals in this AGREEMENT, whenever such claims may have occurred. In addition, the Parties further agree that because FIKEL will no longer be employed by the CITY (see paragraph 6 below), and thus, could not suffer a Workers' Compensation injury in the future. The approval of the WCAB of the COMPROMISE AND RELEASE (as to

each of FIKEL's claims) will result in a complete and total waiver of any and all Workers' Compensation claims that FIKEL has or may have against the CITY.

2. The Parties understand that this AGREEMENT extends to all grievances, disputes or claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, arising from or attributable to the above-referred matters and disputes. The Parties understand and expressly agree that this AGREEMENT also extends to any other matter, event or claim occurring prior to the date of execution of this AGREEMENT. The Parties further acknowledge that any and all rights granted to either of them under Section 1542 of the California Civil Code, or any other analogous federal or state law or regulation, are hereby expressly waived. Section 1542 of the California Civil Code provides as follows:

SECTION 1542. CERTAIN CLAIMS AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

3. FIKEL understands and expressly agrees that this AGREEMENT shall bind and benefit his spouse, children, heirs, agents, attorneys, representatives and assigns. The CITY understands and expressly agrees that this AGREEMENT shall bind and benefit its past and/or present parent, subsidiary and/or affiliated entities, as well as all direct or indirect successors, officers, officials, directors, council members, heirs, predecessors, assigns, agents, insurers, employees, attorneys and representatives of the other party, and each of them, past and present.

4. FIKEL acknowledges that he has carefully read this AGREEMENT and has been advised fully by legal counsel or other legally authorized representative of the legal and binding effect of its terms. FIKEL acknowledges that the only promises made to induce him to sign this AGREEMENT are those stated herein. Having been fully advised and informed, FIKEL voluntarily enters into this AGREEMENT, including the waiver of rights covered by this AGREEMENT.

5. FIKEL hereby covenants not to sue or initiate against any other party to this AGREEMENT or any person or entity described in this AGREEMENT, any action or proceeding or to participate in same, individually, or as a member of a class, under any policy, contract, law or regulation, federal, state or local, pertaining in any manner whatsoever to the subject of these disputes, or his employment with the CITY, including, but not limited to, San Bernardino Superior Court Case No. CIVRS806064, and the Workers' Compensation claims listed above on page 1 of the recitals, and any rights FIKEL has or may have under any policy, or local, state, or federal statute, law, or regulation.

6. Upon execution of this AGREEMENT and disposition of the aforementioned WCAB claims by COMPROMISE and RELEASE (as to each of FIKEL's claims), the CITY agrees to effectuate the following:

- a. FIKEL shall be entitled to receive a gross sum in the amount of \$35,000 with the following allocation break down: \$30,000 will be allocated toward settlement of FIKEL's employment law claims with regard to San Bernardino Superior Court Case No. CIVRS806064. The draft (check) for this amount shall be made payable to "The Law Offices of John Y. Igarashi Client Trust Account" and delivered to The Law Offices of John Y. Igarashi at its business address; \$5,000 will be designated toward settlement of FIKEL's Workers' Compensation claims by means of a COMPROMISE AND RELEASE. Subject to the foregoing, said money shall be distributed to FIKEL not later than sixty (60) calendar days of City Council approval;
- b. The CITY shall approve FIKEL's industrial retirement application at the salary rate of \$4,417 per month subject to the approval of the City Council and CalPERS. The City will, without delay, perform any actions reasonably necessary on its part to effectuate FIKEL's receipt of industrial disability retirement payments;

- c. The CITY waives discovery sanctions obtained in the amount of \$1,350, jointly and severally, against FIKEL and his attorney of record, John Igarashi, on June 3, 2009; and
- d. To the extent available to other retired firefighters, FIKEL shall be provided by the CITY with a standard, official, retired firefighter identification card.

7. FIKEL agrees not to reapply for employment at the CITY, and he forever waives any statutory rights to reemployment he may have. FIKEL thus agrees he will not apply for or seek employment or volunteer work with the CITY, or provide services to the CITY, in any capacity whatsoever, including, but not limited to that of an employee, volunteer, independent contractor, or consultant. In agreeing to this provision, FIKEL knowingly and voluntarily acknowledges that if he applies for or seeks employment or volunteer work with the CITY, or applies for or seeks a contract with the CITY, he shall be denied the employment, volunteer work or contract because of this AGREEMENT. The CITY will also not seek to or attempt to consult, contract with, employ, re-employ, or reinstate FIKEL in any manner. The parties designate August 31, 2009 as FIKEL's last date of employment with the CITY. Long term disability payments will continue to remain in effect through and including FIKEL's last date of employment (August 31, 2009). The parties acknowledge their mutual understanding that FIKEL's disability retirement will become effective as of September 1, 2009.

8a. No withholdings of any kind shall be made from the settlement sums described in paragraph 6a of this AGREEMENT. Although the City or its representatives shall not deduct state and/or federal withholdings from the \$30,000 distribution, the City or its representatives shall report said distribution to THE LAW OFFICES OF JOHN IGARASHI to the Internal Revenue Service and to the Franchise Tax Board by means of a Federal 1099 form (describing the distribution as "other," Box 14).

8b. FIKEL shall hold the CITY harmless regarding any investigative and/or enforcement proceedings that may be initiated by the Internal Revenue Service (IRS) or the Franchise Tax Board (FTB) as regards claims of taxes owed in connection with this distribution.

FIKEL shall bear sole responsibility for any tax liability due as a result of the settlement payment, and FIKEL hereby agrees to indemnify and hold the CITY harmless from any and all tax liabilities, penalties and related IRS and/or FTB fees which may become due as a result of payment of the settlement amount. It is the intention of all parties to this AGREEMENT that the payments made to FIKEL are proper and in accordance with all laws as said payments are made as consideration for execution of a release, and are not wage payments. However, should there be a different determination by either the California Franchise Tax Board or the Internal Revenue Service, FIKEL will be obligated based on the terms of this paragraph.

9. In exchange for the promises contained herein, FIKEL agrees that at the time he signs this AGREEMENT, he will sign and forward a Request for Dismissal, with prejudice, of all Defendants in *Fikel v. City of Montclair*, San Bernardino Superior Court Case No. CIVRS806064, to Bruce Barsook, Liebert Cassidy Whitmore, defense counsel. In addition to his lawsuit, FIKEL also agrees to dismiss with prejudice and withdraw from consideration by any state, local or federal agency or court any grievance, claim, charge, complaint, action, appeal, or notice which he may have filed or could file complaining of or pertaining to any actions relating to his employment with the CITY. CITY's counsel will not file the Request for Dismissal until after delivery of the settlement proceeds.

10. The parties and their respective representative hereto agree that except as required by law, they shall not disclose this AGREEMENT or discuss the terms of this settlement with any person who is not a party hereto, provided however, CITY may discuss the terms of this AGREEMENT with the City Council and its City Attorney, and that FIKEL may discuss the terms of this AGREEMENT with his spouse, tax advisors, and legal counsel.

11. Each party understands, acknowledges and agrees that this AGREEMENT is made as a compromise settlement to resolve actual and/or disputed claims and neither its execution nor the furnishing of consideration in compliance with this AGREEMENT shall constitute or be construed for any purposes as an admission by any party of liability, the merits of any claim or defense, or any violation of any federal or state law, statute, rule, regulation or

principle of common law. Any such liability, admission or violation is expressly denied by each of the parties.

12. FIKEL represents that he has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein against the CITY or its past or present officers, officials, executives, agents, assigns, executors, directors, heirs, predecessors, representatives, affiliates, employees, attorneys, insurers, past and/or present parent, subsidiary and/or affiliated entities, direct or indirect successors-in-interest, and representatives of each of them, past or present.

13. The parties agree to bear their own costs and attorneys' fees incurred in connection with all matters resolved by this AGREEMENT, whether or not incurred as of the date of this AGREEMENT.

14. This AGREEMENT constitutes a single, integrated contract expressing the entire AGREEMENT of the parties hereto. There are no other AGREEMENTS, written or oral, express or implied, between the parties hereto, concerning the subject matter hereof, except the AGREEMENTS set forth herein. The recitals shall be deemed an integral part of this AGREEMENT.

15. Each party and representative for each party to this AGREEMENT has reviewed this AGREEMENT, and accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting parties will not be employed in any interpretation of this AGREEMENT.

16. This AGREEMENT may be executed as one or more counterparts, and each such counterpart shall be deemed an original as to the party to be charged.

17. No waiver of any party of any breach of any term or provision of this AGREEMENT shall be construed to be, nor be, a waiver of any preceding, concurrent or succeeding breach of the same, or any other term or provision hereof. No waiver shall be binding unless in writing and signed by the party to be charged or held bound.

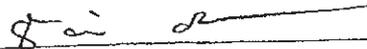
[PAGE 8 OF 8 – SETTLEMENT AGREEMENT AND RELEASE]

[FIKEL v. CITY OF MONTCLAIR]

18. Should any provision of this AGREEMENT be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provisions shall be deemed not to be a part of this AGREEMENT.

19. All parties acknowledge that they are competent to sign this AGREEMENT, and they do so voluntarily. All Parties to this AGREEMENT further acknowledge that they have had an opportunity to review this AGREEMENT prior to executing it and have had an opportunity to, and did, consult legal counsel of their own choosing prior to executing this AGREEMENT regarding the terms of this AGREEMENT and whether or not to execute this AGREEMENT.

DATED: 25 AUG 09

By: 
DAVID FIKEL

CITY OF MONTCLAIR

DATED: _____

By: _____
Paul M. Eaton
Mayor

APPROVED AS TO FORM:

LAW OFFICES OF JOHN IGARASHI, APC

DATED: AUGUST 25, 2009

By: 
JOHN IGARASHI,
Attorneys for DAVID FIKEL

LIEBERT CASSIDY WHITMORE

DATED: _____

By: _____
BRUCE BARSOOK,
Attorneys for CITY OF MONTCLAIR

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT
NO. 09-86 WITH THE CALIFORNIA
DEPARTMENT OF EDUCATION TO
PROVIDE SUMMER AFTER-SCHOOL
PROGRAMS

DATE: September 8, 2009

SECTION: AGREEMENTS

ITEM NO.: 6

FILE I.D.: HSV030

**BUSINESS
PLAN:** N/A

DEPT.: COMMUNITY DEV.

REASON FOR CONSIDERATION: The City of Montclair was awarded a California Department of Education (CDE) 21st Century Community Learning Centers Program—Elementary and Middle Schools Grant. Agreement No. 09-86 with CDE would provide funding for after-school programs to be administered during the summer for five weeks.

BACKGROUND: The Montclair Community Collaborative (MCC), organized in 1996, is a partnership between the City, OMSD, and community organizations having the core objective of improving quality-of-life outcomes for children and youth. Through the ongoing strategic planning process, MCC identifies resources and develops services for children, youth, and adults.

The goal of the CDE 21st Century Program Grant is to promote opportunities for academic enrichment helping students and schools meet performance standards in core academic subjects including reading, language, and mathematics. Youth development activities including art, music, character education, and recreation programs are also part of the grant objectives.

The attached Agreement was received on August 25, 2009 and is the second year of a three-year renewable grant. The program funding allows for summer after-school programs at Kingsley, Mission, Montera, and Ramona elementary schools. It also funds programs at both Serrano and Vernon middle schools. The funding allows these schools to provide academic and literacy support as well as safe, constructive alternatives to students in kindergarten through eighth grades for five weeks. The recreational and enrichment experiences support the learning experiences addressed during the regular instructional day.

The term of proposed Agreement No. 09-86 is July 1, 2009, through December 31, 2010.

FISCAL IMPACT: Should the City Council approve Agreement No. 09-86, the second year of the three-year renewable grant, in the amount of \$89,251, would be awarded to the City. These funds have been allocated to the City through the California Department of Education. The funding would pay for grant oversight, training, supplies, and the salaries of a Learning Coordinator and Learning Leaders at each school site. The award is contingent upon the availability of state funds. If the Legislature takes action to reduce or

Prepared by: M. Richter

Reviewed and
Approved by:

Proofed by: Christine Smudersky

Presented by:

Steve Lupton
Joe Chedoke

defer the funding upon which this award is based, this award would be amended accordingly.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-86 with the California Department of Education to provide summer after-school programs.

Grant Award Notification

GRANTEE NAME AND ADDRESS Lee McDougal, City Manager City of Montclair 5111 Benito Street Montclair, CA 91763	CDE GRANT NUMBER			
	FY	PCA	Vendor Number	Suffix
	09	14349	2110	5A
Attention After School Coordinator	36	STANDARDIZED ACCOUNT CODE STRUCTURE		
Program Office After School Program Office		Resource	Revenue Object	
Telephone 909-625-9402		4124	8290	

Name of Grant Program						
21st Century Community Learning Centers—Elementary & Middle Schools Program—Core						
GRANT AMOUNT	Original/Prior Amendments	Amendment Number	Amendment Amount	Total	Index	Federal Catalog Number
	\$89,251.00			\$89,251.00	0604	84.287
AWARD DATES	Starting		Ending			
	July 1, 2009		December 31, 2010			

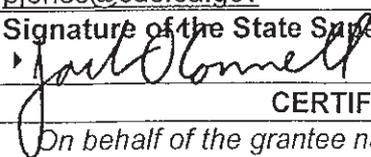
Dear Mr. McDougal:

Congratulations! I am pleased to inform you that you have been funded for the 21st Century Community Learning Centers—Elementary & Middle Schools Program—Core.

This award is made contingent upon the availability of funds. If the Legislature takes action to reduce or defer the funding upon which this award is based, then this award will be amended accordingly.

Please return the original, signed Grant Award Notification (AO-400) to:

Paul Simpson-Jones, Associate Governmental Programs Analyst
 After School Programs Office
 California Department of Education
 1430 N Street, Suite 6408
 Sacramento, CA 95814-5901

California Department of Education Contact		Title	
Paul Simpson-Jones		Associate Governmental Programs Analyst	
E-mail Address		Telephone	
pstones@cde.ca.gov		916-319-0211	
Signature of the State Superintendent of Public Instruction or Designee		Date	
		August 19, 2009	
CERTIFICATION OF ACCEPTANCE OF GRANT REQUIREMENTS			
<i>On behalf of the grantee named above, I accept this grant award. I have read the applicable certifications, assurances, terms, and conditions identified on the grant application (for grants with an application process) or in this document or both; and I agree to comply with all requirements as a condition of funding.</i>			
Printed Name of Authorized Agent		Title	
E-mail Address		Telephone	
Signature		Date	
▶			

Grant Award Notification (Continued)

This award is contingent upon the availability of federal funds. The 21st Century Community Learning Centers (CCLC) Program, authorized by Title IV Part B of the No Child Left Behind Act of 2001 (Public Law 107-110), funds before and after school programs established by collaborative partnerships that may involve local educational agencies (LEAs), cities, counties, and community-based organizations (local agencies).

1. All federal statutes and regulations applicable to each program under which federal funds are made available through this application will be met by the local agency in its administration of each program. The grantee will follow its program plans as specified in the grant application.
2. The grantee will submit reports to the California Department of Education (CDE) to enable the state agency to perform its duties, and will maintain such records and provide access to those records, as the CDE deems necessary. The grantee shall maintain such records for five years after the completion of the activities for which the funds are used.
3. The grantee will make any application, evaluation, periodic program plan, or report relating to each program available to parents and other members of the general public (California Public Records Act, *Government Code* Section 6250 et seq.).
4. No more than 15 percent of grant monies earned may be used for administrative costs (including indirect costs equal to the CDE-approved indirect cost rate or 5 percent, whichever is less).
5. Funds must supplement, not supplant, existing services. Programs may not use 21st CCLC funds to pay for existing levels of services.
6. This grant shall be administered in accordance with the provisions of *California Education Code (EC)* sections 8484.7 through 8484.9. Expenditures shall comply with all applicable provisions of state, federal and local rules, regulations, and policies relating to the administration, use, and accounting for public school funds, including but not limited to, the *EC*.
7. Federal law Title 34 *Code of Federal Regulations* 80.21(i) requires that any interest earned by grantees on federal dollars be returned to the U.S. Department of Education if the amount is in excess of \$100. Grantees should forward the interest payment to the following address:

Accounting Office/Cashier's Office
California Department of Education
P.O. Box 515006
Sacramento, CA 95851-5006

8. The grantee shall submit attendance reports on a semi-annual basis and expenditure reports on a quarterly basis through the After School Support and Information System (ASSIST) on the ASSIST Grant Management Web page located at <http://www3.cde.ca.gov/assist/>. Failure to submit reports as required may result in denial of the remaining grant amount, an invoice from the CDE for the entire grant amount, and reduction or cancellation of future grant funds pursuant to *EC* Section 8483.7.
9. Due dates are listed on the Reporting Due Dates Web page located at <http://www.cde.ca.gov/ls/ba/as/duedates.asp>.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 09-87, A PURCHASE AND SALE AGREEMENT WITH ROBERT D. KESSLER AND SIRA KESSLER, TRUSTEES OF THE KESSLER FAMILY LIVING TRUST, UNDER DECLARATION OF TRUST DATED SEPTEMBER 12, 2007, FOR PROPERTY LOCATED AT 4790 MISSION BOULEVARD IN THE CITY OF MONTCLAIR	DATE: September 8, 2009 SECTION: AGREEMENTS ITEM NO.: 7 FILE I.D.: STA110 DEPT.: PUBLIC WORKS
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CONSIDER AUTHORIZING CITY MANAGER TO EXECUTE AGREEMENT NO. 09-87

BUSINESS

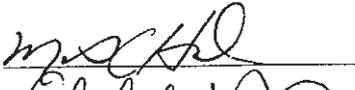
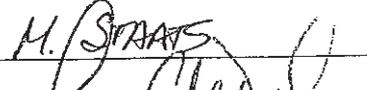
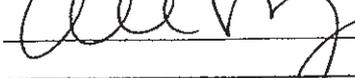
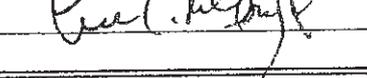
PLAN: STRATEGIC PRIORITY NO. 6

REASON FOR CONSIDERATION: As part of an ongoing effort to secure right-of-way for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, an offer has been made to purchase certain real property in the City of Montclair. A counteroffer for the subject property has been accepted, and a Purchase and Sale Agreement has been signed by the seller. Purchase and Sale Agreements involving the City must be approved by the City Council.

Approval of Agreement No. 09-87 satisfies a portion of Strategic Priority No. 6 as contained in Montclair's "Business Plan."

BACKGROUND: With the passage of the Traffic Congestion Relief Act of 2000, funding was made available for the construction of grade separations between streets and railroad tracks in several areas of the state. The Act provided \$95 million for grade separations in San Bernardino County, including one between Monte Vista Avenue and the Union Pacific Railroad tracks. A consultant was hired by the City to assist with the environmental clearance, design, and right-of-way acquisition. With the design nearly complete, the acquisition of several parcels, either in whole or in part, was identified as necessary for the construction of the grade separation.

One of these properties identified for partial acquisition is located at 4790 Mission Boulevard. Right-of-way is required as shown on Exhibit B to the attached grant deed and would be used as a connector street between State Street and Monte Vista Avenue. The right-of-way is being acquired from Robert D. Kessler and Sira Kessler, Trustees of the Kessler Family Living Trust, under Declaration of Trust Dated September 12, 2007, hereinafter referred to as the Kessler right-of-way and the owners as the Kesslers.

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

The acquisition of the Kessler right-of-way was discussed with the City Council in Closed Session on December 19, 2005, February 5, 2007, and April 21, 2008. An offer letter was prepared and submitted to the Kesslers by the City's right-of-way acquisition agent. After reviewing the construction drawings and the City's offer, the Kesslers asked that certain work be included as part of the grade separation construction. The additional work, consisting of fence relocations, additional fence and gate installations, and drive approach construction, is acceptable to the City. The Kesslers also asked that the City take the right-of-way as a fee acquisition rather than as an easement. This request is also acceptable to the City. Finally, the Kesslers asked for an increase in the compensation offer. Staff recommends acceptance of the counteroffer. The attached purchase and sale agreement includes all the requested changes and the agreed upon price.

FISCAL IMPACT: The agreed upon price for the Kessler property is \$1,696,558. Additional expenses are expected to be incurred for escrow and title insurance. This cost should not exceed \$15,000. Additional expenses will also be incurred in relocating 13 tenants currently occupying trailers, buildings, and/or fenced-in enclosures on the Kessler property. These relocation costs range from \$150 to \$27,000 per tenant with a total cost expected to be approximately \$84,000. City funds would be used for the acquisition. Upon payment, the City would request reimbursement from the state through the Traffic Congestion Relief Program. Sufficient funds are currently available through the state.

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

1. Approve Agreement No. 09-87, a Purchase and Sale Agreement with Robert D. Kessler and Sira Kessler, Trustees of the Kessler Family Living Trust, under Declaration of Trust Dated September 12, 2007, for property located at 4790 Mission Boulevard in the City of Montclair.
2. Authorize City Manager to execute Agreement No. 09-87.

APN: 1012-111-02

TITLE REPORT NO: 140-845400-03

PROJECT: Monte Vista Avenue at Union Pacific Railroad – Grade Separation Project

AGREEMENT FOR ACQUISITION OF REAL PROPERTY
(ESCROW INSTRUCTIONS)

THIS AGREEMENT is entered into this ____ day of _____ 2009, by and between the City of Montclair (hereinafter called "Buyer"), and the undersigned Robert D. Kessler and Sira Kessler, Trustees of the Kessler Family Living Trust, dated September 12, 2007 (hereinafter called "Seller") for acquisition by Buyer of certain real property hereinafter set forth.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. AGREEMENT TO SELL AND PURCHASE. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and for the consideration set forth in this Agreement (hereinafter called "Agreement"), all that certain real property (hereinafter called "Property") situated in the City of Montclair, County of San Bernardino, State of California, and legally described as follows:

SEE EXHIBITS "A" AND "B" ATTACHED HERETO
AND BY THIS REFERENCE MADE A PART HEREOF

2. PURCHASE PRICE. The total purchase price, payable in cash through escrow, shall be the sum of:

ONE MILLION SIX HUNDRED NINETY-SIX THOUSAND FIVE HUNDRED FIFTY-EIGHT
AND NO/100 DOLLARS
(\$1,696,558.00)

3. CONVEYANCE OF TITLE. Seller agrees to convey by Grant Deed to Buyer title to the Property free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, and taxes EXCEPT:

A. Non-delinquent taxes for the fiscal year in which this transaction closes which shall be cleared and paid in the manner required by Sections 4986 and 5086 of the Revenue and Taxation Code, if unpaid at the close of this transaction.

B. Public or quasi-public utilities, public alley, public street easements, and public or quasi-public rights of way of record.

C. Items numbered 1, 2, 3, 5 and 6 of the above numbered title report issued by Orange Coast Title Company dated June 1, 2009.

4. TITLE INSURANCE POLICY. Escrow Agent shall, following the recording of the deed to

Buyer, provide Buyer with CLTA Standard Coverage Policy of Title Insurance in the amount of \$1,696,558.00, issued by Orange Coast Title Company, showing the title to the property vested in Buyer, subject only to the exceptions set forth in Paragraph 3 and the printed exceptions and stipulations in said policy. Buyer agrees to pay the premium charged therefore.

5. ESCROW. Buyer agrees to open an escrow in accordance with this Agreement at an escrow company of the Buyer's choice. This Agreement constitutes the joint escrow instructions of Buyer and Seller, and Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts necessary to close this escrow in the shortest possible time.

Seller shall execute and deliver said deed(s) as referenced in Paragraph 3, above, to Escrow Agent concurrently with this Agreement, or as soon as possible thereafter, when said deeds are available. After the opening of escrow, Buyer will deposit an executed Certificate of Acceptance with Escrow Agent. Buyer agrees to deposit the purchase price upon demand of Escrow Agent. Buyer and Seller agree to deposit with Escrow Agent any additional instruments as may be necessary to complete this transaction.

All funds received in this escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account.

6. ESCROW AGENT IS AUTHORIZED TO, AND SHALL:

- A. Pay and charge Seller, upon Seller's written approval, for any amount necessary to place title in the condition necessary to satisfy Paragraph 3 of this Agreement.
- B. Pay and deduct from the amount shown in Paragraph 2 above, any amount necessary to satisfy any delinquent taxes and/or penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds against the property, except those to which title is to be taken subject to in accordance with the terms of this Agreement.
- C. Pay and deduct from the amounts payable to Seller under Paragraph 2 of this Agreement, up to and including the total amount of unpaid principal and interest on note(s) secured by mortgage(s) or deed(s) of trust, if any, and all other amounts due and payable in accordance with terms and conditions of said trust deed(s) or mortgage(s) including late charges, if any, except penalty (if any), for payment in full in advance of maturity, shall, upon demand(s) be made payable to the mortgagee(s) or beneficiary(ies) entitled thereunder.
- D. Pay and charge Buyer for all recording fees incurred in this transaction including payment of reconveyance fees and forwarding fees for partial or full reconveyances of deeds of trust or release or mortgage by Buyer.

E. Pay and charge Buyer for any escrow fees, charges, and costs payable under Paragraph 7 of this Agreement.

F. Disburse funds and deliver deed when conditions of this escrow have been fulfilled by Buyer and Seller.

The term "close of escrow", if and where written in these instructions, shall mean the date necessary instruments of conveyance are recorded in the office of the County Recorder. The recordation of instruments delivered through this escrow is authorized if necessary or proper in the issuance of said policy of title insurance.

All time limits within which any matter herein specified is to be performed may be extended by mutual agreement of the parties hereto. Any amendment of, or supplement to, any instructions must be in writing.

TIME IS OF THE ESSENCE IN THESE INSTRUCTIONS AND ESCROW IS TO CLOSE AS SOON AS POSSIBLE

7. ESCROW FEES, CHARGES AND COSTS. Buyer agrees to pay all Buyer's and Sellers usual fees, charges, and costs which arise in this escrow.

8. RESERVATION OF NON-EXCLUSIVE EASEMENT FOR ACCESS. The Grant Deed shall provide that Seller's conveyance of the real property in fee simple absolute is subject to the reservation of a non-exclusive access easement, inasmuch as Buyer is acquiring the property for the purpose of the construction of a public street. This easement shall extend from the time of the close of escrow until the Buyer commences construction of the public street on the Property.

9. FULL AND COMPLETE SETTLEMENT. Seller hereby acknowledges that the compensation paid to Seller through this Agreement constitutes the full and complete settlement of any and all claims against Buyer, by reason of Buyer's acquisition of the Property, specifically including, but not limited to, any and all damage to Seller's remainder property by reason of the acquisition of the Subject Property or the installation of the improvement project in the manner proposed, the value of improvements pertaining to the realty, leasehold improvements, any and all claims of rental or leasehold value and loss of business goodwill (excluding relocation benefits, if any), and any and all claims in inverse condemnation and for precondemnation damages, and any and all other claims that Seller may have, whether or not specifically mentioned here, relating directly or indirectly to the acquisition by Buyer of this Subject Property. Seller and Buyer, and each and all of their individual collective agents, representatives, attorney, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, hereby release the other part, from any and all obligations, liabilities, claims, costs, expenses, demands, debts, controversies, damages, cause of action, including without limitations those relating to just compensation, damages, which any of them now have, or might hereafter have, by reason of any matter or thing arising out of or in any way related to the acquisition of the Subject Property.

10. CONSTRUCTION AND CURATIVE WORK.

A. It is understood and agreed, by and between the parties hereto, that in addition to the compensation shown in Paragraph 2 hereinabove, the Buyer shall perform the following construction items at the time of the construction of the proposed grade separation project:

1. Install four (4) driveway entrances along new Greenwood Avenue as indicated on Exhibit "C" attached hereto and by this reference made a part hereof.
2. Install new fencing, per City of Montclair code, along new Greenwood Avenue right of way line as indicated on Exhibit "C" attached hereto.
3. Install four (4) gates at driveways along new Greenwood Avenue as indicated on Exhibit "C" attached hereto.

B. All work performed under this agreement shall conform to all applicable building, fire and sanitary laws, ordinance and regulations relating to such work and shall be completed in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated or reconstructed by the Buyer, shall be left in as good a condition as found.

11. CLOSING STATEMENT. Seller instructs Escrow Agent to release a copy of Seller's closing statement to Buyer and to Overland, Pacific & Cutler, Inc., 2280 Market Street, Suite 340, Riverside, California 92501, so that Overland can ascertain if any reimbursements are due Seller.

12. WARRANTIES, REPRESENTATIONS, AND COVENANTS OF SELLER. Seller hereby warrants, represents, and/or covenants to Buyer that:

- A. Seller acknowledges to the Buyer that: (a) they own the entire fee interest in the Property, subject to all matters of record and all matters which an inspection and accurate survey would show; (b) they have made no assignment of any interest in the Property subject to all matters of record and all matters which an inspection and accurate survey would show; and (c) they know of no other individual, party or entity that has or claims any right to any portion of the purchase price to be paid by the City for the Property.
- B. Seller acknowledges that Buyer possesses the power, under California law, to acquire the Property herein by eminent domain. Based upon the intention of Buyer's staff to schedule a hearing to have the City Council consider adopting a resolution of necessity to acquire the Property by eminent domain, Seller has agreed to sell the Property to the Buyer, pursuant to the terms and conditions of this

Agreement, in lieu of the Buyer holding a resolution of necessity hearing to consider acquiring the Property by eminent domain.

- C. To the best of Seller's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the property or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.
- D. To the best of Seller's knowledge, there are no encroachments onto the property by improvements on any adjoining property, nor do any buildings or improvements encroach on other properties.
- E. Until the closing, Seller shall maintain the property in good condition and state of repair and maintenance, and shall perform all of its obligations under any service contracts or other contracts affecting the property.
- F. Until the closing, Seller shall not do anything which would impair Seller's title to any of the property.
- G. All utilities including gas, electricity, water, sewage, and telephone, are available to the property, and to the best of Seller's knowledge, all such items are in good working order.
- H. To the best of Seller's knowledge, neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, or other agreement or instrument to which Seller's property may be bound.
- I. Until the closing, Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in these Warranties, Representations, and Covenants of Seller Section not to be true as of closing, immediately give written notice of such fact or condition to Buyer.
- J. HAZARDOUS WASTE. Neither Seller nor, to the best of Seller's knowledge, any previous owner, tenant, occupant, or user of the Property used, generated, released, discharged, stored, or disposed of any hazardous waste, toxic substances, or related materials ("Hazardous Materials") on, under, in, or about the Property, or transported any Hazardous Materials to or from the Property. Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from the Property. The term "Hazardous Material" shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under Section 25115, 25117 or

25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyl's, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as a "hazardous substances" pursuant to Section 311 of the Clean Water Act, (33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903), or (xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and amended by Liability Act, 42. U.S.C. §9601 *et seq.* (42 U.S.C. §9601).

- K. COMPLIANCE WITH ENVIRONMENTAL LAWS. To the best of Seller's knowledge and belief the Property and its intended use complies with all applicable laws and governmental regulations including, without limitation, all applicable federal, state, and local laws pertaining to air and water quality, hazardous waste, waste disposal, and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery, and Comprehensive Environmental Response Compensation and Liability Acts, and the California Environment Quality Act, and the rules, regulations, and ordinances of the city within which the subject property is located, the California Department of Health Services, the Regional Water Quality Control Board, the State Water Resources Control Board, the Environmental Protection Agency and all applicable federal, state, and local agencies and bureaus.
- L. In the event that Buyer requires Seller to perform any remediation work on the real property being acquired by Buyer, Seller shall be permitted to select and enter into contracts with remediation consultants of its own choosing, provided that such consultants have all licenses or permits required by local ordinance, state law, or federal law.

13. INDEMNITY. Seller agrees to indemnify, defend and hold Buyer harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage, or disposal of any Hazardous Material on, under, in, or about, or the transportation of any such materials to or from, the Property,

or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment, or license relating to the use, generation, release, discharge, storage, disposal, or transportation of Hazardous Materials on, under, in, or about, to or from, the Property. This indemnity shall include, without limitation, any damage, liability, fine, penalty, punitive damage, cost, or expense arising from or out of any claim, action, suit, or proceeding for personal injury (including sickness, disease, or death, tangible or intangible property damage, compensation for lost wages, business income, of its or other economic loss, damage to the natural resource or the environment, nuisance, pollution, contamination, leak, spill, release or other adverse effect on the environment). This indemnity extends only to liability created prior to or up to the date this escrow shall close. Seller shall not be responsible for acts or omissions to act after the close of this escrow.

14. CONTINGENCY. It is understood and agreed between the parties hereto that the completion of this transaction, and the escrow created hereby, is contingent upon the specific acceptance and approval of the Buyer herein. The execution of these documents and the delivery of same to Escrow Agent constitute said acceptance and approval.

The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns, and successors of the parties hereto.

This Agreement contains the entire agreement between both parties; neither party relies upon any warranty or representation not contained in this Agreement.

15. COUNTERPARTS. This agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

16. MISCELLANEOUS.

- A. Assignment. This Agreement shall not be assignable by any Party without prior written consent of the other Party; provided, however, that Buyer may assign their rights hereunder.
- B. Governing Law. All questions with respect to this Agreement, and the rights and liabilities of the Parties hereto, shall be governed by the laws of the State of California.
- C. Inurement. Subject to the restrictions against assignment as herein contained, this Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estates, heirs and legatees of each of the Parties hereto.
- D. Attorney's Fees. In the event of any controversy, claim or dispute between the Parties hereto, arising out of or relating to this Agreement or the breach thereof, the prevailing Party shall be entitled to recover from the other Party reasonable

attorney's fees and costs.

- E. Additional Documents. All Parties hereto agree to execute any and all additional documents and instruments necessary to carry out the terms of this Agreement.
- F. No Merger. All warranties, representations, acknowledgements, releases, covenants and obligations contained in this Agreement shall survive the delivery and recordation of the Grant Deed.
- G. Authority to Execute on Behalf of Buyer. Lee C. McDougal represents to Seller that he is the City Manager of the Buyer and that he is authorized by Buyer to execute this Agreement on its behalf.
- H. Ratification. This Agreement may be subject to approval and ratification by the City Council of the City of Montclair.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth hereinabove.

MAILING ADDRESS OF SELLER

Robert D. Kessler, Trustee
of the Kessler Family Living Trust
4848 Mission Boulevard
Montclair, CA 91762

Sira Kessler, Trustee
of the Kessler Family Living Trust
4848 Mission Boulevard
Montclair, CA 91762

SELLER


Robert D. Kessler, Trustee


Sira Kessler, Trustee

MAILING ADDRESS OF BUYER

City of Montclair
c/o Mike Hudson, City Engineer
P.O. Box 2308
Montclair, CA 91763

BUYER

Lee C. McDougal, City Manager

EXHIBIT "A"

LEGAL DESCRIPTION:

THAT PORTION OF THE WEST ONE-HALF OF THE EAST ONE-HALF OF LOT 35 OF MAP OF SAN ANTONIO TRACT IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3 OF MAPS, PAGE 16 MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWESTERLY CORNER OF PARCEL 1 OF PARCEL MAP NO. 12231 AS PER MAP RECORD IN BOOK 146 PAGES 77 AND 78 INCLUSIVE OF PARCEL MAPS SAID POINT ALSO BEING A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF STATE STREET (33.00 FEET WIDE HALF-WIDTH); THENCE SOUTH $01^{\circ}00'00''$ EAST ALONG THE WESTERLY LINE OF SAID PARCEL 1 A DISTANCE OF 810.65 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 82.00 FEET TO WHICH A RADIAL LINE BEARS SOUTH $01^{\circ}00'00''$ EAST; THENCE NORTHWESTERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF $112^{\circ}26'44''$ AN ARC LENGTH OF 160.93 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 50.00 FEET; THENCE NORTHERLY ALONG SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF $22^{\circ}26'44''$ AN ARC LENGTH OF 19.59 FEET; THENCE NORTH $01^{\circ}00'00''$ WEST A DISTANCE OF 306.90 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 264.00 FEET; THENCE NORTHWESTERLY ALONG SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF $28^{\circ}22'41''$ AN ARC LENGTH OF 130.76 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 336.00 FEET; THENCE NORTHERLY ALONG SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF $28^{\circ}22'41''$ AN ARC LENGTH OF 166.42 FEET; THENCE NORTH $01^{\circ}00'00''$ WEST A DISTANCE OF 55.33 FEET; THENCE NORTH $44^{\circ}03'40''$ WEST A DISTANCE OF 48.16 FEET TO THE SOUTH RIGHT OF WAY LINE OF SAID STATE STREET (30.00 FEET HALF-WIDTH); THENCE NORTH $89^{\circ}25'56''$ EAST ALONG SAID RIGHT OF WAY LINE A DISTANCE OF 176.99 FEET TO THE NORTHERLY PROLONGATION OF SAID WESTERLY LINE; THENCE SOUTH $01^{\circ}00'00''$ EAST ALONG SAID NORTHERLY PROLONGATION A DISTANCE OF 3.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 76,028 SQUARE FEET OR 1.745 ACRES, MORE OR LESS.

EXHIBIT "B" ATTACHED HERETO AND MADE A PART THEREOF.

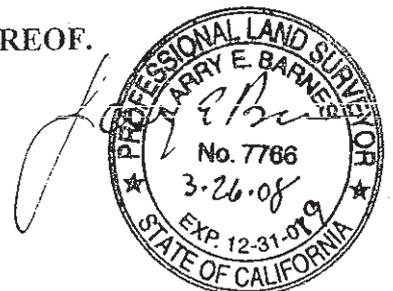
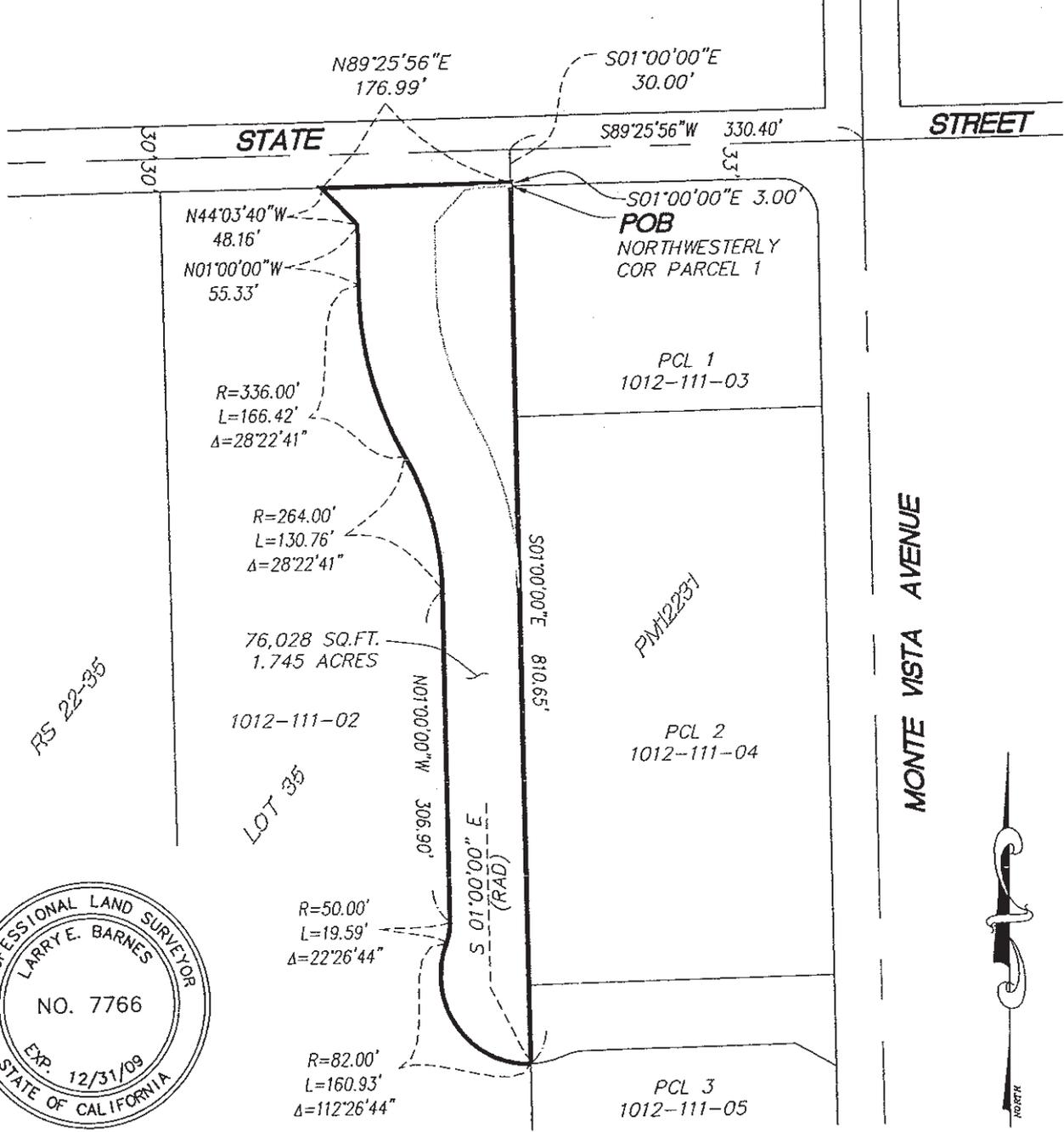


EXHIBIT "B"

ASSESSORS PARCEL NUMBER
1012-111-02



BASIS OF BEARINGS:

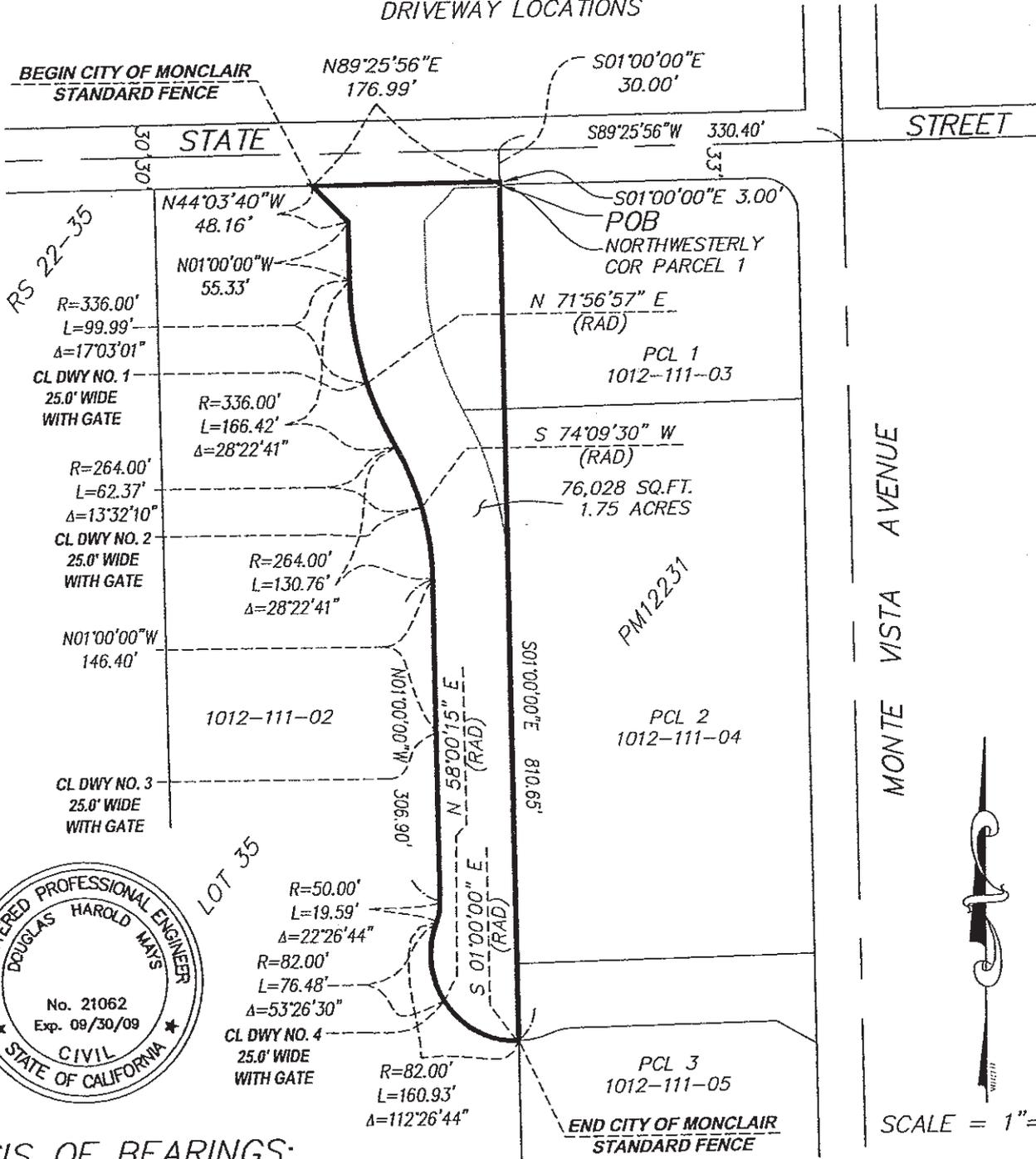
BEARINGS SHOWN HEREON ARE BASED ON THE BEARING BETWEEN SAN BERNARDINO COUNTY SURVEYOR'S HORIZONTAL CONTROL STATION DESIGNATIONS CALID AND MONA BEING NORTH 86°38'38" WEST (GRID) PER RECORDS ON FILE IN THE OFFICE OF THE OFFICE OF THE SAN BERNARDINO COUNTY SURVEYOR.

PREPARED BY ME OR UNDER MY DIRECTION
 BY: *Larry E. Barnes* 3.26.08
 LARRY E. BARNES DATE
 LAND SURVEYOR, PLS. 7766
 ADVANCED SURVEY CONCEPTS, INC.

EXHIBIT "C"

ASSESSORS PARCEL NUMBER
1012-111-02

DRIVEWAY LOCATIONS



SCALE = 1"=150'

BASIS OF BEARINGS:

BEARINGS SHOWN HEREON ARE BASED ON THE BEARING BETWEEN SAN BERNARDINO COUNTY SURVEYOR'S HORIZONTAL CONTROL STATION DESIGNATIONS CALID AND MONA BEING NORTH 86°38'38" WEST (GRID) PER RECORDS ON FILE IN THE OFFICE OF THE OFFICE OF THE SAN BERNARDINO COUNTY SURVEYOR.

PREPARED BY ME OR UNDER MY DIRECTION
 BY: Douglas H. Mays 6-15-09
 DOUGLAS H. MAYS DATE
 CIVIL ENGINEER, P.E. C21062
 EXPIRES: SEPTEMBER 30, 2009

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 09-2812 ADOPTING A MEASURE I SIX- YEAR CAPITAL IMPROVEMENT PROGRAM	DATE: September 8, 2009
CONSIDER ADOPTION OF RESOLUTION NO. 09-2813 ADOPTING A FIVE-YEAR CAPITAL PROJECT NEEDS ANALYSIS	SECTION: RESOLUTIONS
	ITEM NO.: 1
	FILE I.D.: FIN285/TRN510
	DEPT.: PUBLIC WORKS

BUSINESS

PLAN: STRATEGIC PRIORITY NO. 3, GOAL 3

REASON FOR CONSIDERATION: The San Bernardino Associated Governments (SANBAG) requires each local jurisdiction to annually update its Measure I Five-Year Capital Improvement Program (CIP) and Expenditure Strategy proposed to be funded by Measure I. Beginning this year, SANBAG is also requiring each local jurisdiction to annually adopt a Five-Year Capital Project Needs Analysis. The City Council is requested to consider adopting Resolution Nos. 09-2812 and 09-2813 adopting the documents pursuant to SANBAG requirements.

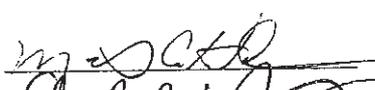
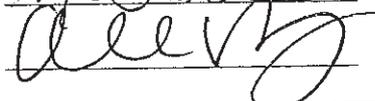
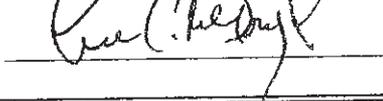
Adoption of Resolution Nos. 09-2812 and 09-2813 would satisfy a portion of Strategic Priority No. 3, Goal 3, as contained in Montclair's "Business Plan."

BACKGROUND: Measure I, the countywide transportation sales tax program, requires that each local jurisdiction receiving pass-through program revenues annually adopt a Measure I Five-Year CIP that outlines the specific projects upon which those funds are to be expended. Inasmuch as there is only one year remaining in Measure I, and Measure I 2010-2040 will begin the following year, SANBAG has asked local jurisdictions to adopt a Six-Year CIP this year.

Beginning this year, SANBAG has also asked local jurisdictions to begin adopting a Five-Year Capital Needs Analysis (CPNA) on an annual basis. The CPNA differs from the CIP in that the CPNA contains only projects that are included in SANBAG's Nexus program. Nexus projects typically include freeway interchange projects, arterial projects, and grade separation projects. Project funding also includes contributions from developers through the development impact fee program.

For this year only, SANBAG is requiring jurisdictions to submit a Six-Year CIP and a Five-Year CPNA. In future years, both the CIP and the CPNA will cover the same five-year period.

Resolution No. 09-2812 lists various projects proposed to be funded by Measure I for City Council consideration. For most of the 20-year life of the original Measure I, Mission Boulevard improvements were the only projects listed. Most of these improvements are completed, and the last three phases are scheduled for construction this current fiscal year, which is the last year of the original Measure I and the first year of the Six-Year CIP.

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

With the completion of the Mission Boulevard improvements, it is proposed that the pass-through Measure I funds be used for the City's pavement management program for the next several years. This proposal would allow the City to catch up on some deferred maintenance on its local, collector, and arterial streets. SANBAG requires local jurisdictions to include a simple one- or two-paragraph expenditure strategy explaining what they are doing to spend their Measure I money. The resolution includes this expenditure strategy.

FISCAL IMPACT: SANBAG has estimated that the City would receive \$2,719,153 during the six-year period covered by Fiscal Years 2009-2010 through 2014-2015. Adoption of Resolution No. 09-2812 would allow the City to continue to receive Measure I subventions.

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

1. Adopt Resolution No. 09-2812 adopting a Measure I Six-Year Capital Improvement Program.
2. Adopt Resolution No. 09-2813 adopting a Measure I Five-Year Capital Project Needs Analysis.

RESOLUTION NO. 09-2812

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MONTCLAIR ADOPTING THE SIX-YEAR CAPITAL
IMPROVEMENT PROGRAM**

WHEREAS, San Bernardino County voters approved passage of Measure I 1990-2010 in November 1989 and renewed as Measure I 2010-2040 in November 2004 authorizing San Bernardino Associated Governments, acting as the San Bernardino County Transportation Authority, to impose a one-half of one percent retail transactions and use tax applicable in the incorporated and unincorporated territory of the County of San Bernardino; and

WHEREAS, revenue from the tax can only be used for transportation improvement and traffic management programs authorized in the Expenditure Plans set forth in Ordinance No. 89-1 of the Authority; and

WHEREAS, Expenditure Plans of the Ordinance require each local jurisdiction receiving revenue from the tax to expend those funds pursuant to a Capital Improvement Program (CIP) adopted by resolution of the local jurisdiction; and

WHEREAS, Expenditure Plans of the Ordinance also require that each local jurisdiction annually adopt and update its CIP; and

WHEREAS, an Expenditure Strategy is also a requirement of the Authority.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby adopts the Measure I Six-Year CIP and Expenditure Strategy, copies of which are attached to this Resolution.

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. 09-2812 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

CITY OF MONTCLAIR
EXPENDITURE STRATEGY

2009/2010

With the adoption of Measure I in 1989, the City of Montclair committed the revenue to be generated from the tax to the rehabilitation of the Mission Boulevard Corridor. This two-and-one-quarter-mile corridor extends from the Los Angeles County line at the San Antonio Channel to the City of Ontario at Benson Avenue. The rehabilitation work, mostly now complete, included pavement resurfacing/replacement; installation of curb, gutter, and sidewalk; modifications to or installation of new traffic signals; construction of a landscaped median; and installation of street lighting. Due to the size of the project and the associated cost, the project is being completed in multiple phases.

Remaining Mission Boulevard work is expected to be completed by early 2010 and is, therefore, still shown in the six-year Measure I Capital Improvement Program. With the completion of the Mission Boulevard improvements, the City will focus on pavement infrastructure maintenance and rehabilitation.

CITY OF MONTCLAIR

MEASURE I SIX-YEAR PLAN 2009/2015

YEAR	STREET & LIMITS	IMPROVEMENT	COST ESTIMATE
2009/2010	Phase 7 Mission Boulevard-Pipeline Avenue to 600 feet east of Pipeline Avenue. Phase 8 Mission Boulevard-Ada Avenue to Benson Avenue. Phase 9 Mission Boulevard-Pipeline Avenue to west City Limit.	This multi-phased, multi-year project includes curb, gutter, and sidewalk construction; pavement rehabilitation; storm drain construction; traffic signal modifications as necessary; street lighting; and median and parkway landscaping.	\$4,800,000
2010/2011	Pavement Rehabilitation-Variou Locations	Grind and overlay including application of pavement fabric as necessary.	\$500,000
2011/2012	Pavement Rehabilitation-Variou Locations	Grind and overlay including application of pavement fabric as necessary.	\$500,000
2012/2013	Pavement Rehabilitation-Variou Locations	Grind and overlay including application of pavement fabric as necessary.	\$500,000
2013/2014	Pavement Rehabilitation-Variou Locations	Grind and overlay including application of pavement fabric as necessary.	\$500,000
2014/2015	Pavement Rehabilitation-Variou Locations	Grind and overlay including application of pavement fabric as necessary.	\$500,000
		TOTAL	\$7,300,000

Contact: Michael C. Hudson
City Engineer
909-625-9441
Resolution No. 09-2812

Measure I Revenue Estimate (six years)

\$2,719,153

RESOLUTION NO. 09-2813

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MONTCLAIR ADOPTING THE FIVE-YEAR CAPITAL
PROJECTS NEEDS ANALYSIS**

WHEREAS, San Bernardino County voters approved passage of the extension of Measure I in November 2004 authorizing San Bernardino Associated governments, acting as the San Bernardino County Transportation Authority, to impose a one-half of one percent retail transactions and use tax applicable in the incorporated and unincorporated territory of the County of San Bernardino; and

WHEREAS, revenue from the tax can only be used for transportation improvement and traffic management programs authorized in the Expenditure Plans set forth in Ordinance No. 04-1 of the Authority; and

WHEREAS, the Strategic Plan requires each local jurisdiction applying for revenue from the Valley Major Street and Freeway Interchange Programs to annually adopt and update a Five-Year Capital Project Needs Analysis.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby adopts the Measure I Five-Year Capital Project Needs Analysis.

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. 09-2813 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. 09-2814 DETERMINING THE STATUS OF LOCAL SAFETY EMPLOYEE DAVID FARRELL FIKEL	DATE: September 8, 2009 SECTION: RESOLUTIONS ITEM NO.: 2 FILE I.D.: PER600 DEPT.: ADMIN. SVCS.
BUSINESS PLAN: N/A	

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

BACKGROUND: David Farrell Fikel was hired as a Firefighter on July 29, 2002. During a training exercise on August 10, 2002, a falling ladder caused injury to Mr. Fikel's left thumb and hand. He underwent physical therapy and surgery for his injury and returned to work in a modified-duty capacity based on the physician's identified work restrictions. On August 11, 2004, Mr. Fikel was involved in an automobile accident, which resulted in him experiencing lower back pain. For the majority of his employment, Mr. Fikel has worked in a modified-duty capacity because of the injuries to his thumb, hand, and to his lower back.

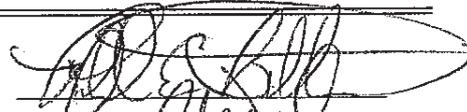
Following is a summary of Mr. Fikel's reported injuries:

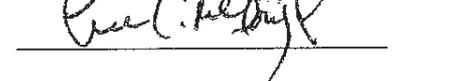
<i>Date of Injury</i>	<i>Description of Injury</i>
8.10.02	Employee injured his left thumb/hand when a ladder fell and struck him during a training exercise.
8.11.04	Employee experienced lower back pain after being involved in an automobile accident when an individual backed into his City-provided vehicle.
11.14.05	Employee claimed a continuous trauma injury to his lower back as a result of performing his modified-duty assignments.

On March 3, 2004, Mr. Fikel's physician, Dr. Brodie, issued a report indicating that his condition was permanent and stationary. Dr. Brodie concluded that, because of Mr. Fikel's injury, he was unable to return to work as a Firefighter since he had a 75 percent loss of preinjury capacity for lifting, pushing, pulling, grasping, holding, twisting, and performing

Prepared by: Gary E. Chao

Reviewed and
Approved by:





Proofed by: Kathy Dalton

Presented by:

other activities of comparable physical effort. On August 25, 2004, Mr. Fikel was seen by a Qualified Medical Examiner (QME) for an evaluation of the injury to his left thumb and hand. The evaluation was conducted by Dr. Knight who concluded that Mr. Fikel was precluded from returning to work as a Firefighter/Paramedic because of the permanent work restrictions of no forceful gripping, grasping, and pinching with his left upper extremity. Dr. Knight identified Mr. Fikel as a qualified injured worker.

As a result of the QME report, the permanent modified-duty position of Fire Prevention Specialist was developed and offered to Mr. Fikel. The job description was reviewed by Mr. Fikel who asserted that he was unable to make a determination about the position without clarification of the physical demands of the duties since he believed that many of the duties would exceed his work limitations. The Fire Prevention Specialist position was sent to Dr. Brodie for review who concluded, "... Mr. Fikel will not be able to perform to the best of his ability in these activities." Although modifications were made to the Fire Prevention Specialist duties, Mr. Fikel never formally accepted the offer of this permanent modified-duty position.

On May 23, 2007, Mr. Fikel was evaluated by Dr. Leupold, Agreed Medical Examiner (AME), for his reported back injury of August 11, 2004, and for his continuous trauma claim. Dr. Leupold diagnosed Mr. Fikel to have a large L4-5 disc extrusion and concluded that the August 11, 2004 accident, "... reasonably aggravated, if not caused, his current lumbar spine symptoms." Dr. Leupold also concluded, "It is also medically reasonable that this aggravation is a result of cumulative trauma due to his job duties subsequent to the August 11, 2004 industrial injury." Dr. Leupold recommended that Mr. Fikel give serious consideration to surgical disc excision and he referred him to be seen for a surgical consultation.

On April 30, 2007, Mr. Fikel was seen by Dr. Sukoff for neurosurgical consultation. At that time, Dr. Sukoff confirmed that he had a large central L4-5 disc herniation and was a candidate for surgery. Dr. Sukoff also indicated that, "...the employee's tolerance for sitting is the most severe aspect of his pain syndrome and his disability precluding substantial work would require training for work that requires a minimal amount of sitting. Bending at the waist and lifting are precluded." Since Mr. Fikel informed the physician that he was not desirous of undertaking the risks of surgery, Dr. Sukoff reevaluated him on August 20, 2007, and declared his condition as permanent and stationary.

On October 24, 2007, Mr. Fikel returned to Dr. Leupold for an AME reevaluation. In his report, Dr. Leupold indicates that since Mr. Fikel has decided not to pursue surgical intervention, his condition reached Maximal Medical Improvement (MMI) as of Dr. Sukoff's permanent and stationary report of August 20, 2007. He identified his work restrictions as, "Limited to light work pertaining to the lumbar spine." Dr. Leupold indicates that given his work restrictions, Mr. Fikel would not be able to return to his usual and customary job duties as a Firefighter/Paramedic/Code Enforcement Officer.

In September 2008, a reasonable accommodation meeting was held to discuss the development of a new permanent modified-duty position for Mr. Fikel. As a result of the meeting, a new position was developed which addressed and accommodated Mr. Fikel's work restrictions. The new modified-duty position, Fire Prevention/Code Enforcement Analyst, was sent to Mr. Fikel and his attorney to review, and they were then to forward it to Dr. Leupold for his opinion. It was later learned that Mr. Fikel and his attorney never forwarded the modified-job description to Dr. Leupold for review.

On June 20, 2008, Mr. Fikel filed a civil lawsuit against the City of Montclair with the following complaints:

- Disability discrimination
- Retaliation
- Failure to take all reasonable steps to prevent workplace discrimination and retaliation
- Retaliation in violation of public policy
- Conversion
- Breach of contract
- Breach of the implied covenant of good faith and fair dealing
- Injunctive relief

In June 2009, a mediation hearing was held between the City of Montclair and Mr. Fikel in an attempt to resolve the issues leading to his lawsuit. The mediation concluded with both parties agreeing to the following terms:

- Mr. Fikel agreed to resolve all of his Workers' Compensation claims through a Compromise and Release.
- The City would pay Mr. Fikel \$35,000.00 to settle his lawsuit and his Workers' Compensation claims.
- The City would process and approve Mr. Fikel's application for industrial disability retirement with CalPERS.

Since Mr. Fikel cannot return to his regular duties as a Firefighter/Paramedic as per the AME's report, he is considered a qualified injured worker and is eligible for an industrial disability retirement.

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

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 09-2814 determining the status of local safety employee David Farrell Fikel.

RESOLUTION NO. 09-2814

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

WHEREAS, the City of Montclair (hereinafter referred to as Agency) is a contracting agency of the California Public Employees' Retirement System (CalPERS); and

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

WHEREAS, an application for industrial disability retirement of David Farrell Fikel employed by the Agency in the position of Firefighter has been filed with CalPERS; and

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

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby find and determine that David Farrell Fikel is incapacitated within the meaning of the Public Employees' Retirement Law for performance of his duties in the position of Firefighter; and

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

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

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

BE IT FURTHER RESOLVED his last day of employment was August 31, 2009; and

BE IT FURTHER RESOLVED that Advanced Disability Pension Payments (ADPP) will not be made; and

BE IT FURTHER RESOLVED that the member's primary disabling condition is physical (orthopedic); and

BE IT FURTHER RESOLVED that the member's disabling condition is not a direct consequence of a violent act perpetrated upon the member's person but did occur during the performance of those portions of the member's duties that are particularly hazardous and dangerous.

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. 09-2814 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

**MINUTES OF THE MEETING OF THE MONTCLAIR
CODE ENFORCEMENT COMMITTEE HELD ON
MONDAY, AUGUST 17, 2009, AT 6:00 P.M. IN THE
CITY HALL CONFERENCE ROOM, 5111 BENITO
STREET, MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Council Member Paulitz called the meeting to order at 5:58 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Dutrey; Council Member Paulitz; City Manager McDougal; Deputy City Manager Starr; Fire Chief Ament; Acting Police Chief Jones; Fire Division Chief Shiba; and City Prosecutor Eckart

III. APPROVAL OF MINUTES

A. Minutes of Code Enforcement Committee Meeting of July 20, 2009.

It was the consensus of the Code Enforcement Committee to approve the minutes of the Code Enforcement Committee meeting of July 20, 2009.

IV. PUBLIC COMMENT - None

V. OLD BUSINESS

A. The Committee reviewed and discussed a proposed Ordinance that would amend Chapter 1.04 of the Montclair Municipal Code related to the issuance of administrative citations and collection of administrative fines by shortening the appeal process and eliminating the need for City Council approval. This Ordinance will be reviewed again at the next Executive City Staff meeting and a Notice of Public Hearing will be set for a City Council meeting in October.

B. City Prosecutor Eckart presented a draft of a proposed revision to Chapter 10.44 ("Property Maintenance") of the Montclair Municipal Code. He suggested the adoption of a new Public Nuisance Ordinance Chapter 7.24 into Title 7. The new Ordinance will avoid any conflicts with definitions already contained in various technical codes adopted in Title 10. City Prosecutor Eckart noted that Section 7.24.020(16)(c) allows for an exemption on watering during times of drought and proposed that this Section be removed. The Committee decided to delete Section 7.24.020(16)(c) from the Ordinance. Members agreed that the Public Nuisance Ordinance appeared to be very thorough, but that

more time is needed to review the Ordinance before it is placed on the agenda for City Council consideration. The Ordinance will be placed on the agenda in November or early December.

VI. NEW BUSINESS - None

VII. ROUNDTABLE DISCUSSION ON PROBLEM PROPERTIES

Fire Chief Ament reported that Golden State Water Company abated the overgrown vegetation on its property as well as a portion of adjoining land owned by the Monte Vista Water District. He also asked Council Member Paulitz for clarification on how to proceed in addressing the chain-link fence installed by Golden State Water Company that is in violation of the City Ordinance regarding fencing. Council Member Paulitz recommended that the City send a letter to Golden State Water Company explaining that the newly installed chain-link fence does not currently meet the requirements of the Montclair Municipal Code. The existing fencing may remain in place as is, with no further action required by Golden State Water Company at this time. City Manager McDougal advised Fire Chief Ament to send a draft of the letter to Community Development Director Lustro for review.

Council Member Paulitz stated that he is pleased to have noticed many of the vacant properties in the City being adequately maintained to prevent overgrown/dead vegetation. Mayor Pro Tem Dutrey commented that he has also noticed vacant properties in the City being maintained, which he attributed to realtors maintaining the properties so that they will appeal to potential new City residents as well as investors.

Council Member Paulitz requested a list of all the foreclosed properties in the City. Fire Chief Ament will inquire with the Information Technology Division about giving Council Member Paulitz access to Property Finder with DocEdge.com.

VIII. NEXT MEETING

The next meeting is scheduled for Monday, September 21, 2009, at 6:00 p.m.

IX. ADJOURNMENT

At 6:20 p.m., Council Member Paulitz adjourned the Code Enforcement Committee Meeting.

Submitted for Code Enforcement
Committee approval,



Angelic J. Bird
Receptionist/Office Specialist

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
AUGUST 17, 2009, AT 7:25 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Eaton called the meeting to order at 7:25 p.m.

II. ROLL CALL

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

III. APPROVAL OF MINUTES

**A. Minutes of the Regular Personnel Committee Meeting of
August 3, 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
August 3, 2009.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

At 7:26 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 7:33 p.m., the Personnel Committee returned from Closed Session.
Mayor Eaton stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 7:33 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,


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