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

November 16, 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.

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

II. **INVOCATION**

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

III. **PLEDGE OF ALLEGIANCE**

IV. **ROLL CALL**

V. **PRESENTATIONS**

A. Introduction of New Promotees

B. Presentation by Southern California Regional Associate Daniel Rossman, The Wilderness Society, Related to Protecting the San Gabriel Mountains

VI. **PUBLIC COMMENT**

This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded five minutes to address the City Council Members and Redevelopment Agency and Montclair Housing Corporation Boards of Directors. (Government Code Section 54954.3)

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

VII. **PUBLIC HEARINGS**

A. Consider Receiving Public Comment and Authorizing the Allocation and Expenditure of Supplemental Law Enforcement Services Funds [CC] 4

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B. Second Reading - Consider Adoption of Ordinance No. 09-910 Amending Chapter 1.04 of the Montclair Municipal Code Related to the Issuance of Administrative Citations and Collection of Administrative Citation Fines [CC] 6

VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Minutes of Regular Joint Council/Agency/MHC Meeting of September 21, 2009 [CC/RDA/MHC]

2. Minutes of Regular Joint Council/Agency/MHC Meeting of October 5, 2009 [CC/RDA/MHC]

B. Administrative Reports

1. Consider Receiving and Filing of Treasurer's Report [CC] 12

2. Consider Approval of Warrant Register and Payroll Documentations [CC] 13

3. Consider Receiving and Filing of Treasurer's Report [RDA] 14

4. Consider Approval of Warrant Register [RDA] 15

5. Consider Receiving and Filing of Treasurer's Report [MHC] 16

6. Consider Approval of Warrant Register [MHC] 17

7. Consider Setting a Public Hearing to Consider Resolution No. 09-04, a Resolution of the City of Montclair Redevelopment Agency Adopting the Implementation Plan for Redevelopment Project Area Nos. I, II, III, IV, and V [RDA] 18

C. Agreements

1. Consider Approval of Agreement No. 09-105 and Acceptance of Quitclaim Deed with Raymundo Orneles for Acquisition of Real Property at 10767 Monte Vista Avenue, Unit B [CC]

Consider Authorizing City Manager to Execute Agreement No. 09-105 [CC] 23

2. Consider Approval of Agreement Nos. 09-106 (Osmose Utilities Services, Inc.), 09-107 (Carl McCoy and Harold McCoy), 09-108 (Jack DiGiorgio), 09-109 (We Love Tows Auto Transport), and 09-110 (Reynaldo Martinez), Self-Move Agreements in Conjunction with Right-of-Way Acquisition for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project [CC] 40

3. Consider Approval of Agreement No. 09-114 with Graffiti Tracker, Inc., for Continued Use of Its Database to Track and Analyze Graffiti [CC] 80

4. Consider Approval of Agreement No. 09-116 Amending Agreement No. 08-57 with John M. and Brenda Goller Construction Management Services Associated with Youth and Senior Centers [CC] 90

5. Consider Award of Contract to Gentry Brothers, Inc., in the Amount of $1,042,590 [CC]

   Consider Approval of Agreement No. 09-117 with Gentry Brothers, Inc., for Construction of the Mission Boulevard Improvement Phase 7 Project [CC]

   Consider Authorization of a $105,000 Construction Contingency [CC] 96

D. Resolutions - None

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 Personnel Committee Meeting of November 2, 2009 103

XII. COUNCIL/AGENCY WORKSHOP

A. Update of Housing Element - Joint Study Session with Planning Commission

   (Council/Agency may consider continuing this item to an adjourned joint meeting on Wednesday, November 18, 2009, at 7:00 p.m. in the City Council Chambers).

B. Crime Suppression Unit/30-Day Vehicle Impound Storage Lot

   (Council/Agency may consider continuing this item to an adjourned joint meeting on Monday, December 7, 2009, at 5:45 p.m. in the City Council Chambers).

XIII. ADJOURNMENT OF CITY COUNCIL AND RDA AND MHC BOARDS OF DIRECTORS

The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, December 7, 2009, at 7:00 p.m. in the Council Chambers.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the City Council, Redevelopment Agency Board, or Montclair Housing Corporation Board after distribution of the Agenda packet are available for public inspection in the Office of the City Clerk located at 5111 Benito Street, Montclair, California, between 7:00 a.m. and 6:00 p.m., Monday through Thursday.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (909) 625-9415. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

I, Donna M. Jackson, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the bulletin board adjacent to the south door of Montclair City Hall on November 12, 2009.

AGENDA REPORT

SUBJECT:	CONSIDER RECEIVING PUBLIC COMMENT AND AUTHORIZING THE ALLOCATION AND EXPENDITURE OF SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUNDS	**DATE:**	November 16, 2009
		SECTION:	PUBLIC HEARINGS
		ITEM NO.:	A
		FILE I.D.:	PDT362
BUSINESS PLAN:	N/A	**DEPT.:**	POLICE

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the allocation of Supplemental Law Enforcement Services funds to the Police Department Fiscal Year 2009-10 Budget to enhance patrol services.

BACKGROUND: Government Code Sections 30061-30065 stipulate that a Supplemental Law Enforcement Services Fund (SLESF) be established in each county treasury to receive all funds allocated to a county for purposes of implementing the guidelines for SLESF grant funds. The county auditor shall allocate the moneys in the county's SLESF including interest or other earned returns within 30 days of deposit into the SLESF. However, the county auditor shall not transfer those moneys to a recipient agency until the Supplemental Law Enforcement Oversight Committee certifies receipt of an approved expenditure plan from the governing board of that agency. The San Bernardino County Board of Supervisors established a Supplemental Law Enforcement Oversight Committee on August 21, 1996.

Allocations to local eligible agencies shall be expended or encumbered no later than June 30 of the following fiscal year. Agencies that have not met this requirement shall remit unspent SLESF moneys to the Controller for deposit into the General Fund. SLESF moneys are for the exclusive use of "front line law enforcement services" and "front line municipal police services," both of which include antigang, community crime prevention, and juvenile justice programs. These moneys shall supplement existing services and shall not be used to supplant any existing funding for law enforcement services provided by that entity.

The City of Montclair is eligible to receive $100,000 from the SLESF grant. The Chief of Police is requesting the allocation be used for the following equipment and services to enhance Police Department patrol services:

Traffic enforcement overtime	$ 39,226
SWAT equipment	15,000
SWAT training and overtime	15,000
Digital voice recorders (60)	13,774

Prepared by: Judy Bu

Reviewed and Approved by: K.S. Jones

Proofed by: Sharon Rayguera

Presented by: Chief Cheng

Promotional items	5,000
Computer server for photograph database	5,000
911 first responder tool (60)	5,000
Firearms safety training and materials	2,000
TOTAL	$100,000

FISCAL IMPACT: Should the City Council authorize an SLESF allocation for the above expenditure plan, $100,000 would be allocated from the SLESF to the Police Department's Fiscal Year 2009-10 Budget to enhance patrol services.

RECOMMENDATION: Staff recommends the City Council receive public comment and authorize the allocation and expenditure of Supplemental Law Enforcement Services funds.

AGENDA REPORT

SUBJECT:	CONSIDER ADOPTION OF ORDINANCE NO. 09-910 AMENDING CHAPTER 1.04 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE ISSUANCE OF ADMINISTRATIVE CITATIONS AND COLLECTION OF ADMINISTRATIVE CITATION FINES SECOND READING	**DATE:**	November 16, 2009
		SECTION:	PUBLIC HEARINGS
		ITEM NO.:	B
		FILE I.D.:	CDE010
		DEPT.:	FIRE
BUSINESS PLAN:	N/A		

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Ordinance No. 09-910 amending Chapter 1.04 of the Montclair Municipal Code (MMC) related to the issuance of Administrative Citations and collection of Administrative Citation fines.

BACKGROUND: The City Council adopted Ordinance No. 98-779 (codified as Chapter 1.04 of the MMC) at its meeting of August 3, 1998, to establish a process for imposing administrative/civil fines for violators of the MMC (and other technical codes adopted therein) by means of an Administrative Citation. This process was created to ensure that responsible parties who were issued Administrative Citations pay the corresponding administrative fine to the City in a timely manner.

The Code Enforcement Committee directed staff in August 2009 to examine the Administrative Citation Ordinance and recommend changes related to the recovery and collection of delinquent administrative fines. Proposed Ordinance No. 09-910 would utilize all legal means available to the City to collect delinquent administrative fines and ensure that violators are adequately advised about available methods of payment for such fines.

FISCAL IMPACT: Potential revenues from the implementation of proposed Ordinance No. 09-910 are unknown.

RECOMMENDATION: Staff recommends the City Council adopt Ordinance No. 09-910 amending Chapter 1.04 of the Montclair Municipal Code related to the issuance of administrative citations and collection of administrative citation fines.

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

ORDINANCE NO. 09-910

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING CHAPTER 1.04 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE ISSUANCE OF ADMINISTRATIVE CITATIONS AND COLLECTION OF ADMINISTRATIVE FINES

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

WHEREAS, many of the responsible parties that are issued administrative citations fail to timely pay the corresponding administrative fines to the City; and

WHEREAS, the City would like to utilize all available legal means to collect delinquent administrative fines; and

WHEREAS, the City would like to ensure that violators are adequately advised about available methods to the City for the collection of delinquent administrative fines.

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

SECTION I. Section 1.04.020 ("Administrative Citation") of Chapter 1.04 ("Administrative Citations") of Title 1 ("General Provisions") of the Montclair Municipal Code is hereby amended to read as follows:

1.04.020 Administrative citation.

A. Whenever an Enforcement Officer charged with the enforcement of any provision of this Code determines that a violation of that provision has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any person responsible for causing, creating, maintaining, suffering, or permitting the violation (whether as an owner or tenant, or agent, manager, or representative of the owner or tenant, or otherwise).

B. In the event the Enforcement Officer determines that a violation constitutes a continuing violation that pertains to building, plumbing, electrical, or other similar structural or zoning issues which do not create an immediate danger to health or safety, the person responsible for such continuing violation shall be given a reasonable period of time, not to exceed 30 calendar days, to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties.

C. Each administrative citation shall contain the following information:

1. The date of the violation(s).

2. The name and address of the responsible person.

3. The address or a definite description of the location where the violation(s) occurred.

4. The section(s) of this Code or any other applicable State statute(s) violated and a brief description of the violation(s).

5. A description of the action(s) required to correct the violation(s), and, if applicable, any deadlines or time limitations for commencing and completing such actions.

6. The amount of the fine for each of the code violation(s).

7. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid.

8. An order prohibiting the continuation or the repeated occurrence of the Code violation(s) described in the administrative citation.

9. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained.

10. A statement that the failure to timely tender the fine(s) and other fees, costs, and/or charges imposed pursuant to this Chapter may result in the recordation of a lien and/or the delay in issuance or renewal of any City license and/or permit.

11. The name and signature of the citing Enforcement Officer.

SECTION II. Section 1.04.030 ("Amount of fine") of Chapter 1.04 ("Administrative Citations") of Title 1 ("General Provisions") of the Montclair Municipal Code is hereby amended to read as follows:

1.04.030 Imposition of administrative fine, late fees, interest charges, and reinspection fees

A. The amount of the fine for Code violations imposed pursuant to this chapter shall be set forth in the schedule of fines established by resolution of the City Council.

B. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same responsible person within a

36-month period of time, or, for those violations that would otherwise have constituted infractions, within a 12-month period of time.

C. The schedule of fines shall specify the amount of any late payment charges imposed for the payment of fines after its due date.

D. In addition to any fine imposed pursuant to this Chapter, a re-inspection fee shall be assessed against any responsible person in an amount established by resolution of the City Council if the responsible person does not timely and completely correct or abate a violation (with all requisite approvals, permits, licenses, and/or inspections) after having received notification from the City to correct or abate same.

SECTION III. Section 1.04.120 ("Recovery of administrative citation fines and costs") of Chapter 1.04 ("Administrative Citations") of Title 1 ("General Provisions") of the Montclair Municipal Code is hereby amended to read as follows:

1.04.120 Recovery of delinquent administrative fines, fees, and costs.

A. The City may collect any past due administrative fine or other associated fee or cost by use of all available legal means. Unpaid administrative fines and other charges, fees, or costs imposed in accordance with this Chapter shall constitute a debt that may be collected in any manner allowed by law, including, but not limited to the recordation of a lien (secured or unsecured) with the San Bernardino County Recorder's Office and/or with the California Franchise Tax Board "Inter-Agency Offset Program" (pursuant to Section 12419.10 of the California Government Code). The City may also recover its collection costs pursuant to Section 1.12.030 of this Code.

1. Notwithstanding any provision of this Code to the contrary, a Citee is not entitled to a hearing before the City Manager, Planning Commission, City Council, or other hearing officer prior to the recordation of a lien with the San Bernardino County Recorder's Office and/or with the California Franchise Tax Board "Inter-Agency Offset Program" for any delinquent administrative fine that has been deemed final. This section does not affect a Citee's ability to contest an administrative citation in accordance with Section 1.04.050 of this Code or to seek judicial review of an administrative citation in accordance with Section 1.04.130 of this Code.

B. The City may also withhold issuance or renewal of any license, permit, or other entitlement for any property or business whenever an administrative penalty resulting from a Code violation at said property or business remains unpaid.

C. The City shall be entitled to recover its attorney fees and costs arising from an action to collect an administrative fine and other charges, fees, or costs imposed in accordance with this Chapter if it is the prevailing party and provided it made the election to seek attorney fees at the commencement of the action. A Citee shall be entitled to recover his or her attorney fees if the City

made the election to seek attorney fees at the outset of the action and the Citee prevails thereon.

SECTION IV. Section 1.04.120 ("Notices") of Chapter 1.04 ("Administrative Citations") of Title 1 ("General Provisions") of the Montclair Municipal Code is hereby amended to read as follows:

1.04.140 Notices.

A. The administrative citation and all notices required to be given by this chapter shall be served on any person responsible for the violation in accordance with the provisions of Section 1.08.090 of this Code.

B. Failure to receive any notice specified in this chapter does not affect the validity of the proceedings conducted hereunder.

SECTION V. Severability.

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

SECTION VI. Effective Date.

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

SECTION VII. Posting.

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

APPROVED AND ADOPTED this XX day of XX, 2009.

_____
Mayor

ATTEST:

_____
City Clerk

I, Donna M. Jackson, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 09-910 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2009, and finally passed not less than five (5) days thereafter on the XX day of XX, 2009, by the following vote, to-wit:

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

_____
Donna M. Jackson
City Clerk

AGENDA REPORT

SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT	**DATE:**	November 16, 2009
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	1
BUSINESS PLAN:	N/A	**FILE I.D.:**	FIN520
		DEPT.:	ADMIN. SVCS.

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

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

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

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

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: _____ Presented by: _____

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATIONS	**DATE:**	November 16, 2009
		SECTION:	ADMIN. REPORT
		ITEM NO.:	2
BUSINESS PLAN:	N/A	**FILE I.D.:**	FIN540
		DEPT.:	ADMIN. SVCS.

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

BACKGROUND: Mayor Pro Tem Dutrey has examined the Warrant Register dated November 16, 2009, and Payroll Documentations dated August 30, 2009, and September 13, 2009, finds them to be in order and recommends their approval.

FISCAL IMPACT: The Warrant Register dated November 16, 2009, totals $3,678,237.83. The Payroll Documentation dated August 30, 2009, totals $619,304.59, with $471,680.28 being the total cash disbursement. The Payroll Documentation dated September 13, 2009, totals $606,632.58, with $447,706.23 being the total cash disbursement.

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

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

AGENDA REPORT

SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT	**DATE:**	November 16, 2009
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	3
		FILE I.D.:	FIN510
BUSINESS PLAN:	N/A	**DEPT.:**	REDEVELOPMENT

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

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

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

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

Prepared by: Reviewed and Approved by:

Proofed by: Presented by:

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER	**DATE:**	November 16, 2009
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	4
		FILE I.D.:	FIN530
BUSINESS PLAN:	N/A	**DEPT.:**	REDEVELOPMENT

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

BACKGROUND: Vice Chairman Dutrey has examined the Warrant Register dated 10/01/09 - 10/31/09 in the amounts of $2,919.76 for Project I; $66.51 for Project II; $80,982.58 for Project III; $17,958.65 for Project IV; $44,638.02 for Project V; and $163.84 for Mission Boulevard Joint Redevelopment Project and finds it to be in order.

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

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

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: _____ Presented by: _____

AGENDA REPORT

SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT	**DATE:**	November 16, 2009
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	5
BUSINESS PLAN:	N/A	**FILE I.D.:**	FIN525
		DEPT.:	MHC

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

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

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

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

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

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER	**DATE:**	November 16, 2009
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	6
		FILE I.D.:	FIN545
BUSINESS PLAN:	N/A	**DEPT.:**	MHC

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

BACKGROUND: Vice Chairman Dutrey has examined the Warrant Register dated 10/01/09 - 10/31/09 in the amount of $32,865.95 for the Montclair Housing Corporation and finds it to be in order.

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

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

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: _____ Presented by: _____

AGENDA REPORT

SUBJECT:	CONSIDER SETTING A PUBLIC HEARING TO CONSIDER RESOLUTION NO. 09-04, A RESOLUTION OF THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY ADOPTING THE IMPLEMENTATION PLAN FOR REDEVELOPMENT PROJECT AREA NOS. I, II, III, IV, AND V	**DATE:**	November 16, 2009
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	7
		FILE I.D.:	RDA160
BUSINESS PLAN:	N/A	**DEPT.:**	REDEVELOPMENT

REASON FOR CONSIDERATION: State of California Health and Safety Code Section 33490 requires that every agency adopt, after holding a public hearing, an implementation plan for each redevelopment project area and evaluate the progress of the redevelopment project every five years. The Redevelopment Agency Board of Directors is, therefore, requested to set December 21, 2009, as the date for a public hearing to consider adoption of the proposed Implementation Plan for Redevelopment Project Area Nos. I, II, III, IV, and V. The implementation plan required, pursuant to state law, states that all projects to be conducted within a project area must be included in the implementation plan.

BACKGROUND: Major redevelopment reform legislation was enacted pursuant to AB 1290 on January 1, 1994. One requirement of the law involves the adoption of an implementation plan for redevelopment project areas every five years. The City of Montclair Redevelopment Agency's initial Implementation Plan was adopted on December 19, 1994. Subsequent Implementation Plans were adopted by the Redevelopment Agency Board of Directors on December 20, 1999, and on December 20, 2004. The proposed Implementation Plan for 2009 contains specific goals and objectives of the Redevelopment Agency for Redevelopment Project Area Nos. I, II, III, IV, and V; the specific programs including potential projects and estimated expenditures proposed to be made during the next five years; and an explanation of how the goals and objectives, programs, and expenditures would eliminate blight within the Project Areas. The Agency Board could only consider adoption of the proposed Implementation Plan through its adoption of Resolution No. 09-04 at a legally noticed public hearing. It should be noted that the proposed Implementation Plan does not include the Mission Boulevard Joint Redevelopment Project Area because a separate Implementation Plan document for the project was prepared and approved by the City of Montclair Redevelopment Agency Board of Directors and the San Bernardino County Redevelopment Agency Board of Directors upon the project's adoption in 2003. The Implementation Plan for the Mission Boulevard Joint Redevelopment Project Area was updated and adopted in 2008. Pursuant to state

Prepared by:	M. STAATS	Reviewed and Approved by:	M. STAATS
Proofed by:	Marita A. Caldwell	Presented by:	

law, the notice of public hearing must be published for three consecutive weeks. Publication and posting shall be completed not less than ten days prior to the date set for the hearing.

FISCAL IMPACT: The cost to publish the Notice of Public Hearing is not anticipated to exceed $2,000.

RECOMMENDATION: Staff recommends the Redevelopment Agency Board of Directors set a public hearing for Monday, December 21, 2009, at 7:00 p.m. in the City Council Chambers to consider Resolution No. 09-04, a Resolution of the City of Montclair Redevelopment Agency adopting the Implementation Plan for Redevelopment Project Area Nos. I, II, III, IV, and V.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City of Montclair Redevelopment Agency will hold a public hearing on December 21, 2009, at 7:00 p.m., in the City of Montclair City Council Chambers, 5111 Benito Street, Montclair, California, to consider adoption of the *Implementation Plan* for the City of Montclair Redevelopment Project Area Nos. I, II, III, IV, and V.

Any person interested in the above proceedings may appear at the time and place listed above to testify regarding this item. Any written correspondence regarding this matter must be sent to the attention of the Agency Secretary, 5111 Benito Street, Montclair, California, 91763. All pertinent data may be inspected at the Office of the Agency Secretary, located at the City of Montclair City Hall, 5111 Benito Street, Montclair, California, before the public hearing.

If you contest the item listed above in court, you may be limited to challenging only those issues you or someone else cited during the public hearing described in this Notice or documented in written correspondence delivered to the Montclair Redevelopment Agency at, or prior to, the public hearing. Furthermore, you must exhaust any administrative remedies prior to litigating the Montclair Redevelopment Agency's action.

_____
Agency Secretary
City of Montclair Redevelopment
Agency

PUBLISH THIS NOTICE ON: **NOVEMBER 20, 2009**
NOVEMBER 27, 2009
DECEMBER 4, 2009

RESOLUTION NO. 09-04

A RESOLUTION OF THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY ADOPTING THE IMPLEMENTATION PLAN FOR REDEVELOPMENT PROJECT AREA NO. I, REDEVELOPMENT PROJECT AREA NO. II, REDEVELOPMENT PROJECT AREA NO. III, REDEVELOPMENT PROJECT AREA NO. IV, AND REDEVELOPMENT PROJECT AREA NO. V

WHEREAS, every redevelopment agency is required, pursuant to Health and Safety Code Section 33490, to adopt every five years an implementation plan for each redevelopment project area containing the specific goals and objectives of the agency for its redevelopment projects, specific programs, potential projects, estimated expenditures proposed to be made during the next five years of such plans, and an explanation of how the foregoing will eliminate blight within the project areas (the "Implementation Plan"); and

WHEREAS, the City of Montclair Redevelopment Agency (the "Agency") adopted its original Implementation Plan for Redevelopment Project Area Nos. I, II, III, IV, and V on December 19, 1994; and subsequent Implementation Plans were adopted on December 20, 1999, and December 20, 2004; and

WHEREAS, the Agency is now required, pursuant to Health and Safety Code Section 33490, to adopt, after a noticed public hearing, an Implementation Plan for Redevelopment Project Area Nos. I, II, III, IV, and V; and

WHEREAS, the Agency has reviewed the proposed Implementation Plan as prepared by the staff of the Agency; and

WHEREAS, the Agency has made the Implementation Plan available to the public for its review and has, on December 21, 2009, held a public hearing and provided to all interested parties the opportunity to be heard concerning the Implementation Plan; and

WHEREAS, in conformity with the Health and Safety Code Section 33490(d), notice of the public hearing was published pursuant to Government Code Section 6063 and posted pursuant to law.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Montclair Redevelopment Agency as follows:

Section 1. The Implementation Plan, as presented to the Agency prior to the public hearing, is hereby approved as the Implementation Plan of Redevelopment Project Area Nos. I, II, III, IV, and V.

Section 2. The Secretary of the Agency shall certify to the adoption of this Resolution, and a copy of the Implementation Plan shall be placed in the Office of the Agency Secretary.

APPROVED AND ADOPTED this XX day of XX, 2009.

_____
Chairman

ATTEST:

_____
Secretary

I, Donna M. Jackson, Secretary of the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. 09-04 was duly adopted by the Redevelopment Agency Board of Directors at a regular meeting thereof held on the XX day of XX, 2009, and that it was adopted by the following vote, to-wit:

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

_____
Donna M. Jackson
Secretary

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 09-105 AND ACCEPTANCE OF QUIT-CLAIM DEED WITH RAYMUNDO ORNELES FOR ACQUISITION OF REAL PROPERTY AT 10767 MONTE VISTA AVENUE, UNIT B CONSIDER AUTHORIZING CITY MANAGER TO EXECUTE AGREEMENT NO. 09-105	**DATE:**	November 16, 2009
		SECTION:	AGREEMENTS
		ITEM NO.:	1
		FILE I.D.:	STA110
		DEPT.:	PUBLIC WORKS
BUSINESS PLAN:	**STRATEGIC PRIORITY NO. 6**		

REASON FOR CONSIDERATION: As part of ongoing efforts to secure right-of-way for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, the City is currently in escrow to purchase certain real property in the City of Montclair. One tenant located at 10767 Monte Vista Avenue, Unit B, has agreed to leave certain items behind and quitclaim them to the City rather than relocate them. Proposed Agreement No. 09-105 and an associated quitclaim deed transferring ownership of those items to the City are attached for City Council consideration.

Approval of Agreement No. 09-105 and acceptance of the quitclaim deed 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.

On June 8, 2008, the City entered into Agreement No. 08-35, a purchase and sale agreement with Harold W. and Peggy C. McCoy and Carl L. McCoy (McCoys) for property located at 10763-10771 Monte Vista Avenue. Close of escrow was delayed because of some hazardous waste cleanup required on the site, paid for by the McCoys. The site is now free and clear of any hazardous wastes and escrow will soon close.

A tenant of the McCoys, Raymundo Ornelas, has agreed to leave certain items behind rather than have them relocated at the City's expense. The value of the items was less than the cost of relocation. Proposed Agreement No. 09-105 and the associated quitclaim deed transfers ownership of those items to the City.

FISCAL IMPACT: Approval of proposed Agreement No. 09-105 and acceptance of the

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

quitclaim deed would eliminate any future claim for compensation by Mr. Ornelas. The value of Mr. Ornelas' property is $870 and would be reimbursed to the City by the state.

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

1. Approve Agreement No. 09-105 and accept the quitclaim deed with Raymundo Orneles for acquisition of real property at 10767 Monte Vista Avenue, Unit B.

2. Authorize the City Manager to execute Agreement No. 09-105.

PARCEL NO. 1011-301-24

PROJECT: Monte Vista Grade Separation Project

TENANT-SELLER: Raymundo Ornales

AGREEMENT FOR ACQUISITION OF TENANT-SELLER'S INTEREST IN REAL PROPERTY

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____, 200_____, by and between the **City of Montclair** (hereinafter called "Buyer"), and the undersigned **Raymundo Ornelas** (hereinafter called "Tenant-Seller") for the acquisition by Buyer of certain interests in real property hereinafter set forth.

IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. AGREEMENT. Tenant-Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and acquire from Tenant-Seller, upon the terms and for the consideration set forth in this Agreement, (a) all right, title and interest, in and to certain improvements, including fixtures and equipment (collectively "Improvements") located in, on, or affixed in any manner to the premises known and numbered as 10767, Unit B, Monte Vista Ave., Montclair, CA 91762, California, California ("Premises") which Premises are part of that real property described below, located in the City of Montclair, County of San Bernardino, State of California, and (b) any tenancy interest of Tenant-Seller ("Tenancy Interest") in and to said real property:

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

Commonly known as 10763 – 10771 Monte Vista, Ave., Montclair, CA ("Property").

The Improvements to be conveyed by Tenant-Seller are a part of the Premises, and specifically include, without limitation, the items under the name of Tenant-Seller contained in the list of "Improvements Pertaining to the Realty" attached hereto as Exhibit "B" and incorporated herein as part of this Agreement.

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

EIGHT HUNDRED SEVENTY DOLLARS and no/100 dollars

($ 870.00)

3. CONVEYANCE OF INTEREST IN REAL PROPERTY. Tenant-Seller agrees to execute a Quitclaim Deed in the same form as that attached hereto as Exhibit "C" in favor of Buyer ("Quitclaim Deed"), relinquishing, releasing, and forever quitclaiming all right title and interest in and to the Tenancy Interest.

4. CONVEYANCE OF INTEREST IN CONVEYED IMPROVEMENTS. The Quitclaim Deed described in Paragraph 3 above and attached hereto as Exhibit "C" will also convey from Tenant-Seller to Buyer all of Tenant-Seller's interest in and to the Improvements, which conveyance shall be free and clear of all recorded and unrecorded encumbrance, liens, assessments, leases, and taxes. Unless otherwise provided, recording of the Quitclaim Deed and closing of the transaction described herein shall be subject to

Tenant-Seller's vacation of the Premises and proof of clear title to all said Improvements, having been obtained and received by Buyer in accordance with Paragraphs 8 and 9 of this Agreement.

5. RECORDING. Recordation of any documents delivered through this Agreement is authorized, if necessary or proper, upon acceptance by Buyer, as described herein.

6. CERTIFICATION OF OWNERSHIP. Tenant-Seller hereby warrants and certifies under penalty of perjury that Tenant-Seller is the owner of the subject Improvements and that no document has been signed by or on behalf of Tenant-Seller for the purpose of creating any lien, encumbrance, or security interest in any of the Improvements, and that the Tenant-Seller does not know of any claim of lien, encumbrance, or other security interest therein, EXCEPT: a) Trust Deeds on the Property, duly recorded; b) real and personal property taxes.

7. PERMISSION TO ENTER ON PREMISES. Tenant-Seller hereby grants Buyer, or its authorized agent, permission to enter upon the Premises at all reasonable times prior to close of this transaction for the purpose of making necessary inspections.

8. BULK SALE. In order to establish proof of clear title to the Improvements, Buyer may publish a Notice to Creditors pursuant to the Bulk Sales Law of the State of California and obtain a title report and/or a report from the Secretary of State's Office as to filings of security interests covering only those certain items Improvements as set forth in Exhibit "B" attached hereto in the name of the Tenant-Seller.

9. CONFLICTING INTERESTS. In the event any conflicting claim of title or any security interest or lien of any kind shall be discovered or asserted as to any item of Improvements, Buyer shall, upon receiving notice or knowledge thereof, withhold such an amount otherwise distributable to Tenant-Seller as is reasonably necessary, in the sole opinion of Buyer, to protect Buyer against such claim of interest or lien. The withholding of such funds shall not prevent closing of this transaction if the total funds to be withheld from Tenant-Seller do not exceed the net amount to be paid to Tenant-Seller through this transaction. Buyer will not pay out the funds withheld or disburse any withheld funds to any claimant or other party (except upon court order or levy) without the written consent and acknowledgment of Tenant-Seller.

A general creditor's claim shall not be deemed to be a claim against any specific item of Improvements and Tenant-Seller hereby agrees to accept all responsibility therefore. Unless otherwise provided, it shall be presumed that Tenant-Seller is entitled to payment under this transaction if the Improvements are listed under the name of Tenant-Seller on Exhibit "B"; otherwise, it shall be presumed that the Property owner is the person entitled thereto.

10. DISMISSAL OF EMINENT DOMAIN ACTION. Tenant-Seller hereby consents to the dismissal of any action previously or subsequently filed by Buyer for the condemnation of said Tenancy Interest and waives any claims for compensation, costs, attorney's fees and deposits in said action, or any claim whatsoever which might arise out of the filing of such action, whether or not such claim is specifically identified herein. Tenant-Seller hereby authorizes Buyer to withdraw and make payable to Buyer any funds deposited with the Court in said eminent domain action.

11. BUYER IS HEREBY AUTHORIZED TO, AND SHALL:

A. Pay and charge Tenant-Seller for any and all current and/or delinquent taxes and any penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds against Tenant-Seller's Improvements and the Tenancy Interest.

B. Pay and charge Tenant-Seller for any amount necessary to place title in the condition necessary to satisfy Paragraph 3 of this Agreement;

C. Disburse funds when conditions of this Agreement have been fulfilled by Buyer and Tenant-Seller.

12. FULL AND COMPLETE SETTLEMENT. Tenant-Seller hereby acknowledges that the compensation paid to Tenant-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 and the Tenancy Interest and any dislocation of Tenant-Seller from the Premises, specifically including, but not limited to the value of the Improvements, leasehold improvements, any and all claims for rental or leasehold value and loss of business goodwill, if any, and any and all claims in inverse condemnation and for precondemnation damages, and any and all other claim that Tenant-Seller may have, whether or not specifically mentioned here, relating directly or indirectly to the acquisition by Buyer of the Property, the Improvements and the Tenancy Interest (excluding, relocation benefits to which Tenant-Seller may be entitled), however, Tenant-Seller and Buyer, and each and all of their individual collective agents' representatives, attorneys, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, hereby release the other party, and each of them from any and all obligations, liabilities, claims, costs, expenses, demands, debts, controversies, damages, causes 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 or in any way relating to any condemnation action affecting the Property, the Improvements and the Tenancy Interest.

13. ACKNOWLEDGMENT CONCERNING CIVIL CODE SECTION 1542. Tenant-Seller acknowledges that Tenant-Seller has been advised by Tenant-Seller's attorneys concerning, and is familiar with, the provisions of California Civil Code §1542, which provides as follows:

> "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."

Tenant-Seller acknowledges that they and any others they are acting on behalf of herein may have sustained damage, loss, cost, or expenses that are presently unknown and unsuspected, and such damage, loss, costs, or expenses which may have been sustained may give rise to additional damages, loss, costs, or expenses in the future. Nevertheless, Tenant-Seller acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights which they or those that are acting on behalf of may have under California Civil Code §1542, or under any statute or common law or equitable principle of similar effect.

14. CONTINGENCY. It is understood and agreed between the parties hereto that this transaction is subject to and contingent upon receipt by Buyer of the duly executed Quitclaim Deed in favor of Buyer from Tenant-Seller with respect to the Tenancy Interest and the Improvements. It is further understood and agreed between the parties hereto that this transaction is subject to and contingent upon specific approval and acceptance by Buyer herein.

15. AGREEMENT TO EXECUTE. The Tenant-Seller and Buyer agree to execute and file and join in the execution and filing of any and all agreements, consents, or other documents reasonably necessary to effect this full and complete settlement and purchase of the Improvements and the Tenancy Interest.

16. AUTHORIZATION TO EXECUTE. The Tenant-Seller and Buyer, in signing this Agreement on behalf of themselves and each and all of their individual and collective agents, representatives, attorneys, principals, predecessors, successors, assigns, administrators, executors, heirs, and beneficiaries, hereby

represent and warrant that they are duly authorized, and each of them sign this Agreement and act on behalf of said persons and entities.

17. COMPROMISE IN SETTLEMENT. This Agreement is a compromise in settlement of pending or possible litigation between the parties to the Agreement and shall never be treated as an admission by the Buyer for any purpose of liability or as to value of any property or claim.

18. SURVIVAL OF RIGHTS AND OBLIGATIONS. Notwithstanding the releases contained herein and agreement concerning this transaction, all the rights and obligations created under and pursuant to this Agreement shall survive the execution of the Agreement, the releases contained herein, and the close of this transaction.

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

A. To the best of Tenant-Seller's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Improvements, the Tenancy Interest or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

B. Until the closing, Tenant-Seller shall maintain the Improvements and the Premises 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 Improvements and the Premises.

C. Until the closing, Tenant-Seller shall not do anything which would impair Tenant-Seller's title to the Premises, the Improvements or the Tenancy Interest.

D. All utilities including gas, electricity, water, sewage, and telephone, are available to the Premises, and to the best of Tenant-Seller's knowledge, all such items are in good working order.

E. To the best of Tenant-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 Tenant-Seller, the Premises, the Improvements or the Tenancy Interest may be subject.

F. Until the closing, Tenant-Seller shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Paragraph 19 not to be true as of closing, immediately give written notice of such fact or condition to Buyer.

20. HAZARDOUS WASTE. Neither Tenant-Seller nor, to the best of Tenant-Seller's knowledge, any previous owner, tenant, occupant, or user of the Property or the Premises, has 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 the Premises, or transported any Hazardous Materials to or from the Property or the Premises. Tenant-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 Premises. The term "Hazardous Materials" 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 §25115, §25117 or §25122.7, or listed pursuant to §25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under

§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 §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 §25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated byphenyls, (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. S1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. S6901 et seq. (42 U.S.C. S6903) or (xi) defined as a "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42. U.S.C. S6901, et seq. (42 U.S.C. S6901).

21. COMPLIANCE WITH ENVIRONMENTAL LAWS. To the best of Tenant-Seller's knowledge, the Premises and its 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.

22. INDEMNITY. Tenant-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 Premises, 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 Premises. 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, profits 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 acts or omissions of Tenant-Seller herein.

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

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

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

Mailing Address of Tenant-Seller
Raymundo Ornelas
10767, Unit B, Monte Vista, Ave
Montclair, CA 91762

Tenant-Seller

Raymundo Ornelas

10-02-09
Date

Mailing Address of Buyer
City of Montclair
5111 Benito Street
P.O. Box 2308
Montclair, CA 91763
Lee C. McDougal
City Manager

Buyer

Lee C. McDougal, City Manager

Date

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "A"

A PARCEL OF LAND DESCRIBED IN DEED TO HAROLD W. MC COY & PEGGY C. MC COY, TRUSTEES OF THE HAROLD W. MC COY AND PEGGY C. MC COY REVOCABLE LIVING TRUST DATED JULY 19, 1990, AS TO AN UNDIVIDED ½ INTEREST AND CARL L. MC COY, TRUSTEE OF THE CARL L. MC COY REVOCABLE LIVING TRUST DATED MAY 17, 1990 AS TO AN UNDIVIDED ½ INTEREST RECORDED FEBRUARY 12, 1991 DOCUMENT NO. 91050374 OF OFFICIAL RECORDS OF SAN BERNARDINO COUNTY SAID PARCEL DESCRIBED IN SAID DEED AS FOLLOWS: (RESTATED AS RECORDED)

ALL THAT PORTION OF LOT 2, BLOCK 29, ACCORDING TO MAP OF MONTE VISTA TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 34 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 2, SAID POINT BEING ON THE EAST LINE OF MONTE VISTA AVENUE; THENCE NORTH 234.00 FEET ALONG THE EAST LINE OF SAID MONTE VISTA AVENUE TO THE NORTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO HAROLD W. MC COY ET UX, BY DEED RECORDED OCTOBER 30, 1963 IN BOOK 6019, PAGE 65 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TO THE TRUE POINT OF BEGINNING.

THENCE EAST ALONG THE NORTH LINE OF SAID MC COY LAND TO THE EASTERLY LINE OF THE LAND CONVEYED TO ROY W. PHELPS ET UX., AND RAYMOND W. ALBRECHT, ET UX., BY DEED RECORDED NOVEMBER 9, 1960 IN BOOK 5278, PAGE 376; THENCE NORTHERLY ALONG SAID EASTERLY LINE TO THE NORTH LINE OF PHELPS LAND, THENCE WEST ALONG SAID NORTH LINE TO THE EAST LINE OF SAID MONTE VISTA AVENUE; THENCE SOUTH ALONG THE EAST LINE OF SAID MONTE VISTA AVENUE, TO THE TRUE POINT OF BEGINNING.

ACCEPTING THEREFROM THE SOUTH 60.84 FEET.

THE ABOVE PARCEL OF LAND CONTAINS 0.49 ACRES (21,383 SF) MORE OR LESS.

PREPARED BY ME OR UNDER MY DIRECTION

BY: Larry E Barnes 2.16.06

DATE

PROFESSIONAL LAND SURVEYOR
LARRY E. BARNES
No. 7766
EXP. 12-31-07
STATE OF CALIFORNIA

EXHIBIT B

IMPROVEMENTS PERTAINING TO THE REALTY

RAY ORNELAS
IMPROVEMENTS PERTAINING TO THE REALTY
ITEMS TO BE LEFT IN PLACE
EFFECTIVE DATE OF VALUE - March 30, 2007
EXHIBIT "B"

Item No.	Qty.	Description
1	1	Lot of supplemental electrical for various machines
2	1	Misc. minor improvements

EXHIBIT C

QUITCLAIM DEED

RECORDING REQUESTED BY:
City of Montclair
5111 Benito Street
Montclair, CA 91764
WHEN RECORDED MAIL TO:
Same as above

RECORDER:
Record without fee subject to Govt. Code 6103. Recordation required to complete chain of title.

INCORPORATED AREA A.P.N.: 1011-301-24	QUITCLAIM DEED	DOCUMENT TRANSFER TAX $ 0.00 PER REVENUE & TAXATION CODE SECTION 11922

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Raymundo Ornelas

do(es) hereby REMISE, RELEASE AND FOREVER QUITCLAIM to:

City of Montclair

all right, title and interest in and to (a) the real property described in Exhibit "1" ("Property"); and (b) any improvements owned by the conveying party that are attached or affixed in any manner to the Property and which are not removed by the conveying party ("Retained Improvements") prior to the date of recording of this Quitclaim Deed. The Property is located in the City of Montclair, County of San Bernardino, State of California, and is described as follows:

SEE EXHIBIT "1" ATTACHED HERETO AND
BY THIS REFERENCE MADE A PART HEREOF

Raymundo Ornelas 10-02-09
Raymundo Ornelas Date

ACCEPTANCE:
This is to certify that the interest in the LANDS conveyed by the within instrument to the City of Montclair, a municipal corporation, is hereby accepted by the undersigned officer/agent on behalf of the City Council, and the Grantee consents to the recordation thereof by its duly authorized officer/agent.

Date: _____

Title: City Clerk

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE

Not Applicable

Name | Street Address | City & State

NOTARY ACKNOWLEDGMENT

State of California }
County of San Bernardino } ss.

On October 2, 2009, before me, Raimok Dawit, a Notary Public, personally appeared Raymundo Ornelas,

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) (is/~~are~~) subscribed to the within instrument and acknowledged to me that (he/~~she~~/~~they~~) executed the same in (his/~~her~~/~~their~~) authorized capacity(~~ies~~), and that by (his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary

Notary Seal

RAIMOK DAWIT
Commission # 1838747
Notary Public - California
San Bernardino County
My Comm. Expires Feb 27, 2013

EXHIBIT "1"
(to Quitclaim Deed)

LEGAL DESCRIPTION

EXHIBIT "1"

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ACCEPTING THEREFROM THE SOUTH 60.84 FEET.

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PREPARED BY ME OR UNDER MY DIRECTION

BY: Larry E Barnes 2.16.06
DATE

PROFESSIONAL LAND SURVEYOR
LARRY E. BARNES
No. 7766
EXP. 12-31-07
STATE OF CALIFORNIA

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NOS. 09-106 (OSMOSE UTILITIES SERVICES, INC.), 09-107 (CARL McCOY AND HAROLD McCOY), 09-108 (JACK DiGIORGIO), 09-109 (WE LOVE TOWS AUTO TRANSPORT), AND 09-110 (REYNALDO MARTINEZ), SELF-MOVE AGREEMENTS IN CONJUNCTION WITH RIGHT-OF-WAY ACQUISITION FOR THE MONTE VISTA AVENUE/UNION PACIFIC RAILROAD GRADE SEPARATION PROJECT	**DATE:**	November 16, 2009
		SECTION:	AGREEMENTS
		ITEM NO.:	2
		FILE I.D.:	STA110
		DEPT.:	PUBLIC WORKS
BUSINESS PLAN:	STRATEGIC PRIORITY NO. 6, GOAL 2		

REASON FOR CONSIDERATION: As part of ongoing efforts to secure right-of-way for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, the City is currently acquiring right-of-way in fee title and easements on various parcels. Most of these parcels are occupied, and the tenants must be relocated. Under state laws, the tenants are entitled to move themselves but must enter into agreements with the City to recover their costs. Agreements with the City require City Council approval.

Approval of Agreement Nos. 09-106 through 09-110 satisfies a portion of Strategic Priority No. 6, Goal 2, 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.

The City has closed escrow on a number of right-of-way acquisitions, most of which had tenants occupying the premises. Notice has been given to the tenants to vacate the premises. Under state law, the tenants are entitled to reimbursement of relocation expenses or may relocate themselves. In the event they choose to "self move," they are entitled to relocation expenses not exceeding the amount of the lowest bid that the City receives for that move. Agreement Nos. 09-106 through 09-110 provide for relocation expenses for several tenants.

FISCAL IMPACT: Partial funding for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project is provided through the state Traffic Congestion Relief Program. All right-of-way costs to date, including the proposed relocation expenses, would be reimbursed to the City by the state. Tenants will receive half of the money up front and the other half when the move is complete.

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

The agreements provide for relocation expenses in the following amounts:

Agreement No.	*Party*	*Amount*
09-106	Osmose Utilities Services, Inc.	$2,609.00
09-107	Carl McCoy and Harold McCoy	$5,469.95
09-108	Jack DiGiorgio	$ 850.00
09-109	We Love Tows Auto Transport	$4,138.70
09-110	Reynaldo Martinez	$8,916.47

RECOMMENDATION: Staff recommends the City Council approve Agreement Nos. 09-106 (Osmose Utilities Services, Inc.), 09-107 (Carl McCoy and Harold McCoy), 09-108 (Jack DiGiorgio), 09-109 (We Love Tows Auto Transport), and 09-110 (Reynaldo Martinez), self-move agreements in conjunction with right-of-way acquisition for the Monte Vista Avenue/ Union Pacific Railroad Grade Separation Project.

Self Move Agreement

It is hereby understood and agreed by Osmose Utilities Services, Inc. (called here the "Claimant") and the City of Montclair (called here the "Displacing Agency") that the amount to be paid to the Claimant for the relocation of all equipment, stock, inventory, and other items of personal property as seen in the attached pictures (**Exhibit A**) and not acquired with the real property located at 10807 Monte Vista, Montclair, CA 91763 ("Subject Property") to the replacement location at 12176 S. 7th Street, Modesto, CA 95351 ("Replacement Site") is **TWO THOUSAND SIX HUNDRED NINE DOLLARS** ($2,609.00). This payment is based on the amount of the lowest, most reasonable bid, attached hereto as **Exhibit B**.

The parties further agree as follows:

1. No claim for payment shall be honored by the Displacing Agency until:

   (a) The Claimant has completed the removal of all items as set forth in Exhibit "A" from the Subject Property.

   (b) The Claimant has relocated all items listed on Exhibit "A" to the Replacement Site.

   (c) A representative of the Displacing Agency has personally inspected the Subject Property and the Replacement Site to verify completion of the move.

2. If upon inspection by a representative of Overland, Pacific & Cutler, Inc., the Displacing Agency's relocation representative, any portion of the items on Exhibit "A" were not relocated to the Replacement Site for any reason whatsoever, an appropriate reduction in the agreed amount shall be made by the Displacing Agency.

3. The claim for payment shall be submitted within eighteen (18) months of the date of moving from the Subject Property.

4. The Claimant shall allow a representative of Overland, Pacific & Cutler, Inc. to monitor the move as it sees fit, and such monitoring shall not carry with it any liability or responsibility on the part of the Displacing Agency or Overland, Pacific & Cutler, Inc.

5. Neither the Displacing Agency nor any employee, officer, or agent thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Claimant under or in connection with the agreement. It is also understood and agreed that the Claimant shall fully indemnify and hold the Displacing Agency and Overland, Pacific & Cutler, Inc. harmless for any liability imposed by injury or damage to property occurring by reason of anything done or omitted by Claimant in connection with this agreement.

6. In the event the actual cost of the move exceeds the amount agreed upon above, only those additional costs which can be shown to have been actually required in order to complete the move will, within certain limitations, be reimbursed. In this event, the actual cost of the entire move must be itemized and documented in support of the claim. All moving expense records are subject to review and audit by a representative of the Displacing Agency.

This agreement does not include specialized and related moving costs which are to be performed by others. These costs will be handled under a separate claim upon completion of the work and presentation of itemized paid bills. Such specialized and related moving costs may include the following:

None

GARY M. SAMUELSON

Gary Samuelson-Operations Manager

Claimant Signature

9-25-09

Date

Recommended:

Overland, Pacific & Cutler, Inc.

Karen Jackson

Karen Jackson

Mark LaBonte

Approved:

City of Montclair

Lee C. McDougal, City Manager

Date

Attachments

EXHIBIT "A"

The following items require relocation and have not been acquired with the real property in conjunction with the acquisition of the Subject Property.

Please list and describe all items to be relocated:

All personal property within the part take area, to include but not limited to:

Vehicles
Construction Equipment
Tools
Supplies
Jack Hammers
Hand Shovels
Tampers
Wood preservatives
Shed
30' Container

I certify under the penalty of perjury that the above listed items are personal property owned by me and are to be relocated to the Replacement Site.

Dated: 9-25-09

By: _____
Gary Samuelson-Operations Manager

EXHIBIT "B"

LOWEST, MOST REASONABLE MOVING BID

Please see attached moving bid

COMMERCIAL RELOCATION COMPANY, INC.
Office and Industrial Movers
www.CommercialRelocationCompany.com

Project Pricing Information:

2/15/08

Osmose

Total Materials Costs		
Shrinkwrap, labels, etc.	$	200.00
Sales Tax @ 8.25%	$	17.00
Total Materials	**$**	**217.00**
Office Relocation Labor		
1 Supervisor 8 Hours @ $35/hour	$	280.00
1 Driver 8 Hours @ $55/hr., include truck	$	440.00
6 Helper 8 Hours @ $27/hr	$	1,296.00
Fuel Surcharge	$	88.00
Complete Relocation labor	**$**	**2,392.00**
Complete Estimated Move Cost	***$***	***2,609.00***

If replacement valuation is needed, cost is $8/$1000 of customer's declared value

Other Various Options & Equipment Rental Rates:

Excess Replacement Valuation: $8.50/$1000 of valuation
Carts left on-site at customer's request: $2/cart per day plus subsequent pick up, $300 each if lost
4-wheel dollies left on-site at customer's request: $1/dolly per day plus subsequent pick up, $45 each if lost
Quickpacks: $2/quickpack per day plus subsequent pick up, $28 each if lost
Computer keyboard bags: $3 each
Storage in our warehouse: $2/sq. foot as used
Forklifts as needed: Approx. $350/day
Tear down and rebuild of workstations: please ask
Post-move tune-up: handled hourly at above rates, please ask

16182 Gothard Street, Suite B, Huntington Beach, Ca. 92647 (714) 596-0502 (714) 847-0530 fax

Self Move Agreement

It is hereby understood and agreed by Carl McCoy and Harold McCoy (called here the "Claimant") and the City of Montclair (called here the "Displacing Agency") that the amount to be paid to the Claimant for the relocation of all equipment, stock, inventory, and other items of personal property as seen in the attached pictures (**Exhibit A**) and not acquired with the real property located at 10767 Monte Vista, Montclair, CA 91763 ("Subject Property") to the replacement location at 5674 San Bernardino Street, Montclair, CA 91763 ("Replacement Site") is **FIVE THOUSAND FOUR HUNDRED SIXTY NINE DOLLARS AND NINETY FIVE CENTS** ($5,469.95). This payment is based on the amount of the lowest, most reasonable bid, attached hereto as **Exhibit B**.

The parties further agree as follows:

1. No claim for payment shall be honored by the Displacing Agency until:

   (a) The Claimant has completed the removal of all items as set forth in Exhibit "A" from the Subject Property.

   (b) The Claimant has relocated all items listed on Exhibit "A" to the Replacement Site.

   (c) A representative of the Displacing Agency has personally inspected the Subject Property and the Replacement Site to verify completion of the move.

2. If upon inspection by a representative of Overland, Pacific & Cutler, Inc., the Displacing Agency's relocation representative, any portion of the items on Exhibit "A" were not relocated to the Replacement Site for any reason whatsoever, an appropriate reduction in the agreed amount shall be made by the Displacing Agency.

3. The claim for payment shall be submitted within eighteen (18) months of the date of moving from the Subject Property.

4. The Claimant shall allow a representative of Overland, Pacific & Cutler, Inc. to monitor the move as it sees fit, and such monitoring shall not carry with it any liability or responsibility on the part of the Displacing Agency or Overland, Pacific & Cutler, Inc.

5. Neither the Displacing Agency nor any employee, officer, or agent thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Claimant under or in connection with the agreement. It is also understood and agreed that the Claimant shall fully indemnify and hold the Displacing Agency and Overland, Pacific & Cutler, Inc. harmless for any liability imposed by injury or damage to property occurring by reason of anything done or omitted by Claimant in connection with this agreement.

6. In the event the actual cost of the move exceeds the amount agreed upon above, only those additional costs which can be shown to have been actually required in order to complete the move will, within certain limitations, be reimbursed. In this event, the actual cost of the entire move must be itemized and documented in support of the claim. All moving expense records are subject to review and audit by a representative of the Displacing Agency.

This agreement does not include specialized and related moving costs which are to be performed by others. These costs will be handled under a separate claim upon completion of the work and presentation of itemized paid bills. Such specialized and related moving costs may include the following:

None

Carl McCoy

Carl McCoy
Claimant Signature

Harold McCoy

Harold McCoy
Claimant Signature

9-26-09
Date

Recommended:

Overland, Pacific & Cutler, Inc.

Karen Jackson

Mark LaBonte

Approved:

City of Montclair

Lee C. McDougal, City Manager

Date

Attachments

EXHIBIT "A"

The following items require relocation and have not been acquired with the real property in conjunction with the acquisition of the Subject Property.

Please list and describe all items to be relocated:

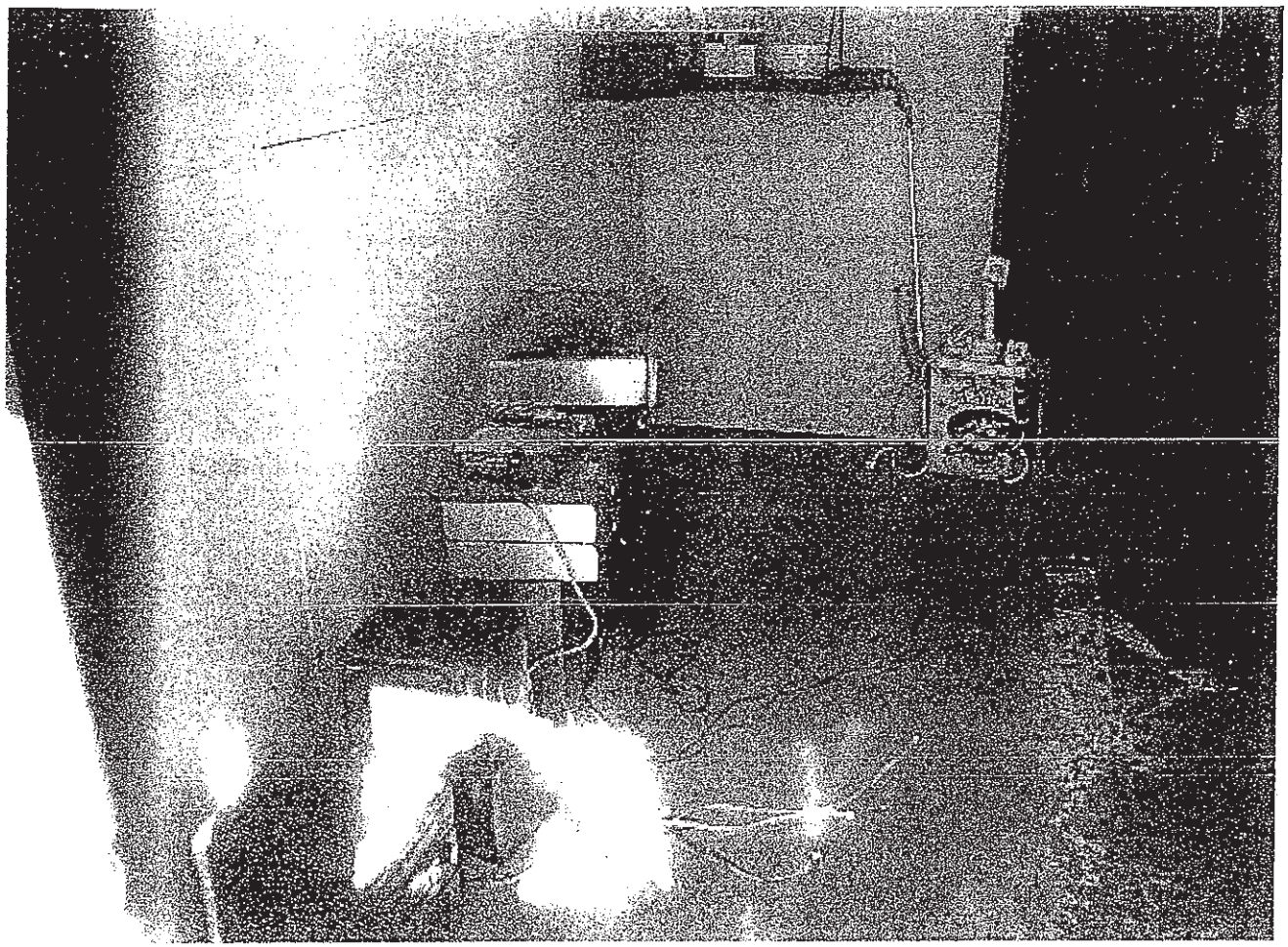
Please see photos

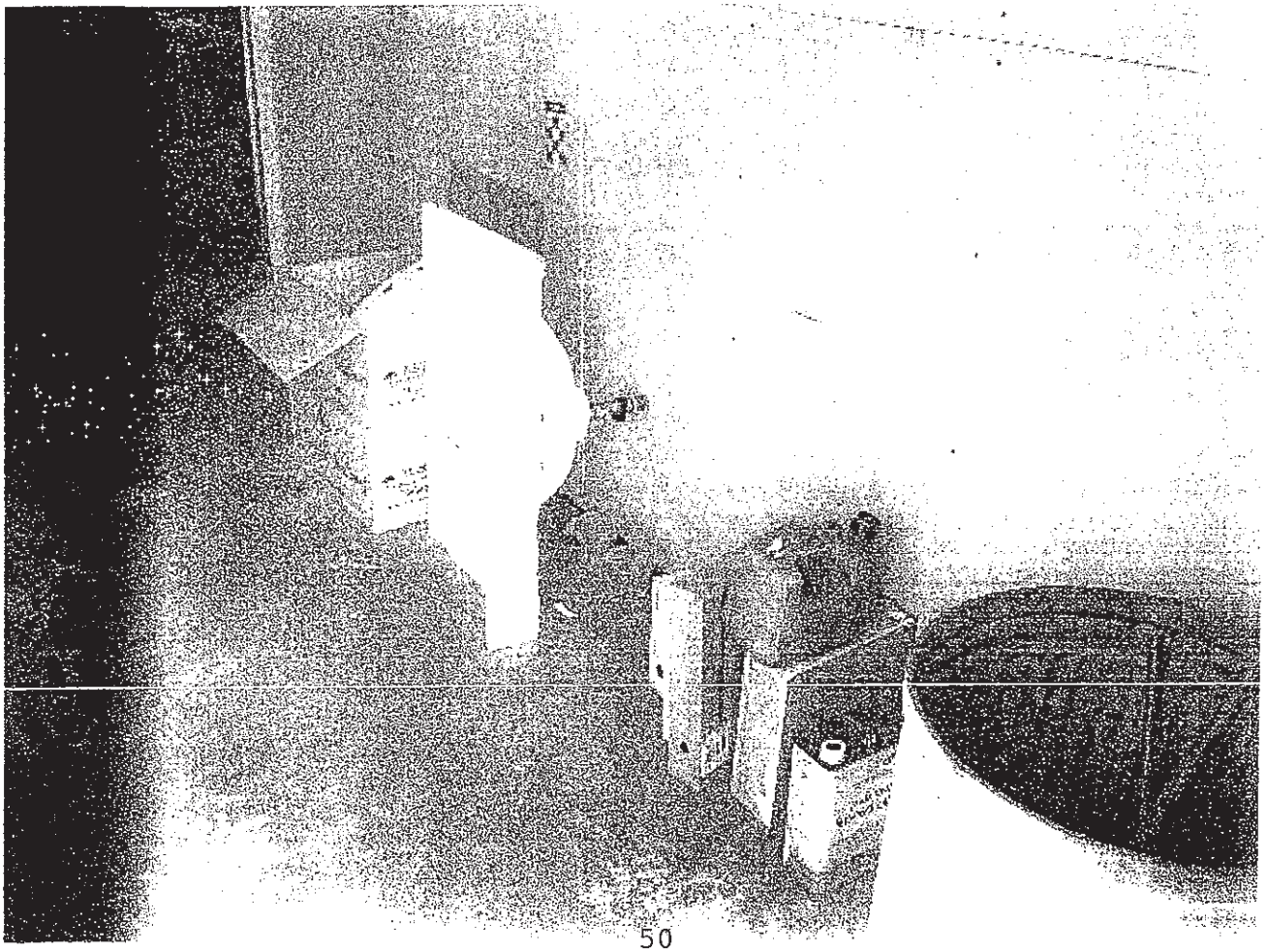
I certify under the penalty of perjury that the above listed items are personal property owned by me and are to be relocated to the Replacement Site.

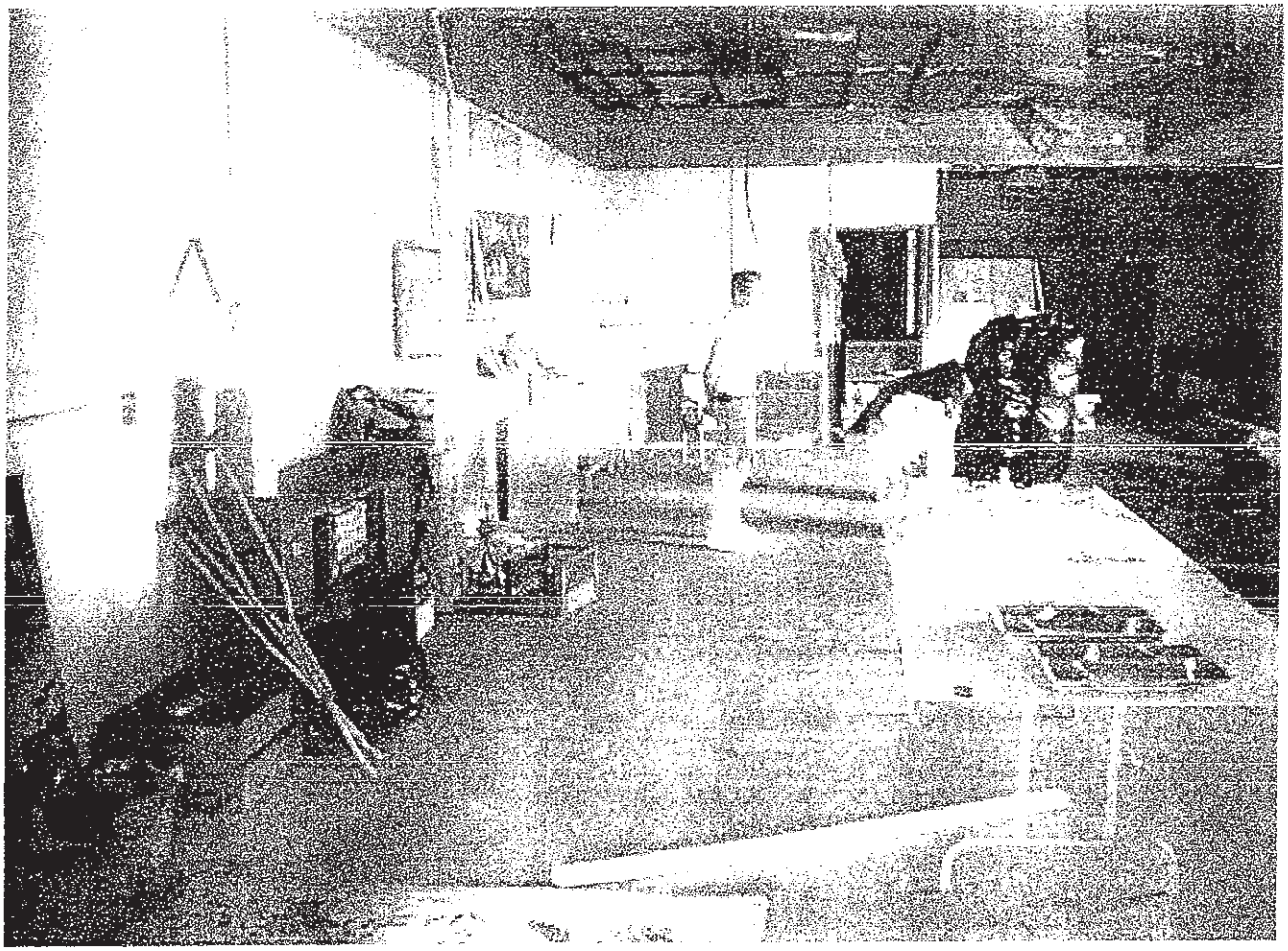
Dated: 9-26-09

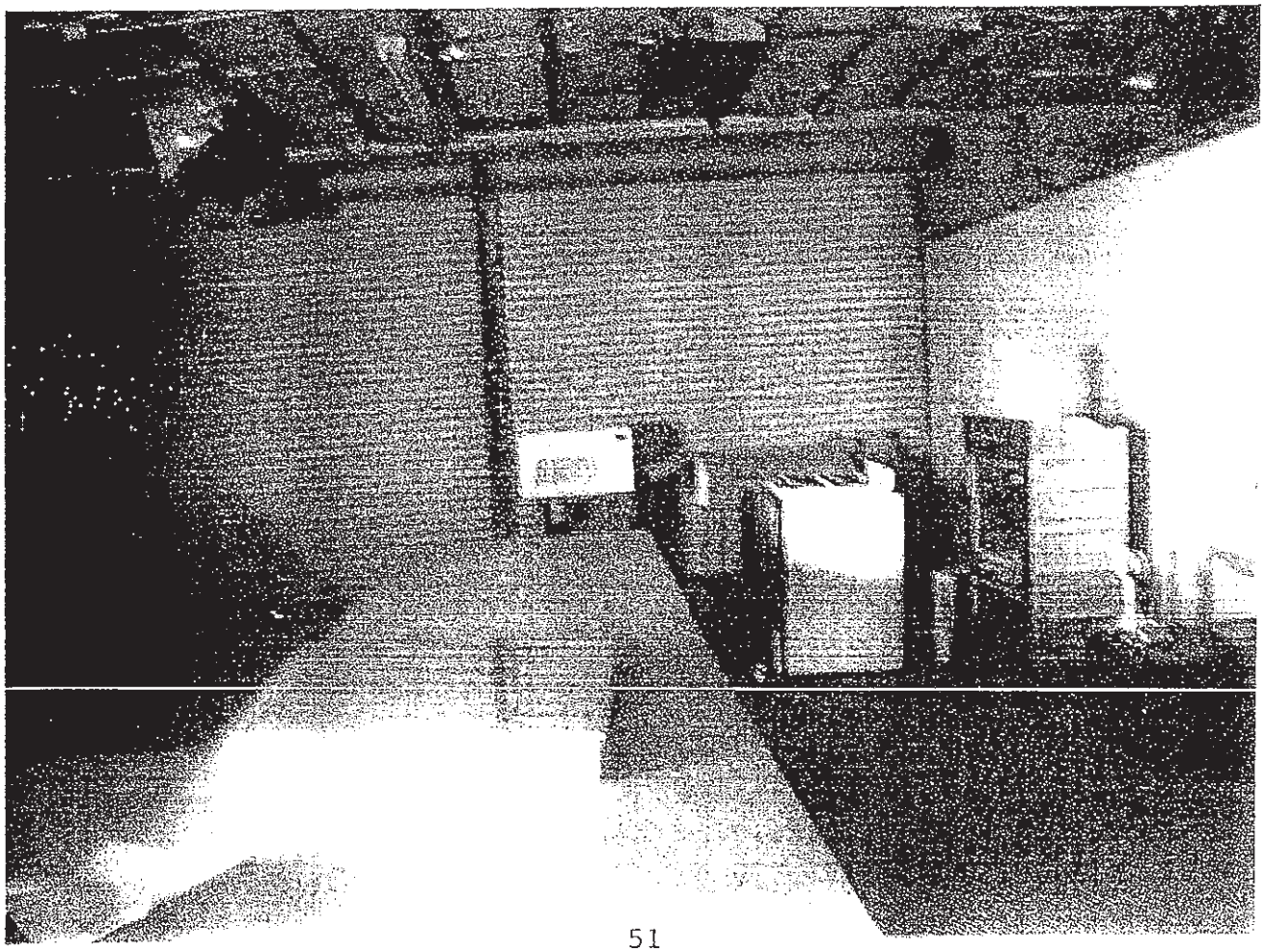
By: _____
Carl McCoy

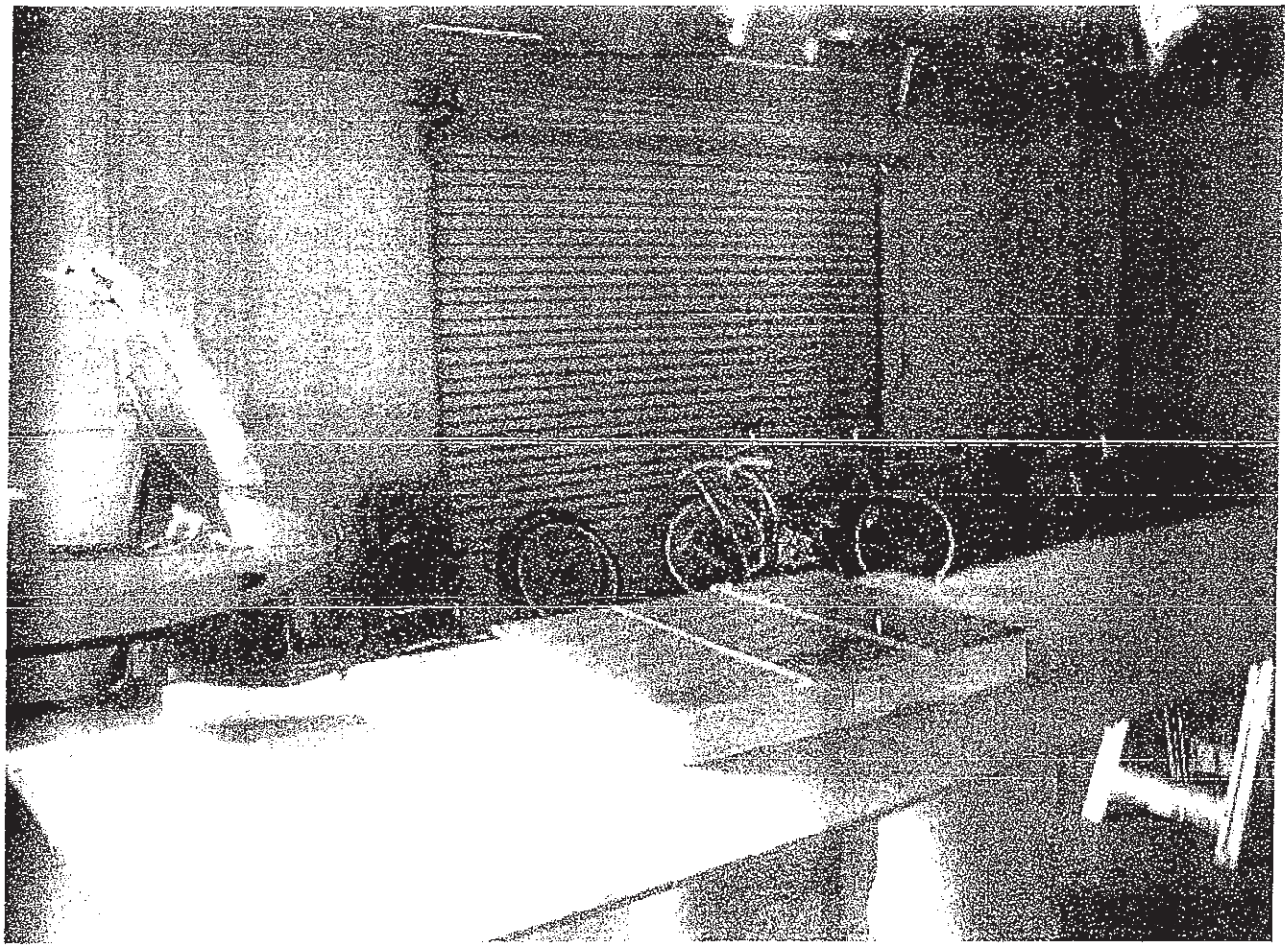
By: _____
Harold McCoy

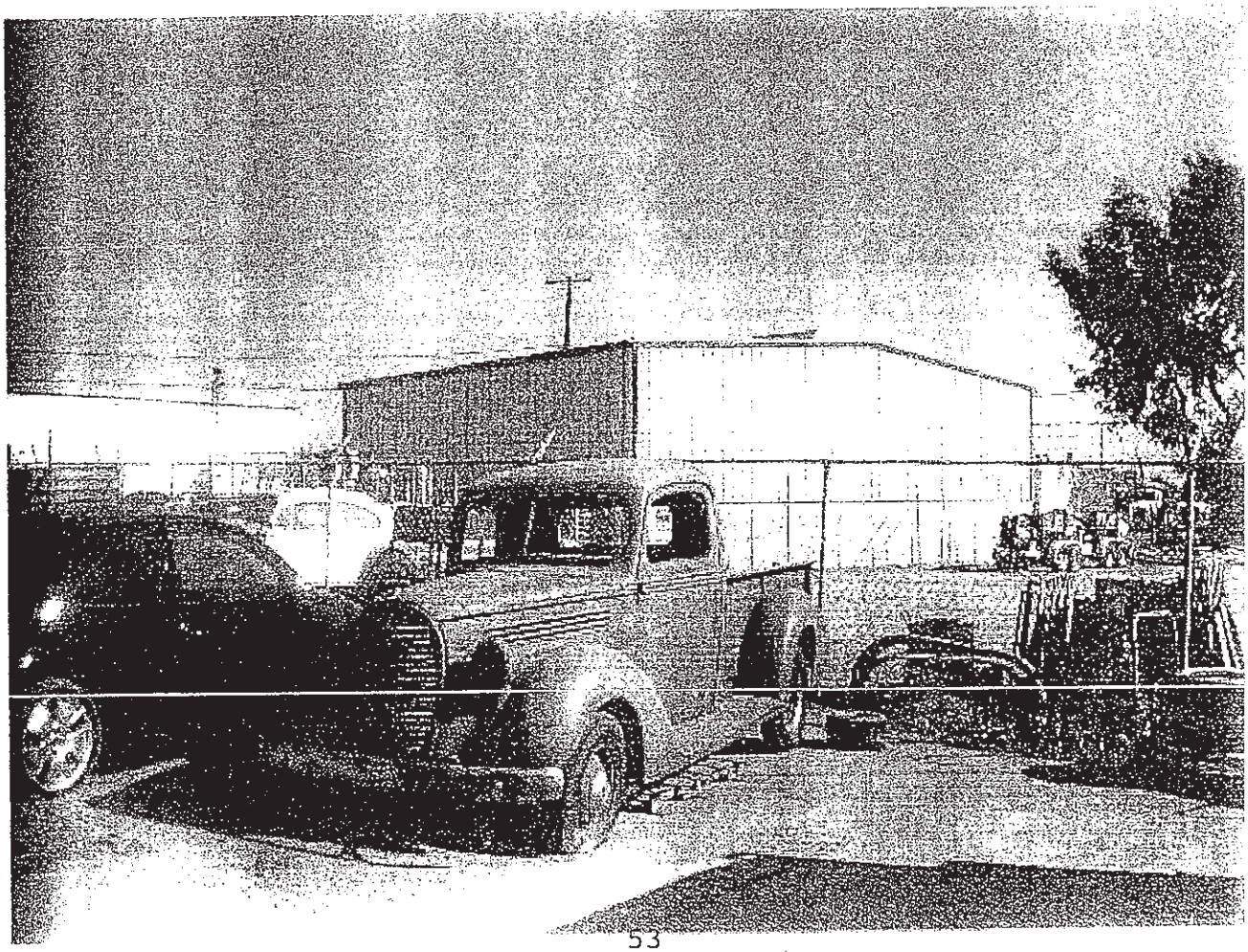


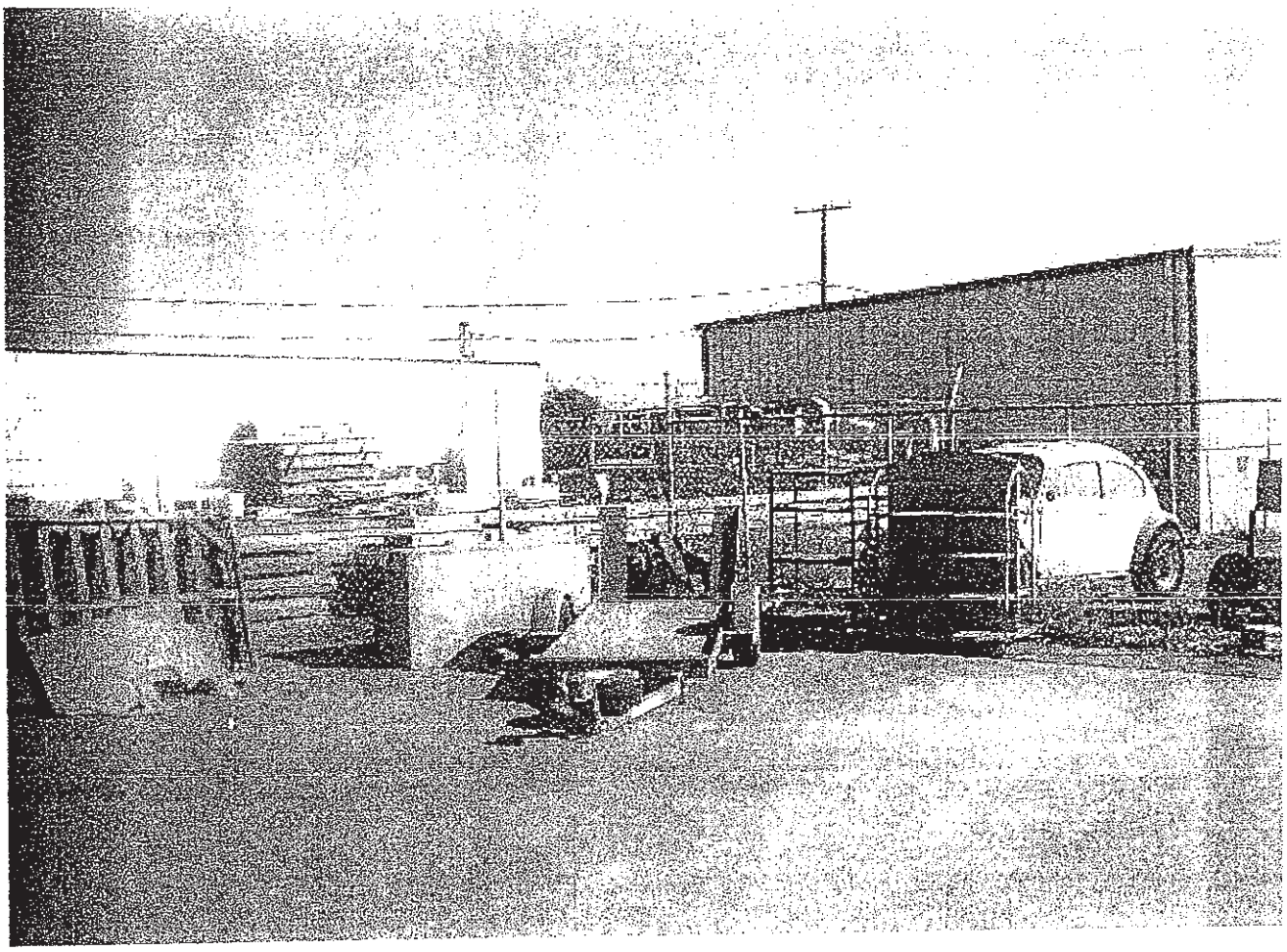


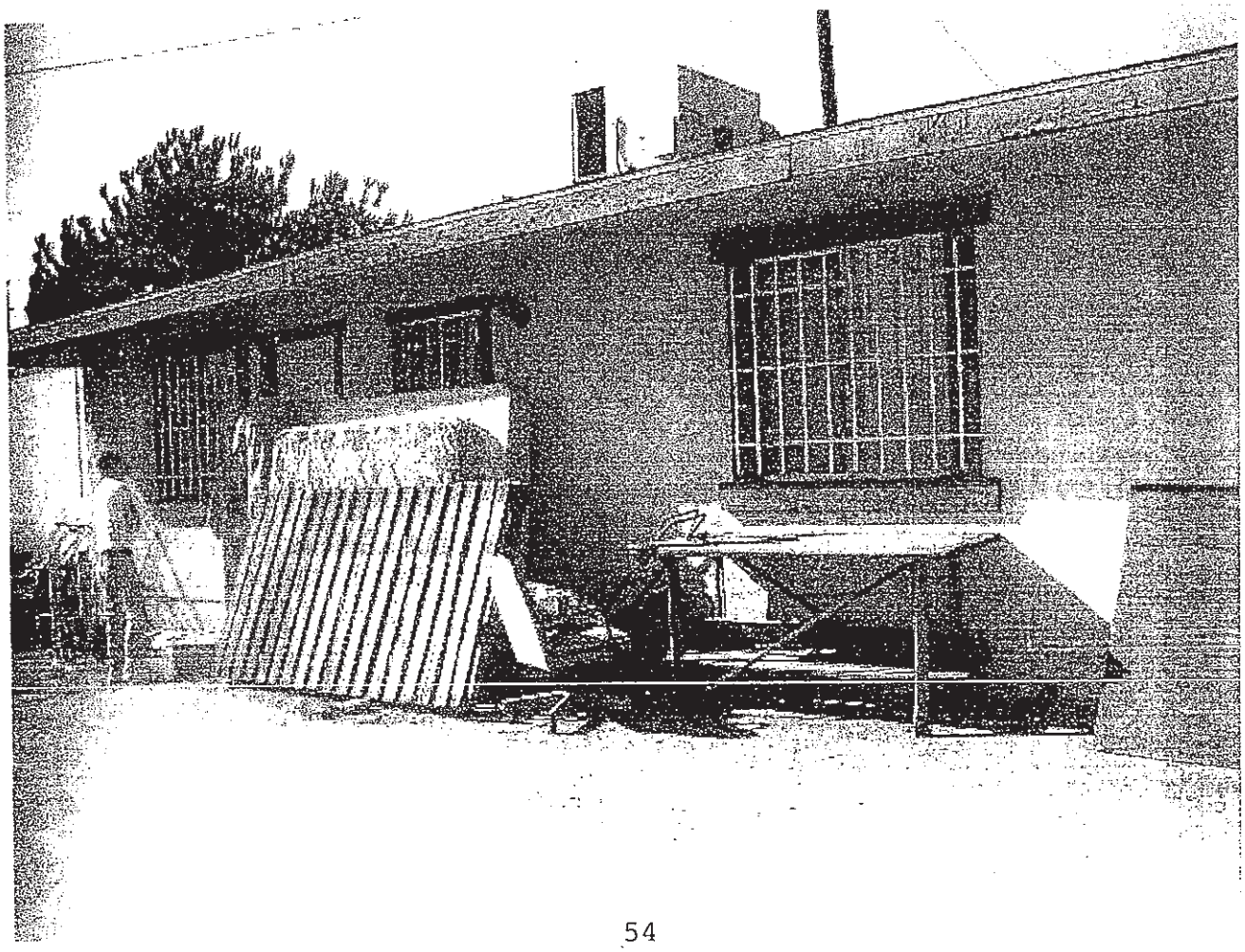


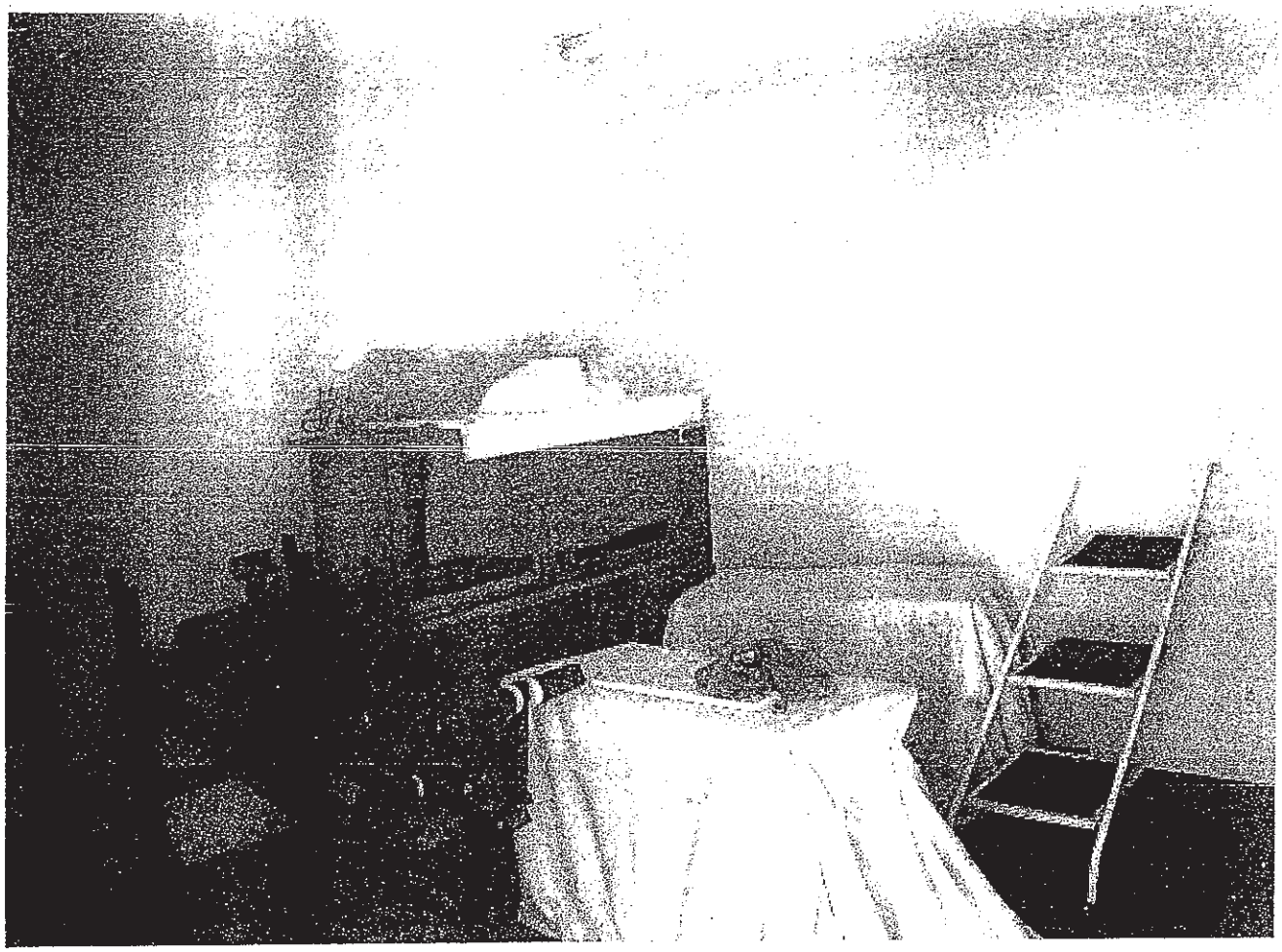


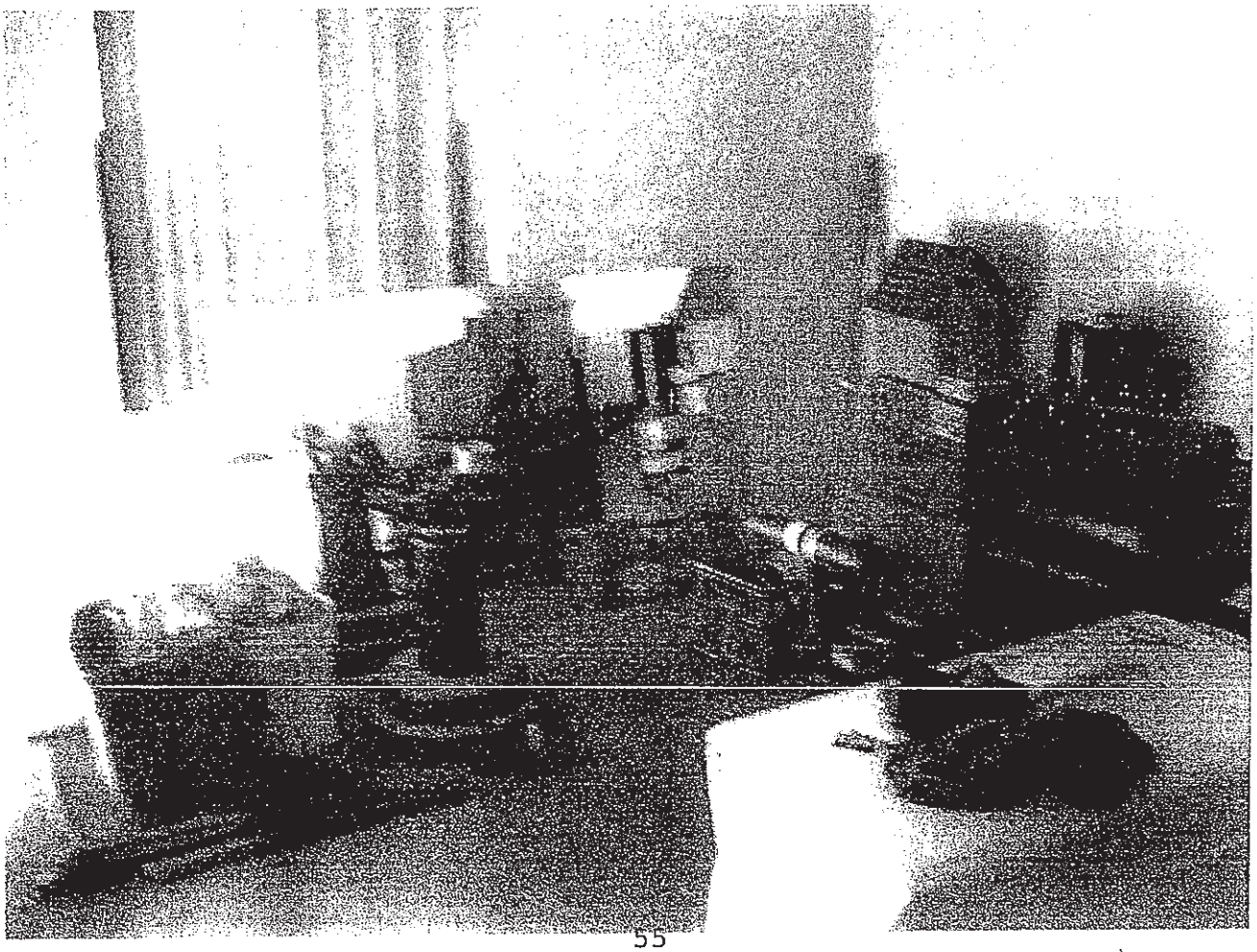


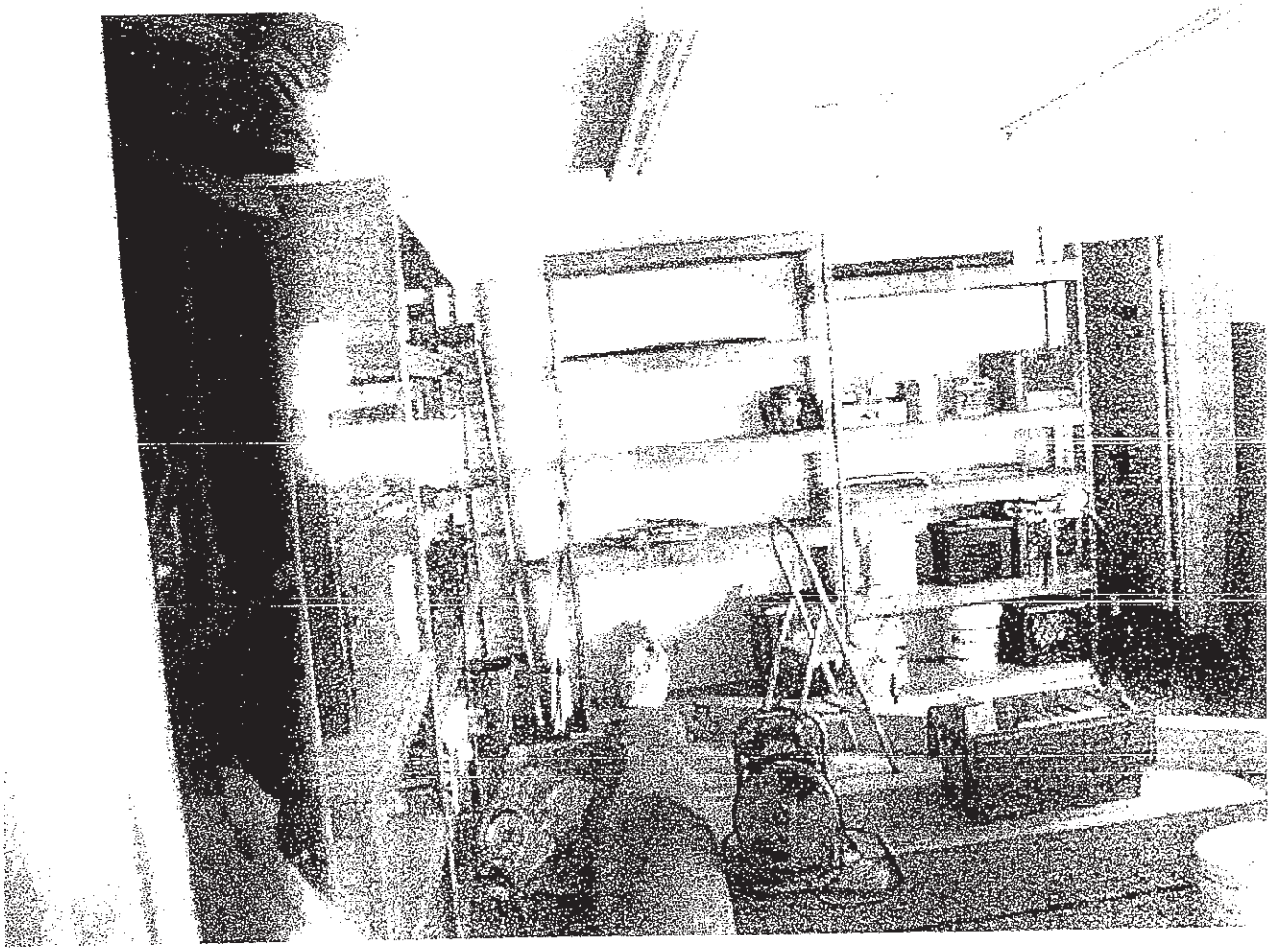


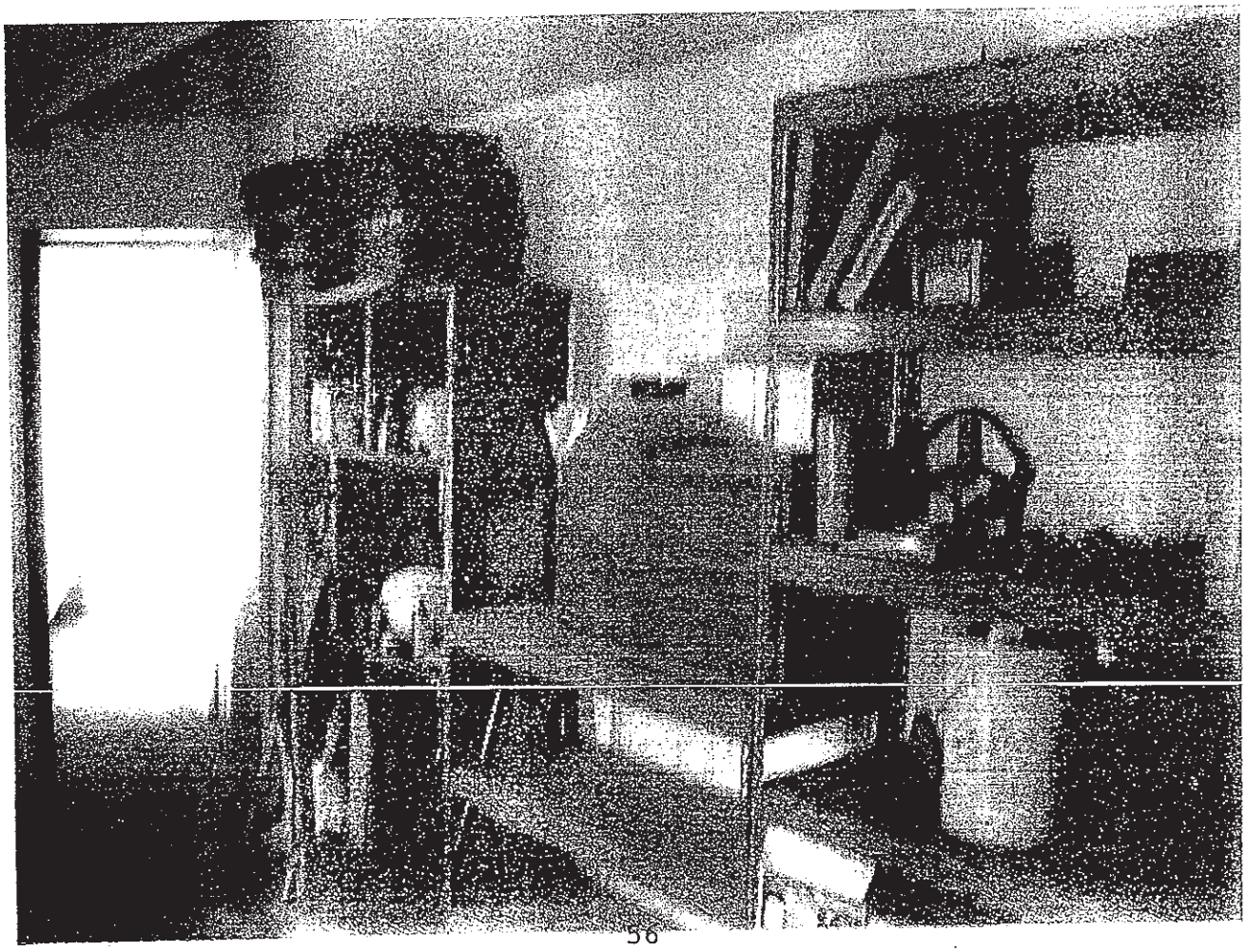


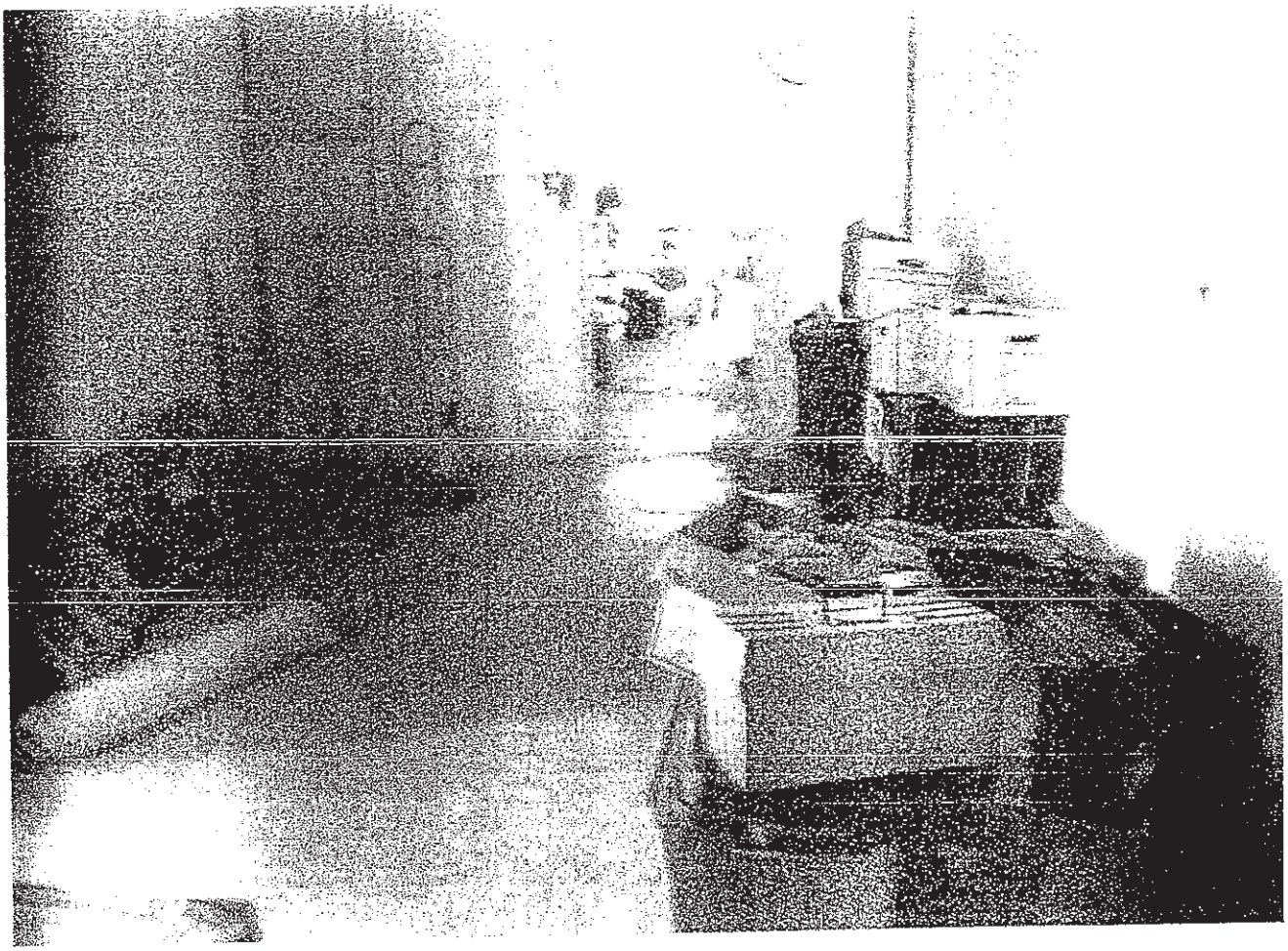


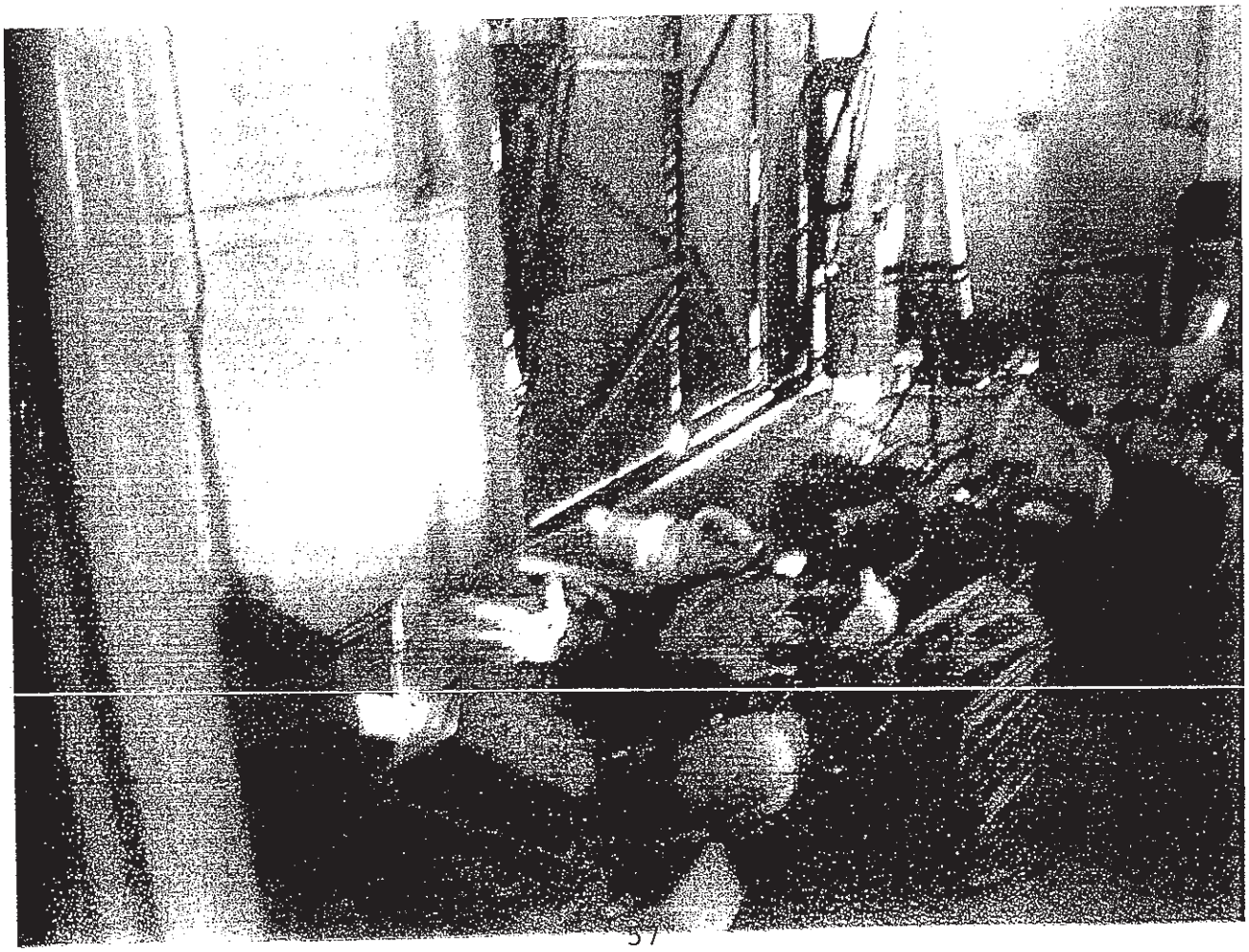


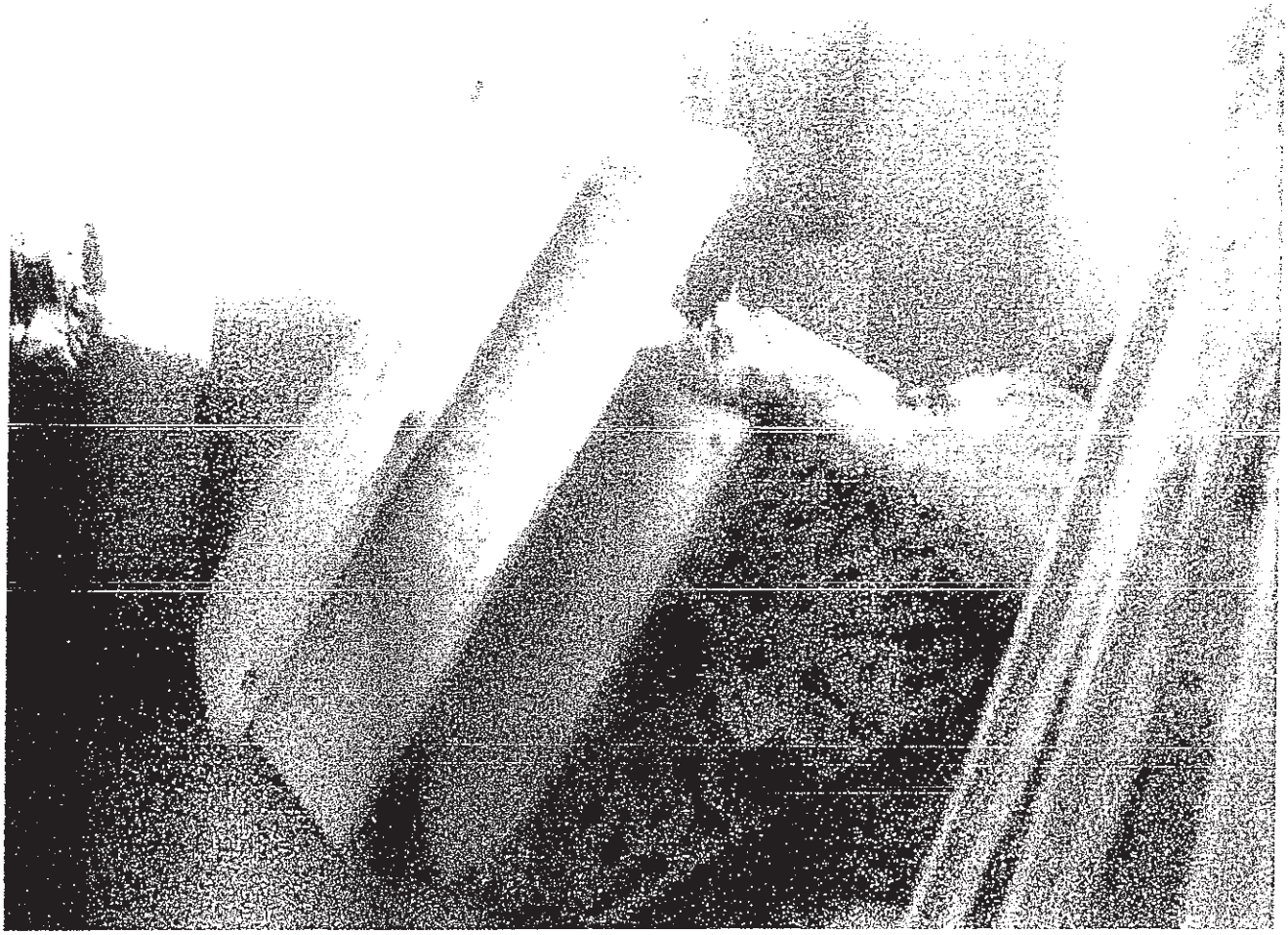


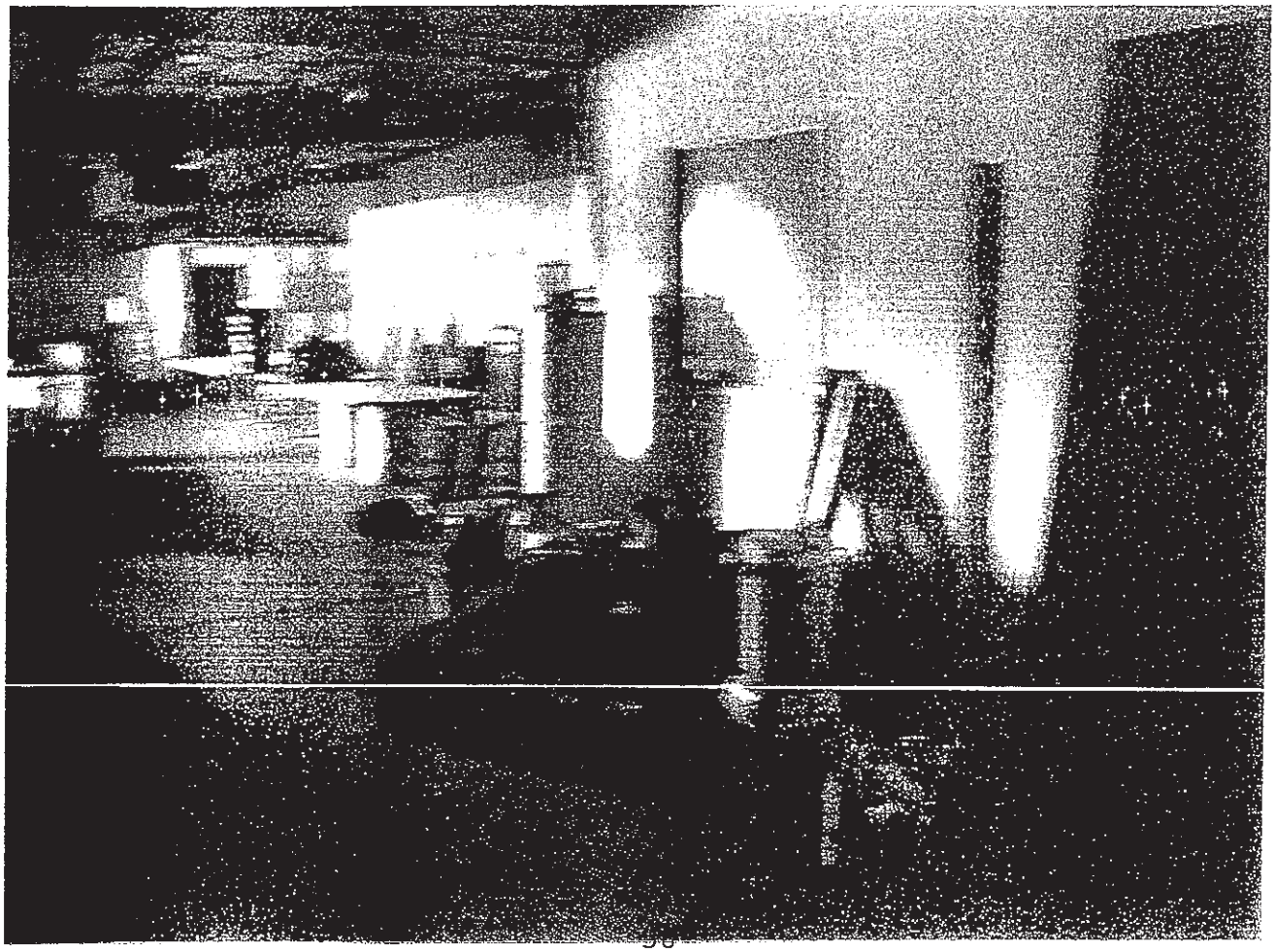












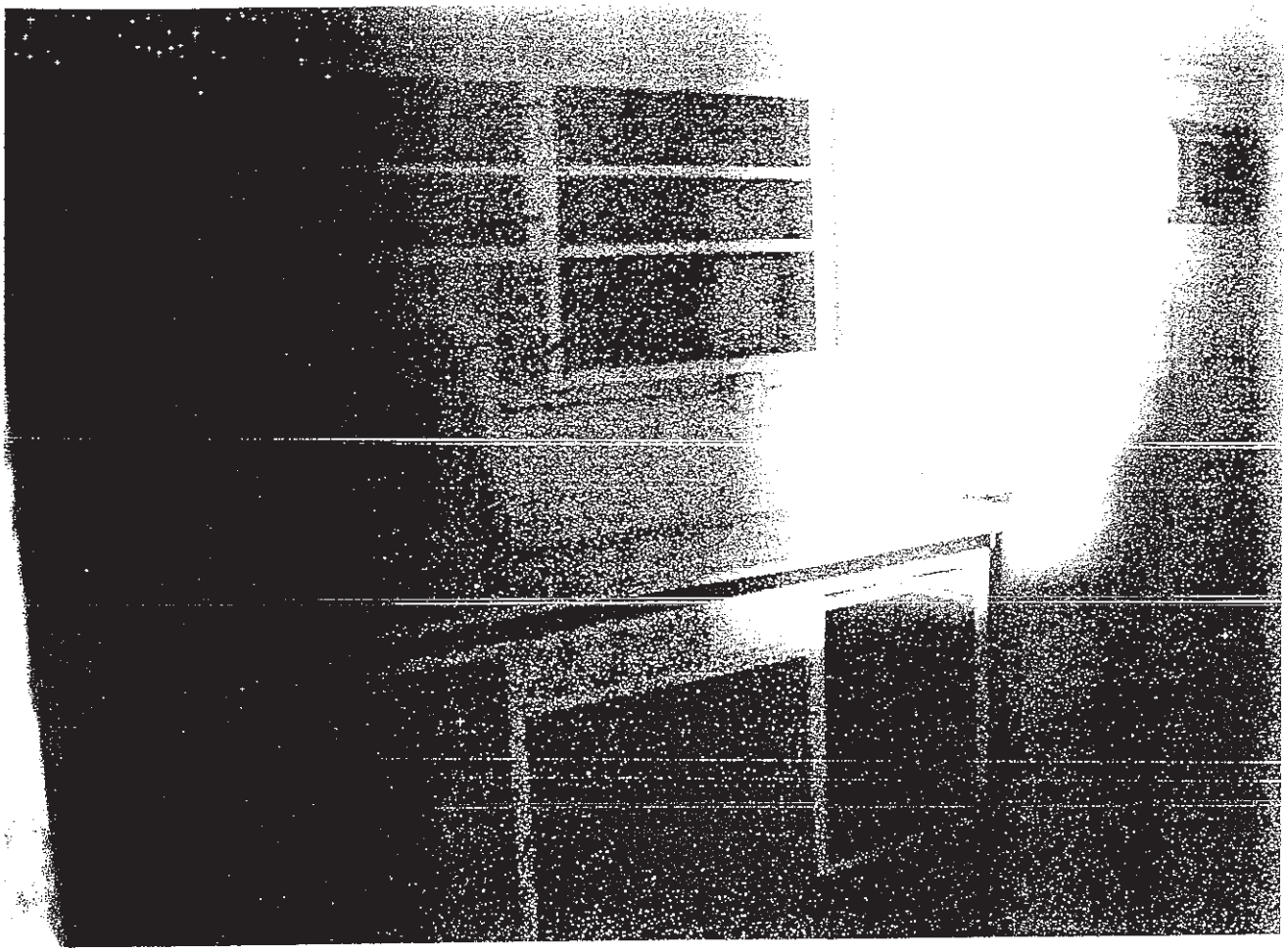


EXHIBIT "B"

LOWEST, MOST REASONABLE MOVING BID

Please see attached moving bid

Exhibit "B"

Estimate/Order For Service

Estimate Prepared For: Carl & Harold Mc Coy

Agent
Suddath Relocation Systems
14221 Artesia Blvd.
La Mirada, CA 90638
562-404-7794
562-483-7845
sbargsten@suddath.com

Sales Person
Shannon Bargsten
sbargsten@suddath.com

Origin Information

Shipper: Carl & Harold Mc Coy
Address: 1067 Monta Vista Av
Address 2:
City St. Zip: Montclair, CA 91763
County: San Bernardino
Phone(H): ___-___-____
Phone(W): ___-___-____
Email: kjackson@opcservices.com

Destination Information

Shipper: Carl & Harold Mc Coy
Address:
Address 2:
City St. Zip: Anaheim, CA 92805
County: Orange
Phone(H): ___-___-____
Phone(W): ___-___-____

Service Information

Order No:
Estimate Date: 9/21/2009
Pack Date:
Load Date:
Deliver Date:

Tariff: Local	Effective Date: 9/21/2009	Estimated Weight: 25000

Local Moving Charges

6 Mover(s), 2 Van(s), 8 Hour(s). Hourly Rate: $220.00
Travel Time: 2 hours. Hourly Rate: $220.00 per hour

Local Moving Charges: $2,200.00

Local Packing Charges

3 packers, 1 van, 8 hours, $110.00/per hour

Article	Qty	Cost Ea.	Cost
1.5 cu ft	22	$5.58	$122.76
3.0 cu ft	30	$10.29	$308.70
4.5 cu ft	26	$10.29	$267.54
Dish Pack	10	$23.31	$233.10
Glass Pack	7	$20.27	$141.89
King/Queen	6	$17.32	$103.92
Shrink rap	5	$22.65	$113.25
Sped pack	5	$31.50	$157.50

SubTotal: $1,448.66
Tax: $91.29

Packing Total: $2,419.95

Additional Charges

Service Description		
Towing 1 show truck and 1 small tralor	$700.00	
		Total Miscellaneous: $700.00
Local Fuel Charge	$150.00	
		Fuel Charge Total: $150.00

Local Additional Charges: $850.00

Total Estimated Costs: $5,469.95

Signature of Salesperson ____ Date ____ Signature of Consumer ____ Date ____

Self Move Agreement

It is hereby understood and agreed by Jack Di Giorgio (called here the "Claimant") and the City of Montclair (called here the "Displacing Agency") that the amount to be paid to the Claimant for the relocation of all equipment, stock, inventory, and other items of personal property itemized on the attached inventory (**Exhibit A**) and not acquired with the real property located at 4848 W. Mission Blvd., Montclair, CA 91762 ("Subject Property") to the replacement location at 4848 W. Mission Blvd., Montclair, CA 91762 ("Replacement Site") is **EIGHT HUNDRED FIFTY DOLLARS** ($850.00). This payment is based on the amount of the lowest, most reasonable bid, attached hereto as **Exhibit B**.

The parties further agree as follows:

1. A check in the amount of $850.00 will be released when a representative of Overland, Pacific & Cutler, Inc. the Displacing Agency's relocation representative has personally inspected the Subject/Displacement Property to verify completion of the move.

2. If upon inspection by a representative of Overland, Pacific & Cutler, Inc. any portion of the items on Exhibit "A" were not relocated to the Replacement Site for any reason whatsoever, an appropriate reduction in the agreed amount shall be made by the Displacing Agency.

3. The Claimant shall allow a representative of Overland, Pacific & Cutler, Inc. to monitor the move as it sees fit, and such monitoring shall not carry with it any liability or responsibility on the part of the Displacing Agency or Overland, Pacific & Cutler, Inc.

4. Neither the Displacing Agency nor any employee, officer, or agent thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Claimant under or in connection with the agreement. It is also understood and agreed that the Claimant shall fully indemnify and hold the Displacing Agency and Overland, Pacific & Cutler, Inc. harmless for any liability imposed by injury or damage to property occurring by reason of anything done or omitted by Claimant in connection with this agreement.

5. In the event the actual cost of the move exceeds the amount agreed upon above, only those additional costs which can be shown to have been actually required in order to complete the move will, within certain limitations, be reimbursed. In this event, the actual cost of the entire move must be itemized and documented in support of the claim. All moving expense records are subject to review and audit by a representative of the Displacing Agency.

This agreement does not include specialized and related moving costs which are to be performed by others. These costs will be handled under a separate claim upon completion of the work and presentation of itemized paid bills. Such specialized and related moving costs may include the following:

None

Jack Di Giorgio
Jack Di Giorgio

Jack Di Giorgio
Signature

10-11-09
Date

Recommended:

Overland, Pacific & Cutler, Inc.

Karen Jackson
Karen Jackson

Mark LaBonte

Approved:

City of Montclair

Lee C. McDougal, City Manager

Date

Attachments

EXHIBIT "A"

The following items require relocation and have not been acquired with the real property in conjunction with the acquisition of the Subject Property.

Please list and describe all items to be relocated:

Please see attached inventory list

I certify under the penalty of perjury that the above listed items are personal property owned by me and are to be relocated to the Replacement Site.

Dated: 10-11-09

By: Jack Di Giorgio
Jack Di Giorgio

Exhibit "A"

CARS To be Moved

1-79 CHev P.U.

2-62 STudebaker

3-79 CHev Wagon

4-89 CHev S-10 P.U.

5-79 Pontiac Firebird

6-84 CAD Seville

7-82 CHev S-10 P.U.

8-75 CHev P.U.

9-65 CHev Panel

10-78 CAD Coupe DeVille

11-64 Ford T Bird

12-82 Pontiac Field

13-79 Dodge Ram P.U.

14-70 CAMARO

15-63 CHev P.U.

EXHIBIT "B"

LOWEST, MOST REASONABLE MOVING BID

Please see attached moving bid

Estimate Prepared For: Jack Di Giorgio

Estimate/Order For Service

Agent
Suddath Relocation Systems
14221 Artesia Blvd.
La Mirada, CA 90638
562-404-7794
562-483-7845
sbargsten@suddath.com

Sales Person
Shannon Bargsten
sbargsten@suddath.com

Origin Information

Shipper: Jack Di Giorgio
Address: 4848 w mission Blvd
Address 2:
City St. Zip: Ontario, CA 91762
County: San Bernardino
Phone(H): 909-622-5398
Phone(W): ___-___-____
Email: kjackson@opcservices.com

Destination Information

Shipper: Jack Di Giorgio
Address:
Address 2:
City St. Zip: Ontario, CA 91762
County: San Bernardino
Phone(H): ___-___-____
Phone(W): ___-___-____

Service Information

Order No:
Estimate Date: 7/23/2009
Pack Date:
Load Date:
Deliver Date:

Tariff: Local	Effective Date: 7/23/2009	Estimate Weight: 0

Additional Charges

Service Description	
Moving 15 cars on site	$850.00

Total Miscellaneous: **$850.00**

Local Additional Charges: $850.00

Total Estimated Costs: $850.00

Valuation Options	Listed below are the minimum Valuation Options that are offered and the total price for the move with each option.		
	Type	Charge	Total
currently applied	0.60/lb	$0	$850.00
	3.50/lb - $0.00	$0.00	$850.00
	FVP $0 - $0.00	$0.00	$850.00
	FVP $250 - $0.00	$0.00	$850.00
	FVP $500 - $0.00	$0.00	$850.00

Signature of Salesperson | Date | Signature of Consumer | Date

Self Move Agreement

It is hereby understood and agreed by We Love Tows Auto Transport (called here the "Claimant") and the City of Montclair (called here the "Displacing Agency") that the amount to be paid to the Claimant for the relocation of all equipment, stock, inventory, and other items of personal property itemized on the attached inventory (**Exhibit A**) and not acquired with the real property located at 4848 W. Mission Blvd., Montclair, CA 91762 ("Subject Property") to the replacement location at 41015 163rd St. East, Lancaster, CA 93535 ("Replacement Site") is **FOUR THOUSAND ONE HUNDRED THIRTY EIGHT DOLLARS AND SEVENTY CENTS** ($4,138.70). This payment is based on the amount of the lowest, most reasonable bid, attached hereto as **Exhibit B**.

The parties further agree as follows:

1. In order to facilitate the move, the Displacing Agency will process one check for half of the total moving payment in the amount of $2,069.35 which will be delivered by a representative of Overland, Pacific & Cutler, Inc.

2. The final check in the amount of $2,069.35 will be released when a representative of Overland, Pacific & Cutler, Inc. the Displacing Agency's relocation representative has personally inspected the Subject/Displacement Property to verify completion of the move.

3. If upon inspection by a representative of Overland, Pacific & Cutler, Inc. any portion of the items on Exhibit "A" were not relocated to the Replacement Site for any reason whatsoever, an appropriate reduction in the agreed amount shall be made by the Displacing Agency.

4. The Claimant shall allow a representative of Overland, Pacific & Cutler, Inc. to monitor the move as it sees fit, and such monitoring shall not carry with it any liability or responsibility on the part of the Displacing Agency or Overland, Pacific & Cutler, Inc.

5. Neither the Displacing Agency nor any employee, officer, or agent thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Claimant under or in connection with the agreement. It is also understood and agreed that the Claimant shall fully indemnify and hold the Displacing Agency and Overland, Pacific & Cutler, Inc. harmless for any liability imposed by injury or damage to property occurring by reason of anything done or omitted by Claimant in connection with this agreement.

6. In the event the actual cost of the move exceeds the amount agreed upon above, only those additional costs which can be shown to have been actually required in order to complete the move will, within certain limitations, be reimbursed. In this event, the actual cost of the entire move must be itemized and documented in support of the claim. All moving expense records are subject to review and audit by a representative of the Displacing Agency.

This agreement does not include specialized and related moving costs which are to be performed by others. These costs will be handled under a separate claim upon completion of the work and presentation of itemized paid bills. Such specialized and related moving costs may include the following:

None

WE LOVE TOWS AUTO TRANSPORT
2585 COTTONWOOD TRL.
CHINO HILLS, CA 91709

x VERN HARRIS
Vern Harris

x Vern Harris
Signature

x 10-25-09
Date

Recommended:

Overland, Pacific & Cutler, Inc.

Karen Jackson
Karen Jackson

Mark LaBonte

Approved:

City of Montclair

Lee C. McDougal, City Manager

Date

Attachments

EXHIBIT "A"

The following items require relocation and have not been acquired with the real property in conjunction with the acquisition of the Subject Property.

Please list and describe all items to be relocated:

7 - cars
3 - trailers
4 - trucks
1 - 45' container full of auto parts
Misc. loose auto parts

I certify under the penalty of perjury that the above listed items are personal property owned by me and are to be relocated to the Replacement Site.

Dated: X 10/25/04

By: X Vern Harris
Vern Harris

EXHIBIT "B"

LOWEST, MOST REASONABLE MOVING BID

Please see attached moving bid

Estimate Prepared For: Vern Harris We love tows auto

Estimate/Order For Service

Agent Suddath Relocation Systems
14221 Artesia Blvd.
La Mirada, CA 90638
562-404-7794
562-483-7845
sbargsten@suddath.com

Sales Person
Shannon Bargsten
sbargsten@suddath.com

Origin Information

Shipper: Vern Harris We love tows auto
Address: 4848 Mission Blvd
Address 2:
City St. Zip: Ontario, CA 91762
County: San Bernardino
Phone(H): 714-276-5153
Phone(W): ___-___-____
Email: kjackson@opcservices.com

Destination Information

Shipper: Vern Harris We love tows auto
Address: 4105 163 East
Address 2:
City St. Zip: Lancaster, CA 93534
County: Los Angeles
Phone(H): ___-___-____
Phone(W): ___-___-____

Service Information

Order No:
Estimate Date: 10/21/2009
Pack Date:
Load Date:
Deliver Date:

Tariff: Local	Effective Date: 10/21/2009	Estimate Weight: 0

Additional Charges

Service Description

Moving 7 cars 3 tralors 4 trucks 1 45 FT contaner to lancaster $4,138.70

Total Miscellaneous: **$4,138.70**

Local Additional Charges: **$4,138.70**

Total Estimated Costs: $4,138.70

Valuation Options	Listed below are the minimum Valuation Options that are offered and the total price for the move with each option.		
	Type	Charge	Total
currently applied	0.60/lb	$0	$4,138.70
	3.50/lb - $0.00	$0.00	$4,138.70
	FVP $0 - $0.00	$0.00	$4,138.70
	FVP $250 - $0.00	$0.00	$4,138.70
	FVP $500 - $0.00	$0.00	$4,138.70

WE LOVE TOWS AUTO TRANSPOR
2585 COTTONWOOD TRL.
CHINO HILLS, CA 91709

Signature of Salesperson _____ Date _____ Signature of Consumer Vern Harris Date 10/25/09

Self Move Agreement

It is hereby understood and agreed by Reynaldo Martinez (called here the "Claimant") and the City of Montclair (called here the "Displacing Agency") that the amount to be paid to the Claimant for the relocation of all equipment, stock, inventory, and other items of personal property itemized on the attached inventory (**Exhibit A**) and not acquired with the real property located at 4848 W. Mission Blvd., Montclair, CA 91762 ("Subject Property") to the replacement location at 2255 Rancho Rd., Phelan, CA 92329 ("Replacement Site") is **EIGHT THOUSAND NINE HUNDRED SIXTEEN DOLLARS AND FOURTY SEVEN CENTS** ($8,916.47). This payment is based on the amount of the lowest, most reasonable bid, attached hereto as **Exhibit B**.

The parties further agree as follows:

1. In order to facilitate the move, the Displacing Agency will process one check for half of the total moving payment in the amount of $4,458.23, which will be delivered by a representative of Overland, Pacific & Cutler, Inc.

2. The final check in the amount of $4,458.24 will be released when a representative of Overland, Pacific & Cutler, Inc. the Displacing Agency's relocation representative has personally inspected the Subject/Displacement Property to verify completion of the move.

3. If upon inspection by a representative of Overland, Pacific & Cutler, Inc. any portion of the items on Exhibit "A" were not relocated to the Replacement Site for any reason whatsoever, an appropriate reduction in the agreed amount shall be made by the Displacing Agency.

4. The Claimant shall allow a representative of Overland, Pacific & Cutler, Inc. to monitor the move as it sees fit, and such monitoring shall not carry with it any liability or responsibility on the part of the Displacing Agency or Overland, Pacific & Cutler, Inc.

5. Neither the Displacing Agency nor any employee, officer, or agent thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Claimant under or in connection with the agreement. It is also understood and agreed that the Claimant shall fully indemnify and hold the Displacing Agency and Overland, Pacific & Cutler, Inc. harmless for any liability imposed by injury or damage to property occurring by reason of anything done or omitted by Claimant in connection with this agreement.

6. In the event the actual cost of the move exceeds the amount agreed upon above, only those additional costs which can be shown to have been actually required in order to complete the move will, within certain limitations, be reimbursed. In this event, the actual cost of the entire move must be itemized and documented in support of the claim. All moving expense records are subject to review and audit by a representative of the Displacing Agency.

This agreement does not include specialized and related moving costs which are to be performed by others. These costs will be handled under a separate claim upon completion of the work and presentation of itemized paid bills. Such specialized and related moving costs may include the following:

None

Reynaldo Martinez Haro
Reynaldo Martinez

Signature

10-19-09
Date

Recommended:

Overland, Pacific & Cutler, Inc.

Karen Jackson
Karen Jackson

Mark LaBonte

Approved:

City of Montclair

Lee C. McDougal, City Manager

Date

Attachments

EXHIBIT "A"

The following items require relocation and have not been acquired with the real property in conjunction with the acquisition of the Subject Property.

Please list and describe all items to be relocated:

Please see attached inventory list

I certify under the penalty of perjury that the above listed items are personal property owned by me and are to be relocated to the Replacement Site.

Dated: 10-19-09

By: Reynaldo Martinez
Reynaldo Martinez

Exhibit "A"

This is the list of vehicles that was moved from 4848 W. Mission Blvd., Montclair to 2255 Rancho Rd. Phelan.

#	Year	Make	Model	Last 4 of VIN #
1	1974	DATS	240Z	8975
2	1983	CHEVROLET	VEN	9065
3	1993	HONDA	ACURA	9846
4	1969	BUK	SKYLER	2286
5	1987	FORD150	PICK-UP	1782
6	1975	CHEVROLET	PICK-UP	6135
7	1986	TOYOTA	FORDRUNNER	2809
8	1989	HONDA	ACURA	3168
9	1998	MERZ	300	7459
10	1976	CHEVROLET	30FV	1707
11	1978	GMC	3500	7580
12	1969	CHEVROLET	FLATBED	3415
13	11969	CHEVROLET	FLATBED	3407
14	1988	DODGE	B150	6178
15	1984	CADILAC	SEVIL	7077
16	1975	DODGE	DART	4980
17	1993	NISSAN	MAXIMA	7564
18	1994	GMC	BOBTL	0205
19	1983	FORD	PICK-UP	1142
20	1982	FORD	MUSTANG	8148
21	1990	FORD	BOX	6050
22	1990	FORD	F700	2778
23	1985	CHEVROLET	S70	7937
24	1966	CHEVROLET	IMPALLA	6427
25	1995	TOYOTA	CAMRY	4548
26	1995	EXPLORER	4FOR	0540
27	1994	NISSAN	QUEST	6329

Page 1 of 2

Reynaldo Martinez H.

4848 W. Mission Blvd. Montclair CA 91763

To whom it may concern:

List of equipments and vehicles that still need to be moved:

1. Trailer RV 36 Ft. long
2. Daihatsu Golf Car
3. Industrial Gas Air Compressor
4. 88 Ford Pick-up truck, Plates: 5Y78538, VIN #: 3178
5. High Lander Forklift 12 Tons
6. Toyota Truck Flat Bed, No plates, VIN#: 4465
7. 24 Ft. Equipment Storage Container (Full of Tools and Equipment).

EXHIBIT "B"

LOWEST, MOST REASONABLE MOVING BID

Please see attached moving bid

Estimate Prepared For: Reynaldo Martinez

Estimate/Order For Service

Agent
Suddath Relocation Systems
14221 Artesia Blvd.
La Mirada, CA 90638
562-404-7794
562-483-7845
sbargsten@suddath.com

Sales Person
Shannon Bargsten
sbargsten@suddath.com

Origin Information

Shipper: Reynaldo Martinez
Address: 4848 Mission Blvd
Address 2:
City St. Zip: Ontario, CA 91762
County: San Bernardino
Phone(H): 951-315-6119
Phone(W): ___-___-____
Email: kjackson@opcservices.com

Destination Information

Shipper: Reynaldo Martinez
Address:
Address 2:
City St. Zip: Phelan, CA 92329
County: San Bernardino
Phone(H): ___-___-____
Phone(W): ___-___-____

Service Information

Order No:
Estimate Date: 7/23/2009
Pack Date:
Load Date:
Deliver Date:

Tariff: Local	Effective Date: 7/23/2009	Estimated Weight: 9000

Local Moving Charges

4 Mover(s), 1 Van(s), 8 Hour(s). Hourly Rate: $140.00

Travel Time: 2 hours. Hourly Rate: $140.00 per hour

Local Moving Charges: $1,400.00

Local Packing Charges

3 packers, 1 van, 6 hours, $110.00/per hour

Article	Qty	Cost Ea.	Cost
1.5 cu ft	10	$5.58	$55.80
3.0 cu ft	40	$10.29	$411.60
4.5 cu ft	10	$10.29	$102.90
Dish Pack	4	$23.31	$93.24
Wardrobe	3	$12.84	$38.52

SubTotal: $702.06

Tax: $54.41

Packing Total: $1,416.47

Additional Charges

Service Description	
Moving 1 fork lift 1 cushman cart 1 air comprssor	$500.00
Moving 1 28 ft RV and 1 flatbed truck	$500.00
Moving 1 20 ft contaner	$500.00
Moving 24 cars 3 to a load	$4,500.00

Total Miscellaneous: $6,000.00

Local Fuel Charge $100.00

Fuel Charge Total: $100.00

Local Additional Charges: $6,100.00

Total Estimated Costs: $8,916.47

Signature of Salesperson | Date | Signature of Consumer | Date

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 09-114 WITH GRAFFITI TRACKER, INC., FOR CONTINUED USE OF ITS DATA-BASE TO TRACK AND ANALYZE GRAFFITI	**DATE:**	November 16, 2009
		SECTION:	AGREEMENTS
		ITEM NO.:	3
		FILE I.D.:	GRF050
BUSINESS PLAN:	STRATEGIC PRIORITY NO. 3, GOAL 1	**DEPT.:**	POLICE

REASON FOR CONSIDERATION: The Police Department would like to continue contracting with Graffiti Tracker, Inc., to track, analyze, and ultimately reduce the occurrences of graffiti within the City.

Approving professional services Agreement No. 09-114 with Graffiti Tracker, Inc., would satisfy a portion of Strategic Priority No. 3, Goal 1, as contained in Montclair's Business Plan."

BACKGROUND: Graffiti has long been one of the most common urban problems threatening the vitality and beauty of cities across the country. Graffiti continues to be a major concern for the City of Montclair and is, therefore, designated Strategic Priority No. 3, Goal 1, of the City's Strategic Plan. During Fiscal Year 2008-09, graffiti was abated from 11,082 locations.

Graffiti Tracker, Inc., specializes in providing Police and City personnel with the tools needed to reduce graffiti vandalism. The company assisted the City in implementing a graffiti protocol that continues to provide a graffiti database, analysis, and tracking to further reduce the occurrences of graffiti. The Graffiti Tracker system utilizes cameras equipped with global positioning system (GPS) technology. Photographs of graffiti are taken by the City's graffiti abatement crews and are sent to Graffiti Tracker, where they are analyzed and categorized for reference. The result of the analysis is then stored in the web-based Graffiti Tracker system. Police and City personnel are permitted unlimited searches of the organized database to determine patterns of graffiti incidents, such as the most active vandals and/or gangs, rising tension between rival gangs, and frequently hit areas or "hot spots."

The web-based program requires no software installation and has restrictions as to the number of system users.

FISCAL IMPACT: City Council's approval of Agreement No. 09-114 would result in a $6,000 expenditure from the Montclair Police Department Fiscal Year 2009-10 Budget. In view of the City's current fiscal condition, Police Department staff was successful in renegotiating a $6,000 annual contract fee reduction with the vendor.

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

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-114 with Graffiti Tracker, Inc., for continued use of its database to track and analyze graffiti.

PROFESSIONAL SERVICES AGREEMENT

(City of Montclair and Graffiti Tracker Inc.)

THIS PROFESSIONAL SERVICES AGREEMENT is made as of January 1, 2010, by and between the City of Montclair, (Agency), and Graffiti Tracker Inc. (Contractor).

RECITALS

1. Agency has determined it requires professional services from a Contractor to provide graffiti analysis and tracking services for the Agency.

2. Agency desires to retain Contractor as an independent contractor to provide such services on an as-needed basis.

3. Contractor represents it is fully qualified to perform such services by virtue of its experience and the training, education, and expertise of its principals and employees.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. **Contractor's Services.**

   a. Scope and Level of Services. The nature, scope, and level of the specific services to be performed by Contractor are as set forth in Exhibit A, attached to this Agreement and incorporated herein as though set forth in full. Agency is retaining Contractor pursuant to this Agreement on a nonexclusive basis and reserves the right to retain other professionals to perform similar service, if Agency determines such services are needed.

   b. Time of Performance. The services shall be performed in a timely manner and on a regular basis in accordance with the written instruction of the Contract Administrator. Time is of the essence in the performance of this Agreement.

2. **Standard of Care.** As a material inducement to Agency to enter into this Agreement, Contractor hereby represents and warrants it has the professional expertise and experience necessary to undertake the services to be provided herein.

3. **Compliance with Law.** All services rendered hereunder by Contractor shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of Agency and

any federal, state, or local governmental agency having jurisdiction in effect at the time service is rendered.

4. **Term of Agreement.** This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect for a period of 12 months, unless earlier terminated pursuant to Section 15.

5. **Compensation.** Agency agrees to compensate Contractor for its services according to the fee and payment schedule set forth in Exhibit B, attached hereto, and incorporated herein as though set forth in full. In no event shall the total compensation and costs payable to Contractor under this Agreement exceed the sum of $6,000 unless specifically approved by the City Council. Agency agrees that services may not begin until first payment is received.

6. **Ownership of Work Product.** All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of Agency, without restriction or limitation, upon its use or dissemination by Agency.

7. **Representatives.**

   a. Project Manager. The Project Manager for the services required under this Agreement is hereby designated as Timothy M. Kephart, who shall be the representative of Contractor authorized to act in its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability, and reputation of the foregoing Project Manager were substantial inducements for Agency to enter into this Agreement. Therefore, the foregoing Project Manager shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. Contractor may not change the foregoing Project Manager without the express written approval of Agency.

   b. Contract Administrator. The Contract Administrator and Agency's representative shall be the Deputy City Manager, or in his/her absence, an individual designated in writing by the Contract Administrator. It shall be Contractor's responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the services, and Contractor shall refer any decisions that must be made by Agency to the Contract Administrator. Unless otherwise specified herein, any approval of Agency required hereunder shall mean the approval of the Contract Administrator.

8. **Standard of Performance.** Contractor shall perform all work to the highest professional standards and in a manner reasonably satisfactory to Agency. Contractor hereby covenants

that it shall follow the highest professional standards in performing all services required hereunder.

9. **Status as Independent Contractor.** Contractor is, and shall at all times remain as to Agency, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of Agency or otherwise act on behalf of Agency as an agent. Neither Agency nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time or in any manner, represent that it or any of its agents or employees are in any manner employees of Agency. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Agreement and to indemnify and hold Agency harmless from any and all taxes, assessments, penalties, and interest asserted against Agency by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor further agrees to indemnify and hold Agency harmless from any failure of Contractor to comply with applicable workers' compensation laws. Agency shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to Agency from Contractor as a result of Contractor's failure to promptly pay to Agency any reimbursement or indemnification arising under this section.

10. **Confidentiality.** Agency agrees not to use any intellectual property or information related to the Graffiti Tracker system for purposes of development or competition of another Graffiti Tracker system. Upon request, all Agency data shall be returned to Agency upon the termination of this Agreement. Contractor's covenant under this section shall survive the termination of this Agreement.

11. **Conflict of Interest.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Contractor under this Agreement, or which would conflict in any manner with the performance of its services hereunder.

12. **Indemnification.** Contractor agrees to indemnify, hold harmless, and defend Agency and the Redevelopment Agency, and their respective officers, employees, volunteers, and agents serving as independent contractors in the role of Agency or Agency officials (collectively, "Indemnities") from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to, death or injury to any person and injury to any property, resulting from willful misconduct, negligent acts, errors, or omissions of Contractor or any of its officers, employees, or agents.

    a. Agency does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by Agency, or the deposit with Agency, of any

insurance policy or certificate required pursuant to this Agreement.

b. This hold harmless, indemnification, and defense provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense. Contractor agrees that Contractor's covenant under this section shall survive the termination of this Agreement.

13. **Cooperation.** In the event any claim or action is brought against Agency relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation that Agency might require.

14. **Termination.**

a. Agency shall have the right to terminate the services of Contractor at any time for any reason on sixty (60) calendar days written notice to Contractor. In the event this Agreement is terminated by Agency, Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect, and Contractor shall have no other claim against Agency by reason of such termination, including any claim for compensation.

b. Contractor shall have the right to terminate this Agreement at any time for any reason on sixty (60) calendar days written notice to Agency, and Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect.

15. **Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery, if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

Agency:

City of Montclair
4870 Arrow Highway
Montclair, CA 91763

Contractor:

Graffiti Tracker Inc.
12165 West Center Rd, Suite 80
Omaha, NE 68130

16. **Nondiscrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Contractor will take affirmative action to ensure that employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

17. **Assignability; Subcontracting.** Contractor shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Contractor's obligations hereunder, without the prior written consent of Agency, and any attempt by Contractor to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect.

18. **Compliance with Laws/Licenses.** Contractor shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local governments. Contractor shall obtain and maintain all necessary professional licenses for providing the services outlined in this Agreement.

19. **Non-Waiver of Terms, Rights, and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Agency of any payment to Contractor constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default.

20. **Attorney's Fees.** In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who drafted that portion of the Agreement.

21. **Exhibits; Precedence.** All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provision of any Exhibit or document incorporated herein by reference, the provisions of this Agreement shall prevail.

22. **Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Agency and Contractor. This Agreement supersedes all prior oral or written negotiations, representations; or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

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

"Agency"

ATTEST:

By: _____
City Clerk

City of Montclair

By: _____
Mayor

"Contractor"

By: _____
Timothy M. Kephart

EXHIBIT A

SCOPE OF SERVICES

Contractor shall perform the following services for the City of Montclair:

Responsibilities

1. Train designated personnel on how to use GPS cameras.

2. Establish graffiti tracking protocols.

3. Train personnel on how to upload graffiti data to the Graffiti Analysis Intelligence Tracking System (GAITS).

4. Provide access to GAITS to all designated personnel 24 hours a day, 7 days a week, until contract ends.

5. On a daily basis, graffiti data will be uploaded to the GAITS system from the City of Montclair staff. Graffiti Tracker Inc., will be responsible for analyzing all of that data and making the results of that analysis available to the GAITS system.

6. Provide training to all designated personnel (Agency staff/law enforcement/District Attorney's Office) on how to utilize the GAITS system.

This contract constitutes a lease for access to the Graffiti Analysis Intelligence Tracking System (GAITS). Permission from the Contract Administrator will be required for anyone to have access to this system. Upon permission being granted for access to the system, a username and password will be given to those individuals, and they will be granted an "Operator" level access to the GAITS system. This lease will be in effect for the duration of the contract.

EXHIBIT B

SCHEDULE OF FEES

Contractor will not be required to work on the following ten holidays:

1. January 1 (New Year's Day)
2. The third Monday in January (Dr. Martin Luther King Jr. Day)
3. The third Monday in February (President's Day)
4. March 31 (Cesar Chavez Day)
5. The last Monday in May (Memorial Day)
6. July 4 (Independence Day)
7. The first Monday in September (Labor Day)
8. November 11 (Veteran's Day)
9. The fourth Thursday in November (Thanksgiving Day)
10. December 25 (Christmas Day)

The total contract amount for the 12-month time period commencing January 1, 2010, and ending December 31, 2010, will be an amount not to exceed $6,000 based on the volume of photographs taken by the graffiti abatement crews and equipment costs.

Effective upon the signing of this contract, an invoice for the full amount will be submitted by the Contractor to the Contract Administrator. Payment should be processed and received no later then 30 calendar days from the date invoice was submitted.

It is recommended that each graffiti abatement crew be equipped with one (1) camera. Services will commence once equipment has been purchased and first invoice paid.

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 09-116 AMENDING AGREEMENT NO. 08-57 WITH JOHN M. AND BRENDA GOLLER CONSTRUCTION MANAGEMENT SERVICES ASSOCIATED WITH THE YOUTH AND SENIOR CENTERS	**DATE:**	November 16, 2009
		SECTION:	AGREEMENTS
		ITEM NO.:	4
		FILE I.D.:	HSV151
BUSINESS PLAN:	**STRATEGIC PRIORITY NOS. 4 AND 5, GOAL 1**	**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 Nos. 4 and 5, Goal 1, as contained in Montclair's "Business Plan."

BACKGROUND: The City entered into Agreement No. 08-57 with John M. and Brenda Goller Construction Management Services to assist with the construction of the Montclair Youth and Senior Centers and other related construction work. It was to the City's advantage after entering into this Agreement to add additional improvements to various City facilities, necessitating modifications to the scope of the construction management contract. These additional improvements included:

- Reroofing of various City facilities
- Build out of Police Department Facility Expansion Area
- Addition of sliding glass doors to City Hall and Recreation building for handicap accessibility
- Modification to pottery room to provide for bleacher storage
- Painting and new carpeting at the Montclair Branch Library
- Inclusion of Information Technology Division modifications to the Youth Center
- Rental of mini excavator for irrigation pipe repair

In an effort to keep these improvements on schedule, John M. and Brenda Goller Construction Management Services brought in additional resources not originally anticipated in Agreement No. 08-57.

Prepared by:		Reviewed and Approved by:	M. STAATS
Proofed by:		Presented by:	

FISCAL IMPACT: The compensation to John M. and Brenda Goller Construction Management Services under Agreement No. 08-57 was originally negotiated as a lump sum contract.

Original fee	$577,900
Fee increase	35,257
New contract amount	$613,157

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

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 09-116 amending Agreement No. 08-57 with John M. and Brenda Goller Construction Management Services.

CITY OF MONTCLAIR
AMENDMENT TO AGREEMENT NO. 08-57
WITH JOHN M. AND BRENDA GOLLER
CONSTRUCTION MANAGEMENT SERVICES
FOR
MODIFICATION TO SCOPE OF SERVICES FOR
YOUTH AND SENIOR CENTERS

This agreement is made and entered into this _____ day of _____, 2009, by and between the CITY OF MONTCLAIR, a municipal corporation ("City") and John M. and Brenda Goller Construction Management Services, a California Corporation ("Consultant"), and collectively ("Parties").

RECITALS

WHEREAS, Parties have previously entered into Agreement No. 08-57 effective on July 1, 2008, for construction management services in conjunction with the construction of the City of Montclair Youth Center and Senior Center at Alma Hofman Park; and

WHEREAS, Paragraph 2. SERVICES of Agreement No. 08-57 identified the work to be done as "EXHIBIT A-Scope of Services" in that agreement; and

WHEREAS, Paragraph 5. PAYMENT of Agreement No. 08-57 identified the compensation to be provided; 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. Expand Scope of Services described in Exhibit "A" of Agreement No. 08-57 to include construction management services for:
   a. Reroofing the following City facilities:
      i. Library
      ii. Community Center
      iii. Park Sheds
      iv. Fire Station No. 2
      v. City Yard
   b. Buildout of Police Department Facility Expansion Area
   c. Addition of sliding glass doors at City Hall (2) and Recreation Building (1)
   d. Removal of spa and patio at Recreation Building
   e. Addition of IT and NPDES facilities to west wing of Youth Center
   f. Communication modifications to Library
   g. Additive alternates to Senior Center project, to wit:
      i. Painting and carpeting in Library
      ii. Grinding and overlay of City Hall and Recreation Building parking lots
      iii. Painting of all buildings in the Civic Center
2. Modify Paragraph 5. of Agreement No. 08-57 by substituting the attached Exhibit B-1 for Exhibit B.
3. All other terms of Agreement No. 08-57 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:

JOHN M. AND BRENDA GOLLER CONSTRUCTION MANAGEMENT SERVICES

By_____
John M. Goller, President

Date_____

By_____
Brenda Goller, Sec./Treas.

Date_____

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 B-1

Payment Schedule

2008		2009		2010	
July*	$24,025.29	January	$23,700.00	January	$28,888.89
August*	$23499.35	February	$23,700.00	February	$28,888.89
September	$21,700.00	March	$23,700.00	March	$28,888.89
October	$21,700.00	April	$23,700.00	April	$28,888.89
November	$26,700.00	May	$23,956.36	May	$28,888.89
December	$21,700.00	June	$27,875.36	June	$28,888.89
		July	$23,700.00		
		August	$23,700.00		
		September	$23,700.00		
		October	$27,588.89		
		November	$27,588.89		
		December	$27,588.89		
Total	$139,324.64		$300,498.39		$173,333.34

AGENDA REPORT

SUBJECT:	CONSIDER AWARD OF CONTRACT TO GENTRY BROTHERS, INC., IN THE AMOUNT OF $1,042,590 CONSIDER APPROVAL OF AGREEMENT NO. 09-117 WITH GENTRY BROTHERS, INC., FOR CONSTRUCTION OF THE MISSION BOULEVARD IMPROVEMENT PHASE 7 PROJECT CONSIDER AUTHORIZATION OF A $105,000 CONSTRUCTION CONTINGENCY	**DATE:**	November 16, 2009
		SECTION:	AGREEMENTS
		ITEM NO.:	5
		FILE I.D.:	SSP178
		DEPT.:	PUBLIC WORKS
BUSINESS PLAN:	**STRATEGIC PRIORITY NO. 3, GOAL 2**		

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

Approval of Agreement No. 09-117 would satisfy a portion of Strategic Priority No. 3, Goal 2, as contained in Montclair's "Business Plan."

BACKGROUND: The City Council authorized staff to advertise for bids for the Mission Boulevard Improvement Phase 7 Project at the September 8, 2009 regular joint meeting. This project is the seventh phase of a multiphase project to rehabilitate and beautify the Mission Boulevard Corridor from the San Antonio Channel to Benson Avenue.

Phase 7 work for the Mission Boulevard Corridor Improvement Project would extend from the easterly limit of Phase 3 improvements approximately 300 feet west of Ramona Avenue and continue westerly through the Pipeline Avenue intersection. The project would include new median islands; landscaping and irrigation; pavement reconstruction; curb, gutter, and sidewalk construction; modifications to the traffic signal and intersection enhancements at the Pipeline Avenue intersection; and restriping.

The City Clerk received and opened 12 bid proposals for the Mission Boulevard Improvement Phase 7 Project on October 15, 2009. The bid results are as follows:

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

Contractor	*Bid Amount*
Gentry Brothers, Inc.	$1,042,590.00
Pima Corporation	$1,046,827.00
All American Asphalt, Inc.	$1,061,000.00
Sequel Contractors, Inc.	$1,062,024.00
MCI	$1,121,237.00
Hillcrest Contracting, Inc.	$1,154,947.20
C.S. Legacy Construction, Inc.	$1,155,950.00
Sully-Miller Contracting Co.	$1,171,323.00
Excel Paving	$1,182,629.00
Laird Construction Co., Inc.	$1,196,196.00
Elite Bobcat Service, Inc.	$1,310,338.00
Engineer's Estimate	**$1,750,000.00**

Following the bid opening, all bid proposals were reviewed for completeness and accuracy. Gentry Brothers, Inc., provided all the required documents and was deemed to be the lowest, responsible, responsive bidder for the project.

Gentry Brothers Inc., has previously done work for the City. Based on past projects with the City, Gentry Brothers, Inc., is known to have the personnel, equipment, and job experience necessary to complete this contract in accordance with the plans and specifications.

FISCAL IMPACT: The project was funded by a combination of the following two separate sources: approximately $500,000 from the federal High-Priority Project and the balance of approximately $542,590 from the Redevelopment Agency.

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

1. Award contract to Gentry Brothers, Inc., in the amount of $1,042,590.

2. Approve Agreement No. 09-117 with Gentry Brothers, Inc., for construction of the Mission Boulevard Improvement Phase 7 Project.

3. Authorize a $105,000 construction contingency.

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

A. Recitals.

(i) Pursuant to Notice Inviting Sealed Bids or Proposals, bids were received, publicly opened, and declared on the date specified in said notice.

(ii) CITY did accept the bid of CONTRACTOR.

(iii) CITY has authorized the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:

FOR THE CONSTRUCTION OF

MISSION BOULEVARD CORRIDOR IMPROVEMENT PHASE 7 PROJECT

"PROJECT" hereinafter.

B. Resolution.

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

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

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

3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to

complete his portion of PROJECT within the time specified in the Special Provisions. CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher, for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

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

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

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

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

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

(1) Public Liability - Bodily Injury (not auto) $1,000,000 each person; $2,000,000 each accident.

(2) Public Liability - Property Damage (not auto) $500,000 each accident; $1,000,000 aggregate.

(3) Contractor's Protective - Bodily Injury $1,000,000 each person; $2,000,000 each accident.

(4) Contractor's Protective - Property Damage $500,000 each accident; $1,000,000 aggregate.

(5) Automobile - Bodily Injury $1,000,000 each person; $2,000,000 each accident.

(6) Automobile - Property Damage $500,000 each accident.

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

(1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;

(2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.

d. Each such policy of insurance provided for in paragraph b. shall:

(1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;

(2) Name as additional insureds the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;

(3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;

(4) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."

(5) Otherwise be in form satisfactory to CITY.

e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

5. CONTRACTOR'S LIABILITY: The City of Montclair and its respective officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof, or for any of the materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, whatsoever arising out of or in connection with the performance of the project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the project or at any time before its completion and final acceptance. The CONTRACTOR will indemnify CITY against and will hold and save CITY harmless from any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY, and in connection therewith:

a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.

b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or CITY covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the CITY harmless therefrom.

c. In the event CITY is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the project, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to CITY any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

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

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

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

8. CONTRACT PRICE AND PAYMENT: CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **October 15, 2009**.

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

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

CITY OF MONTCLAIR, CALIFORNIA

By:_____
Mayor

Attest:_____
City Clerk

CONTRACTOR:

Gentry Brothers, Inc.

384 Live Oak

Irwindale, CA. 91706

By: Rod Gentry
Title

By: President
Title

By:_____
Title

MINUTES OF THE MEETING OF THE MONTCLAIR PERSONNEL COMMITTEE HELD ON MONDAY, NOVEMBER 2, 2009, AT 8:35 P.M. IN THE CITY ADMINISTRATIVE OFFICES, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor Eaton called the meeting to order at 8:35 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 October 19, 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 October 19, 2009.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

At 8:36 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/ terminations, and evaluations of employee performance.

At 8:48 p.m., the Personnel Committee returned from Closed Session. Mayor Eaton stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 8:48 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,

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

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL AND REDEVELOPMENT AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS HELD ON MONDAY, SEPTEMBER 21, 2009, AT 6:59 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chairman Eaton called the meeting to order at 6:59 p.m.

II. INVOCATION

Mayor/Chairman Eaton gave the Invocation.

III. PLEDGE OF ALLEGIANCE

Council Member/Director Ruh led those assembled in the Pledge.

IV. ROLL CALL

Present: Mayor/Chairman Eaton; Mayor Pro Tem/Vice Chairman Dutrey; Council Members/Directors Paulitz, Raft, and Ruh; City Manager/Executive Director McDougal; Deputy City Manager/ Director of Administrative Services Starr; Director of Redevelopment/Public Works Staats; Director of Community Development/Agency Planner Lustro; City Attorney/Agency Counsel Robbins; City Clerk/Agency Secretary Jackson

V. PRESENTATIONS - None

VI. PUBLIC COMMENT

A. **Mr. Alan Katherman,** 9856 Helena Avenue, Montclair, noted he has resided on Helena Avenue for five years. He read a statement addressing the following issues:

1. Dangerous/illegal traffic maneuverings and loitering occurring in the vicinity of **Montclair High School (MHS)** near his home, particularly the double parking, vehicles blocking driveways, and hazardous U-turns made at the intersection of Helena Avenue and Berkeley Street before and after school.

   Mr. Katherman noted he has complained to **MHS** Principal **Michael Hook** about the loitering and vandalism at his

residence. He suggested the simple solution of posting **MHS** security staff or Police Officers at the school during the subject time periods, individuals whose "presence alone would be a deterrent to this kind of irresponsible behavior."

2. Large number of junk food vendors conducting business near **MHS** during the subject time periods, an activity that, in addition to ruining students' health, contributes to discarded trash on **Mr. Katherman's** and his neighbors properties.

Mayor Eaton advised **Mr. Katherman** that staff would follow up on his concerns.

Mr. Katherman stated that he sent the City emails including photographs earlier today and gave the Council copies.

City Manager McDougal advised that he received **Mr. Katherman's** email and has addressed the issues with Director of Redevelopment/Public Works Staats and Police Chief Jones. He stated that the matter would be presented to the Code Enforcement Committee at its next meeting for recommendations to the City Council. Emphasizing that the City is enforcing a "zero tolerance" policy about the moving traffic violations, loitering, and vandalism, he stated that **Mr. Katherman** would be receiving correspondence from the City.

B. **Mr. Sahaj Ananda, Nithyananda Vedic Temple,** 9720 Central Avenue, Montclair, requested the City's permission to temporarily increase the facility's occupancy from 325 to 684 during the esteemed **Swami Paramahamsa Nithyananda's** visit this weekend and next month. He stated that the temple's surface parking of 114 spaces allows for a maximum building occupancy of 684 based on zoning requirements. He advised that he is presently working with Planning staff to amend the temple's conditions of approval to allow for the maximum allowable occupancy, which would be presented to the Planning Commission at its next meeting.

Director of Community Development Lustro concurred that **Vedic Temple** representatives have been working closely with Planning staff to amend its Conditional Use Permit to increase occupancy of the facility based on its maximum number of parking spaces. Staff is tentatively supportive after preliminary review of **Vedic Temple's** request but will not be able to process the request in time for the **Swami's** first visit this weekend; however, a City Council authorization to Building Division for a temporary increase in occupancy would suffice in the interim until the Planning Commission could consider the matter.

It was the consensus of the City Council that Building Division give authorization to **Vedic Temple** for a temporary increase in occupancy to a maximum of 684.

Mayor Pro Tem Dutrey expressed his concern about the impact of doubling the temple's occupancy on residents and the dealerships located to the west of the site. He spoke in support of the Planning Commission's careful consideration of **Vedic Temple's** request for a CUP amendment.

Mayor Eaton stated, "Well, let's work them on this event and get it worked out."

Mr. Ananda thanked Mayor Eaton and the Council.

VII. PUBLIC HEARINGS - None

VIII. CONSENT CALENDAR

Mayor Pro Tem Dutrey requested that Item C-2 be removed from the Consent Calendar for comment.

Moved by Mayor Pro Tem/Vice Chairman Dutrey, seconded by Council Member/Director Raft, and carried unanimously to approve the following Consent Items as presented:

A. Approval of Minutes

1. Minutes of Adjourned Joint Council/Agency Corporation Meeting of September 8, 2009

The City Council and Redevelopment Agency Board approved the minutes of the Regular Joint City Council/Redevelopment Agency Board meeting of September 8, 2009.

2. Minutes of Regular Joint Council/Agency/Montclair Housing Corporation Meeting of September 8, 2009

The City Council and Redevelopment Agency/Montclair Housing Corporation Boards approved the minutes of the Regular Joint City Council/Redevelopment Agency Board/Montclair Housing Corporation Board meeting of September 8, 2009.

B. Administrative Reports

1. Receiving and Filing of City Treasurer's Report

The City Council received and filed the City Treasurer's Report for the month ending August 31, 2009.

2. **Approval of City Warrant Register and Payroll Documentation**

   The City Council approved the City Warrant Register dated September 8, 2009, totaling $1,919,218.95 and the Payroll Documentation dated July 5, 2009, amounting to $638,287.84, with $465,573.60 being the total cash disbursement.

3. **Receiving and Filing of Agency Treasurer's Report**

   The Redevelopment Agency Board received and filed the Redevelopment Agency Treasurer's Report for the month ending August 31, 2009.

4. **Approval of Agency Warrant Register**

   The Redevelopment Agency Board approved the Redevelopment Agency Warrant Register dated 8.01.09-8.31.09 in the amounts of $6,269.39 for Project I; $284.37 for Project II; $1,064,080.31 for Project III; $141,537.06 for Project IV; $263,762.46 for Project V, and $116,392.82 for the Mission Boulevard Joint Redevelopment Project.

5. **Receiving and Filing of Montclair Housing Corporation Treasurer's Report**

   The Montclair Housing Corporation (MHC) Board received and filed the MHC Treasurer's Report for the month ending August 31, 2009.

6. **Approval of MHC Warrant Register**

   The MHC Board approved the MHC Warrant Register dated 8.01.09-8.31.09 in the amount of $184,295.81.

7. **Authorization to Advertise for Bid Proposals for the Central Avenue and Palo Verde Street Traffic Signal Improvement Project**

   The City Council authorized staff to advertise for bid proposals for the Central Avenue and Palo Verde Street Traffic Signal Improvement Project.

8. **"No Action" on Alcoholic Beverage Permit Application - Joe's Sushi**

   The City Council voted "No action" on the "On-Sale Beer and Wine" license application of Mi Kyoung Jeong for Joe's Sushi, 5668 Holt Boulevard Montclair, California.

C. Agreements

1. **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**

The City Council approved *Agreement No. 09-82* with San Bernardino County to receive approximately $7,225 in nonmatching funds from the Emergency Management Performance Grant Program.

D. Resolutions

1. **Adoption of Resolution No. 09-2815 Authorizing Mayor Paul M. Eaton to Sign *Agreement No. 09-90,* Program Supplement No. N004 to *Administering Agency-State Agreement No. 08-5326R***

The City Council adopted Resolution No. 09-2815 authorizing Mayor Paul M. Eaton to sign *Agreement No. 09-90,* Program Supplement No. N004 to *Administering Agency-State Agreement No. 08-5326R.*

IX. PULLED CONSENT CALENDAR ITEMS

C. Agreements

2. **Approval of *Agreement No. 09-89* With RBF Consulting to Update the City's General Plan Housing Element**

Mayor Pro Tem Dutrey spoke in support of this item. He asked if staff is considering a General Plan update, which should be done every ten years.

Director of Community Development Lustro replied that the General Plan Maintenance Account currently contains funding sufficient for a General Plan Housing Element update to comply with the current Regional Housing Needs Assessment as well as numerous statutory requirements implemented since the last update to the Housing Element nine years ago. He expressed his hope to update the entire General Plan as soon as fiscally possible.

Moved by Mayor Pro Tem Dutrey, seconded by Council Member Paulitz, and carried unanimously that the City Council approve *Agreement No. 09-89* with RBF Consulting to update the City's General Plan Housing Element.

X. RESPONSE - None

XI. COMMUNICATIONS

A. **City Attorney/Agency Counsel** - No comments

B. **City Manager/Executive Director** - No comments

C. **Mayor/Chairman** - No comments

D. **City Council/Agency Board**

1. Council Member/Director Paulitz asked if construction has begun on the Senior Center.

   City Manager McDougal answered, "Yes."

2. Council Member/Director Raft expressed her condolences to Council Member Paulitz in the recent passing of **Connie** and wished him the best.

3. Mayor Pro Tem/Vice Chairman Dutrey commented as follows:

   (a) He also gave his condolences to Council Member Paulitz and told him, "We are here for you anytime you need us."

   (b) He congratulated Acting Police Chief Keith Jones for his official appointment as Montclair Chief of Police.

   (c) He noted *Por La Vida* celebrated its Tenth Anniversary last week. Although he was unable to attend the festivities, he recognized the many differences this important organization has made in the community.

   (d) He noted Mayor Eaton and he were honored to attend an open house for **San Bernardino County Fourth District Supervisor Ovitt** last Wednesday at his Chino Hills District Office. He stated that **Supervisor Ovitt** has done an excellent job representing Montclair in regional and County matters.

   (e) He noted Mayor Eaton, Council Member Ruh, and his attendance at Montclair Community Day at the **2009 Los Angeles County Fair.** He noted the following three community heroes were honored: **Mr. Keith Robinson** for his work as a Montclair Basketball League volunteer coach for the past 20 years; **Mr. Jose Dominguez** for completely renovating his apartment building in Montclair to provide a safe, clean, and affordable environment for less fortunate families; and

Mr. Timothy Nguyen, a student volunteer for the past two summers at the **Montclair Branch Library.**

(f) He asked staff to report on the Helena Avenue traffic issue at a later date.

4. Council Member/Director Ruh commented as follows:

(a) He expressed his condolences to the **Paulitz** family. He noted he was unable to attend the memorial because of a previous commitment but that he left a card expressing his thoughts and prayers at the **Paulitz** home on September 5.

(b) He recognized the Montclair Police Officers Association (MPOA) for conducting the recent **Tip-a-Cop** fundraiser at **Buca di Beppo Italian Restaurant** in Claremont that raised $2,000 for the **Special Olympics.** He noted the **Special Olympics** is a wonderful program that is very "near and dear" to California First Lady **Maria Shriver,** whose mother, **Eunice Kennedy Shriver,** was instrumental in shifting the focus of the **Joseph P. Kennedy Jr. Foundation** to research on the causes of mental retardation and humane ways to treat it, culminating in, among other things, the **Special Olympics** movement. He commended MPOA for its efforts to raise funds for this worthwhile program.

(c) He noted a resident contacted him suggesting Ramona Avenue south of Kingsley Street could be better lit at night and asked that staff look into the matter.

(d) He also noted his attendance at Montclair Community Day at the Fair and recognized Montclair's Community Heroes. He thanked local officials, the Council, and representatives from the offices of **Supervisor Ovitt** and **Assembly Member Torres,** expressing his appreciation for their attendance to recognize contributing Montclair residents.

E. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of September 8, 2009

The City Council received and filed the Personnel Committee meeting minutes of September 8, 2009, for informational purposes.

XII. COUNCIL/AGENCY WORKSHOP

A. Presentation of Proposed Fire Department Reorganization

Moved by Council Member/Director Paulitz, seconded by Council Member/Director Raft, and carried unanimously to continue this item to an adjourned joint meeting on Monday, October 5, 2009, at 5:45 p.m. in the City Council Chambers.

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

At 7:17 p.m., Mayor/Chairman Eaton adjourned the City Council and Redevelopment Agency and Montclair Housing Corporation Boards of Directors.

Submitted for City Council/Redevelopment Agency Board/Montclair Housing Corporation Board approval,

Yvonne L. Smith
Transcribing Secretary

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL AND REDEVELOPMENT AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS HELD ON MONDAY, OCTOBER 5, 2009, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chairman Eaton called the meeting to order at 7:00 p.m.

II. INVOCATION

The Reverend Dr. Kundan L. Peter, Senior Pastor, **First United Methodist Church of Montclair,** gave the Invocation.

III. PLEDGE OF ALLEGIANCE

Council Member/Director Paulitz led those assembled in the Pledge.

IV. ROLL CALL

Present: Mayor/Chairman Eaton; Mayor Pro Tem/Vice Chairman Dutrey; Council Members/Directors Paulitz, Raft, and Ruh; City Manager/Executive Director McDougal; Deputy City Manager/ Director of Administrative Services Starr; Director of Redevelopment/Public Works Staats; Director of Community Development/Agency Planner Lustro; City Attorney/Agency Counsel Robbins; City Clerk/Agency Secretary Jackson

V. PRESENTATIONS

A. Introduction of New Promotee

Fire Chief Ament introduced Fire Engineer Sergio Mejia, who was promoted to his new position effective September 20, 2009, after serving as a Firefighter since July 2007.

Mayor Eaton congratulated Fire Engineer Mejia on his promotion, expressed his pride in Fire Engineer Mejia's service to the City and residents of Montclair, and presented him with a City pin.

VI. PUBLIC COMMENT

A. **Mr. David Daleiden,** 742 North Amherst Avenue, Claremont, identified himself as a student at **Claremont McKenna College** and the leader of a chapter of the right-to-life advocacy group, **Live Action.** He generally spoke in support of the City's decision to allow banners to be displayed in front of **Family Planning Associates Medical Group,** 5050 San Bernardino Street, and of his opposition to legalized abortion.

B. **Mr. Ryan Boone,** 39 West 356 Washburn Drive, Geneva, Illinois, identified himself as a student at **Claremont McKenna College** and a member of **Live Action.** He noted his attendance this evening serves as a reminder on the abortion debate and told the City Council, "We each have a personal responsibility, and I would like you to exercise yours."

C. **Ms. Christina Noriega,** 1030 Columbia Avenue, #712, Claremont, identified herself as a student at **Scripps College** and a member of **Live Action.** She generally spoke in support of the City's protection of **First Amendment** rights and of her opposition to legalized abortion.

Mayor Eaton thanked the speakers, advising that Council Members would likely respond to their comments during Section XI, "Communications," of the agenda for tonight's meeting.

VII. PUBLIC HEARINGS - None

VIII. CONSENT CALENDAR

Moved by Mayor Pro Tem/Vice Chairman Dutrey, seconded by Council Member/Director Raft, and carried unanimously to approve the following Consent Items as presented:

A. **Approval of Minutes** - None

B. **Administrative Reports**

1. **Approval of City Warrant Register and Payroll Documentation**

   The City Council approved the City Warrant Register dated October 5, 2009, totaling $628,885.47 and the Payroll Documentation dated July 19, 2009, amounting to $640,120.29, with $464,041.92 being the total cash disbursement.

C. Agreements

1. Approval of *Agreement No. 09-92* With AM Johnson Consulting for ArtCorps Program Management Services

The City Council approved *Agreement No. 09-92* with AM Johnson Consulting for ArtCorps Program management services.

2. Approval of *Agreement No. 09-93* With the Hope Through Housing Found to Provide an After-School Program at the San Antonio Vista Apartments

The City Council approved *Agreement No. 09-93* with the Hope Through Housing Foundation to provide an After-School Program at the San Antonio Vista Apartments.

3. Approval of *Agreement No. 09-94* With Ontario-Montclair School District to Provide After-School Programs

The City Council approved *Agreement No. 09-95* with the Ontario-Montclair School District to provide After-School Programs.

4. Approval of *Agreement No. 09-95* With the California Department of Public Health to Provide a Nutrition Education Program

The City Council approved *Agreement No. 09-95* with the California Department of Public Health to provide a nutrition education program.

5. Approval of *Agreement No. 09-96* With the San Bernardino County Department of Aging and Adult Services to Provide Funding From the American Recovery and Reinvestment Act of 2009 for the Senior Citizen Nutrition Program

The City Council approved *Agreement No. 09-96* with the San Bernardino County Department of Aging and Adult Services to provide funding from the American Recovery and Reinvestment Act of 2009 for the Senior Citizen Nutrition Program.

D. Resolutions

1. Adoption of Resolution No. 09-2816 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges

The City Council adopted Resolution No. 09-2816 authorizing placement of liens on the 169 accounts listed on Exhibit A to the Resolution for delinquent sewer and trash charges.

IX. **PULLED CONSENT CALENDAR ITEMS** - None

X. **RESPONSE** - None

XI. **COMMUNICATIONS**

A. **City Attorney/Agency Counsel**

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

Property:	*10374 Marion Avenue*
Negotiating Parties:	*City of Montclair Redevelopment Agency and Philip Vo*
Negotiators:	*Director of Redevelopment/Public Works Staats and Assistant Director of Redevelopment Caldwell*
Under Negotiation:	*Recommendations Regarding a Purchase Offer*

Agency Counsel Robbins requested a Closed Session on the above matter pursuant to Section 54956.8 of the Government Code.

B. **City Manager/Executive Director** - No comments

C. **Mayor/Chairman**

1. Mayor/Chairman Eaton commented as follows:

(a) He noted his attendance and the excellent turnouts at the following events:

(1) *Por La Vida* Tenth Anniversary - September 16

(2) **Montclair Community Collaborative** 13th Anniversary celebration, "Community Partners are Flowers in Life's Garden" - September 28

(3) Police Department Open House and Pancake Breakfast - October 3

(4) Police Department employee retirement party - October 3

D. **City Council/Agency Board**

1. Council Member/Director Paulitz commented as follows:

   (a) He also noted his attendance at both the *Por La Vida* Tenth Anniversary and **Montclair Community Collaborative** 13th Anniversary celebrations last month as well as the Police Department Open House and Pancake Breakfast and Police employee retirement party on Saturday.

   (b) He told the **Live Action** speakers, "You are preaching to the choir." He advised that he has walked and carried signs at **Family Planning Associates Medical Group** while praying the **Rosary.** He asserted, "If I could do it, I would close that place; but I can't."

2. Council Member/Director Raft commented as follows:

   (a) She noted she was unable to attend the Police Department employee retirement party because she was busy moving that day.

   (b) She concurred with comments made by the **Live Action** speakers "100 percent."

3. Mayor Pro Tem/Vice Chairman Dutrey commented as follows:

   (a) He commended staff for improving the Council Chambers audio system.

   (b) He noted he was unable to attend the Police Department events because he was in Las Vegas over the weekend.

   (c) He recognized the **Montclair Community Collaborative (MCC)** for celebrating its 13th anniversary, noting work prevented him from attending the event. He advised that staff, **Ontario-Montclair School District** representatives, community members, faith-based and community-based organizations, businesses, and county representatives involved in **MCC** have worked diligently to provide needed services in the community.

   (d) He noted from last week's City Manager's Weekly Report that, incredibly, the City has received over ten million emails since 2004. He noted 8.6 million of those emails were blocked as spam and another 17,000 were

blocked because of viruses, resulting in an average of 6,000 emails received daily, which is astonishing in itself. He commended Information Technology staff for continually updating the City's **Barracuda Spam and Virus Firewall** to monitor and block the latest Internet threats.

(e) He noted Fire Chief Ament presented a proposed reorganization of the Fire Department at an adjourned joint meeting earlier this evening, which the City Council approved in concept. He expressed his belief that such action sets an important tone of the City's current fiscal condition. He recalled that our City Manager directed each department to reorganize to conserve personnel resources during the recession of the early 1990s. He stated that doing so has proved very successful in the past, and continuing to do so would be prudent considering the economic outlook in the foreseeable future.

(f) In response to the **Live Action** speakers, he noted the **First Amendment** guarantees the right of freedom of speech, which must be respected. He advised that the City of Montclair has no regulatory power over the issue of legalized abortion and that only the **United States Supreme Court** is able to make those types of decisions for our country. He expressed his viewpoint that "the most powerful voice of abortion is the power of prayer, and Council Member Paulitz's and my church here in Montclair has been a strong advocate of protecting unborn children."

4. Council Member/Director Ruh commented as follows:

(a) He expressed his condolences to the family of retired Fire Chief Dan Tapia, whose mother, **Mary J. Tapia,** passed away on September 30, 2009. He stated, "All of us here at the City share sympathy, prayer, and our outreach to him and all of his family during this very difficult time. His mother was a very accomplished lady when you read about the many nice things she did to help her neighbors, to be a part of her community, and simply to be there when other people needed her. In her 83 years, I think she accomplished quite a bit; and so my sympathies go out to her family tonight."

(b) He noted **Pomona Valley Habitat for Humanity (PVHFH)** would soon be opening its **ReStore** at 4609 Holt Boulevard, Montclair. He noted the store will

sell donated home-improvement goods—furniture, home accessories, building materials, and appliances—and that proceeds from the sale of these items will provide funding for all of **PVHFH's** community improvement work while simultaneously providing an environmentally and socially responsible way to keep good reusable materials out of the waste stream. He stated that he is pleased the store "could find a home right here in Montclair; I think it's very beneficial to us and to our residents." He added that shopping at the **ReStore** would not only provide tax revenues for Montclair but also funding for a very worthwhile cause.

(c) He also noted his attendance at the **Montclair Community Collaborative** 13th Anniversary ceremony, adding "it was very good to see so many individuals honored for their fine work in this wonderful endeavor, which does help support our families; make them whole; and in many cases, give them the hope they need and the tools they need to empower themselves for a better life."

(d) He also noted his attendance at the Police Department Open House and Pancake Breakfast as well as the Police Department employee retirement party. He encouraged the public to make reservations to tour the new state-of-the-art Police headquarters, which is considered a hallmark throughout Southern California.

(e) He noted he was unable to attend the Fire Department employee retirement party because of a last-minute family commitment. He expressed his best wishes to retirees Fire Division Chief Randy Rohrer and Engineer Greg West.

(f) He congratulated Fire Engineer Mejia on his promotion. He noted Fire Engineer Mejia's family must be proud of all that he has accomplished and achieved and told him, "Keep up the good work."

(g) In response to the **Live Action** speakers, he stated that "as an American, I believe in our **Constitution,** I believe in our system of law, I believe that the **First Amendment** is one of our sacred amendments and gives us the right to speak out on many of the issues of our time; it has provided us a safe harbor over the years to allow people to freely express debate on a wide range of issues. The issues have ranged from everything from, in our early days, banking and taxation issues; into the 1850s, the issue of slavery; an issue in the 1910s and 1920s was

women's right to vote; all the way to the issues we are facing today: abortion, the death penalty, health care, and many other issues. I believe we need to find ways to continue to champion the **First Amendment** so that everybody has that opportunity to speak their mind in a civil and free way without infringing on the rights of others. It's in our **Constitution;** we have all sworn an oath to uphold that **Constitution.** I think it is one of our sacred duties.

"I will also say that my Roman Catholic faith teaches me many things of issues, especially of debate, of issues as articulated very clearly with **St. Thomas Aquinas,** who spoke so clearly about the need to speak out on issues. I think we all fully understand that each of one us who believes in a higher authority and a higher power receives guidance from them and has to make those decisions within our consciences of what we believe is right, true, and correct. We may not always agree with decisions that are made; but when we don't agree with them, then we need to do what we can to change those systems and to change what is in place. One can look only as far back as 50 years ago: In many parts of this country, especially in parts of the Deep South and the former Confederacy, there were laws on the books and statutes from the **U.S. Supreme Court** that indicated it was OK for races of people to be segregated by law; it was perfectly OK to discriminate based on race, religion, and sexual orientation. It took a lot of vigilant people who worked hard and sacrificed their lives and time to overcome those laws and to prove them wrong. That has been our history in this country, and I believe it will continue to be our history as long as we continue to respect the **First Amendment."**

E. Committee Meeting Minutes

1. Minutes of Code Enforcement Committee Meeting of September 21, 2009

The City Council received and filed the Code Enforcement Committee meeting minutes of September 21, 2009, for informational purposes.

2. Minutes of Personnel Committee Meeting of September 21, 2009

The City Council received and filed the Personnel Committee meeting minutes of September 21, 2009, for informational purposes.

XII. ADJOURNMENT OF CITY COUNCIL AND MONTCLAIR HOUSING CORPORATION BOARD OF DIRECTORS

At 7:26 p.m., Mayor/Chairman Eaton adjourned the City Council and Montclair Housing Corporation Board of Directors in memory of **Ms. Margaret Carroll,** who passed away on August 16, 2009, at the age of 80. He stated that **Ms. Carroll** was a Montclair resident for 48 years and that in 2009, she was named Montclair's Volunteer of the Year. He stated that **Ms. Carroll** was Past President and a 45-year member of the Montclair Vista Women's Club and was also involved in district and state women's clubs, having served as the **California Federation of Women's Clubs** Public Relations Chairperson.

At 7:26 p.m., the Redevelopment Agency Board went into Closed Session regarding real property negotiations pursuant to Section 54956.8 of the Government Code.

XIII. CLOSED SESSION ANNOUNCEMENTS

At 7:39 p.m., the Redevelopment Agency Board returned from Closed Session. Chairman Eaton announced the Redevelopment Agency Board met in Closed Session regarding real property negotiations, information was received and direction given to staff, and no further announcements would be made at this time.

XIV. ADJOURNMENT OF REDEVELOPMENT AGENCY BOARD OF DIRECTORS

At 7:40 p.m., Chairman Eaton adjourned the Redevelopment Agency Board of Directors.

Submitted for City Council/Redevelopment Agency Board/Montclair Housing Corporation Board approval,

Yvonne L. Smith
Transcribing Secretary