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

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

January 19, 2010

7:00 p.m.

MONTCLAIR

Mayor Paul M. Eaton

Mayor Pro Tem J. John Dutrey

Council Member Leonard Paulitz

Council Member Carolyn Raft

Council Member Bill Ruh

City Manager Lee C. McDougal

City Attorney Diane E. Robbins

City Clerk Donna M. Jackson

CITY OF MONTCLAIR

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

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5111 Benito Street, Montclair, California

January 19, 2010

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 Police Department Promotee

B. Presentation of Military Banners to Montclair Servicemen Who Have Completed Their Military Service

VI. PUBLIC COMMENT

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

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

VII. PUBLIC HEARINGS

A. Consider Adoption of Resolution No. 10-2824 Authorizing Recovery of Abatement Costs Incurred by the City Related to Property Owned by Jose F. Carrillo and Silvia L. Chicas and Located at 10179 Lehigh Avenue, Montclair, California [CC] 4

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VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Minutes of Regular Joint Council/Agency/MHC Meeting of January 4, 2010

2. Minutes of Regular Joint Council/Agency/MHC Meeting of December 21, 2009

3. Minutes of Adjourned Joint Council/Agency/MHC Meeting of June 15, 2009

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

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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 Making an Environmental Finding Related to a Proposed Splash Pad Project in Alma Hofman Park Pursuant to the California Environmental Quality Act [CC] 18

8. Consider Setting a Public Hearing to Prioritize Funding for Fiscal Year 2010-11 Community Development Block Grant Projects [CC] 19

9. Consider Setting a Public Hearing to Consider Ordinance No. 10-912 Adding Chapter 1.16 to the Montclair Municipal Code Regarding Claims Against the City [CC] 20

10. Consider Placing City Manager Lee C. McDougal on Special Assignment for the Period Beginning March 1, 2010, Through June 29, 2010, or the Date of His Retirement from Active Employment, Whichever Occurs First [CC] 25

C. Agreements

1. Consider Approval of Agreement No. 10-07 with L. D. King, Inc., in the Amount of $39,500 for Construction Surveying and Staking Services for the Mission Boulevard Improvement Phase 7 Project [CC]

   Consider Authorization for City Manager to Amend the Agreement Scope of Services as May be Necessary for a Total Increase Not to Exceed $5,000 [CC] 27

2. Consider Approval of Agreement No 10-09, an Agreement for Consultant Services with David Taussig and Associates, Inc., Regarding Community Facilities District Formation Services [CC] 43

3. Consider Approval of Agreement No. 10-10 with San Bernardino County for the Construction of a Splash Pad at Alma Hofman Park [CC] 45

D. Resolutions - None

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

A. City Attorney/Agency Counsel

1. Closed Session Pursuant to Section 54956.9(a) of the Government Code Regarding Pending Litigation

Charles Howell v. City of Montclair

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 January 4, 2010 56

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

(At this time, the City Council will meet in Closed Session regarding pending litigation).

XIII. CLOSED SESSION ANNOUNCEMENTS

XIV. ADJOURNMENT OF CITY COUNCIL

The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, February 1, 2010, 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 January 14, 2010.

AGENDA REPORT

SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 10-2824 AUTHORIZING RECOVERY OF ABATEMENT COSTS INCURRED BY THE CITY RELATED TO PROPERTY OWNED BY JOSE F. CARRILLO AND SILVIA L. CHICAS AND LOCATED AT 10179 LEHIGH AVENUE, MONTCLAIR, CALIFORNIA	**DATE:**	January 19, 2010
		SECTION:	PUBLIC HEARINGS
		ITEM NO.:	A
		FILE I.D.:	CDE020
BUSINESS PLAN:	N/A	**DEPT.:**	FIRE

REASON FOR CONSIDERATION: As a means of recovering the costs incurred by the City for abatement of nuisances as rendered necessary by the Montclair Fire Department, the City Council is requested to consider the *Report of Cost of Abatement* and to make the determination that the costs associated with the abatement actions are appropriate.

BACKGROUND: The following is a recap of actions taken by the Montclair Fire Department related to the abatement action on the subject property:

June 1, 2009 – Senior Code Enforcement Officer Gabe Fondario responded to an open and vacant home after receiving numerous complaints about hazardous and unsafe conditions at the subject property. Upon arrival, he observed extremely dry and overgrown vegetation throughout the front yard of the property. As Officer Fondario approached the residence, he noticed open and accessible windows throughout the front portion of the structure. He observed while looking into the windows that the structure's interior was only partially constructed of wood-framed walls.

Officer Fondario entered the backyard area of the property and noticed several more broken windows on the south wall of the structure and the north side of the detached garage. There was dry and overgrown vegetation throughout the backyard including large piles of cut and extremely dry tree branches stacked against the west side of the detached garage.

Upon further inspection, Officer Fondario noticed a sign referencing Prudential California Realty, REO Group, on the structure's rear door. He contacted the company while at the site and was advised that Prudential California Realty is no longer in possession of the property.

Prepared by:	G. FONDARIO	Reviewed and Approved by:	
Proofed by:	Angelic Bird	Presented by:	

Officer Fondario returned to the station after his inspection and contacted City Prosecutor Jim Eckart to obtain current owner information for the property. A document search revealed the property is owned by José F. Carrillo and Silvia L. Chicas and is listed as being owner occupied.

June 2, 2009 - Officer Fondario was unsuccessful in locating and/or contacting the property owners regarding the extensive nuisance conditions at the property including contacting the utility companies in an effort to obtain the owners' current mailing address.

June 3, 2009 - Officer Fondario spoke with "Victor," a neighbor residing at 10187 Lehigh Avenue, to see if he had any contact information for the current property owners. Victor informed Officer Fondario that the owners had not been seen at the residence for approxi-mately three to four months. Victor advised that he has had continual problems and encounters with homeless individuals and teenagers trespassing at the vacant structure, causing Victor's dog to bark throughout the night on numerous occasions. The property is located directly across the street from Lehigh Elementary School and has become an attractive nuisance not only to homeless and unauthorized persons but to small children as well.

June 4, 2009 - Upon the discovery of additional Health and Safety Code violations at the subject property, Officer Fondario met with "Bernie" of Excaliber Associates Construction at the site to begin an emergency board-up and cleanup of the property. Further inspection of the property revealed another broken window having shards of glass protruding from the frame on the east side of the structure.

Officer Fondario also noticed the double doors on the north side of the structure had been kicked in, allowing easy access to the structure. He entered the structure through the opening and found numerous two-by-four boards with protruding nails strewn across the floor.

As he made his way through the structure, Officer Fondario came upon an open and exposed bathroom in which he noticed a large amount of fresh water on the floor below the plumbing fixtures. He opened one of the fixtures and observed that the water was still on at the residence. Officer Fondario contacted "Bill" of the Monte Vista Water District. Bill advised him that water service to the subject property had been disconnected several months ago and that he would immediately dispatch a service technician to the property to again disconnect water service.

June 4, 2009 - Contracted Excaliber Associates Construction to board up and secure the property and abate the remaining conditions.

June 8, 2009 - Bernie of Excaliber Associates Construction telephoned Officer Fondario to advise that he was unable to board up one of the windows on the north side of the structure because of a large beehive in the wall adjacent to the window. Officer Fondario told

		Bernie he would meet with a West Valley Mosquito and Vector Control District representative at the subject property regarding removal of the beehive.
June 9, 2009	-	Officer Fondario met with "Quan" from West Valley Mosquito and Vector Control District at the subject property who told him that a private pest-control company could remove the beehive. Officer Fondario immediately contacted Bernie of Excaliber Associates Construction and asked him to remove the bees from the structure and complete the board-up.
June 9, 2009	-	Abatement completed as directed by the Montclair Fire Department and detailed in the "*Report of Cost of Abatement.*"
June 16, 2009	-	Officer Fondario reinspected the property and found that the bees had been removed, allowing for the remaining broken windows on the structure to be boarded up.
December 11, 2009	-	Excaliber Associates Construction faxed Invoice No. 963 in the amount of $1,343.50 to the Fire Department itemizing completion of all the above noted actions.

Resolution No. 10-2824 states that if reimbursement is not made to the City by the date set by the City Council, the City may begin enforcement proceedings to collect abatement costs by placing a *Nuisance Abatement Lien* on the subject property.

FISCAL IMPACT: Should the City Council approve this item, placement of and collection on the proposed lien would reimburse the City $1,655.52 in abatement expenses.

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

1. Adopt Resolution No. 10-2824 declaring the findings of the *Report of Cost of Abatement* dated Thursday, January 7, 2010, related to the property located at 10179 Lehigh Avenue, Montclair, California.

2. Determine the reimbursement amount of $1,655.52 be paid to the City of Montclair within ten calendar days of the adoption of Resolution No. 10-2824.

RESOLUTION NO. 10-2824

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR DECLARING THE FINDINGS OF THE CITY COUNCIL RELATED TO REPORT OF COST OF ABATEMENT FOR PROPERTY LOCATED AT 10179 LEHIGH AVENUE, MONTCLAIR, CALIFORNIA

WHEREAS, a copy of the subject *Report of Cost of Abatement,* dated Thursday, January 7, 2010, is herein attached and made a part of this Resolution as Exhibit A; and

WHEREAS, pursuant to Montclair Municipal Code Section 10.44.130, a *Report of Cost of Abatement* was prepared setting forth the costs incurred by the City to abate a nuisance as described in Exhibit A at the property identified by Assessor's Parcel No. 1009-401-13-0000 located at 10179 Lehigh Avenue, Montclair, California; and

WHEREAS, pursuant to Montclair Municipal Code Section 10.44.160, the City Council held a hearing on Tuesday, January 19, 2010,to consider the report.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair determines that the subject *Report of Cost of Abatement* is accepted as presented and that the owners of the property, José F. Carrillo and Silvia L. Chicas, are hereby ordered to reimburse the City of Montclair in the total amount of $1,655.52 for the cost of nuisance abatement. Said amount shall be a personal obligation of the property owners.

BE IT FURTHER RESOLVED that such payment shall be made to the City of Montclair by the date set by City Council. If such payment is not made by that date, a lien will be placed on said property.

BE IT FURTHER RESOLVED that if such payment is not received by the City of Montclair by the aforementioned date, the City may begin enforcement proceedings to collect the abatement cost by placing a *Notice of Nuisance Abatement Lien* on the subject property with the Office of the County Recorder of the County of San Bernardino pursuant to Government Code Section 38773.1 and in the manner prescribed in the Montclair Municipal Code.

BE IT FURTHER RESOLVED that if reimbursement is not made by the date set by the City Council, the City Clerk is authorized to forward the attached *Notice of Nuisance Abatement Lien* (Exhibit B) to the appropriate County authorities for collection of the amount as set forth above.

APPROVED AND ADOPTED this XX day of XX, 2010.

_____
Mayor

ATTEST:

_____
City Clerk

I, Donna M. Jackson, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 10-2824 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2010, and that it was adopted by the following vote, to-wit:

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

_____

Donna M. Jackson
City Clerk

EXHIBIT A

MONTCLAIR FIRE DEPARTMENT
CODE ENFORCEMENT UNIT

REPORT OF COST OF ABATEMENT
TO BE CONSIDERED BY THE MONTCLAIR CITY COUNCIL
PURSUANT TO MONTCLAIR MUNICIPAL CODE SECTION 10.44.160

To be considered by the Montclair City Council on Tuesday, January 19, 2010.

Notice of this hearing was mailed to the Property Owners named below on Thursday, January 7, 2010, pursuant to Montclair Municipal Code Section 10.44.150.

Pursuant to Chapter 10.44 of the Montclair Municipal Code, the City caused the abatement of a nuisance defined as follows:

Date of Notification:	Numerous failed attempts	
Property Owners:	Jose F. Carrillo and Silvia L. Chicas	
Mailing Address:	10179 Lehigh Avenue, Montclair, CA 91763	
Subject Property:	Address:	10179 Lehigh Avenue Montclair, CA 91763
	APN:	1009-401-13-0000
	Legal Description:	Tract No. 4764, Lot No. 54
Description of Nuisance:	Open and vacant dwelling with overgrown vegetation, trash, junk, and debris throughout the property.	

_____ This nuisance was abated pursuant to Montclair Municipal Code Section 10.44.100 without exigent circumstances. The Property Owner/Occupant failed to abate the nuisance within the time specified in the *Notice to Abate a Public Nuisance* and had either exhausted his/her hearing and appeal options or did not in a timely manner and in the appropriate format request such hearing and/or appeal.

__X__ This nuisance was abated pursuant to Montclair Municipal Code Section 10.44.110 with exigent circumstances that posed a serious threat to the public's health or safety and was declared by the City to be an immediate hazard, which would, if not immediately suppressed, seriously endanger public health or safety.

Details of expenses are listed as follows:

Parcel No.: 1009-401-13-0000

Contractor/Agency performing the work:	Excaliber Associates Construction
Dates during which work was performed:	June 4, 2009 - June 9, 2009
Describe work performed:	Secure open and vacant dwelling; remove overgrown vegetation, trash, junk, and debris from the property.

Cost of work performed by Excaliber Associates Construction: **$1,343.50**

Other costs related to abatement proceedings, as authorized in the Montclair Municipal Code:

Code Enforcement Officer	6 hours	@ $40.47/hour	242.82
Vehicle	15 miles	@ .58¢/mile	8.70
Administrative Processing	2 hours	@ $30.25/hour	60.50
TOTAL ABATEMENT COST:			**$1,655.52**

Prepared by: G. Fondario

Title: Code Enforcement Officer

Date: January 7, 2010

RECORDING REQUESTED BY

Exhibit B

WHEN RECORDED, MAIL TO:

MONTCLAIR FIRE DEPARTMENT
P.O. BOX 2308
MONTCLAIR, CA 91763

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF NUISANCE ABATEMENT LIEN

WHEREAS, it was determined by the Code Enforcement Unit of the City of Montclair that violations of Montclair Municipal Code Sections 10.44.010 and 10.48.040, Abatement of Dangerous Buildings Code Section 203, Government Code Section 38773.5, and California Administrative Code Section 138 existed; and

WHEREAS, it was determined that such violations did exist and were ordered to be abated on Tuesday, June 9, 2009; and

WHEREAS, as directed by the Montclair Fire Department Code Enforcement Unit, the violations were abated by Excaliber Associates Construction on Tuesday, June 9, 2009; and

WHEREAS, the following are costs associated with this lien:

Cost paid to contractor	$1,343.50
Administrative fees	312.02
Total	$1,655.52

NOW, THEREFORE, BE IT KNOWN that a *Nuisance Abatement Lien* exists on the property owned by Jose F. Carrillo and Silvia L. Chicas and described as follows:

10179 Lehigh Avenue, Montclair, California 91763
Assessor's Parcel No. 1009-401-13-0000; Tract No. 4764, Lot No. 54

The amount of such lien shall be $1,655.52, plus interest and other costs, which may hereafter become due.

Dated:_____

_____
Lee C. McDougal, City Manager (or his duly authorized representative)
City of Montclair

ATTEST:

Dated:_____

_____
Donna M. Jackson
City Clerk

Authorization for this lien per attached Resolution No. 10-2824 and Exhibit A.

AGENDA REPORT

SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT	**DATE:**	January 19, 2010
		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 December 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 December 31, 2009.

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

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION	**DATE:**	January 19, 2010
		SECTION:	ADMIN. REPORT
		ITEM NO.:	2
		FILE I.D.:	FIN540
BUSINESS PLAN:	N/A	**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 January 19, 2010, and Payroll Documentation0 dated December 6, 2009, finds them to be in order and recommends their approval.

FISCAL IMPACT: The Warrant Register dated January 19, 2010, totals $1,373,837.25. The Payroll Documentation dated December 6, 2009, totals $617,193.16, with $450,241.47 being the total cash disbursement.

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

Prepared by:	Donna M Jackson	Reviewed and Approved by:	
Proofed by:	Janet Kulbeck	Presented by:	

AGENDA REPORT

SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT	**DATE:**	January 19, 2010
		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 December 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 December 31, 2009.

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

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER	**DATE:**	January 19, 2010
		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 12/01/09 - 12/31/09 in the amounts of $9,092.83 for Project I; $309.37 for Project II; $135,328.25 for Project III; $153,657.96 for Project IV; $588,536.62 for Project V; and $0.00 for Mission Boulevard Joint Redevelopment Project and finds it to be in order.

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

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

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

AGENDA REPORT

SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT	**DATE:**	January 19, 2010
		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 December 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 December 31, 2009.

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

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER	**DATE:**	January 19, 2010
		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 12/01/09 - 12/31/09 in the amount of $32,831.37 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 December 31, 2009.

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

AGENDA REPORT

SUBJECT:	CONSIDER SETTING A PUBLIC HEARING TO CONSIDER MAKING AN ENVIRONMENTAL FINDING RELATED TO A PROPOSED SPLASH PAD PROJECT IN ALMA HOFMAN PARK PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT	**DATE:**	January 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	7
		FILE I.D.:	ENV075
BUSINESS PLAN:	N/A	**DEPT.:**	COMMUNITY DEV.

REASON FOR CONSIDERATION: Projects that may have potential impacts on the environment are required to undergo environmental review in accordance with the California Environmental Quality Act (CEQA).

BACKGROUND: In late 2009, the City was contacted by Supervisor Gary Ovitt and County of San Bernardino staff regarding the County's desire to construct a "splash pad" at Alma Hofman Park. A splash pad is a zero-depth aquatic recreational feature that contains ground-mounted elements that spray water when activated by motion sensors connected to each of the individual elements. The County proposes to fund the entire cost of the 1,963-square-foot splash pad and related equipment, estimated to be approximately $750,000; however, it has been requested that the City Council make the CEQA environmental finding because the proposed project would be located on City property.

FISCAL IMPACT: The cost to public a Notice of Public Hearing related to making an environmental finding for a splash pad in Alma Hofman Park should not exceed $400.

RECOMMENDATION: Staff recommends the City Council set a public hearing for Monday, February 1, 2010, at 7:00 p.m. in the City Council Chambers to consider making an environmental finding related to a proposed splash pad project in Alma Hofman Park pursuant to the California Environmental Quality Act.

Prepared by:	Steve Lustro	Reviewed and Approved by:	Steve Lustro
Proofed by:	Laura Berke	Presented by:	

AGENDA REPORT

SUBJECT:	CONSIDER SETTING A PUBLIC HEARING TO PRIORITIZE FUNDING FOR FISCAL YEAR 2010-11 COMMUNITY DEVELOPMENT BLOCK GRANT PROJECTS	**DATE:**	January 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	8
		FILE I.D.:	GRT050
BUSINESS PLAN:	N/A	**DEPT.:**	COMMUNITY DEV.

REASON FOR CONSIDERATION: Each fiscal year, the City of Montclair is required to conduct a public hearing to prioritize funding for various competing Community Development Block Grant (CDBG) projects. This hearing is conducted in compliance with requirements of the federal Department of Housing and Urban Development (HUD) and the County of San Bernardino Department of Community Development and Housing (CDH).

BACKGROUND: In November, staff submitted its applications for CDBG funding to the County of San Bernardino. CDH has compiled a list of proposals eligible for funding from Montclair's annual CDBG allocation, including those submitted by staff and outside agencies, for consideration by the City Council. Details of the eligible proposals, along with the proposed Fiscal Year 2010-11 funding, will be provided to Council for reference and consideration prior to the public hearing.

FISCAL IMPACT: The cost to publish a Notice of Public Hearing related to prioritizing funding for Fiscal Year 2010-11 CDBG projects should not exceed $400.

RECOMMENDATION: Staff recommends the City Council set a public hearing for Monday, February 1, 2010, at 7:00 p.m. in the City Council Chambers to prioritize funding for Fiscal Year 2010-11 Community Development Block Grant projects.

Prepared by:	Peter Castro	Reviewed and Approved by:	Peter Castro
Proofed by:	Lana Burke	Presented by:	

AGENDA REPORT

SUBJECT:	CONSIDER SETTING A PUBLIC HEARING TO CONSIDER ORDINANCE NO. 10-912 ADDING CHAPTER 1.16 TO THE MONTCLAIR MUNICIPAL CODE REGARDING CLAIMS AGAINST THE CITY	**DATE:**	January 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	9
		FILE I.D.:	LIT025
BUSINESS PLAN:	N/A	**DEPT.:**	ADMIN. SVCS.

REASON FOR CONSIDERATION: The City Council is requested to consider setting a public hearing to consider adoption of Ordinance No. 10-912 adding Chapter 1.16 to the Montclair Municipal Code establishing procedures for presentation of claims against the City for money or damages that are not otherwise governed by the Government Claims Act, California Government Code Section 900 *et seq.*, or other state law.

BACKGROUND: The Government Claims Act, California Government Code Section 900 *et seq.*, establishes the general rule that public entities must be given notice of claims for money or damages. Claim presentation requirements facilitate prompt investigation and possible early settlement of claims. Early notice of claims also allows the City to make suitable budgetary adjustments and provides opportunities to take corrective measures to avoid reoccurrence and future liability.

California Government Code Section 905 lists several exceptions to the generally mandated claim requirements. However, under provisions of California Government Code Section 935, claims that are excepted under Section 905 are subject to the claim requirements and procedures that are established by ordinances adopted by local public entities, provided local claims requirements are similar to, and no more restrictive than, those established by the Government Claims Act (California Government Code Section 900 *et seq.*).

It is in the best interests of the City of Montclair to establish and codify clearly defined claim requirements and procedures for presentation of all claims against the City for money or damages. Proposed Ordinance No. 10-912 establishes policies and procedures for the presentation of claims. Specifically, the Ordinance requires the following:

1. All claims against the City for money or damages shall be presented within the time and in the manner prescribed by Part 3 of Division 3.7 of Title 1 of the California Government Code.

2. All claims shall be made in writing and verified.

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

3. No claim may be filed on behalf of a class of persons unless verified by every member of that class.

4. All claims shall be responsive to California Government Code Section 910.

5. All claims shall be presented and acted upon as required by California Government Code Sections 935(b), 945.4, and 945.6.

6. Any action brought against the City upon any claim or demand shall conform to requirements of California Government Code Sections 940-949.

In addition to establishing policies and procedures for presentation of claims, including claims in connection with filing a notice of lien or stop notice and claims by the state or other local public entities, adoption of Ordinance No. 10-912 would reduce the City's exposure to certain claims including class actions.

FISCAL IMPACT: Minimal cost related to advertising a public hearing. There is no existing data from which to provide an estimate of the fiscal impact related to adoption of a claims process and any correlating reduction in liabilities. However, adopting specific requirements and procedures for all claims would limit the City's liability to one year from the date of accrual of a claim and could potentially reduce liabilities related to claims.

RECOMMENDATION: Staff recommends the City Council set a public hearing for Monday, February 1, 2010, at 7:00 p.m. in the City Council Chambers to consider Ordinance No. 10-912 adding Chapter 1.16 to the Montclair Municipal Code regarding claims against the City.

ORDINANCE NO. 10-912

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADDING CHAPTER 1.16 TO THE MONTCLAIR MUNICIPAL CODE REGARDING CLAIMS AND DEMANDS AGAINST THE CITY

WHEREAS, early notice of claims against the City facilitates prompt investigation and possible early settlement of claims, allows the City to make reasonable and necessary fiscal adjustments, and provides opportunities to take corrective action to avoid repeat occurrences and future liability; and

WHEREAS, the City Council desires to establish and codify requirements for all claims for money or damages against the City not otherwise governed by the Government Claims Act, California Government Code Sections 900 *et seq.*; and

WHEREAS, such locally adopted claim requirements and procedures are authorized and enforceable pursuant to Government Code Section 935.

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

SECTION I. Chapter 1.16 (Claims) of the Montclair Municipal Code is hereby added to read as follows:

Chapter 1.16 Claims.

A. Authority. This Ordinance is enacted pursuant to Section 935 of the California Government Code.

B. Claims Presentation Procedures. All claims and demands against the City for money or damages not otherwise governed by the Government Tort Claims Act, California Government Code Section 900 *et seq.* or other state law (hereinafter "claims") shall be presented within the timeframe and in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof), as those provisions now exist or shall hereafter be amended from time to time, and as further provided in this Chapter.

C. Form of Claim. All claims shall be made in writing and filed with the City Clerk or designee. All claims shall be verified by the claimant or by his/her guardian, conservator, executor, or administrator. No claim may be filed on behalf of a class of persons unless verified by every member of that class as required by this section. In addition, all claims shall contain the information required by California Government Code Section 910 *et seq.* The City may provide a claim form pursuant to Government Code Section 910.4 specifying the information to be contained in any claim against the City.

D. Audit. All claims shall be audited by the City Clerk or designee for compliance with this Chapter and submitted as required for approval or rejection as provided for in California Government Code Section 37202.

E. Claim Prerequisite to Suit. In accordance with California Government Code Sections 935(b), 945.4, and 945.6, all claims shall be presented as provided in this Chapter and acted upon by the City prior to the filing of any action on such claims; and no such action may be maintained by a person who has not complied with the requirements of this chapter.

F. Suit. Any legal action brought against the City upon any claim or demand shall conform to the requirements of Government Code Sections 940-949. Any action brought against any employee of the City shall conform to the requirements of California Government Code Sections 950-951.

SECTION II. Severability.

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

SECTION III. Effective Date; Transitional Clause.

This Ordinance shall be in full force and effect thirty (30) days after passage as provided by Government Code Section 36937, and its provisions shall be applicable to any claims subject to the provisions of this Chapter not otherwise time barred. If application of time periods established by this Chapter would extinguish an existing claim that is not otherwise time barred, then such claim shall be deemed to have been presented in compliance with this Chapter subject to the sooner of:

A. The date any applicable claims period would have expired; or

B. Six (6) months after the accrual of the cause of action for claims described in the first sentence of Government Code Section 911.2 or one (1) year after the accrual of the cause of action for claims described in the second sentence of that section. Nothing in this Chapter shall be construed to extend the time for the presentation of any claim, which time was established by statute, Ordinance, or other law in effect prior to the adoption of this Ordinance.

SECTION IV. Posting.

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

APPROVED AND ADOPTED this XX day of XX, 2010.

_____
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. 10-912 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2010, and finally passed not less than five (5) days thereafter on the XX day of XX, 2010, by the following vote, to-wit:

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

_____
Donna M. Jackson
City Clerk

AGENDA REPORT

SUBJECT:	CONSIDER PLACING CITY MANAGER LEE C. MCDOUGAL ON SPECIAL ASSIGNMENT FOR THE PERIOD BEGINNING MARCH 1, 2010, THROUGH JUNE 29, 2010, OR THE DATE OF HIS RETIREMENT FROM ACTIVE EMPLOYMENT, WHICHEVER OCCURS FIRST	**DATE:**	January 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	10
		FILE I.D.:	CMR650
BUSINESS PLAN:	N/A	**DEPT.:**	CITY MGR.

REASON FOR CONSIDERATION: City Manager Lee C. McDougal recently announced his intention to retire effective on or about June 29, 2010. To facilitate transition to and mentoring of his designated successor, the City Council directed the City Attorney to prepare an agenda report placing City Manager McDougal on special assignment.

BACKGROUND: After 34 years of service to the City of Montclair, including his last 17 years of employment as Montclair City Manager, City Manager McDougal announced his retirement effective on or about June 29, 2010. City Manager McDougal's planned retirement provides the City Council with a set of unique opportunities including the following:

1. Providing mentoring services for the City Manager-designee to facilitate transition to the City Manager position.

2. Taking advantage of City Manager McDougal's extensive public service knowledge acquired over 34 years as a professional public administrator by assigning him to focus on a number of specialized projects, as mutually agreed upon—assignments to include the following major task components:

   (a) *Best Practices Study.* Analyze internal and external operating procedures and protocols of other local agencies with the objective of developing possible recommendations to improve levels of organizational and operational efficiency, new and/or enhanced special operating proce-dures, and alternatives for delegating and completing complex and standardized tasks.

   (b) *Economic Development and Public/Business Sector Liaison.* Represent interests of the City at local, regional, statewide, and national levels of government to secure potential funding and resources for public works projects and economic development of the City; serve as special liaison to the private sector for the purpose of promoting business expansion/improvement during the current period of economic recession and encourage future development concurrent with

Prepared by:	Diane E. Robbins	Reviewed and Approved by:	
Proofed by:	Marie M. Jackson	Presented by:	

improvements in the economy; and represent interests of the City as special liaison/intermediate to secure federal funds from the Obama administration's proposed jobs program legislation, the American Recovery and Reinvestment Act of 2009, and the proposed Surface Transportation Authorization Act.

(c) *Consultant Services/Problem Resolution.* Serve as special consultant/advisor to the City Council, Deputy City Manager, and departmental-level staff and provide on-call services for problem/conflict resolution related to administrative and operational issues.

(d) *Special Assignments.* Conduct additional special assignments as requested by the City Council.

City Manager McDougal's special assignment period would begin March 1, 2010, and continue through his anticipated retirement date on or about June 29, 2010. During this period of special assignment, day-to-day management responsibilities of the City Manager's position would be assumed by the Deputy City Manager. City Manager McDougal would not have any fixed office hours and would not be required to attend meetings of the City Council, Redevelopment Agency, and Montclair Housing Corporation.

FISCAL IMPACT: No changes are proposed to City Manager McDougal's current salary and benefits during the proposed period of special assignment.

RECOMMENDATION: City Attorney Robbins recommends the City Council place City Manager Lee C. McDougal on special assignment beginning March 1, 2010, through June 29, 2010, or the date of his retirement from active employment, whichever occurs first. Except as noted herein, all other provisions of City Manager McDougal's Employment Agreement shall remain in effect during the period of special assignment.

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 10-07 WITH L. D. KING, INC., IN THE AMOUNT OF $39,500 FOR CONSTRUCTION SURVEYING AND STAKING SERVICES FOR THE MISSION BOULEVARD IMPROVEMENT PHASE 7 PROJECT CONSIDER AUTHORIZATION FOR CITY MANAGER TO AMEND THE AGREEMENT SCOPE OF SERVICES AS MAY BE NECESSARY FOR A TOTAL INCREASE NOT TO EXCEED $5,000	**DATE:**	January 19, 2010
		SECTION:	AGREEMENTS
		ITEM NO.:	1
		FILE I.D.:	SSP178
		DEPT.:	PUBLIC WORKS
BUSINESS PLAN:	**STRATEGIC PRIORITY NO. 3, GOAL 3**		

REASON FOR CONSIDERATION: The City will soon begin construction of Phase 7 of the Mission Boulevard Street Improvement Project. Construction survey and staking services are required and are the City's responsibility to provide. A proposal for these services has been submitted by L. D. King, Inc. Proposed Agreement No. 10-07 with L. D. King, Inc., provides for the required services and is attached for the Council's review and consideration. Awards of contracts and agreements with the City require City Council approval.

Approval of Agreement No. 10-07 would satisfy a portion of City of Montclair Business Plan Strategic Priority No. 3, Goal 3, as contained in Montclair's "Business Plan."

BACKGROUND: On November 16, 2009, the City Council awarded a construction contract to Gentry Brothers, Inc., for construction of Phase 7 of the Mission Boulevard Street Improvement Project. One of the necessary components of a successful project includes accurate construction surveying and staking. Based on past associations with L. D. King, Inc., and the design of this project, L. D. King, Inc., understands the City's requirements and standards.

FISCAL IMPACT: Construction surveying and staking for Phase 7 of the Mission Boulevard Street Improvement Project were negotiated as a time and materials contract not to exceed a total of $39,500. Sufficient funds have already been appropriated for this work. Funding sources for the complete project include federal High Priority Project funds and the Montclair Redevelopment Agency.

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

1. Approve Agreement No. 10-07 with L. D. King, Inc., in the amount of $39,500 for construction surveying and staking services for the Mission Boulevard Improvement Phase 7 Project.
2. Authorize the City Manager to amend the Agreement Scope of Services as may be necessary for a total increase not to exceed $5,000.

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

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

MISSION BOULEVARD PHASE 7 CONSTRUCTION STAKING

THIS AGREEMENT is made and effective as of January 19, 2010, between the City of Montclair, a Municipal Corporation ("City"), and L. D. King, Inc., a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on January 25, 2010, and shall remain and continue in effect for a period of twelve months until tasks described herein are completed, but in no event later than January 25, 2011, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

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

3. PERFORMANCE

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

4. CITY MANAGEMENT

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

5. PAYMENT

a. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed $39,500.00 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

b. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Ten Thousand Dollars ($10,000.00). Any additional work in excess of this amount shall be approved by the City Council.

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

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

7. DEFAULT OF CONSULTANT

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

causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

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

8. OWNERSHIP OF DOCUMENTS

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

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

9. INDEMNIFICATION

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

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

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

10. INSURANCE

a. Consultant shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to City nor shall Consultant allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI:

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	$1,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	$2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	$1,000,000
Professional Liability (per claim and aggregate)	$1,000,000
Workers' Compensation	Statutory

b. All insurance required by this section shall apply on a primary basis. Consultant agrees that it will not cancel or reduce said insurance coverage. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

c. Auto liability insurance shall cover owned, nonowned, and hired autos. If Consultant owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

d. At all times during the term of this Agreement, Consultant shall maintain on file with City a certificate of insurance in a form acceptable to City showing that the aforesaid policies are in effect in the required amounts. The general liability policy shall contain or be endorsed to contain a provision including the Indemnitees as additional insureds. Consultant shall promptly file with City such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

e. No policy required by this section shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnitees.

f. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

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

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

h. General Insurance Requirements: All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured, and all subcontractors waive the right of subrogation against City and City's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by City; and (3) they cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City by certified mail. Consultant shall furnish City with copies of all such policies. Consultant may effect for its own account insurance not required under this Agreement.

11. INDEPENDENT CONTRACTOR

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control and shall not be construed to be employees of City for any purpose including

eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations, which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Montclair in connection with the award, terms or implementation of this Agreement including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Montclair will receive compensation, directly or indirectly, from Consultant, or from any officer, employee, or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or subagreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not, without written authorization from the City Manager or unless requested by

the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

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

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

16. NOTICES

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

To City:	Michael C. Hudson City Engineer City of Montclair 5111 Benito Montclair, CA 91763
To Consultant:	L.D. King, Inc. 2151 Convention Center Way Suite 100 Ontario, CA 91764-4464

17. ASSIGNMENT

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

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

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

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. AUTHORITY TO EXECUTE THIS AGREEMENT

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

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

CITY:

CITY OF MONTCLAIR

_____
Paul M. Eaton
Mayor

Date_____

ATTEST:

_____
Donna M. Jackson
City Clerk

APPROVED AS TO FORM:

_____
Diane E. Robbins
City Attorney

CONSULTANT:

L. D. KING, INC.

_____
President

Date_____

EXHIBIT A

LDKING

Engineers/Planners/Surveyors

November 30, 2009

Mr. Michael C. Hudson
City of Montclair, Engineering Dept.
5111 Benito Street, P.O. Box 2308
Montclair, California 91763

Subject: Proposal to Provide Professional Surveying Services for the Construction Staking of "Phase 7 Mission Boulevard Improvements" in the City of Montclair, California

Dear Mike:

L.D. King, Inc. is pleased to submit this proposal for your review and consideration to provide Professional Surveying Services for the above-described project. All field work will be performed in accordance with prevailing wage requirements for public works contracts. L.D. King, Inc. will provide the following Construction Survey Services:

SCOPE OF SERVICES

TASK I HORIZONTAL AND VERTICAL CONTROL

- Establish horizontal and vertical control on site from existing monuments and project benchmark.

TASK II REMOVALS/ POTHOLES

- Provide stakes for all removals and saw cut lines.
- Provide surveys of all pothole locations and as-built of existing utilities.

TASK III STORM DRAIN

- Provide a minimum of three (3) stakes for each lateral including all primary points of control, BC's, EC's, grade breaks, begin and end.
- Provide stakes to the inside face of catch basins with line points and beginning and end of local depressions.

TASK IV CURB/GUTTERS/DRIVEWAYS

- Provide curb stakes at 25' intervals and at all primary points of control, BC's, EC's, radius points, angle points and grade breaks.
- Provide stakes for street overlay sections at centerline, crown, and grade breaks.
- Provide one (1) stake at driveway and handicap ramp centerlines for establishment of curb depressions.
- Provide three (3) stakes per cross gutter.

L.D. King, Inc. 2151 Convention Center Way, Suite 100, Ontario, CA 91764-4464 (909) 937-0200 Fax: (909) 937-0202

TASK V STREET LIGHTS/ TRAFFIC SIGNALS

- Provide two (2) stakes for the center of all proposed traffic signal poles, controller cabinets, etc.
- Provide mark on curb at the center of all proposed street lights.

TASK VI CENTERLINE MONUMENT PRESERVATION

- Tie out existing centerline monuments to be removed/disturbed during construction and file appropriate corner records.
- Reset centerline monuments after completion of improvements and file appropriate corner records.
- Set centerline ties and prepare City of Montclair standard tie sheets.

TASK VII GENERAL

- Provide surveys as required for as-built drawings.
- Provide survey supervision and calculations for survey field crews.

OPTIONAL SERVICES - ROUGH GRADE

- Provide stakes at 50' intervals and all primary points of control for rough grading of curb section, right of way and medians.

COMPENSATION

L.D. King, Inc. shall be compensated for work for each task as defined below. Fees presented herein are an estimate and are subject to union increases.

TASK	DESCRIPTION	FEE
Task I	Horizontal and Vertical Control	$ 2,000.00
Task II	Removals/Potholes	$ 5,700.00
Task III	Storm Drain	$ 5,700.00
Task IV	Curb/Gutters/Driveways	$13,200.00
Task V	Street Lights/Traffic Signals	$ 1,900.00
Task VI	Centerline Monument Preservation	$ 6,000.00
Task VII	General	$ 5,000.00
	TOTAL	$39,500.00

The above tasks will be performed on a time and materials basis for an estimated budget of $39,500.00, not to be exceeded without prior Client approval.

OPTIONAL SERVICES

Task A	Rough Grade	$ 4,700.00

The above task, if requested, will be performed on a time and materials basis for an estimated budget of $4,700.00, not to be exceeded without prior Client approval.

EXTRA SERVICES

Client agrees to pay Consultant compensation for all authorized extra services at the hourly rates set forth in our current Rate Schedule, attached. All extra work shall be authorized by the Client prior to commencing such work.

REIMBURSABLE EXPENSES

Reimbursable expenses include actual expenditures incurred by the Consultant on behalf of the Client in the interest of the project and include all items such as blueprints, reproductions, fees, permits, bond premiums, title company charges and delivery charges not specifically covered by the terms of this Agreement. In the event such reimbursable items are paid directly by the Consultant, then such charges and expenses shall be invoiced at direct cost plus 15%.

Thank you for the opportunity to submit our proposal for your review. We are prepared to begin work immediately upon your authorization to proceed.

Respectfully submitted,

Michael A. Baine, P.L.S.
Vice President - Survey

AUTHORIZATION TO PROCEED:

Dated: _____

Michael C. Hudson

Attachment

E:\Proposals\Survey\Montclair-Mission\Phase 7 Improvements.doc

EXHIBIT B

LDKING

Rate Schedule

L.D. King, Inc.

October 1, 2008– September 30, 2009

Principal	$220.00
Sr. Project Manager/Sr. Engineer Designer	$170.00
Project Manager	$151.00
Project Engineer	$132.00
Engineer/Designer/Planner III	$121.00
Engineer/Designer/Planner II	$105.00
Engineer/Designer/Planner I	$ 95.00
CAD Drafter	$ 88.00
Sr. Graphic Artist	$ 82.00
Project Coordinator	$ 75.00
Graphic Artist/Technician	$ 71.00
Project/Administrative Assistant	$ 63.00

Surveying Services

Director of Surveys	$165.00
Project Surveyor, Office	$138.00
Senior Survey Calculator	$121.00
Survey Calculator	$105.00
3-Man Survey Crew	$295.00
2-Man Survey Crew	$234.00
1-Man Survey Crew	$150.00

Travel Time

3-Man Survey Crew	$158.00
2-Man Survey Crew	$107.00

Overtime Rates

3-Man Survey Crew	$354.00
2-Man Survey Crew	$274.00
1-Man Survey Crew	$187.00

Subsistence

3-Man Survey Crew	$303.00
2-Man Survey Crew	$205.00

Construction Services

Sr. Resident Engineer	$131.00
Resident Engineer	$126.00
Senior Inspector	$116.00
Inspector	$100.00
Car/Truck for Construction Services Personnel	$ 65.00/Day

Reimbursable Costs

In-House Reproduction	Cost
Printing and Materials	Cost + 15%
Express Mail, Courier, Next Day Service	Cost + 15%
Special Subconsultant Services	Cost + 10%

NOTE: L.D. KING, INC. reserves the right to change hourly rates on October 1, due to labor agreements, salary adjustments, and changes in operating expenses. All billings will be at the current billing rates.

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 10-09, AN AGREEMENT FOR CONSULTANT SERVICES WITH DAVID TAUSSIG AND ASSOCIATES, INC., REGARDING COMMUNITY FACILITIES DISTRICT FORMATION SERVICES	**DATE:**	January 19, 2010
		SECTION:	AGREEMENTS
		ITEM NO.:	2
		FILE I.D.:	LDU460
BUSINESS PLAN:	**STRATEGIC PRIORITY NO. 1**	**DEPT.:**	PUBLIC WORKS

REASON FOR CONSIDERATION: In considering potential projects within the North Montclair Downtown Specific Plan area, staff is seeking to establish a financial mechanism to ensure the projects have a limited impact on the City General Fund. Proposed Agreement No. 10-09 would authorize staff to retain the services of David Taussig and Associates, Inc. David Taussig and Associates, Inc., would develop the documentation necessary for establishment of a Community Facilities District (CFD) related to the proposal submitted by Montclair I MGP, LLC, should this project receive the approval of the Planning Commission and City Council. Agreement No. 10-09 is included in the agenda packet for the Council's review and consideration.

Approval of Agreement No. 10-09 will satisfy a portion of Strategic Priority No. 1 as contained in the City of Montclair "Business Plan."

BACKGROUND: The City Council adopted the North Montclair Downtown Specific Plan on May 16, 2006. The intent of the Specific Plan was to encourage pedestrian, transit-oriented mixed-use development. The North Montclair Downtown Plan also included areas for parks and other public open space. The Specific Plan requires public parks and open space in order to allow access by the entire community and give the area the quality of a city center. However, as a land use document, the Specific Plan did not provide guidance on how the City should deal with legal, environmental, and maintenance issues involved with build-out of the Specific Plan.

As the City Council is aware, Montclair I MGP, LLC, has submitted a project proposal for consideration that is located on the former Sam's Club site. The proposed development would include 385 multifamily residential units, approximately 770 parking spaces for residents with at least one space per unit being located adjacent to the related unit and the other space for such unit located elsewhere on the property, and development of a one-acre public park. In order to facilitate review of the proposed project, staff has found it necessary to seek the expertise of certain outside consultants. On December 21, 2009, the City Council approved Reimbursement Agreement No. 09-130 with Montclair 1 MGP, LLC. The purpose of the Reimbursement Agreement was to allow staff to retain the outside legal, planning, and engineering expertise needed to review the project and have the developer reimburse the City for such expense. As noted in the December 21, 2009 staff

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

report, nothing in the Reimbursement Agreement or any product of the consultants would be deemed to require approval or conditional approval of any or all land use entitlements. In addition, any consultants retained pursuant to the Agreement would be contractors exclusively of the City.

After a prior solicitation of consultants through a Request for Proposal process for the purpose of developing a master Community Facility District produced no response, City staff seeks to retain the services of David Taussig and Associates, Inc., to assist in the formation of a CFD to finance certain annual service costs related to items including park maintenance, street lighting, and street maintenance for the proposed project. Proposed Agreement No. 10-09 is the standard consultant agreement prepared by the City Attorney. The more salient points in proposed Agreement No. 10-09 include the following:

- The total amount of the Agreement would not exceed $19,000 unless additional payment is approved.
- The effective date of the Agreement would be December 15, 2009, to account for the time that David Taussig and Associates, Inc., has already committed to the project.
- The City would be able to suspend or terminate the Agreement, with or without cause, by serving the consultant with ten days' written notice.
- Any work or documents prepared by the consultant would become the sole property of the City.
- The consultant would provide the City with the appropriate forms of indemnification and insurance.

The formation of the CFD would become a condition of approval in the application for development submitted by Montclair I MGP, LLC.

FISCAL IMPACT: The City Council's approval of Agreement No. 10-09 would create no fiscal impact for the City. The fee for the services provided by David Taussig and Associates, Inc., would be provided from the deposit supplied by Montclair I MGP, LLC, through Reimbursement Agreement No. 09-130.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 10-09, an Agreement for Consultant Services with David Taussig and Associates, Inc., regarding Community Facilities District formation services.

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 10-10 WITH SAN BERNARDINO COUNTY FOR CONSTRUCTION OF A SPLASH PAD AT ALMA HOFMAN PARK	**DATE:**	January 19, 2010
		SECTION:	AGREEMENTS
		ITEM NO.:	3
		FILE I.D.:	PRK200
BUSINESS PLAN:	N/A	**DEPT.:**	PUBLIC WORKS

REASON FOR CONSIDERATION: San Bernardino County has offered to fund and construct a water feature at Alma Hofman Park known as a "splash pad." The County has asked the City to enter into an agreement for the construction of the facility; proposed Agreement No. 10-10 is attached for the Council's review and consideration. Agreements require City Council approval.

BACKGROUND: San Bernardino County, through Supervisor Gary Ovitt's office, has offered to fund the construction of a splash pad at Alma Hofman Park. A splash pad consists primarily of spray heads that are motion-sensor activated. When the splash pad is open, people could run through the area and be cooled down on warm summer days.

The County proposes hiring a contractor to install the splash pad and appurtenant facilities. Once completed, the City would set the operating hours of the splash pad and provide for operation and maintenance. The terms of the construction, operation, and maintenance are addressed in proposed Agreement No. 10-10. It is anticipated that the splash pad would be completed by early summer.

FISCAL IMPACT: San Bernardino County proposes funding the design and construction of the splash pad at an estimated cost of $750,000. There would be no cost to the City for the construction. The County has asked the City to fund the operation and maintenance costs. These costs will depend on operating hours and the period during the year that the splash pad will operate. If the splash pad were operated year round during normal park hours, the maintenance costs would average approximately $100,000 per year. Staff proposes operating the splash pad from around Memorial Day to Labor Day at an annual cost of approximately $35,000. This cost includes water-treatment chemicals, labor, water consumption, and electrical usage for the pumps.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 10-10 with San Bernardino County for construction of a splash pad at Alma Hofman Park.

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

County of San Bernardino

F A S

STANDARD CONTRACT

FOR COUNTY USE ONLY

E M X	X / Change / Cancel	New	Vendor Code	SC	Dept. CLB	A	Contract Number
County Department: County Administrative Office				Dept.	Orgn.		Contractor's License No.
County Department Contract Representative: Gary McBride				Ph. Ext. 387-4599			Amount of Contract $750,000
Fund: CJV	Dept.: CIP	Organization: 0B10	Appr.	Obj/Rev Source: 3310		Activity	GRC/PROJ/JOB Number
Commodity Code			Estimated Payment Total by Fiscal Year: FY / Amount / I/D				
Project Name: Alma Hofman Park Splash Pad Project							

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called COUNTY, and

Name: City of Montclair hereinafter called CITY

Address: 5111 Benito Street

Montclair, CA 91763

Phone: (909) 626-8571 Birth Date:

Federal ID No. or Social Security No.: 95-6005731

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the COUNTY desires to provide financial assistance to the CITY and take the lead to construct improvements for a splash pad project at the Alma Hofman Park located at 5111 Benito Street in the CITY (hereinafter referred to as PROJECT and more fully described in the attached Exhibit A); and

WHEREAS, the Alma Hofman Park is a public park and is accessible to use by CITY and COUNTY residents alike; and

Whereas, the PROJECT will be of mutual benefit to the COUNTY and the CITY; and

WHEREAS, the total project cost is estimated to be $750,000, and COUNTY is proposing to fund the total design and construction costs for the PROJECT; and

WHEREAS, the CITY owns the site upon which the PROJECT will be constructed; and

WHEREAS, COUNTY and CITY desire to set forth responsibilities and obligations of each as pertains to such funding of the proposed PROJECT.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 COUNTY AGREES TO:

1.1 Act as the Lead Agency in the design and construction of the PROJECT.
1.2 Obtain the approval of the CITY of the plans and specifications for the PROJECT.
1.3 Construct the PROJECT by contract in accordance with the plans and specifications.
1.4 Advertise, award, administer, and fully fund the construction of the PROJECT in accordance with the California Public Contract Code and any other applicable federal, state, or local laws.
1.5 Require its contractors to maintain Workers' Compensation Insurance or a state-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with $250,000 limits, covering all persons providing services on behalf of the contractor and all risks to such persons under this Agreement and Comprehensive General Liability and Automobile Liability Insurance to include contractual coverage and coverage for owned, hired, and non-owned vehicles. The Comprehensive General and Automobile Liability policies shall have combined single limits for bodily injury and property damage of not less than one million dollars ($1,000,000).
Waiver of Subrogation Rights – Contractors shall require the carriers of the above required coverages to waive all rights of subrogation against the COUNTY, the CITY, and their officers, employees, agents, volunteers, contractors, and subcontractors.
Policies Primary and Non-Contributory – All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY or the CITY.
1.6 Provide adequate initial inspection of all items of work performed under the construction contract(s) with COUNTY'S contractors or subcontractors for the PROJECT.
1.7 Fully fund total PROJECT costs.

2.0 CITY AGREES TO:

2.1 Include completion of any applicable CEQA requirements.
2.2 Review plans and specifications for the PROJECT and provide comments to the COUNTY in a timely manner.
2.3 Provide plan check, permits, and all legally required inspections for the PROJECT.
2.4 Determine and set hours of operation for the completed PROJECT.
2.5 CITY shall be responsible for performing any repair or maintenance for the completed PROJECT and shall be responsible for 100% of the associated repair or maintenance costs for the life of the PROJECT.
2.6 Approve and record Notice of Completion for the PROJECT.

3.0 IT IS MUTUALLY AGREED:

3.1 COUNTY agrees to indemnify and hold harmless the CITY, its officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any act or omission of COUNTY, its officers, employees, agents, or volunteers in connection with COUNTY's performance of its obligations under this Agreement.
3.2 CITY agrees to indemnify and hold harmless the COUNTY, its officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any act or omission of CITY, its officers, employees, agents, or volunteers in connection with CITY's performance of its obligations under this Agreement.
3.3 In the event the COUNTY and/or the CITY is found to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under the Agreement, the COUNTY and/or CITY shall indemnify the other to the extent of its comparative fault. Furthermore, if the COUNTY or CITY attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the COUNTY and CITY agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

3.4 COUNTY and CITY are self-insured public entities for purposes of Professional Liability, General Liability, and Workers' Compensation. COUNTY and CITY warrant that through their programs of self-insurance, they have adequate Professional Liability, General Liability and Workers' Compensation to provide coverage for liabilities arising out of COUNTY and CITY's performance of this agreement.

3.5 Except with respect to the parties' indemnification obligations contained herein and the CITY's continuing operation, repair, and maintenance obligations, this Agreement shall terminate upon completion of the PROJECT and payment of final billing by the COUNTY for the PROJECT.

3.6 If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under paragraph 3.1 through 3.4.

3.8 This Agreement contains the entire agreement of the parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified in writing signed by both parties.

3.9 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between CITY and COUNTY concerning the interpretation or enforcement of this Agreement, or which arises out of or is in any way connected with this Agreement or the PROJECT, shall be instituted and prosecuted in the appropriate state court in the County of San Bernardino, California.

3.10 Time is of the essence for each and every provision of this Agreement.

3.11 Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for any or against any party. Any term referencing time, days or period for performance shall be deemed workdays. The captions of the various articles and paragraphs are for convenience and ease or reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.12 No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

3.13 No waiver of any default shall constitute a waiver of any other default or brief, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

3.14 If a court of competent jurisdiction declares any portion of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this agreement is frustrated.

3.15 This Agreement may be signed in counterparts, each of which shall constitute an original.

THIS AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both parties.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands.

COUNTY OF SAN BERNARDINO

► _____
Gary C. Ovitt, Chairman, Board of Supervisors

Dated: _____

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

LAURA M. WELCH, Clerk of the Board of Supervisors of the County of San Bernardino

By _____
Deputy

CITY OF MONTCLAIR

By: ► _____
Paul M. Eaton, Mayor

Dated: _____

By: _____
Donna Jackson, City Clerk

APPROVED AS TO FORM:

By: _____
Diane Robbins, City Attorney

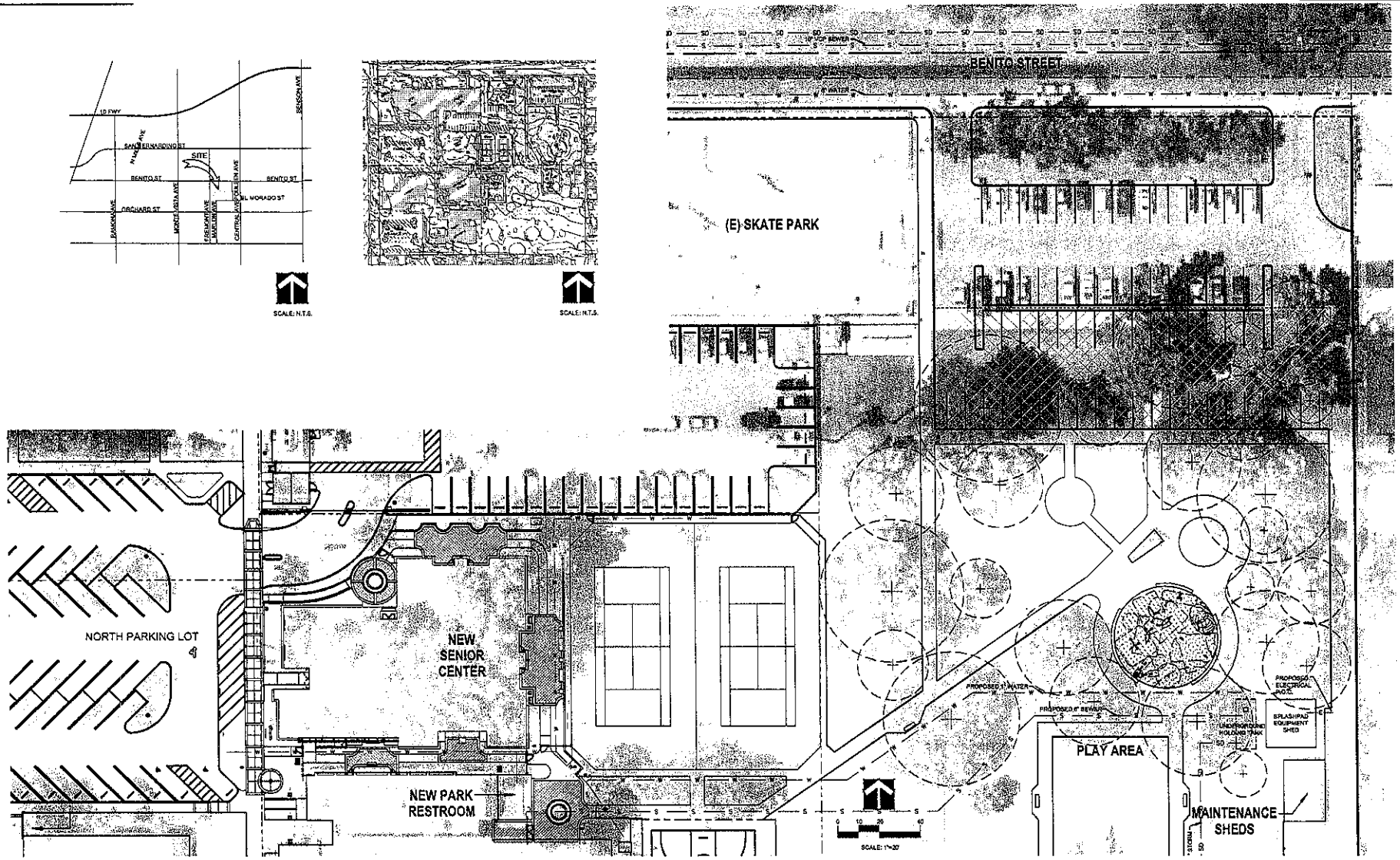
Approved as to Legal Form	Reviewed by Contract Compliance	Reviewed for Processing
► _____	► _____	► _____
REX A. HINESLEY, Deputy County Counsel		Agency Administrator/CAO
Date January 4, 2010	Date _____	Date _____

EXHIBIT A

PROJECT DESCRIPTION

SCALE: N.T.S.

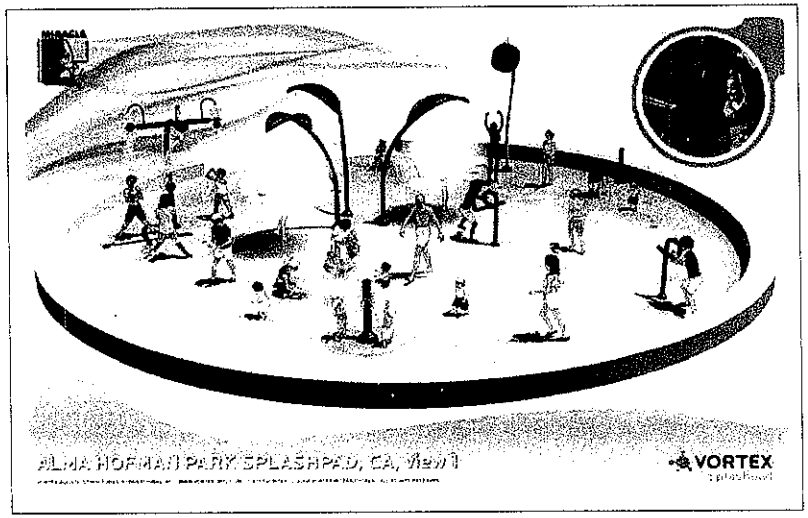
SCALE: N.T.S.

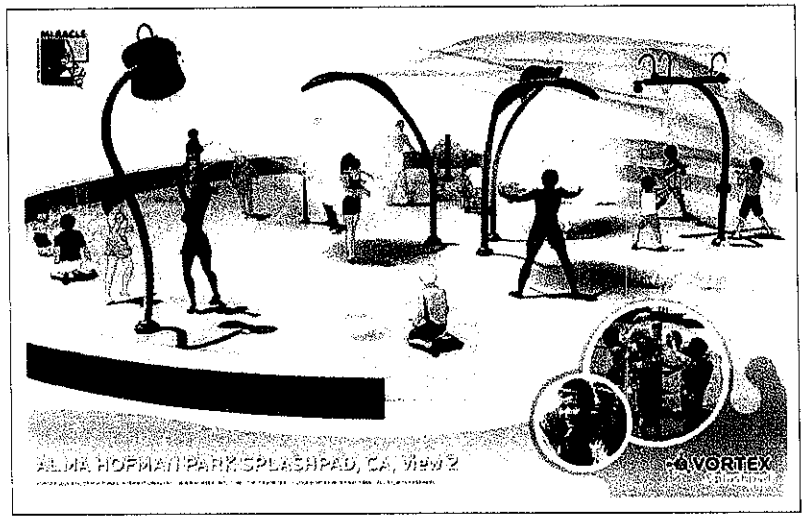


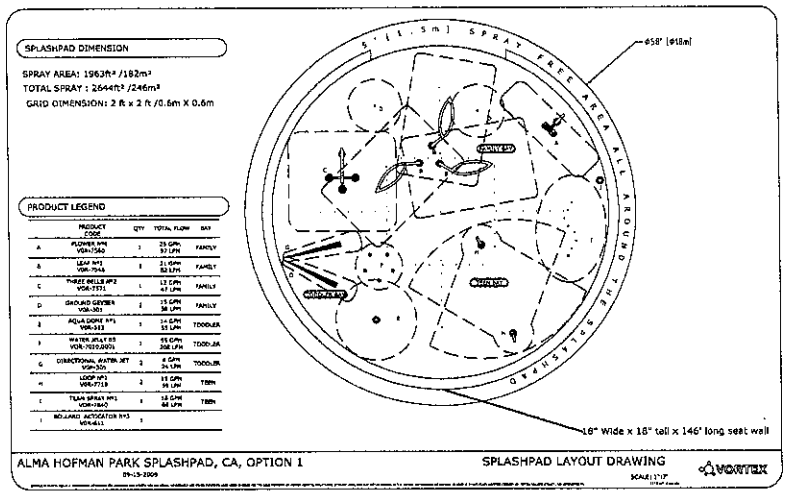
ALMA HOFMAN PARK - CITY OF MONTCLAIR - OPTION 1

COUNTY OF SAN BERNARDINO - ARCHITECTURAL DIVISION

DAVID EVANS AND ASSOCIATES INC.
4200 Concours, Suite 200
Ontario, CA 91764
Phone: 909.481.5750
10-06-2009







ALMA HOFMAN PARK - CITY OF MONTCLAIR - OPTION 1

COUNTY OF SAN BERNARDINO - ARCHITECTURAL DIVISION

DAVID EVANS AND ASSOCIATES INC.
4200 Concours, Suite 200
Ontario, CA 91764
Phone: 909.481.5750
10-06-2009

January 6-2010

Alma Hofman Splash Pad Schedule

Start		07/29/09
Preliminary Design		08/24/09
Option #1 to City for approval		11/14/09
City Approval		11/19/09
Authorization to proceed		Oct 21 '09
Design with Const. docs		10/19/09
Survey County		11/12/09
Health Permit		Nov 26 '09
Submitted to City of Mon		12/14/09
Agreement with City		01/19/10
BOS advertise		01/26/10
Advertise to bid	30	01/29/10
Walk pre bid		02/04/10
Bid		03/02/10
BAI for processing		03/08/10
Award 3-30 & 4-6 dark		04/13/10
Notice to Award		04/14/10
Preconstruction meeting	10	04/26/10
Notice to proceed		04/27/10
Construction		
Submittals	14	05/10/10
Order materials		05/11/10
Embeded materials del	2 weeks from	05/24/10
Equipment del	3 weeks from	06/18/10
Equipment install	3 weeks	07/09/10
Check out and test	1 week	07/19/10
Punch and final	5	07/19/10
Grand Opening		**August 1st**

Alma Hofman Park - City of Montclair and County of San Bernardino - Option 1

October 06, 2009 | Prepared by: ABE

	ITEMS	QTY	UNIT	UNIT COST	SUB TOTAL BASE COST	EXTENSION OF BASE COST
	MOBILIZATION					
1	Contractors Mobilization (Including permits and temporary facilities and services)	1	LS	$ 5,000.00	$ 5,000.00	
	Sub-Total					**$ 5,000.00**
	DEMOLITION					
2	Clear and Grub for Holding Tank and Equipment Shed	1	LS	$ 400.00	$ 400.00	
3	Relocate Play Area Equipment (Shark)	1	LS	$ 2,500.00	$ 2,500.00	
4	Play Area Wood Mulch	2,641	SF	$ 0.50	$ 1,320.50	
5	Play Area Drainage and Sump	1	LS	$ 1,000.00	$ 1,000.00	
6	Concrete Removal	2,400	SF	$ 1.25	$ 3,000.00	
7	Tree, including Rootball	1	EA	$ 1,100.00	$ 1,100.00	
	Sub-Total					**$ 9,320.50**
	GRADING and EARTHWORK					
8	Excavation and Export for Holding Tank	100	CY	$ 20.00	$ 2,000.00	
9	Excavation and Compaction for Splashpad	1	LS	$ 5,000.00	$ 5,000.00	
	Sub-Total					**$ 7,000.00**
	PAVING and SURFACE MATERIAL					
10	4" Thick PCC Paving, Medium Broom Finish	2,400	SF	$ 5.00	$ 12,000.00	
	Ring outside splach **Sub-Total**					**$ 12,000.00**
	PLANTING					
11	Over Seed Turf Repair Areas	1	LS	$ 2,500.00	$ 2,500.00	
12	90 Day Maintenance during Plant Establishment Period	1	LS	$ 300.00	$ 300.00	
	Sub-Total					**$ 2,800.00**
	IRRIGATION					
13	Irrigation System Adjustment	2,000	SF	$ 2.00	$ 4,000.00	
	Sub-Total					**$ 4,000.00**
	SPLASHPAD					
14	Vortex Custom Splashpad	1	LS	$ 203,540.00	$ 203,540.00	
15	Vortex Custom Splashpad Installation	1	LS	$ 100,000.00	$ 100,000.00	
16	Equipment Shed	1	LS	$ 40,625.00	$ 40,625.00	
17	Equipment Shed Installation	1	LS	$ 20,000.00	$ 20,000.00	
18	12" Wide Concrete Seatwall	100	LF	$ 55.00	$ 5,500.00	
19	Splash Pad Resilient Surfacing	1,963	SF	$ 23.00	$ 45,149.00	
20	4" Thick PCC Base under Resilient Surfacing	1,963	SF	$ 5.00	$ 9,815.00	
	Sub-Total					**$ 424,629.00**

	ITEMS	QTY	UNIT	UNIT COST	SUB TOTAL BASE COST	EXTENSION OF BASE COST
	UTILITIES					
21	Domestic Water (1")	400	LF	$ 30.00	$ 12,000.00	
22	Sewer Line (6")	400	LF	$ 40.00	$ 16,000.00	
23	Sewer Connection	1	EA	$ 1,500.00	$ 1,500.00	
24	Sewer Clean-out	3	EA	$ 1,500.00	$ 4,500.00	
25	6" Sch. 80 PVC for Storm Water	200	LF	$ 30.00	$ 6,000.00	
26	Storm Drain Connection	1	EA	$ 1,000.00	$ 1,000.00	
27	Electrical / Power Upgrades	1	LS	$ 20,000.00	$ 20,000.00	
	Sub-Total					**$ 61,000.00**
	PROJECT EXECUTION COST					
	County Project Management and Inspections (10%)	1	LS	$ 52,574.95	$ 52,574.95	
	Special Inspections and Permits (5%)	1	LS	$ 26,287.48	$ 26,287.48	
	Design Fee	1	LS	$ 52,300.00	$ 52,300.00	
	Contingency (10%)	1	LS	$ 52,574.95	$ 52,574.95	
	GRAND TOTAL					
	ADD ALTERNATE 1					
AA1	Dedication Plaque 18 X 24 installed on wall or cc	1	Allow	$ 5,000.00	$ 5,000.00	
	Sub-Total					**$ 5,000.00**
	Construction			$ 540,000.00		
	Preliminary design, design, construction	0.1		$ 64,800.00		
	Project Management and inspection	0.1		$ 54,000.00		
	Survey and special inspectoins & city	0.06		$32,400		
	Contengency	0.1		$ 54,000.00		
				$ 745,200.00		

MINUTES OF THE MEETING OF THE MONTCLAIR PERSONNEL COMMITTEE HELD ON MONDAY, JANUARY 4, 2010, AT 7:17 P.M. IN THE CITY ADMINISTRATIVE OFFICES, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor Eaton called the meeting to order at 7:17 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 December 21, 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 December 21, 2009.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

At 7:18 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/ terminations, and evaluations of employee performance.

At 7:22 p.m., the Personnel Committee returned from Closed Session. Mayor Eaton stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 7:22 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,

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