

CITY OF MONTCLAIR

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

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

May 3, 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.

Page No.

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

II. **INVOCATION**

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

III. **PLEDGE OF ALLEGIANCE**

IV. **ROLL CALL**

V. **PRESENTATIONS**

A. Introduction of New Employees/Promotee

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 Resolution No. 10-2837 Approving the Following:

Tentative Tract Map No. 18213 Resubdividing a 15.1-Acre Site Into 13 Numbered Lots and 14 Lettered Lots for Condominium Purposes [CC]

Precise Plan of Design for a 385-Unit Residential Development Within the North Montclair Downtown Specific Plan [CC]

Consider Resolution No. 10-2841 Approving a Variance for Interior Side-Yard Setbacks [CC]

Consider Resolution No. 10-2842 Approving a Variance for Building Height [CC]

5

B. First Reading – Consider Adoption of Ordinance No. 10-914 Authorizing an Amendment to the Contract with the Board of Administration of the California Public Employees' Retirement System [CC]

63

VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Minutes of Regular Joint Council/Agency/MHC Meeting of April 19, 2010

B. Administrative Reports

1. Consider Approval of Filing of a Notice of Completion for City of Montclair Police Department Facility Bid Package No. 10-Roofing, Waterproofing, Sheet Metal, and Metal Roofing; Reduction of Faithful Performance Bond to 10 Percent; and Retention of Payment Bond for Six Months [CC]

Consider Release of Retention 30 Days After Recordation of Notice of Completion [CC]

72

2. Consider Authorization to Transfer After-School Program Personnel Grant Funds to After-School Program Supplies and Contract Accounts [CC]

75

3. Consider Status Report on Emergency Contracting Procedures Related to the Damaged Floor in the Community Center Gymnasium and Determine There is a Need to Continue the Action [CC]

76

4. Consider Approval of Warrant Register and Payroll Documentation [CC]

78

C. Agreements

1. Consider Approval of Agreement No. 10-30 with Dietz Towing and Agreement No. 10-45 with Pacific Truck and Auto Towing, Inc., for Cost Recovery for Vehicles Stored Pursuant to California Vehicle Code Section 14602.6, the 30-Day Impound Law [CC] 79
2. Consider Approval of Agreement No. 10-43 with the San Bernardino County Department of Aging and Adult Services to Provide a Senior Citizen Nutrition Program [CC] 92
3. Consider Redevelopment Agency Board of Directors' Award of Contract to LSC Construction in the Amount of \$21,300 [RDA]

Consider Redevelopment Agency Board of Directors' Approval of Agreement No. 10-47 with LSC Construction for the 9916 Central Avenue Improvement Project Phase 2 [RDA]

Consider Authorization of a \$2,200 Construction Contingency [RDA] 150
4. Consider Approval of Agreement No. 10-48-I-85, an Irrevocable Annexation Agreement with Fabian and Eloisa Rodriguez for 11303 Wesley Avenue (APN 1013-043-31) [CC] 157

D. Resolutions

1. Consider Adoption of Resolution No. 10-2839 Declaring the Need for Emergency Contracting Procedures and Authorizing Performance Related to Block Wall Construction at Alma Hofman Park [CC]

Consider Appropriation of \$10,000 from Park Development Fund for Removal and Reconstruction of Block Wall at Alma Hofman Park [CC] 162

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

- A. City Attorney/Agency Counsel
- B. City Manager/Executive Director
- C. Mayor/Chairman
- D. Council/Agency Board
- E. Committee Meeting Minutes *(For Informational Purposes Only)*
 1. Minutes of the Personnel Committee Meeting of April 19, 2010 166

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

The next regularly scheduled City Council, Redevelopment Agency, and Montclair Housing Corporation meetings will be held on Monday, May 17, 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 April 29, 2010.

AGENDA REPORT

SUBJECT: CONSIDER RESOLUTION NO. 10-2837
APPROVING THE FOLLOWING:

TENTATIVE TRACT MAP NO. 18213
RESUBDIVIDING A 15.1-ACRE SITE INTO
13 NUMBERED LOTS AND 14 LETTERED
LOTS FOR CONDOMINIUM PURPOSES

PRECISE PLAN OF DESIGN FOR A 385-UNIT
RESIDENTIAL DEVELOPMENT WITHIN THE
NORTH MONTCLAIR DOWNTOWN SPECIFIC
PLAN

CONSIDER RESOLUTION NO. 10-2841
APPROVING A VARIANCE FOR INTERIOR
SIDE-YARD SETBACKS

CONSIDER RESOLUTION NO. 10-2842
APPROVING A VARIANCE FOR BUILDING
HEIGHT

DATE: May 3, 2010

SECTION: PUBLIC HEARINGS

ITEM NO.: A

FILE I.D.: LDU600

DEPT.: COMMUNITY DEV.

**BUSINESS
PLAN:** STRATEGIC PRIORITY NO. 2

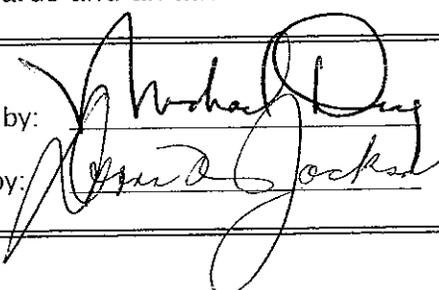
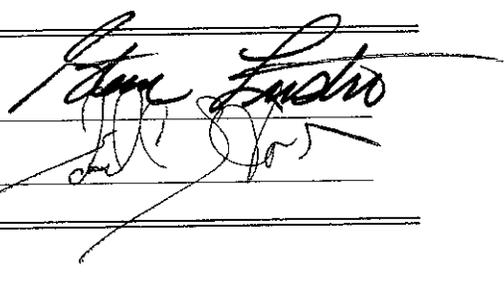
REASON FOR CONSIDERATION: All land use and design-review entitlements within the boundary of the North Montclair Downtown Specific Plan (NMDSP) require public hearing review and approval by the City Council.

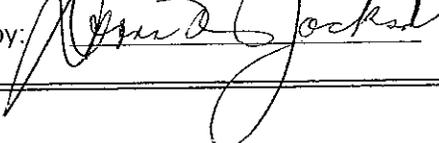
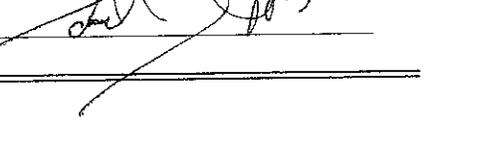
Approving the requested entitlements would satisfy a portion of Strategic Priority No. 2 as contained in the Montclair's "Business Plan."

Project Proposal

Montclair I MGP Partners LLC is proposing to build a 385-unit residential community with amenities and a neighborhood public park at the northeast corner of Monte Vista Avenue and Moreno Street. The new development would be known as The Paseos at Montclair North and, if built, would be the first development project within the boundaries of the North Montclair Downtown Specific Plan (NMDSP). The project involves the City Council's review and consideration of a Tentative Tract Map for condominium purposes, a Precise Plan of Design, and a Variance for interior setbacks and building height (for the podium building).

Copies of Tentative Tract Map No. 18213, site plan, floor plans, elevations, renderings, and conceptual landscape and public park plans are included in the Council packets. Color boards and an audiovisual simulation will be presented at the Council meeting.

Prepared by:  Reviewed and Approved by: 

Proofed by:  Presented by: 

Tentative Tract Map No. 18213

The applicant is requesting approval of a Tentative Tract Map in order to subdivide the existing 15.1-acre site into 13 numbered lots ranging in size from .10 acres to 1.06 acres for condominium purposes and a clubhouse. In addition, 14 lettered lots are also proposed to allow for public and private streets and to create a .71-acre public park at the center of the site. After the public streets and park areas are deducted from the gross area, the net site area is 12.85 acres, which would result in a density of 30 dwelling units per acre.

Access to the site would be provided via two public streets. A new street is proposed to allow north-south access to and from Moreno Street. In addition, Olive Street would be extended westerly and connect to Monte Vista Avenue. The new north-south street is designed to create a one-way loop around the proposed park. Parking would be allowed along the residential side of the street but not along the frontage of the proposed park. Private streets and driveways would provide internal access to and between the new buildings.

Initially, the new units would be market-rate apartments. By building the new units to condominium standards and recording the proposed condominium map, the applicant would have the opportunity to sell the units as condominiums when and if it becomes economically viable to do so in the future. Until that time, The Paseos would be managed by an onsite, institutional-quality professional property management company with an onsite manager to oversee the day-to-day management, leasing, and maintenance functions of the new residential community.

To serve the new resident population, a 10,354-square-foot clubhouse/community building is proposed. The clubhouse/community building is proposed near the center of the property and would be the primary activity center of the community, featuring such amenities as a fitness center, meeting rooms, a large multipurpose room, movie theater, event kitchen, and business center. Outside the clubhouse/community building are outdoor "terrace" spaces that would include a community pool, citrus garden, seating areas, and a dog park for residents.

Neighborhood Public Park

In accordance with the NMDSP, the proposed plan includes a public park to provide open space for passive recreational activities of the local residents. The new, linear-shaped park would be approximately .71 acres in size with approximate dimensions of 60 feet in width by 545 feet in length. The grade of the park would be set approximately four feet below the grade of the adjacent public street that will surround it. The park would be made accessible via ramps and stairs along the perimeter and within the interior of the park. No parking would be allowed around the perimeter of the park.

Proposed park amenities include a plaza and water feature at the north end of the park; an informal amphitheater space; nonstructured play area sand basin; a bridge/seating area; and areas of turf, trees, and shrubs. Natural boulders, stones, and paving materials would be utilized as accents throughout the park site. At the south end of the park, a water-quality infiltration basin is proposed to handle stormwater runoff from most of the project site during rain events. The infiltration basin would be designed to appear and be used as part of the park.

Precise Plan of Design

The Paseos is designed and planned to meet condominium standards and quality. The units would contain sub-metered utilities, attached garages, large patios and decks, and significant community amenities. Three basic building configurations are proposed as generally described below:

- Three-story courtyard buildings organized around a linear public park (Building Type A) and "paseos" in between the buildings.
- Three-story modified courtyard buildings organized around a community pool (Building Types B through E)
- Three-story podium building with parking in structure below the residential units (Building Type F).

Each residential building configuration would provide a combination of living unit types, which are summarized in the following table:

The Paseos - Summary of Residential Building and Unit Types				
<i>Building Type</i>	<i>No. Buildings</i>	<i>Stories</i>	<i>Types Units</i>	<i>Units in Building</i>
A	8	3	1-Bedroom Live/Work	1
			1 Bedroom Flat	6
			2 Bedroom Flat	4
			2-Bedroom Townhouse	12
			3-Bedroom Townhouse	4
B	2	3	1-Bedroom Flat	4
			2-Bedroom Townhouse	10
C	2	3	1-Bedroom Flat	3
			2-Bedroom Townhouse	6
D	6	3	1-Bedroom Flat	4
			2-Bedroom Townhouse	5
E	2	3	1-Bedroom Flat	1
			2-Bedroom Townhouse	2
F (Podium)	1	3	Studio	10
			1-Bedroom Flat	42
			2-Bedroom Flat	7
			2-Bedroom Townhouse	2
			3-Bedroom Townhouse	2
Total Number of Dwelling Units				385

The following table is a summary of the unit sizes per unit type.

The Paseos - Summary of Unit Sizes		
Buildings A through E		
<i>Floor Plan</i>	<i>Size Range</i>	<i>Number of Units</i>
1-Bedroom Live/Work	1,051 s.f.	8
1-Bedroom Flat	644 s.f. - 702 s.f.	88
2-Bedroom Flat	1,004 s.f. - 1,078 s.f.	162
2-Bedroom Townhouse	1,002 s.f. - 1,416 s.f.	32
3-Bedroom Townhouse	1,324 s.f.	32
<i>Subtotal</i>		322 units

The Paseos – Summary of Unit Sizes (continued)		
Building F		
<i>Floor Plan</i>	<i>Size Range</i>	<i>Number of Units</i>
Studio	541 s.f. – 591 s.f.	10
1-Bedroom Flat	645 s.f. – 723 s.f.	42
2-Bedroom Flat	855 s.f. – 917 s.f.	7
2-Bedroom Townhouse	1,104 s.f.	2
3-Bedroom Townhouse	1,432 s.f.	2
Subtotal		63 Units
Grand Total		385 Units

Each unit would have a private patio or balcony space suitable in size for a small café table and chairs. Patios at ground level would be defined by low decorative walls and landscaping.

Traffic and Parking

A traffic study prepared by Gibson Transportation Consulting, Inc., was completed and approved by the City Engineer. Traffic was determined to be within the traffic volumes anticipated by the EIR prepared for the NMDSP. The only significant change recommended by the study was to add a "Right Turn Only" lane for westbound traffic on the new Olive Street extension where it would intersect with Monte Vista Avenue. The project site plan was modified accordingly to show the "Right Turn Only" lane as recommended by the traffic study.

The parking requirement for residential units in the NMDSP is a minimum of one space per unit (Section 5.2.030.C.3). Each unit in buildings A through E would have at least one garage space, some of which (*i.e.*, ground-level units) would have direct access. All units in Building F (podium building) would have covered and secured parking in the attached parking structure. Parking for the proposed project is as follows:

Parking Summary	
<i>Type/Location*</i>	<i>Quantity Provided</i>
Attached Garages	276 spaces
Detached Garages	80 spaces
Parking Garage at Podium Building (Building F)	104 spaces
Uncovered	241 spaces
Disabled-Accessible	13 spaces
Grand Total	714 spaces
*NMDSP requires one (1) garage parking space for each residential unit.	

The 714 onsite parking spaces for the proposed 385 units would result in a ratio of approximately 1.85 spaces per unit. In addition, the project provides for an additional 58 street parking spaces on public streets within the project boundaries. No parking along the Monte Vista Avenue frontage is proposed.

Detached garage buildings would be located along the perimeter of the site and around Buildings B through E. Each garage building is designed to accommodate three or five garage spaces, each having minimum interior dimensions of 10 feet wide by 20 feet deep,

and automatic rollup garage doors. Covered trash enclosures would be attached to one or both ends of some of the garage buildings around the site.

Architecture

The design theme for The Paseos project is based on the "Santa Barbara" architectural style, which is a blend of Spanish, Mediterranean, and Moorish influences. The major design characteristics of the Santa Barbara style are simple massing, white stucco surfaces, red tile roofs, use of arches and courtyards, and restrained ornamentation. Dark brown-framed windows and doors are deep set in the walls to allude to the adobe vernacular, while plaster details at the eaves and openings further enhance the sculptural quality of the buildings. The buildings are appointed with traditionally designed wrought iron, light fixtures, and ceramic tiles.

The proposed buildings, including the detached garage buildings, include some or all of the proposed architectural elements/details applied to all sides of the building. The tower elements built into the corner building at Moreno Street and Monte Vista Avenue and the clubhouse building are designed to serve as key focal points of identity and reference for the complex. Project perimeter walls would be clad in plaster that matches the units with occasional decorative metal inserts. According to the project architect, the project would be constructed to Build It Green® certification standards.

Landscaping/Hardscape

The applicant has submitted comprehensive landscape and irrigation plans for the project site. The selection and distribution of plant materials are intended to complement the architecture of the buildings and highlight the several passive open space areas—"paseos" and promenades—planned around the buildings. These spaces would be decorated according to individual themes and include a tile wall design at entry points, benches, decorative urns and pots, and enhanced paving finishes in addition to plant materials. In some spaces, a water feature, such as fountain or pool, would be provided. All parking courts between the buildings would be finished in concrete pavers.

The proposed tree and shrub palettes feature a wide variety of plant materials, the majority of which are California-friendly and drought tolerant. The proposed tree list includes Eucalyptus, Juniper, Palm, Pine, Crape Myrtle, Oak, Olive, and Sycamore trees. The shrub list includes sages, ornamental grasses, Ceanothus, rockrose, etc. Special focal point plants are also proposed including citrus (orange) trees and specimen-size succulents, such as Yucca and Dracaena (Dragon Plant), for key locations.

Approximately 30 trees would be planted in the public park, including three specimen-sized trees, to create an immediate impact. The largest specimen tree and focal point of the park is a planned 120-inch-box Coast Live Oak (*Quercus agrifolia*) that would be accompanied by two 72-inch box-size Engelmann Oaks (*Quercus engelmannii*). The remaining trees in the park are proposed to be California Sycamores (*Platanus racemosa*) in 36- and 48-inch box sizes.

Finally, the proposal creates an attractively landscaped pedestrian-oriented street edge along Monte Vista Avenue and Moreno Street. Monte Vista Avenue would have Canary Island Pines (*Pinus canariensis*) and Crape Myrtle (*Lagerstroemia indica*) street trees, while the Moreno Street frontage would have California Sycamores and Southern Live Oaks (*Quercus virginiana*).

Height and Setback Variance Requests

The applicant is requesting two variances for the project. The first variance request is for the overall height of Building F (podium building) as measured from finished grade at the south side of the building. The variance proposes an 11- to 16-foot increase in height from the 45-foot height limit of the NMDSP in order to make up for the existing change in grade elevation of approximately the same amount from Arrow Highway. The total building height at the south end of the building would be 61'-6" from finished grade to top of the hip roof.

The second variance is for reduced side-yard setbacks from the required five-foot setback distance for the following locations:

- Eastern property boundary for three proposed garage buildings. This setback reduction would allow an average of a two-foot setback between the garage building and the existing masonry walls of the adjacent single-family properties.

According to the applicant's survey of the property, the existing block walls of the adjacent properties encroach onto the subject site anywhere from 1'-2" to 2'-8". The applicant is proposing to leave the existing wall in place in order to avoid any disruption of the neighbors' rear yards but is seeking relief in the setback distance to avoid impacting the remainder of the proposed site improvements.

- West boundary along the EZ Lube property for two garage buildings with a zero setback. No windows or openings on the west elevation of the building are proposed for the garage buildings.

BACKGROUND

- The North Montclair Downtown Specific Plan (NMDSP) was adopted in 2006. The main objective of the NMDSP is to introduce urban-style residential projects to the area and begin the process of creating a "downtown" environment with walkable neighborhoods, local retail, and service businesses and convenient access to rail transit. The NMDSP is a form-based code with three distinct land use districts and detailed design criteria to guide development. Virtually the entire plan area accommodates and encourages medium- to high-density residential development, almost all consisting of attached housing styles.
- The 15.1-acre site is zoned "Corridor Residential" and "Neighborhood Residential" as indicated by the NMDSP. The southern half of the property is located in Redevelopment Project Area No. III.
- Portions of the property were formerly developed with Montclair's original City Yard and Kennedy Park. According to building records, at least seven single-family dwellings existed on the Monte Vista Avenue and Moreno Street frontages of the property, the last of which was demolished along with the park improvements in 1987 to make way for a commercial center (Montclair Town Square) consisting of multiple buildings and anchored by a 108,000-square-foot Price Savers store (later Pace Membership Warehouse, then Sam's Club). The relocation of Sam's Club to Ontario in 2001 hastened the center's demise and ultimate demolition in 2005.

- In 2008, the City Council approved Tentative Tract Map No. 18213 for condominium purposes and a Precise Plan of Design for a 290-unit residential development by M&H Realty Partners V, the applicant's predecessor company. The project was never built as the ensuing national recession and housing crisis severely impacted the "for sale" housing market.
- On August 24, 2009, the City Council, Planning Commission, and staff were invited by the applicant to tour existing projects in Orange County that exemplify certain development characteristics/elements anticipated to be included in the proposed project. Planning Commissioners Flores, Johnson, and Vodvarka attended along with a number of staff members. No Council Members attended.
- On October 14, 2009, the project was formally submitted for City review.
- On January 25, 2010, the applicant presented the project to the Real Estate Committee (Mayor Eaton and Mayor Pro Tem Dutrey). The Committee directed staff and the applicant to expand public notification to adjacent residential uses and requested a workshop and tour of similar projects for all Council Members before the project is presented for formal Council action.
- On February 8, 2010, the Planning Commission conducted a public hearing for the proposed Paseos at Montclair North project. After an extensive presentation by the applicant and consideration of public comments, the Commission voted to continue the item to its regularly scheduled March 22, 2010 meeting. The Commission believed that before a recommendation is made on the item, the applicant should meet to discuss issues raised by the public at the meeting and that the City Council should be given an opportunity to tour selected multifamily projects in Orange County that exemplify certain development characteristics/elements planned for the proposed project.
- The applicant attempted to meet with the adjacent property owners who spoke at the meeting to clarify aspects of the project on which they commented. Mr. Kapoor (owner of the EZ Lube property) was contacted about the project and indicated to the applicant and staff that he wished to maintain "as is" the existing easement and entrance from Monte Vista Avenue and that he remained opposed to the setback variance along the east side of his property. At Mr. Kapoor's request, the applicant revised its site plan to maintain the existing easement between the project site and the EZ Lube property. Attempts to reach Ms. Cheng (owner of the vacant property at the northeast edge of the site) were unsuccessful. As such, staff presumes her position has not changed.
- A City Council workshop and tour was scheduled for February 27, 2010, but was canceled because of inclement weather. The workshop and tour were rescheduled to Saturday, May 1, 2010.
- On March 22, 2010, the Planning Commission conducted a second public hearing on the project and heard additional public comment. The Commission voted unanimously to recommend the City Council's approval of the project, including the Tentative Tract Map, Precise Plan of Design, and Variances for building height and side-yard setbacks.

- On May 1, 2010, Council heard a presentation given by the applicant's team in the Council Chambers and then participated in a field trip with the applicant and City staff of market-rate apartment communities in Orange County. Members of the Planning Commission who were unable to attend the previous tour were also invited.

Analysis

Overall, staff finds the project to be very well designed and consistent with the intent and design goals of the North Montclair Downtown Specific Plan. Staff has worked closely with the applicant's development team for the past year to ensure the project would be developed in accordance with the provisions of the Specific Plan; and except for the requested variances, the project complies with the development standards and guidelines set forth in the Specific Plan with respect to land use, subdivision and urban standards, and architectural and frontage types and styles. If approved, the project would set a high benchmark for future development in North Montclair.

Staff believes that, if approved, the proposed project would help to enhance and diversify the City's housing stock by adding new market-rate, high-quality units in various sizes and configurations that do not currently exist in the City. The site has excellent visibility to drive-by traffic from Monte Vista Avenue, Arrow Highway, and Moreno Street, which would be a significant and recurring source of potential residents. Moreover, the proposed onsite amenities associated with the project would serve and enhance the quality of life for the project residents.

Rental versus Ownership

A policy question that has been raised by Council Members is the issue of rental versus ownership or apartments vs. condominiums. Since the inception of the NMDSP, the City Council has envisioned the majority of the residential units to be offered for individual ownership. Thus, previous projects approved for the site and surrounding areas were "for sale" developments. However, as a result of the severe downturn in the economy and housing market, the projects were never built. The poor economy and housing market continues to persist, and there appears to be no sure sign of immediate turnaround in the "for sale" market. As proposed, the applicant intends to build the project to condominium specifications and process a map for condominium purposes, which could be used to sell the units individually in the future. This approach would at least provide some assurances that the units will be well designed and built. This is a common approach by developers that has been successfully utilized in other communities.

The concern regarding proper management and maintenance of the units would be addressed by requiring a professional, institutional-quality management company with an onsite manager/staff. The management company would be responsible for establishing and enforcing community standards and maintaining the units and surrounding landscaping to maintain strong property values. Tenants who do not pay or are unwilling to abide by the community rules would likely face eviction.

When and if the units are sold, a homeowners association (HOA) would take over the above responsibilities. Covenants, Conditions, and Restrictions (CC&Rs) would be recorded before any units could be sold and would be the governing document that dictates how the HOA operates and what rules the owners—and their tenants and guests—must obey. The document is recorded against each lot; and therefore, the owner of each lot is subject to the terms and conditions set forth. Although an HOA is the appropriate

means for managing/maintaining multiple-family developments, HOAs have their limitations as well. HOAs often have difficulty in collecting dues to maintain services; struggle with management of the complex; and, unlike a for-rent project, they cannot easily enforce rules against unruly property owners (*i.e.*, an HOA cannot evict "deadbeat" homeowners as can be done in an institutionally managed rental project). Moreover, a condominium project does not guarantee or prevent owners from renting their units.

Tract Map

Staff has reviewed the proposed map and has determined that it is technically correct and in compliance with the State Subdivision Map Act and the City's Subdivision Ordinance, subject to the conditions of approval. The proposed development of the site has good internal vehicular and pedestrian access/circulation around the buildings and to bus stops on Monte Vista Avenue and Moreno Street. Needed open space for the site and immediate area would be provided by the proposed public park in the middle of the development. Moreover, the site has very convenient pedestrian access to multiple shopping, banking, and dining opportunities at Montclair Plaza and other commercial areas to the east on Moreno Street and Central Avenue.

Site Plan

Staff finds that the project is substantially in compliance with the various elements and goals of the NMDSP including the requirements for building placement, parking, and building design/profiles. The vision for the NMDSP, articulated by the City and community, is that of a walkable, vibrant Town Center that includes multiple uses and activities that take advantage of the major transit amenities to be found in the plan area. As envisioned by the NMDSP, the project proposes a variety of housing types (*e.g.*, townhouses and courtyard housing, live/work, etc.), that is in keeping with the spirit of a transit "village." In addition, parking is appropriately integrated into the project through on-street and subterranean parking and lined parking garages. Parking for the project is consistent with the NMDSP and, at 714 total offsite spaces, provides nearly double the amount of parking required.

At 30 dwelling units per acre, the proposed project density is consistent with the "Corridor Residential" and "Neighborhood Residential" land use designations for the site. The following table shows how the proposed project compares with the allowable density ranges for the two zoning designations on the property:

Allowable Density Ranges - NMDSP	
<i>Land Use Designation</i>	<i>Density Range</i>
Corridor Residential (CR)	30-50 dwelling units per acre
Neighborhood Residential (NR)	20-30 dwelling units per acre
The Paseos*	30 dwelling units per acre
* Net Site area is 12.85 acres	

If approved, the project would be consistent with Phase 1 - Town Center Residential - of the NMDSP as indicated in Section 6.2.010 of the document. The Specific Plan anticipates build out for Phase 1 at 1,500 to 1,700+ residential units/35,000 to 40,000+-square-foot retail during the Plan's first ten years (2006-2016). The subject property (which includes the EZ Lube property) was envisioned to have 400+ units, which is 15 more than proposed with this project.

The plan is also consistent with the intent of the land use designations for the site. The intent of the "Corridor Residential" land use district states in part, "The...zone is intended to establish a denser fabric of residential buildings, appropriate for locations on arterial roads. It is therefore the portion of the plan where the more intense residential development is expected." The proposal concentrates the buildings toward Monte Vista Avenue, Moreno Street, and Arrow Highway, which are designed to create an attractive and continuous streetscape along these busier roadways. Rather than act just as a building wall or being the back end of the units, the units along the Moreno Street frontage have been designed with door and window features that access and look onto street.

The "Neighborhood Residential" land use districts "are located within the interior of the Plan Area, serving as a transition to the existing single-family house neighborhoods." Except for the three single-story detached garages along the east boundary of the site, the proposed three-story residential buildings would be a minimum of 55 feet from the easterly property line and existing single-family residences on Lindero Avenue. A driveway, parking, and the three detached garage buildings are the only improvements along this common boundary.

Finally, the proposed residential development would be within a one-mile distance from various local and regional public transportation systems and would be within a convenient driving distance to the I-10 and California 210 Freeways. The site boasts easy access to Metrolink and bus transportation at the Montclair Transcenter. As further development occurs within the NMDSP planning area, pedestrian connectivity to the Transcenter would be significantly expanded and improved.

Architecture and Landscaping

Staff finds the proposed "Santa Barbara" architecture for the project to be well done, visually attractive, and a welcome addition to the City. The design's reliance on simple massing configurations and use of appropriate architectural details and durable materials will stand the test of time. Architectural design and details are proposed to be extended to all sides of the buildings.

Staff believes the proposed landscaping plan, including hardscape elements, is well done and appropriate for the proposed architecture. Plant materials are well distributed around the site and many are drought tolerant, provide shade, and add visual interest. The use of specimen-sized trees in the public park would add immediate impact. Except for the park, there would be very few lawn areas located on the site, which would result in less water usage and maintenance.

Public Park

The NMDSP conceptually identifies a public park space to be located generally in the center of the project site. The project that was approved by Council in 2008 included a public park in the subject location. The current application proposes to double the area of the park to almost three quarters of an acre. In addition to increasing the size of the park, the applicant conducted a "competition" among several landscape design firms with the goal of coming up with a unique design that would be an asset to the project and community. Indeed, staff is impressed with the park design concept given the dimensional and topographical challenges. The plan would be for the applicant to construct the park with its required Quimby Act (parkland development) contribution; however, staff is continuing its discussions with the applicant and legal counsel to finalize overall costs and a maintenance agreement for the long-term operation of the park. Accordingly, it is staff's intention to

bring back the details of the public park and associated financing matters for Council consideration in the near future.

Community Facilities District

City staff is currently working with a consultant to lay the groundwork and implement a Community Facilities District (CFD), which would overlay the subject site. Establishment of the CFD, which has been anticipated since the NMDSP was adopted, would provide the vehicle for collecting funds to maintain public improvements, such as curb, gutter, and sidewalk; paving; streetlights; street sweeping; signage; street furniture; landscaping in the public right-of-way; and maintenance of the proposed public park. Completion and City approval of the CFD would be a condition of approval before any grading and/or building permits are issued for the project.

Variances

Building Height Variance for Podium Building "F"

The NMDSP allows up to three stories and an overall height limit of 45 feet. All the buildings of the project comply with this requirement including the portion of the podium building—Building F—proposed to front on Arrow Highway. However, the "notch"-shaped portion of the property on which Building F would be built is impacted by a significant change in grade elevation of approximately 15 to 16 feet from Arrow Highway. This topographical feature is unique to the property and more severe than any similar grade differences on adjoining properties. Because of this condition, the rear (south) side of the Building F would end up being 61'-6" in height as measured from finished grade to the top of roof ridgeline.

Staff believes the increase height is warranted because of the existing grade condition and because the variance would allow the applicant to build most of the "tuck-under" parking levels into the existing slope, thereby reducing the extent of new excavation work that would otherwise be required. Moreover, without the variance, the building would have to be stepped and the possibility of providing efficient parking below the building would be compromised. Below-grade parking with housing above makes the most efficient use of this portion of the property and would not be readily evident from Arrow Highway or any other public right-of-way.

The increased height would not impair the view of other parcels. The only property potentially impacted would be to other buildings within the applicant's proposed development. But even this is not likely to be significant as the development adjacent to Building F would consist of three-story buildings ranging from 38 to 45 feet in total height. These buildings would block the majority of direct views to the south side of Building F.

Lastly, the proposed building height allowed by the variance would not affect or cause an unreasonable infringement on the use and privacy of abutting properties. The site is flanked on either side by the parking lot of Fire Station No. 1 and the 30-foot-high Monte Vista Water District storage reservoir (MVWD Plant No. 5), which would virtually block visibility of Building F from any public street. The nearest residential properties are approximately 520 feet to the southeast of the subject building.

Setback Variance

East Boundary

As proposed, the project site plan has been developed to minimize impact to the greatest extent possible to adjacent residential properties by limiting development along the east boundary to a drive aisle and parking. Accounting for the placement of existing walls encroaching onto the subject site and the desire not to disrupt the adjacent properties, the applicant has chosen not to relocate the existing wall. To then require a five-foot setback in front of the existing boundary wall would require that the garages be pushed westward, thereby adversely affecting development of the rest of the property.

In addition, a setback between the back of the proposed garage and existing boundary wall would create isolated and unusable spaces, which are rather small, obscured from view, and difficult to maintain. By reducing the required setback behind the subject garage buildings, the chances of dumping, neglect, or other unwanted activities are substantially minimized. The two remaining feet of setback at the rear of garage buildings will be adequate for periodic maintenance (*e.g.*, painting). Moreover, the garages would be finished on all sides and have a "flat" roof design and parapet designed to prevent storm runoff from impacting adjacent properties. Further, no openings in the back or side walls of the garage buildings are proposed, so privacy to adjacent properties would not be adversely impacted.

Moreover, the variance request applies to less than 15 percent of the total 1,101-foot length of the east property line. Although this percentage is small, the proposed garage buildings would help to add some visual interest along this side of the project site by breaking up what would be an unmitigated view of uncovered parking spaces. Finally, the proposed location of the three garage plans on the east property line are placed in a manner that screens the view of three of the five motor court areas that would otherwise be visible to adjacent properties.

EZ Lube (West) Boundary

For many of same reasons identified above, staff believes the variance for reduced side-yard setbacks at the EZ Lube boundary can be supported. The development of the subject site is impacted by an existing, nonconforming commercial use on a piece of property that cuts into the subject site. The existing EZ Lube business is no longer a permitted use under the land use provisions of the NMDSP; but until it is removed and replaced with conforming development, appropriate separation of uses is needed. The proposed setback variance for the garages in this location would allow for a permanent separation and buffer between the incompatible uses without creating unusable and isolated land areas that would be between the back of buildings and property lines or perimeter walls/fences where maintenance would be difficult.

The reduced setback at this location poses no significant impact to the use, operation, and appearance of the adjacent property with the commercial use. In fact, development of the garages at the proposed location would help to provide better separation and protection of the properties and uses than a typical six-foot high wall or fence would. The combination of buildings and walls/fences would add visual interest and screening that would benefit both properties. The proposed garages would have no openings or roof overhangs that would impact the adjacent property. However, the owner of the EZ Lube property has expressed his opposition to the setback variance against his property. The owner believes

the variance would adversely impact the use of his property and its future development potential.

Public Notice and Comments

This item was advertised as a public hearing in the *Inland Valley Daily Bulletin* newspaper on April 20, 2010. As indicated previously in this report, public hearing notices were mailed to property owners within an expanded radius of approximately 600 feet from the boundaries of the subject property, whereas a 300-foot radius is required by State law for consideration of this discretionary zoning entitlement. At the time this report was prepared, staff had received written comments from three individuals. Two letters (Cheng and Kapoor) expressed some form of opposition to the project, and one (Montclair Plaza) is in support of the project. At the March 22, 2010 public hearing before the Planning Commission, Darleen Curley, Montclair Chamber of Commerce President/CEO, also spoke in support of the project.

Environmental Assessment

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the City certified an Environmental Impact Report (EIR) on August 15, 2006, in connection with the City's approval of the North Montclair Downtown Specific Plan and anticipated improvements. Pursuant to CEQA Guidelines Sections 15162 and 15182, no subsequent or supplemental EIR or Negative Declaration is required in connection with subsequent discretionary approvals of the same project unless: (1) substantial changes are proposed to the project that indicate new or more severe impacts on the environment; (2) substantial changes have occurred in the circumstances under which the project was previously reviewed that indicate new or more severe environmental impacts; or (3) new important information shows the project would have new or more severe impacts than previously considered; or (4) additional mitigation measures are now feasible to reduce impacts or different mitigation measures can be imposed to substantially reduce impacts.

Staff finds that the current application for the proposed 385-unit Paseos residential community is substantially consistent with the anticipated impacts evaluated in the previously certified EIR for the North Montclair Downtown Specific Plan and its anticipated improvements. Staff further believes that the project would not have one or more significant effects not discussed in the previously certified EIR and would not have more severe effects than previously analyzed and that additional or different mitigation measures are not required to reduce the impacts of the project to a level of less than significant. As such, none of the conditions listed in Section 15162 of the state CEQA Guidelines requiring the preparation of a subsequent or supplemental EIR are present; and the project qualifies for the exemption for residential projects described in Section 15182 of the CEQA Guidelines.

FISCAL IMPACT: There would be no direct fiscal impact on the City's General Fund at this time should the City Council adopt Resolution Nos. 10-2837, 10-2841, and 10-2842 approving the entitlement requests described herein.

RECOMMENDATION: Staff recommends the City Council find the proposal to construct a 385-unit residential community, known as The Paseos, at the northeast corner of Monte Vista Avenue and Moreno Street to be consistent with the General Plan and the goals and development standards of North Montclair Downtown Specific Plan. Accordingly, staff recommends the City Council take the following actions:

1. Certify the City Council has reviewed and considered the environmental assessment based upon the findings of exemption and that there will be no significant impact on the environment as a result of the proposed land use amendments and the subsequent construction of the proposed 385-unit multifamily residential project and take the following actions:
 - (a) Adopt the proposed finding that there will be a DeMinimis impact on fish and wildlife.
 - (b) Direct staff to file a Notice of Determination and the applicant to pay appropriate fees within five days of this action.
2. Approve Tentative Tract Map No. 18213 subdividing a 15.1-acre site at the northeast quadrant of Monte Vista Avenue and Moreno Street into 13 numbered lots and 14 lettered lots for condominium purposes, finding that the map is consistent with the Montclair Municipal Code and the State Subdivision Map Act.
3. Approve a Precise Plan of Design request under Case No. 2009-21 for the site plan, floor plans, elevations, colors, materials, conceptual landscape plan, and conceptual plans for the public park associated with the proposed 385-unit residential community development at the northeast quadrant of Monte Vista Avenue and Moreno Street and associated on- and offsite improvements per the submitted plans and as described in the agenda report, subject to the conditions in Resolution No. 10-2837.
4. Approve a Variance request under Case No. 2009-21 to allow a 61'-6" building height for Building F rather than the maximum allowed 45-foot building height in conjunction with the proposed 385-unit residential development at the northeast quadrant of Monte Vista Avenue and Moreno Street as described in the agenda report and subject to the findings and conditions in Resolution No. 10-2841.
5. Approve a Variance request under Case No. 2009-21 to allow setbacks less than the minimum 5'-0" required in the North Montclair Downtown Specific Plan for one-story, detached garage buildings along the easterly project boundary and a portion of the westerly project boundary (adjacent to EZ Lube) in conjunction with the proposed 385-unit residential community development at the northeast quadrant of Monte Vista Avenue and Moreno Street, as described in the agenda report and subject to the findings and conditions in Resolution No. 10-2842.

RESOLUTION NO. 10-2837

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING TENTATIVE TRACT MAP NO. 18213 AND A PRECISE PLAN OF DESIGN ASSOCIATED WITH A 385-UNIT RESIDENTIAL DEVELOPMENT WITHIN THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN

WHEREAS, Montclair I MGP Partners, LLC, filed an application on October 14, 2009, for a Tentative Tract Map, Precise Plan of Design (PPD), and Variances under Case No. 2009-21 in conjunction with a proposal to construct a 385-unit residential development in the 8900 and 9000 blocks of Monte Vista Avenue; and

WHEREAS, on May 15, 2006, the Montclair City Council adopted the North Montclair Downtown Specific Plan (NMDSP), establishing guidelines for development on numerous parcels of land totaling approximately 150 acres in area; and

WHEREAS, the subject site is located within the "Corridor Residential" and "Neighborhood Residential" land use districts of the NMDSP; and

WHEREAS, Tentative Tract Map No. 18213 is proposed to resubdivide the 15.1-acre site into 13 numbered lots and 14 lettered lots for condominium purposes; and

WHEREAS, a Precise Plan of Design is requested for the overall site plan, floor plans, elevations, colors, materials, conceptual landscape plan, and conceptual public park design associated with the 385-unit residential development; and

WHEREAS, staff has found that the subject proposal complies with the guidelines and development standards outlined in the NMDSP; and

WHEREAS, the NMDSP requires City Council review and approval of all entitlements for projects within the boundary of the NMDSP; and

WHEREAS, the Planning Commission of the City of Montclair conducted public hearings on February 8 and March 22, 2010, and considered said application in the manner prescribed by law; and

WHEREAS, the Planning Commission of the City of Montclair has reviewed and recommended approval of said Tentative Tract Map, Precise Plan of Design, and Variances; and

WHEREAS, members of the Planning Commission, City Council, and staff participated in mobile tours conducted by the applicant on August 24, 2009 and May 1, 2010, to view residential projects similar in quality, character and amenities to the proposed project; and

WHEREAS, the City Council of the City of Montclair finds the requested entitlements to be consistent with the adopted General Plan and the North Montclair Downtown Specific Plan and following good planning principles; and

WHEREAS, the City Council conducted a duly noticed public hearing on May 3, 2010, at which time all interested parties were provided an opportunity to give testimony for or against the proposal.

WHEREAS, based on the entire record before the City Council and all written and oral evidence presented, the City Council finds the proposed project complies with CEQA for the reasons set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. Based on the entire record before the City Council, all written and oral evidence presented to the City Council, and the findings set forth in this Resolution, the City Council approves Tentative Tract Map No. 18213 and a Precise Plan of Design under Case No. 2009-21, subject to the conditions of approval in Exhibit "A" and as depicted in the submitted site plan, elevations, and renderings (Exhibit "B").

SECTION 2. Pursuant to California Government Code Section 66410 *et seq.*, based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of the Tentative Map No. 18213:

- A. The proposed subdivision is designed, to the extent feasible, to provide for passive or natural heating or cooling opportunities. Proposed buildings on the site are generally oriented, spaced, and designed to allow for access to adequate light and air. Each unit will have operable windows to allow for passive cooling provided by seasonal winds. Moreover, the proposed public park at the center of the development will provide substantial open space areas where trees and vegetation will provide shade, air filtering, and other environmental benefits.
- B. The proposed subdivision and the provisions for its design and improvement are consistent with the General Plan for the City of Montclair ("General Plan"), and the applicable specific plan, otherwise known as the North Montclair Downtown Specific Plan ("Specific Plan"):
 - 1. The Tentative Tract Map provides for land uses compatible with the "Specific Plan" land use classification for the subject site in the General Plan. The overall goal of the General Plan is to promote good planning practices and orderly development within the City, and to recognize the potential of specific areas for special treatment. Thus, the "Specific Plan" land use classification of the General Plan for the site and surrounding area is in recognition of its proximity to the existing transit center and its potential for development into a viable and thriving transit-oriented community.

2. The Tentative Tract Map provides for land uses compatible with the "Corridor Residential" and "Neighborhood Residential" land use classification for the subject site in the Specific Plan. As envisioned by the Specific Plan, the project will provide a mix of housing types (*e.g.*, townhouses and courtyard housing, live/work, etc.), at a density that is consistent with the "Corridor Residential" and "Neighborhood Residential" land use designations for the site. Moreover, the design for the project is of a high quality and consistent with the high expectations for improvements for projects within the Specific Plan planning area.
- C. The subject site is physically suitable for the type and density of development proposed in the Tentative Tract given the overall size of the property. The site is 15.1 acres in overall area and is of a configuration that has sufficient width and depth to allow for orderly development as proposed with the project. The project site is also located adjacent to fully improved streets that will provide good access and allow for appropriate internal pedestrian and vehicular circulation. The proposed public streets within the project boundaries will be fully improved and serve to implement the eventual goal of a linked street system that promotes walkability and connectivity to adjacent properties and uses, including the future transit center.
 - D. The subdivision design and improvements proposed in the Tentative Tract Map are not likely to cause substantial environmental damage nor substantially injure fish or wildlife or their habitat. The site is surrounded by urban development and streets and does not contain any bodies of water, and is not linked to any wildlife corridors. The site does not contain any known habitats of significance, including rare or endangered species of plant, animal, or insect life.
 - E. The subdivision design and type of improvements proposed in the Tentative Tract Map are not likely to cause serious public health problems because all development and public improvements will be performed per the requirements of all applicable standards and codes, including the zoning and building codes. As a condition of approval, the applicant is required to submit an acoustical analysis demonstrating that interior noise standards of each unit will comply with Municipal Code requirements.
 - F. The subdivision design and type of improvements proposed in the Tentative Tract Map will not conflict with easements acquired by the public at large for access through or use of the subject site because no such easements exist on the subject site.
 - G. The discharge of waste into the existing sanitary sewer system from the development proposed in the Tentative Tract Map will not cause a violation of existing requirements prescribed by the regional water quality control board. The entire project will be required to connect to a sanitary sewage system pursuant to California Plumbing Code and Municipal Code requirements. Sewer mains exist in the Monte Vista Avenue, Moreno

Street and Arrow Highway rights-of-way and are in close proximity to the site to facilitate ease of connection.

SECTION 3. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of a Precise Plan of Design under Case No. 2009-21:

- A. The property is of a size and shape to support the proposed project. At 15.1 acres in area, the site is of sufficient size and shape to accommodate the proposed development as designed, including the provision of a public park and on-street public parking. The property is appropriately connected to existing developed roadways to allow for ease of access and vehicular circulation.
- B. The proposed project will not have an adverse impact on or substantially depreciate property values in the vicinity, or unreasonably interfere with use and enjoyment of property in the vicinity, or endanger the public peace, health, safety or general welfare. The residential development proposed for the site is consistent with the allowable uses of the residential zoning designation for the site. The proposed residential units will be adequately separated in distance from the only adjacent residential uses along its easterly boundary line so as to reduce significant impacts to privacy and use of said uses.
- C. The project is well designed and promotes orderly development. Overall, the project is well designed and consistent with the design standards of the Specific Plan. Architectural details and materials are of a high quality and appropriate to the proposed architectural style of the project. Proposed landscaping is complementary to the architecture, well distributed around the site, and designed to conserve water. Finally, the proposed site plan is generally consistent with the development pattern suggested by the Specific Plan, does not overcrowd the site, and when completed will represent a positive improvement to the adjacent streets on which it has frontage.

SECTION 4. Pursuant to Section 66412.3 of the Government Code, based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds the subdivision and improvements proposed help the City of Montclair to meet its regional housing needs because the project proposes construction of a variety of housing types for various income levels. In addition, approval of the condominium component of the project requires the applicants to comply with the City's Inclusionary Housing Ordinance. Compliance with the Ordinance will require the applicant to deed-restrict 15 percent of the units for occupancy by low and/or moderate income households. The availability of these units will also assist the City in meeting its regional housing goals and low and moderate income production goals within this redevelopment area.

SECTION 5. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds the

nature and extent of the dedications, reservations, impact fees, and other exactions are reasonably related to public needs and roughly proportional to the impacts created by the subdivision and improvements proposed in the Tentative Tract Map.

SECTION 6. Based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment for the application, the City Council finds that no subsequent or supplemental environmental document is required pursuant to the California Environmental Quality Act (CEQA) in connection with the review and approval of this application based upon the following findings and determinations:

- A. Pursuant to the California Environmental Quality Act (CEQA), the City certified an Environmental Impact Report (EIR) on August 15, 2006, in connection with the City's approval of the North Montclair Downtown Specific Plan and its anticipated improvements. Pursuant to CEQA Guidelines Sections 15162 and 15182, no subsequent or supplemental EIR or Negative Declaration is required in connection with subsequent discretionary approvals of the same project unless: (i) substantial changes are proposed to the project that indicate new or more severe impacts on the environment; (ii) substantial changes have occurred in the circumstances under which the project was previously reviewed that indicates new or more severe environmental impacts; or (iii) new important information shows the project will have new or more severe impacts than previously considered; or (iv) additional mitigation measures are now feasible to reduce impacts or different mitigation measures can be imposed to substantially reduce impacts.
- B. The City Council finds, in connection with the proposed Paseos project (Case No. 2009-21) that substantial changes to the project or the circumstances surrounding the proposed project have not changed which would create new or more severe impacts than those evaluated in the previously certified EIR. The Paseos project conforms to the requirements of the NMDSP and is consistent with land use designations and density standards for the subject site. Staff further finds that the project will not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and that additional or different mitigation measures are not required to reduce the impacts of the project to a level of less than significant.
- C. The City Council finds there is no substantial evidence the project may have a significant effect on the environment, and directs staff to prepare a Notice of Exemption and a DeMinimis finding of no effect on fish and wildlife.
- D. Based on these findings and all evidence in the record, the City Council concurs with staff's determination that no additional environmental review is required pursuant to CEQA in connection with the City's consideration of Case No. 2009-21 for The Paseos residential development.

SECTION 7. The location and custodian of the documents and any other material which constitute the record of proceedings upon which the City Council based its decision is as follows: City Planner, Planning Division, Community Development Department, City of Montclair, 5111 Benito Street, Montclair, California 91763, or by telephone at (909) 625-9477.

SECTION 8. Effective Date. This Resolution shall become effective upon its adoption.

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. 10-2837 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
Conditions of Approval
Case No. 2009-21

Project Approvals & General Conditions

1. This approval is for the following:
 - a. Tentative Tract Map No. 18213, subdividing an existing 15.1-acre site into 13 numbered lots and 14 lettered lots (streets and public park) for the purpose of developing a condominium project of 385 dwelling units on the northeast corner of Monte Vista Avenue and Moreno Street, and associated on- and off-site public improvements; and
 - b. A Precise Plan of Design (PPD) approving the site plan, floor plans, elevations, colors and materials, conceptual landscape plan, and conceptual public park plan associated with the construction of the 385 dwelling units, as described in the staff report and depicted on approved plans on file with the Planning Division.

These entitlements are granted based upon the maps, plans and elevations submitted by Montclair I MGP Partners LLC and dated May 3, 2010. The maps, plans and elevations are approved as submitted, and conditioned herein and shall not be further modified, amended or altered. Approval of the entitlements shall not relieve the subdivider and/or applicant from complying with all federal and state laws, as well as all requirements of the Montclair Municipal Code.

2. Any modification, intensification, or expansion of the use beyond that which is specifically approved by the above-noted entitlements and which is not reflected in the map, plans and drawings approved with this action by the City Council, shall require review and approval by the City Council.
3. In the event that exhibits and written conditions are inconsistent, the written conditions shall prevail.
4. Within five days of City Council approval, the applicant shall submit a check in the amount of \$50 to cover the County administrative fee for filing a Notice of Exemption as required by the California Environmental Act (CEQA). The check shall be made payable to the Clerk of the Board of Supervisors.
5. The applicant shall defend, indemnify and hold harmless, the City of Montclair, its agents, officers, and employees from any claim, action or proceeding against the City or its agents, officers or employees to attack, set aside, void or annul any approval of the City, whether by its

City Council, Planning Commission or other authorized board or officer of this subdivision. Pursuant to California Government Code §66474.9, the subdivider and applicant also agrees to defend, indemnify and hold harmless, the City of Montclair, its agents, officers, and employees from any claim, action or proceeding against the City or its agents, officers or employees to attack, set aside, void or annul any map approval of the City, whether by its City Council, Planning Commission or other authorized board or officer of this subdivision, which action is brought within the time period provided for in Government Code §66499.37. The City shall promptly notify the subdivider and applicant of any such claim, action or proceeding, and the City shall cooperate fully in the defense.

6. Notice to Applicant/Subdivider: The conditions of approval for this project include certain fees, dedication requirements, reservation requirements, inclusionary housing requirements and/or other exactions more specifically described in the conditions of approval herein. The subdivider/applicant is hereby notified that the 90-day protest period to challenge such items has begun as of the date of the project approval or the date of the Impact Fee imposition, which is also the date of final project approval. If the applicant fails to file a protest regarding any of the fees, dedications, reservations, inclusionary housing requirements or other exaction requirements, as specified in Government Code §66020, the subdivider/applicant shall be legally barred from later challenges.
7. The subdivider/applicant shall reimburse the City for the legal costs associated with the preparation/review of any agreements and covenants required by these conditions.

Tentative Map (Condominium Conditions)

Planning

8. The applicant and/or property owner shall ensure that a copy of this Resolution is reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the Project.
9. A single, final map for the project shall be filed for recordation, unless the City approves the filing of multiple final maps and a phasing plan in accordance with California Government Code §66456.1.
10. Prior to recordation of a final map, the subdivider and applicant shall pay any outstanding fees and charges related to the reimbursement agreement entered into with the City of Montclair for the processing of these entitlements.
11. The tentative map shall expire three years from the date of City Council approval unless extended under Government Code §66452.6. The final map shall be filed with the City Engineer and shall comply with the

Subdivision Map Act of the State of California and all applicable ordinances, requirements, and resolutions of the City of Montclair.

12. The subdivider shall dedicate land on the final map for a neighborhood park in accordance with the North Montclair Downtown Specific Plan ("Specific Plan"). Prior to recordation of the final map, the subdivider shall enter into an agreement to be recorded against the property detailing compliance with the City of Montclair Parkland Dedication Ordinance. The proposed Park Agreement shall include a requirement for the dedication of a minimum of .71 acres of land for a neighborhood park, a conceptual park design exhibit for that neighborhood park in compliance with the Specific Plan, as well as a description of the proposed park improvements and facilities to be constructed consistent with the Specific Plan. In addition, the Park Agreement shall include a mechanism for determining the amount of credit to be provided to the subdivider against in-lieu fees to be paid for the construction of improvements and installation of equipment and/or facilities. Such credit shall be based upon the City's adopted parkland dedication/in-lieu fee schedule. No credit/reimbursement shall be provided in excess of the amount of in-lieu fees that are due to be paid to the City by the subdivider/applicant. The final construction drawings for the improvements to the neighborhood park on the project site shall be submitted to the Planning Division during the plan check process for review and approval and construction of the park shall be completed simultaneously with the construction of the first residential building. No Certificate of Occupancy shall be issued for any building unless and until a certificate of completion and acceptance has been issued for the park.
13. Street names for internal streets of the subdivision shall be at the discretion of the developer and subject to the approval of the City Planner.
14. The subdivider and/or applicant shall agree to form and shall form a Community Facilities District ("CFD") pursuant to the terms of Government Code Section 53311, *et seq.*, the territory of which shall include the Project, for the purposes of the payment of maintenance and operation costs associated with the common landscaping, park, lighting and other improvements located within the Project. The CFD shall be formed and the special tax recorded prior to recordation of a final map for the Project or the issuance of the first building permit, whichever occurs first. The subdivider and applicant further expressly agree that failure to form such CFD will result in disapproval of any building permits for the Project.

The subdivider and/or applicant also agree that additional areas may be annexed into the CFD, provided, however, that after giving effect to such annexation, the owner, subdivider and applicant is subject only to its fair share of the obligations and costs incurred as a result of the annexation. The subdivider and/or applicant agree to fully cooperate in any such annexation proceedings.

If, for any reason whatsoever, the Property or portion thereof does not become part of a CFD or if any such CFD that is formed does not provide for the maintenance of the entirety of the improvements within the Property, or any portion thereof, then such improvements shall be maintained by a private property owner's association, or an adequate alternative reasonably acceptable to the City, to undertake such work. The homeowner's association conditions, covenants and restrictions (CC&Rs) shall include a requirement that the homeowner's association pay the assessment and that the assessment provisions contained in the CC&Rs can only be amended with the approval of the City. Failure to provide for the creation of such an owner's association, CC&Rs and/or an adequate alternative reasonably acceptable to the City shall result in the disapproval of subsequent permits with respect to the Property, or any portion thereof.

15. The applicant shall, at the applicant's expense, prepare and submit CC&Rs for a condominium project to the Community Development Director, with the form and content satisfactory to the Community Development Director and City Attorney, prior to approval of a final map for condominium purposes. The CC&Rs shall be recorded in the office of the County Recorder of the County of San Bernardino concurrently with the filing of the final map. The applicant has represented to the City that it intends to lease or rent the units within the Project until a date uncertain in the future when the applicant reserves the option to sell condominium units. The applicant must submit a Condominium Plan to the City for review and approval by the Planning Division and City Attorney prior to the sale of any condominium unit. The CC&Rs shall state that the applicant does not intend to actively market units for sale to the public until a date uncertain in the future, and that prior to the sale of the first condominium unit, the applicant or its successor(s) or assign(s), if any, will comply with these conditions of approval, California Government Code §66459, obtain a Final Subdivision Public Report from the California Department of Real Estate (DRE), form a Condominium Homeowner's Association, file Articles of Incorporation for the Condominium Homeowner's Association (or other appropriate organizational document) with the California Secretary of State, adopt bylaws, comply with the Davis-Sterling Common Interest Development Act, the Subdivided Lands Act, and any successor or other statutes that may apply.

The CC&Rs shall state that the Condominium Homeowner's Association shall be responsible for ongoing maintenance of buildings and grounds related to the Project, including roadways, retaining walls, drainage facilities, and water and sewer systems as described herein.

- a. Street Maintenance. All private streets within the Condominium Development shall be owned by and the cost of repairing and maintaining them shall be borne by an established Condominium Homeowner's Association. Street maintenance shall be addressed

in the CC&Rs and shall not be dedicated to the City for maintenance.

- b. On-Site Easements. The cost of establishing any on-site easements shall be borne by the subdivider and the cost of maintaining any on-site easements shall be borne by an established Condominium Homeowner's Association. All on-site easements shall be addressed in the CC&Rs and shall not be dedicated to the City.
- c. Storm Drain Maintenance. The on-site storm drainage system shall be owned by and the cost of repairing and maintaining it shall be borne by an established Condominium Homeowner's Association. Maintenance of the storm drain system shall be addressed in the CC&Rs and shall not be dedicated to the City. The CC&Rs shall provide that the City have a right to make necessary repairs to any drainage facilities that are the responsibility of the Condominium Homeowner's Association, have an impact on property outside of the boundaries of the area owned by or under the control of the Condominium Homeowner's Association when the Association has been advised in writing of the need to make repairs and has not done so.
- d. Parking Space Use and Maintenance. All on-site guest parking spaces shall be owned by and the cost of repairing and maintaining them borne by an established Condominium Homeowner's Association. Parking spaces, restrictions and enforcement of the restrictions shall be addressed in the CC&Rs and shall not be dedicated to the City for maintenance. The CC&Rs shall include and provide for the expenses associated with the monitoring and towing of illegally parked vehicles owned by any member. The CC&Rs shall clearly define the permitted use of guest parking spaces and prohibit the parking of resident vehicles in guest spaces.
- e. On-Site Parking. The CC&Rs shall stipulate that no utility trailers, commercial or construction vehicle of any length, watercraft, or recreational vehicles shall be permitted to be stored or parked overnight on any private street and/or parking areas within the complex. "Recreational vehicle" is a motor home, travel trailer, truck camper, or camping trailer with or without motive power designed for human habitation for recreational or emergency occupancy.
- f. Lighting Maintenance. The Condominium Homeowner's Association shall be responsible for maintenance of exterior, on-site lighting and shall promptly replace nonfunctioning lights and broken or damaged lighting devices.

- g. Garage Use. The CC&Rs shall stipulate that garages shall, at all times, be available for the parking of vehicles assigned to the applicable condominium unit. Storage within garages shall be allowed only to the extent such storage does not impede access to the parking space(s) within the garage.

The CC&Rs shall also provide for the continuing maintenance by the Condominium Homeowner's Association of all common areas and facilities, including the private streets, auto courts, speed bumps, traffic control signs and devices, common landscaping and irrigation, including perimeter landscaping adjacent to the public streets and all perimeter walls.

The CC&Rs shall contain provisions permitting the City to enforce the maintenance obligations of the HOA in the event it fails to carry them out, including the power, after proper notice, to lien both association and individual properties for the costs of maintenance and enforcement. A separate contract between the HOA and the City may be required for this purpose.

16. The subdivider shall comply with the City's adopted inclusionary housing ordinance (Ordinance No. 05-866). The subdivider shall provide 15 percent required housing for low-to-moderate income households. The ordinance applies to new residential development located within redevelopment project area boundaries. Since the subject property lies within City of Montclair Redevelopment Agency Redevelopment Project Area No. III, the project shall be subject to the provisions of Ordinance No. 05-866. The developer shall agree to satisfy the requirements of Ordinance No. 05-866 through a separate and subsequent agreement approved and adopted by the City Council prior to the approval of a final map. The developer shall agree that approval by the City of the requested entitlements shall constitute in its entirety the City's compliance with the density bonus provision of Government Code §65915.
17. Prior to approval of the final map, a subdivision improvement agreement will be required to be approved by the City. The agreement shall contain provisions for the construction of public improvements and performance and payment bonds for all work within the public rights of way, and a monumentation bond for tract monuments in accordance with the Subdivision Map Act.

Precise Plan & Project Construction Conditions

18. Precise Plan of Design (PPD) approval shall be valid for a period of one year and shall automatically expire on the anniversary date of Planning Commission approval, unless the applicant is diligently pursuing building plan check toward eventual construction of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No

further notice from the City will be given regarding the project's PPD expiration date.

19. Prior to the issuance of any building permit or recordation of a final map, the applicant, or its successor(s) or assign(s) shall record a covenant and agreement against the entire property providing for the perpetual maintenance of all buildings and improvements, including roadways, retaining walls, drainage facilities, and water and sewer systems. The covenant and agreement shall be effective during the time that the Project is not operated as a condominium project or until such time as a homeowner's association is established to take over maintenance of the project. The covenant and agreement shall contain affirmative covenants for the maintenance of all such improvements; provisions for the professional management of the project; provisions for on-site security; mechanisms for City enforcement of the covenants and financial security to pay for any remedial actions taken by the City as a result of non-compliance, including, but not limited to, the power to lien the property, after proper notice, to secure the costs of maintenance and enforcement of the covenant. The covenant and agreement shall be approved by the City Council and may not be cancelled or amended without City approval.
20. Prior to the issuance of any building permit or recordation of the final map (whichever occurs first), the applicant shall record a covenant and agreement against the entire property prohibiting the sale of any individual building within the Project for purposes of rental or lease (non-condominium). The covenant and agreement shall be approved by the City Council and may not be cancelled or amended without City approval.
21. In the event the final map is not recorded, the applicant shall comply with Condition No. 14 requiring the formation of a CFD prior to the issuance of any building permit.
22. All sound attenuation measures (i.e., dual-paned glazing, upgraded insulation, etc.) as identified by the approved acoustical report prepared for the project shall be incorporated into construction drawings submitted for plan check. Maximum interior noise level of all units shall be no higher than 45dBA.
23. Approval of this PPD shall not waive compliance with any applicable regulations as set forth by the California Building Code and/or City Ordinances, the San Bernardino County Health Department, or the State of California.
24. Prior to the installation of any signs, the applicant shall submit an application for a Sign Program for the entire project to the Planning Division for review and approval.

25. No changes to the approved set of plans, including the exterior design and materials/finishes, shall be permitted without prior City review and approval.
26. No outdoor pay telephones or vending machines shall be permitted on the project site, except that vending machines may be allowed in the outdoor recreational area adjacent to the Community Building if installed in an alcove architecturally integrated with a building to the satisfaction of the City Planner.
27. Perimeter walls shall be installed per the approved wall plan. Double wall or fence/wall conditions shall not be permitted. The applicant shall be responsible for coordinating with the adjacent property owners to the north and east regarding the replacement of property line walls, if required. Masonry wall heights, materials, and finishes shall be to the satisfaction of the City Planner.
28. Specify street trees for each public and private street. Required public street trees shall include the following:
 - a. Monte Vista Avenue - *Pinus canariensis* (Canary Island Pine) and a deciduous and/or flowering species in a random, alternating pattern.
 - b. Moreno Street - *Platanus racemosa* (California Sycamore) and an evergreen and/or flowering species in a random, alternating pattern.
 - c. Arrow Highway - *Quercus ilex* (Holly Oak) and a deciduous and/or flowering species in a random, alternating pattern.

Street trees for Olive Street and the public north-south street on either side of the park shall be subject to approval by the City Planner.

29. All street trees shall be minimum 24-inch box size and double-staked per City standards. If planted in turf areas, trees shall be planted within a 4'-0"-diameter circle in which turf does not encroach. The circle shall be left natural or minimally improved with decomposed granite, a thin layer of wood chips or similar moisture-retaining material.
30. Streetlights shall be constructed on all public and private streets. Streetlights within and on the perimeter of the subdivision shall be as follows and as illustrated in "City Nights...City Lights," a publication of Southern California Edison:
 - a. Interior streets (public and private) - "Nostalgic Fluted Pole" with single acorn pole top fixture.
 - b. Monte Vista Avenue and Moreno Street - "Nostalgic Fluted Pole" with double acorn pole top fixture.

- c. Poles shall be black concrete and approximately 18 feet in height.
- d. Fixtures shall be fitted with up-light shielding and house-side shielding (where necessary).

The spacing of streetlights and minimum lighting level for all streets shall be to the satisfaction of the City Engineer. Streetlights on public streets shall be owned and maintained by Southern California Edison. Streetlights on Olive Street may alternate on either side of the street. Streetlights on public north-south street flanking the park shall be placed on the residential side rather than the park side. Streetlights on private streets may be owned and maintained by developer or Southern California Edison.

31. The proposed locations for neighborhood mailboxes within the subdivision shall be subject to City review and approval prior to installation. The applicant shall also ascertain any requirements for such mailboxes from the United States Postal Service.
32. All roof-mounted equipment, satellite dish antennas, and other similar apparatus shall be screened from public view in a manner incorporated into the architectural design of the building to the satisfaction of the Planning Division.
33. All mechanical equipment including, but not limited to, utility meters, air conditioners, vents, and repair equipment shall be located within the building or screened in a manner that is compatible with the architectural design of the building to the satisfaction of the City Planner. Wooden lattice or fence-like screens/covers are not appropriate screening materials and shall not be allowed.
34. Surface mounted exposed conduit or electrical lines shall not be allowed. Electrical switchgear, meters, etc. shall be screened or housed in an enclosure, to the extent allowed by the utilities.
35. Freestanding electrical transformers and Fire Department double detector check equipment shall be screened with masonry walls compatible with the building architecture and/or landscaping to the satisfaction of the City Planner and Fire Marshal. Efforts shall be made to place these elements in locations that are as unobtrusive as possible.
36. Landscape maintenance shall be subject to immediate and periodic inspections by the City. The property owner shall be required to remedy any defects in grounds maintenance and replace any trees, shrubs, vines, or groundcover with a similar species, size, and quantity that are lost due to unauthorized removal, disease, windstorm, or other natural disaster as indicated by the City inspector, within two weeks after notification. Inspections shall be based on automatic landscape irrigation schedule, plant maintenance, weed and rubbish control, landscape plan approval, and any other area that is incidental to grounds maintenance.
37. All landscaping on the project site shall be regularly maintained in a healthy and vigorous living condition at all times. This shall include proper pruning, mowing of lawns, weeding, removal of litter, fertilizing,

and the regular watering of all plants. Dead vegetation shall be promptly replaced with healthy, living plants, in accordance with standard seasonal planting practices. The property owner shall also be responsible to keep the landscaped areas reasonably free of weeds, trash, and debris.

38. All new trees incorporated into the project shall be trimmed and maintained per guidelines established and approved by the International Society of Arboriculture (ISA). Trees shall only be pruned as necessary to promote healthy growth and for aesthetic purposes (i.e., to enhance the natural form of the tree) according to established horticultural standards. Improperly or severely pruned trees, including topping which results in the removal of the normal canopy and/or disfigurement of the tree shall be replaced with trees of similar size and maturity as that which was removed or as required by Director of Community Development.
39. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the permitted use and development of said property as set forth by this permit together with all conditions which are a part thereof. These specific requirements must be recorded with all title conveyance documents at the time of escrow closing.
40. To ensure compliance with the conditions of approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The applicant shall contact the City to schedule an appointment for such inspections.

Building

41. Submit four complete sets of plans including the following:
 - a. Site/Plot Plan;
 - b. Floor Plan;
 - c. Reflected Ceiling Plan;
 - d. Electrical Plans, including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams;
 - e. Plumbing plans, including isometrics, underground diagrams, water and waste diagram, fixture units, gas piping, and heating and air conditioning.
 - f. A plan of all walls to be demolished.

42. Submit two sets of structural calculations, if required, and two sets of energy conservation calculations.
43. Architect's/Engineer's stamp and "wet" signature are required prior to plan check approval.
44. Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.
45. Separate permits are required for fencing and/or walls.
46. All utility services to the project shall be installed underground.
47. Plans shall be submitted for plan check and approved prior to construction. All plans shall be marked with the project file number. The applicant shall comply with the latest adopted California Building Code and all other applicable codes, ordinances, and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of submitted plans.
48. Construction activity shall only be permitted from the hours of 7:00 a.m. to 8:00 p.m. daily.
49. Prior to issuance of building permits for a new residential development project or major addition, the applicant shall pay development fees at the established rate. Such fees may include, but are not limited to, Transportation Development Fees, Permit and Plan Check Fees, School Fees, sewer connection fees, and parkland development fees. Pay all required school fees directly to the Ontario-Montclair School District and Chaffey Joint Union High School District. Applicant shall provide a copy of the school fees receipt to the Building Division prior to permit issuance.
50. Construct trash enclosure(s) per City Standard (available at the Building Division's public counter) or per a plan approved by all applicable City departments.
51. Clearly indicate on submitted plans disabled-accessible path(s) of travel to the public right-of-way and all required disabled-accessible parking lot signs. Sidewalks, paths-of-travel, and curb cuts shall comply with the requirements of the California Building Code, Title 24. The maximum cross-slope on a sidewalk or path-of-travel shall not exceed two percent (2%).
52. Construction drawings submitted to the Building Division for plan review shall comply with the Montclair Security Ordinance No. 357, including, but not limited to, adherence to the following standards:
 - a. Install a numerical address on building elevations visible to a public or private street as determined by the Building Division.

Address numerals shall be a minimum of ten inches in height and be in contrasting color which adequately contrasts to the background to which they are attached.

- b. Provide and maintain a minimum illumination level of one (1) foot-candle from dusk until dawn everyday.
 - c. Install an approved emergency lighting to provide adequate illumination automatically in the event of an interruption of electrical service.
53. A Certificate of Occupancy is required prior to the occupancy of each building. Issuance of the Certificate of Occupancy shall be contingent upon the Fire Department inspection and the final approvals from other departments and/or agencies.
54. Prior to the issuance of a Certificate of Occupancy, the applicant shall:
- a. Submit to the Building Division electronic images of all plans and records which were submitted for the purpose of obtaining a building permit. Electronic images shall comply with the City's Electronic Imaging Policy.
 - b. Complete all on- and off-site improvements.
 - c. Install all disabled-accessible parking stalls and parking lot signage.

Water Quality Management Plan

55. Comply with all requirements of the approved Water Quality Management Plan (WQMP) for this project.
56. The applicant/developer/homeowner's association shall be responsible to contract with a qualified firm to inspect and maintain any and all manufactured stormwater treatment devices specified by the approved WQMP, following all manufacturers' recommendations. It shall also be the responsibility of the applicant/developer/homeowners' association to maintain inspection reports and have them readily available for review by City staff upon request. In the event that any stormwater treatment device fails due to lack of, or insufficient maintenance and/or inspection, or some other unforeseen circumstance, it shall be the responsibility of the applicant/developer/homeowners' association to correct the deficiency and restore the stormwater treatment device(s) to its original working condition.
57. Prepare and submit plans for erosion and sediment control. Plans shall include all phases of the construction project, including rough grading, utility and road installation, and vertical construction to the satisfaction

of the City Engineer. A State General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities shall be obtained prior to construction. Contact Joe Rosales, Environmental Compliance Inspector, at (909) 625-9470.

58. Prior to issuance of a Certificate of Occupancy, the applicant shall:
 - a. Submit to the Engineering Division an electronic copy of the approved WQMP in PDF format.
 - b. Record the WQMP Maintenance Agreement with the County of San Bernardino and show proof of said recording to the Environmental Compliance Inspector.
59. Prior to release of occupancy for any of the dwelling units in the subdivision, the person or corporation responsible for the preparation of the WQMP shall certify in writing to the Building Official that all conditions and requirements of the WQMP have been implemented or complied with. For projects, developments, or properties intended to be leased or sold, developer shall also submit evidence to the Building Official that lessee or purchaser has been advised in writing of lessee's or purchaser's on-going maintenance responsibilities with respect to the requirements of the WQMP.

Engineering

60. Developer shall comply with all requirements of the Subdivision Map Act and the Montclair Municipal Code.
61. A public neighborhood park is intended to be a part of this development. The applicant shall dedicate land for a neighborhood park to the City of Montclair (by separate instrument if not reflected on a final map). In addition, the applicant shall pay in-lieu parkland fees to the City of Montclair in accordance with the Montclair Parkland Dedication Ordinance. Payment of in-lieu fees are payable prior to issuance of any Certificate of Occupancy for any building and shall be based upon the number of units proposed within such building. Dedication of land and construction of park improvements may partially or entirely offset the fees to be paid (See Condition No. 12).
62. Payment of transportation development impact fees. Fees shall be assessed at the rate in effect at the time the fees are paid.
63. Public and private streets shall be designed and built in accordance with City standards as outlined in the North Montclair Downtown Specific Plan. No parking shall be permitted in private streets, alleys, or drive aisles.

64. Street improvement plans are required for all public streets. Construction drawings shall be 24" x 36" with City standard title block. Construction drawings for private streets may be included on grading plans, which shall also be 24" x 36".
65. Street names shall be left up to the developer as long as the names do not conflict with other City street names, are otherwise objectionable to the City, and are to the satisfaction of the City Planner. The primary east-west street shown on the tentative map connecting to Olive Street at the east tract boundary shall be called Olive Street and shall be dedicated to the City of Montclair as a public street. The tentative map shows the primary north-south street as Lot B. Prior to recordation the street shall be named. The public street west of the park shall be one-way southbound; the public street east of the park shall be one-way northbound.
66. Sidewalks shall be constructed on both sides of Olive Street and on the residential side of the proposed north-south public street flanking the public park. Sidewalks are not required on private streets, provided accessibility from each dwelling unit to a public sidewalk can be provided. Sidewalks, intersections, and curb cuts shall comply with Americans with Disabilities Act of 1990 (ADA) requirements. Sidewalks through drive approaches with cross slopes exceeding 2% shall not be permitted.
67. Sidewalks on Monte Vista Avenue and Moreno Street shall have a minimum width of 6'-6" if curb-adjacent and 5'-0" feet if separated from the curb by a parkway.
68. All 5'-0"-wide sidewalks shall be scored lengthwise and widthwise to create 2½-foot "squares." All 6'-6" sidewalks shall be scored lengthwise and widthwise to create 2'-2" "squares."
69. Parkways on Monte Vista Avenue and Moreno Street separating curbs from sidewalks shall have a minimum width of 6'-0".
70. Dedicate additional street right-of-way for Monte Vista Avenue and Moreno Street as may be necessary to accommodate sidewalk and parkway improvements.
71. Restripe Monte Vista Avenue from Arrow Highway to Moreno Street to provide a continuous center two-way left turn pocket. The City Council will be asked to adopt a new parking resolution to add the east side of Monte Vista Avenue, from Arrow Highway to Moreno Street, to its restricted parking list.
72. Storm drains and catch basins within the public north-south street and discharging into the park/drainage basin shall be owned and maintained by the City. Storm drains, catch basins, and other drainage devices, whether located in private or public streets, shall be maintained by

developer. All design and construction shall comply with standards and requirements of the San Bernardino County Flood Control District.

73. All existing overhead utilities within project boundaries and within street frontages adjacent to the project site shall be placed underground, except for Southern California Edison 66KV transmission lines along Arrow Highway. All new guy wires required to anchor end poles shall be located beyond the project limits. No poles or guy wires shall be permitted to remain within any property frontage.
74. All utilities serving the tract shall be underground. This requirement applies to electrical services, transformers and switches, and where technology exists, telephone and cable television facilities as well.
75. Payment of all outstanding sewer reimbursement fees, as imposed by a district, if any, or any assessments, shall be required.
76. Sewers serving the development may be publicly maintained if designed and constructed per Public Works Department standards, and provided sewer easements are dedicated for sewers located within private streets. Sewers not constructed per Public Works Department standards shall be privately maintained. Connections to existing sewers in Monte Vista Avenue, Moreno Street, and/or Arrow Highway shall be made at existing or new manholes. All sewer design shall be subject to the approval of the City Engineer.
77. Sewer improvement plans are required for all sewers, public or private, and shall include both plan and profile views on 24" x 36" construction drawings. Sewers intended to be privately maintained shall not include City standard title block, and shall be labeled "NOT TO BE MAINTAINED BY CITY OF MONTCLAIR."
78. Regional Sewerage Capital Outlay fees are required as specified in the Montclair Municipal Code and by Inland Empire Utilities Agency.
79. Discharge of wastewater into the sewer collection system shall conform to all requirements of the Montclair Municipal Code.
80. A grading plan shall be prepared subject to the approval of the City Engineer. An erosion control plan is to be included and considered an integral part of the grading plan. Grading plans shall be designed in accordance with City standards and guidelines, and shall be on 24" x 36" sheets.
81. All drainage facilities shall comply with requirements of the approved WQMP.
82. The tentative map includes cross sections showing that existing walls along the north and east property lines are to remain. Boundary walls shall have a minimum height of 6'-0" as measured from either side.

Walls not meeting this minimum height shall be replaced, or if structurally adequate, have additional matching block or contrasting capstone added to increase the height to 6'-0".

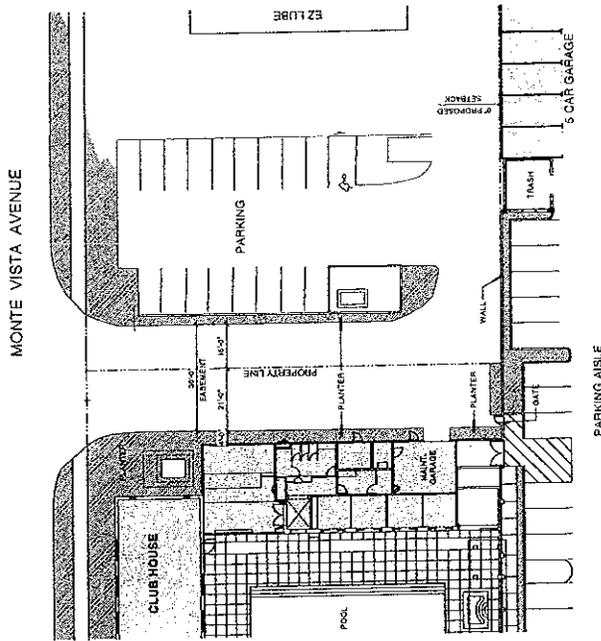
83. No soil may be imported or exported to or from the project site from any adjacent building site or from other sources for construction purposes without first obtaining approval from the City Engineer. A plan acceptable to the City Engineer shall be prepared showing proposed haul routes within the City. The plan shall include provisions for street sweeping and cleanup. Contractor(s) shall comply with all National Pollutant Discharge Elimination System (NPDES) requirements.
84. All on- and off-site trenching and excavation shall conform to CAL-OSHA standards. Excavations that exceed five feet in depth require a CAL-OSHA permit.
85. Underground Service Alert shall be notified at least 48 hours prior to any excavation. Contact Underground Service Alert at 8-1-1.
86. Prior to commencing framing for any buildings or delivery of lumber to any site within the tract limits, an all-weather access shall be provided to each lot/building. All-weather access is defined as base-course A.C. paving with a minimum thickness of 2½" and having a minimum width of 26 feet. This 26-foot width shall be maintained free and clear of all construction equipment, materials, and debris at all times during construction.
87. Bus stops exist on the east side of Monte Vista Avenue and the north side of Moreno Street within the frontage of the property. Bus stop shelters shall be constructed at both locations (or the bus stops may be relocated as may be mutually agreeable to the City, Omnitrans, and developer) to the satisfaction of the City Planner. Shelters shall be designed in an architectural style that complements the project and is satisfactory to the City Planner. Said shelters shall also be constructed in a manner that will allow pedestrian passage around the shelter when occupied. Typically this requires a minimum sidewalk width of eight feet (8'-0").
88. Prior to commencing the plan check process for the Project, the developer shall place signage on the east face of the fence at the west end of Olive Street stating the following:

FUTURE EXTENSION OF OLIVE STREET TO MONTE VISTA
AVENUE AS PART OF TRACT NO. 18213 IMPROVEMENTS

Sign shall measure at least two feet high by four feet wide and shall have black lettering on white background.

Fire

89. A 20-foot wide base asphalt or concrete roadway capable of supporting firefighting apparatus within 150 feet of all structures is required prior to the framing stage of construction. This access is required to be maintained unobstructed throughout construction. Roadway is subject to Fire Department approval prior to construction.
90. The developer/general contractor is responsible for reasonable periodic clean-up of the construction site to avoid hazardous accumulation of combustible trash and debris.
91. Planter areas in the center of drive aisles and adjacent to entrances should be low profile type, not to exceed eight feet in height when mature.
92. The inside turning radius for an access road shall be 32 feet or greater. The outside turning radius for an access road shall be 45 feet or greater.
93. All Fire Department access and fire lanes shall be posted as "No Parking, Fire Lane." Signs shall be designed and mounted in accordance with Montclair Fire Department standards.
94. The proposed residential structure(s) shall require an approved automatic fire sprinkler system. The system shall conform to all local and national standards. Three (3) complete sets of the sprinkler system plans shall be submitted directly to the Fire Marshal's Office for approval prior to installation.
95. A fire hydrant system shall be required to provide the necessary water flow to the proposed structure(s). Exact number, location, and design of hydrants shall be determined by the Fire Marshal's Office when building plans are received. Hydrants shall be active prior to the framing stage of construction.
96. The developer shall contact the Fire Marshal's Office for drive access requirements prior to gutter and curb-line placements.
97. An approved emergency-keyed access system shall be required to facilitate access to buildings or gates by Fire Department personnel in the event of an emergency during non-business hours. Forms are available at the Montclair Fire Department Headquarters for those occupancies requiring such a system. Facilities with gated drive approaches shall contact the Fire Marshal's Office for additional key and strobe requirements.
98. All Montclair Fire Department fees are due prior to any permit issuance.



OPTION 1 (WITH EXISTING EASEMENT)
SCALE: 1/8" = 1'-0"

MONTE VISTA AVENUE

AS03e



EASEMENT EXHIBIT

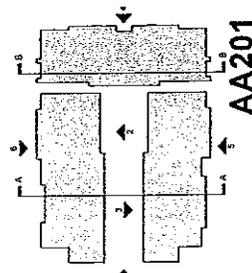
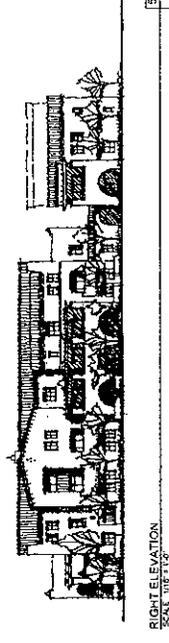
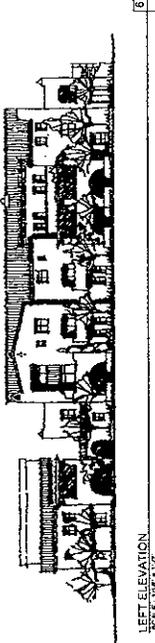
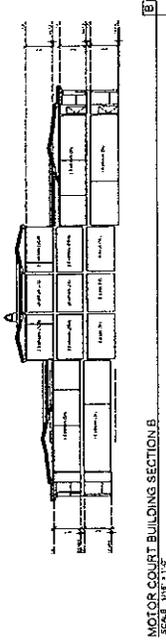
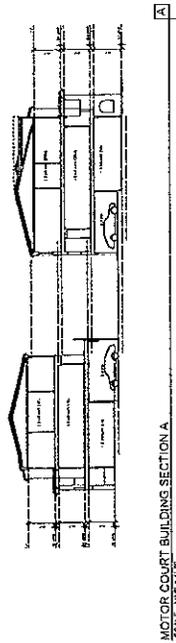
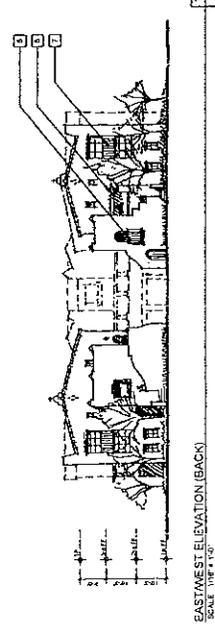
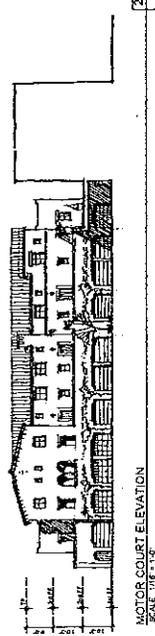
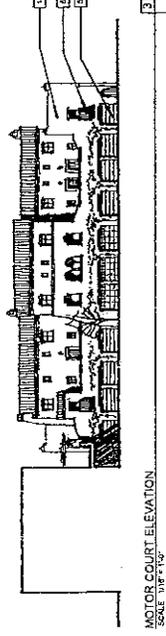
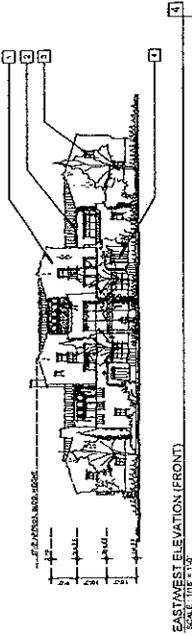
THE PASEOS
11 BARRILLI BLVD.

18 MARCH, 2010

MONTE VISTA & MORENO STREET, MONTCLAIR, CA

LEGEND

- 1 Exterior window frame profile
- 2 Glass window
- 3 Pergola window
- 4 Existing masonry - Shaded areas on elevation indicate
- 5 Shaded areas
- 6 New walls or replacement walls
- 7 Shaded areas - New masonry walls or glass
- 8 New masonry walls

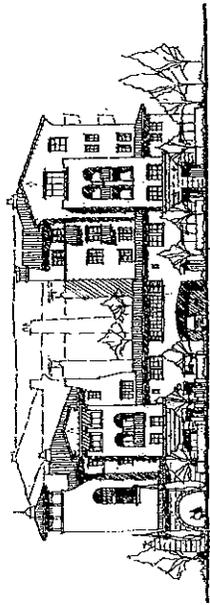


THE PASEOS
 ARCHITECTURAL STUDIO
 21 DECEMBER, 2009

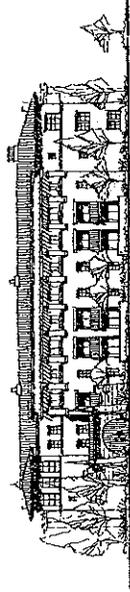
DESIGN
 BUILDING TYPE 'A' ELEVATIONS

CLARENCE
 MONTE VISTA & MORENO STREET, MONTCLAIR, CA

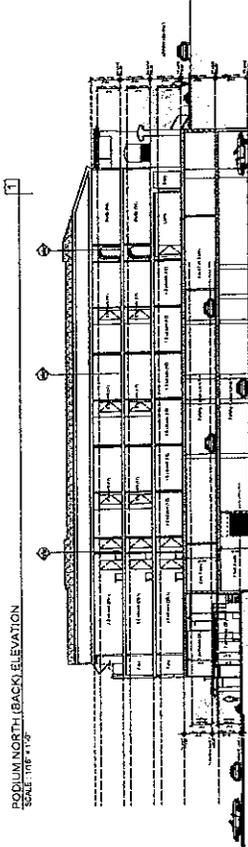
2009 PASEOS ARCHITECTURAL STUDIO. ALL RIGHTS RESERVED. 12/21/09 12:30:41 PM



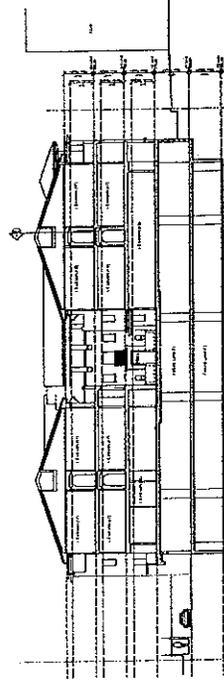
PODIUM SOUTH (FRONT) ELEVATION
SCALE: 1/16" = 1'-0"



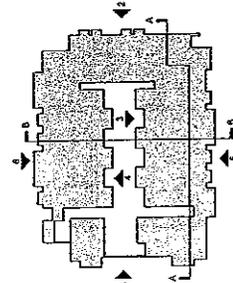
PODIUM NORTH (BACK) ELEVATION
SCALE: 1/16" = 1'-0"



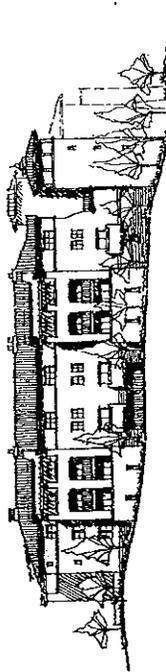
PODIUM BUILDING SECTION A (NORTH - SOUTH)
SCALE: 1/16" = 1'-0"



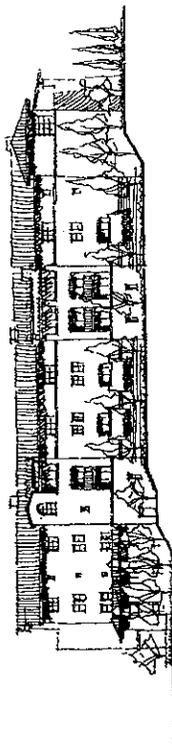
PODIUM BUILDING SECTION B (EAST - WEST)
SCALE: 1/16" = 1'-0"



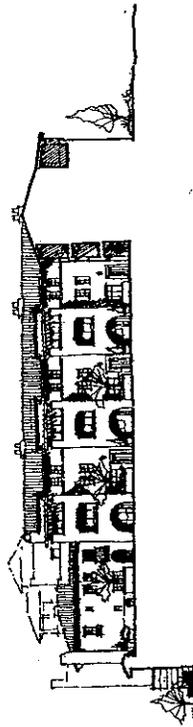
AC201



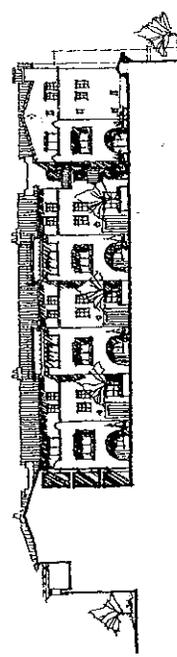
PODIUM EAST (SIDE) ELEVATION
SCALE: 1/16" = 1'-0"



PODIUM WEST (SIDE) ELEVATION
SCALE: 1/16" = 1'-0"



PODIUM INTERIOR COURTYARD (WEST) ELEVATION
SCALE: 1/16" = 1'-0"



PODIUM INTERIOR COURTYARD (EAST) ELEVATION
SCALE: 1/16" = 1'-0"

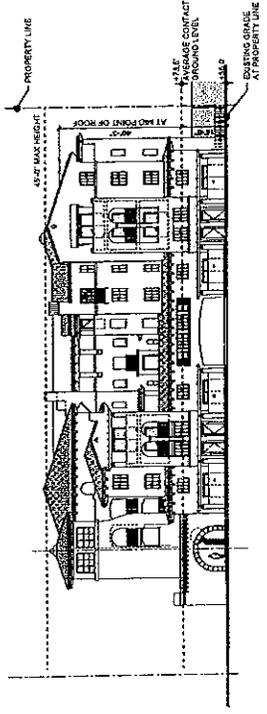
THE
PASEOS
1111 BAYVIEW BLVD.
21 DECEMBER, 2009

PODIUM ELEVATIONS

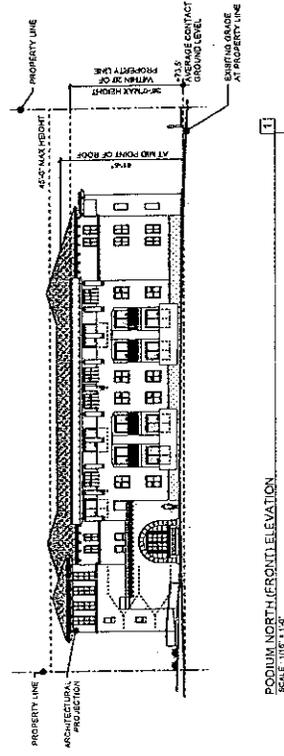
DESIGNADAK
ARCHITECTURAL SERVICES, INC. 1111 BAYVIEW BLVD. #1000
DUBLIN, CA 94568



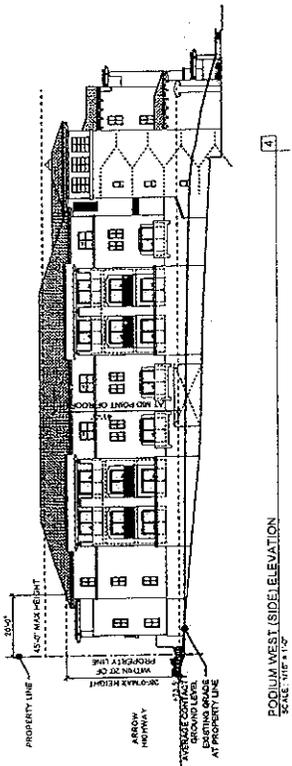
MONTE VISTA & MORENO STREET, MONTCLAIR, CA



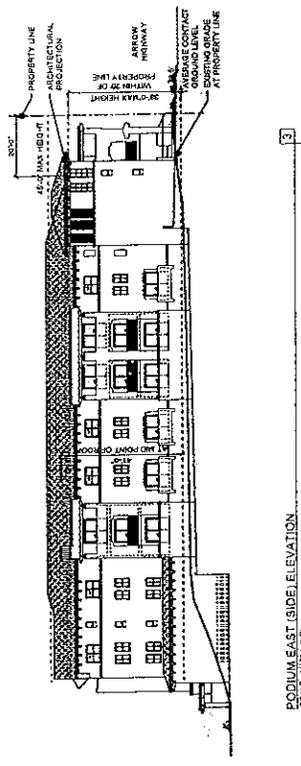
PODIUM SOUTH (BACK) ELEVATION
SCALE: 1/8" = 1'-0"



PODIUM NORTH (FRONT) ELEVATION
SCALE: 1/8" = 1'-0"



PODIUM WEST (SIDE) ELEVATION
SCALE: 1/8" = 1'-0"



PODIUM EAST (SIDE) ELEVATION
SCALE: 1/8" = 1'-0"

THE PASEOS
111 BELLVILLE AVENUE
08 OCTOBER, 2009

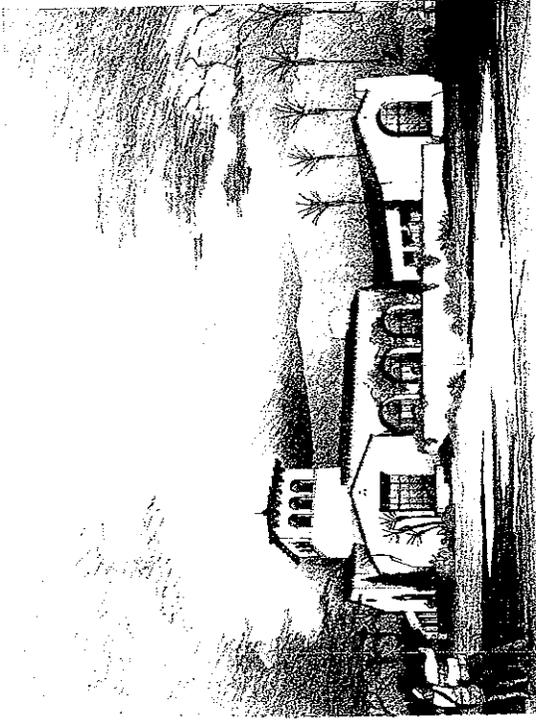
HEIGHT VARIANCE EXHIBIT

AC202

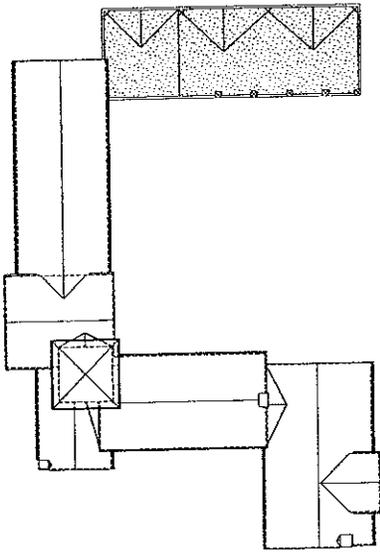
DESIGNARC
Professional Services, Inc. • Irvine, CA 92618 • 949.453.8888



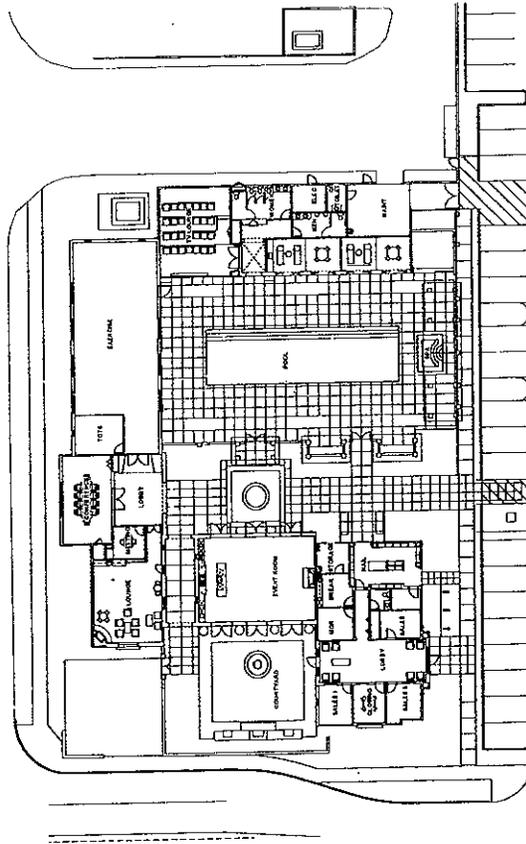
MONTE VISTA & MORENO STREET, MONTCLAIR, CA



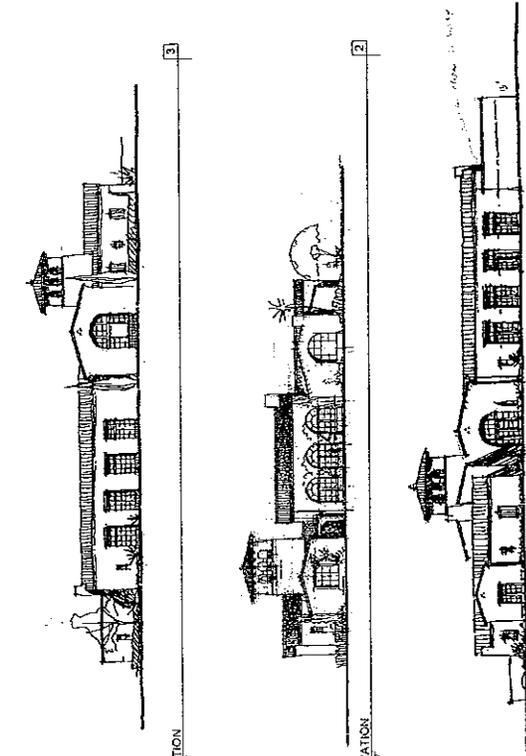
AMENITY BUILDING RENDERING
SCALE: 1/8" = 1'-0"



AMENITY BUILDING ROOF PLAN
SCALE: 1/8" = 1'-0"



AMENITY BUILDING FLOOR PLAN
SCALE: 1/8" = 1'-0"



WEST ELEVATION
SCALE: 1/8" = 1'-0"

SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

EAST ELEVATION
SCALE: 1/8" = 1'-0"

THE
PASEOS
AT BASTILLE (S11)

18 MARCH, 2010

GLAF PATTERS
MONTE VISTA & MORENO STREET, MONTCLAIR, CA

AMENITY BUILDING PLANS + ELEVATION



AD101

200 Grand Avenue, San Diego, CA 92101
Tel: 619.594.8888

ELEVATION KEYNOTES

GENERAL COMMENTS:
 1. ALL WALLS SHALL BE CONCRETE UNLESS OTHERWISE NOTED.
 2. ALL WALLS SHALL BE FINISHED WITH THE FOLLOWING MATERIALS UNLESS OTHERWISE NOTED.
 3. ALL WALLS SHALL BE FINISHED WITH THE FOLLOWING MATERIALS UNLESS OTHERWISE NOTED.
 4. ALL WALLS SHALL BE FINISHED WITH THE FOLLOWING MATERIALS UNLESS OTHERWISE NOTED.

FINISHES:
 1. CONCRETE: UNLESS OTHERWISE NOTED, ALL FINISHES SHALL BE AS SHOWN.
 2. INTERIORS:
 2.1. WALLS: UNLESS OTHERWISE NOTED, ALL FINISHES SHALL BE AS SHOWN.
 2.2. CEILING: UNLESS OTHERWISE NOTED, ALL FINISHES SHALL BE AS SHOWN.
 2.3. FLOORING: UNLESS OTHERWISE NOTED, ALL FINISHES SHALL BE AS SHOWN.
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 2.18. OTHER: UNLESS OTHERWISE NOTED, ALL FINISHES SHALL BE AS SHOWN.

WALL & SYMBOL LEGEND

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GENERAL NOTES

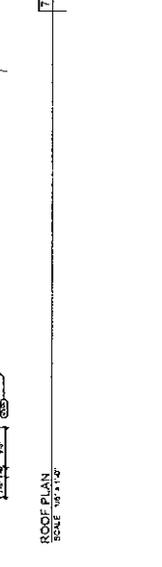
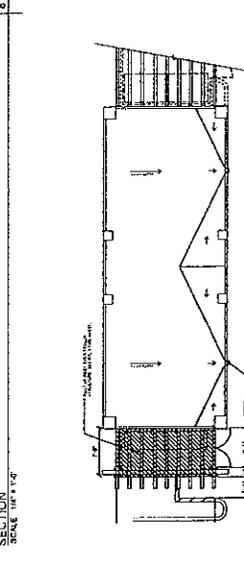
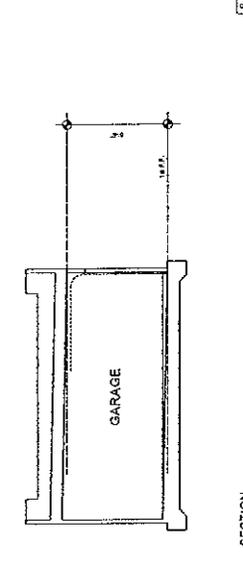
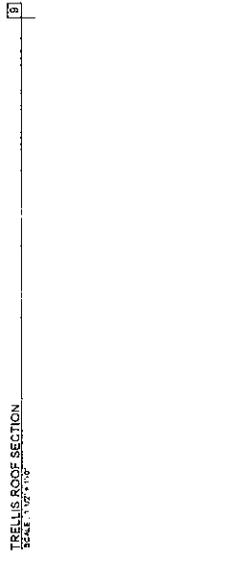
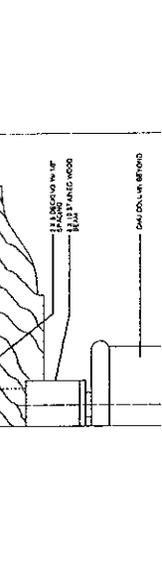
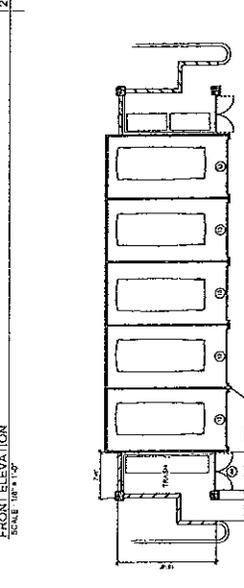
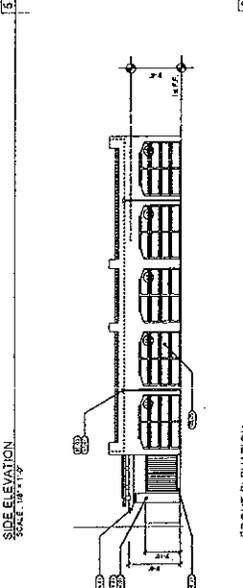
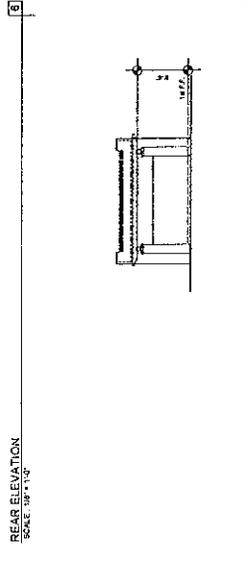
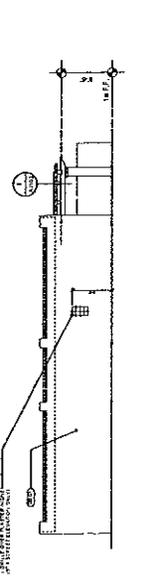
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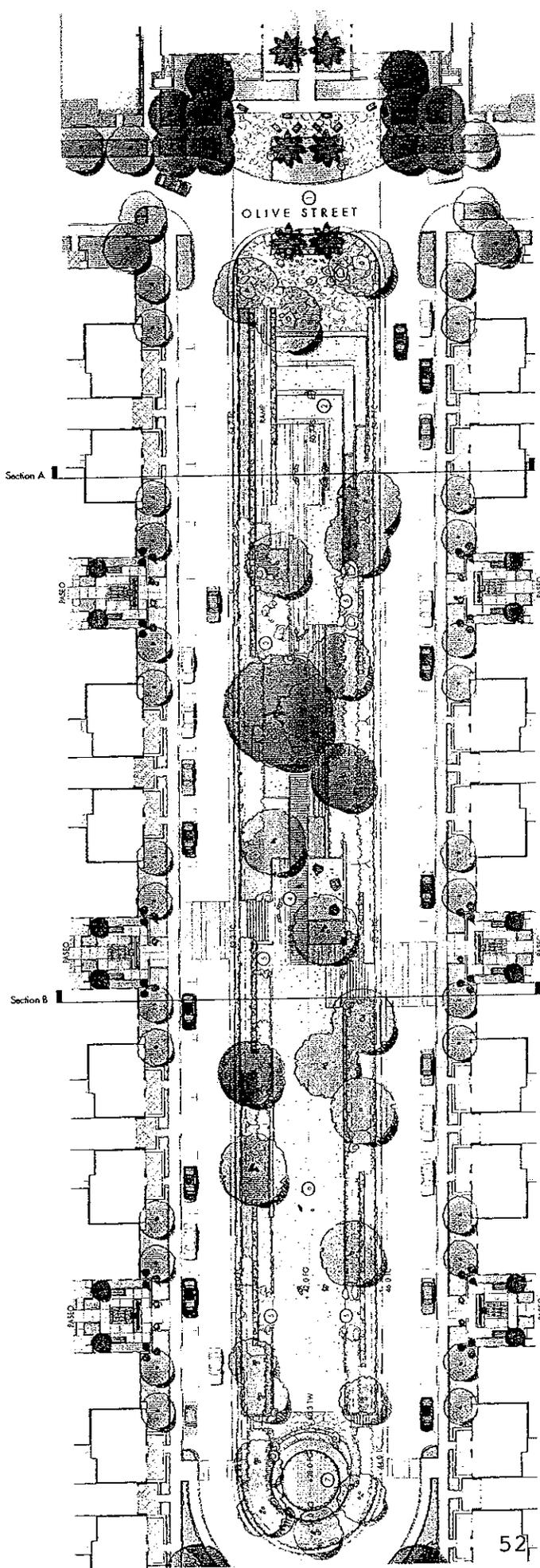
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DETACHED GARAGES

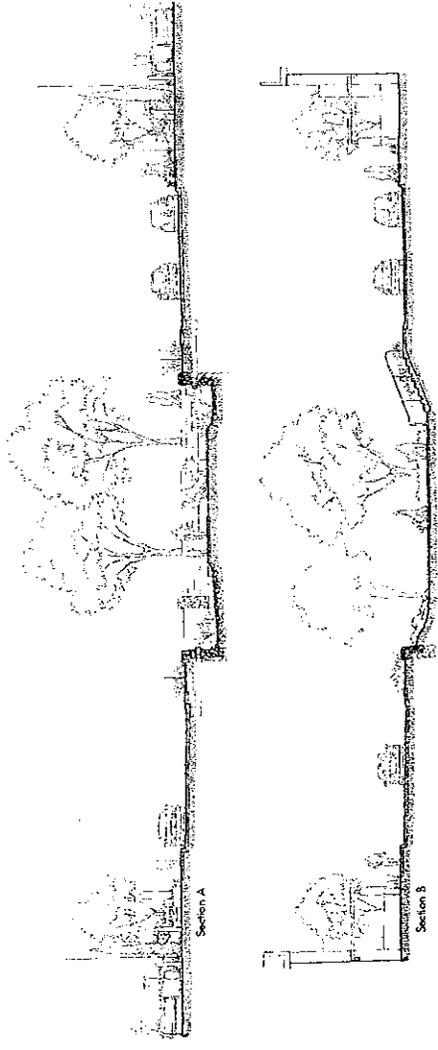
AJ102

1100 11th Street
 Minneapolis, MN 55408





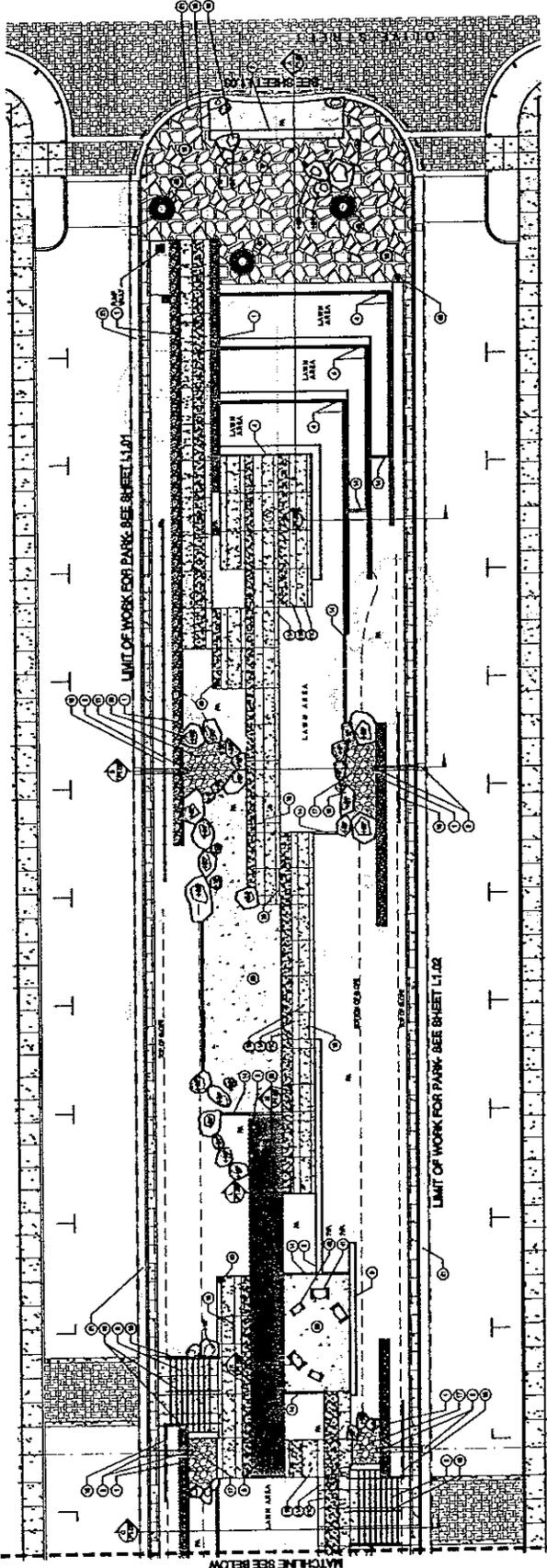
- LEGEND**
- 1. Plaza
 - Bubbling Fountain
 - California Sycamore
 - Improved Paving
 - 2. Amphitheater
 - Stepped Turf Terraces
 - Concrete Suel Walls
 - 20' x 30' Stage
 - 3. Playground
 - Sand and Gravel Basin
 - Non-Structured Play
 - Climbing Rocks
 - Shade Trees
 - Climbing Tree
 - 4. Bridge
 - Wooden Bridge
 - Park Story Board
 - Sculptural Seating
 - Steps Into Park
 - 5. Stormwater System
 - Stormwater Drains
 - Gabion Wall with Scupper
 - Percolation Pit
 - 6. Green
 - Turf Play
 - Sunbathing
 - Reading Grounds
 - 7. Basin
 - Stone Steps
 - Infiltration Basin
 - Butterfly Garden
 - Seating Boulders



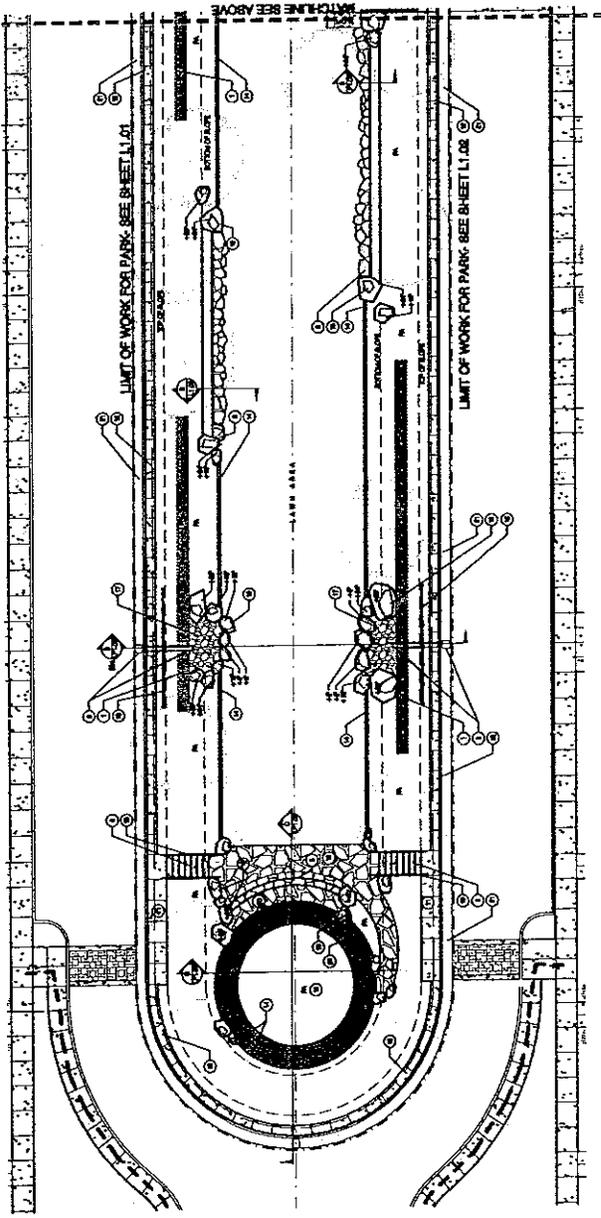
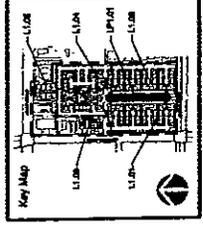
The Arroyo

TBD
PASEOS
 11/11/2009

THE
PASEOS
 11 BRISTOL LANE
 WILMINGTON, MASSACHUSETTS 01890
 TEL: 508-653-1111
 FAX: 508-653-1119
 WWW: www.paseos.com
 1000 STATE STREET, SUITE 200
 WILMINGTON, MASSACHUSETTS 01890
 TEL: 508-653-1111
 FAX: 508-653-1119
 WWW: www.paseos.com



SYMBOL	DESCRIPTION	DETAIL
1	Asphalt	Asphalt
2	Gravel	Gravel
3	Concrete	Concrete
4	Reinforcing Steel	Reinforcing Steel
5	Structural Steel	Structural Steel
6	Wood Decking	Wood Decking
7	Wood Joists	Wood Joists
8	Wood Posts	Wood Posts
9	Wood Girders	Wood Girders
10	Wood Trusses	Wood Trusses
11	Wood Rafters	Wood Rafters
12	Wood Siding	Wood Siding
13	Wood Shingles	Wood Shingles
14	Wood Trim	Wood Trim
15	Wood Stairs	Wood Stairs
16	Wood Railings	Wood Railings
17	Wood Fencing	Wood Fencing
18	Wood Posts	Wood Posts
19	Wood Girders	Wood Girders
20	Wood Trusses	Wood Trusses
21	Wood Rafters	Wood Rafters
22	Wood Siding	Wood Siding
23	Wood Shingles	Wood Shingles
24	Wood Trim	Wood Trim
25	Wood Stairs	Wood Stairs
26	Wood Railings	Wood Railings
27	Wood Fencing	Wood Fencing
28	Wood Posts	Wood Posts
29	Wood Girders	Wood Girders
30	Wood Trusses	Wood Trusses
31	Wood Rafters	Wood Rafters
32	Wood Siding	Wood Siding
33	Wood Shingles	Wood Shingles
34	Wood Trim	Wood Trim
35	Wood Stairs	Wood Stairs
36	Wood Railings	Wood Railings
37	Wood Fencing	Wood Fencing
38	Wood Posts	Wood Posts
39	Wood Girders	Wood Girders
40	Wood Trusses	Wood Trusses
41	Wood Rafters	Wood Rafters
42	Wood Siding	Wood Siding
43	Wood Shingles	Wood Shingles
44	Wood Trim	Wood Trim
45	Wood Stairs	Wood Stairs
46	Wood Railings	Wood Railings
47	Wood Fencing	Wood Fencing
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50	Wood Trusses	Wood Trusses
51	Wood Rafters	Wood Rafters
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92	Wood Siding	Wood Siding
93	Wood Shingles	Wood Shingles
94	Wood Trim	Wood Trim
95	Wood Stairs	Wood Stairs
96	Wood Railings	Wood Railings
97	Wood Fencing	Wood Fencing
98	Wood Posts	Wood Posts
99	Wood Girders	Wood Girders
100	Wood Trusses	Wood Trusses



RESOLUTION NO. 10-2841

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING A VARIANCE FOR SIDE-YARD SETBACKS ASSOCIATED WITH A PROPOSED 385-UNIT RESIDENTIAL DEVELOPMENT AT THE NORTHEAST CORNER OF MONTE VISTA AVENUE AND MORENO STREET WITHIN THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN (ASSESSOR'S PARCEL NOS. 1008-011-23 AND 27-28 AND 1008-161-19, 20, AND 24-26)

WHEREAS, Montclair I MGP Partners, LLC, filed an application on October 14, 2009 for a Tentative Tract Map, Precise Plan of Design (PPD), and the above-captioned variance under Case No. 2009-21 in conjunction with a proposal to construct a 385-unit residential development in the 8900 and 9000 blocks of Monte Vista Avenue; and

WHEREAS, on May 15, 2006, the Montclair City Council adopted the North Montclair Downtown Specific Plan (NMDSP), establishing guidelines for development on numerous parcels of land totaling approximately 150 acres in area; and

WHEREAS, the subject site is located within the "Corridor Residential" and "Neighborhood Residential" land use districts of the NMDSP; and

WHEREAS, the NMDSP designates a portion of the site where this variance request applies as the Corridor Residential (CR) zone and a portion as the Neighborhood Residential (NR) zone; and

WHEREAS, the NMDSP governs the development on the subject site and sets forth standards for development including a side-yard setback of 5'-0" for both of the aforementioned zoning districts; and

WHEREAS, one variance request applies to three single-story, detached garage buildings proposed along the east property line of the site. The variance would allow a reduction from five feet (5'-0") to an average of two feet (2'-0") between the back of the garage building and the existing masonry walls separating the site from the adjacent single-family properties; and

WHEREAS, the second setback variance request applies to the placement of two (2), single-story, detached garage buildings that are proposed for the west side of the property at the common property line with the adjoining parcel currently developed with an EZ Lube auto service facility. The variance would allow a reduction from five feet (5'-0") to a zero (0'-0") setback along the property line for the subject buildings; and

WHEREAS, the NMDSP requires City Council review and approval of all entitlements for projects within the boundary of the NMDSP; and

WHEREAS, the Planning Commission of the City of Montclair conducted public hearings on February 8 and March 22, 2010, and considered said application in the manner prescribed by law; and

WHEREAS, the Planning Commission of the City of Montclair reviewed and recommended approval of said variances at its March 22, 2010 meeting, as contained in Planning Commission Resolution No. 10-1716; and

WHEREAS, the City Council of the City of Montclair finds the requested entitlements to be consistent with the adopted General Plan and the North Montclair Downtown Specific Plan and following good planning principles; and

WHEREAS, the City Council conducted a duly noticed public hearing on May 3, 2010, at which time all interested parties were provided an opportunity to give testimony for or against the proposal; and

WHEREAS, based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment for the application, the City Council finds that no subsequent or supplemental environmental document is required pursuant to the California Environmental Quality Act (CEQA) in connection with the review and approval of this application based upon the following findings and determinations:

A. Pursuant to the California Environmental Quality Act (CEQA), the City certified an Environmental Impact Report (EIR) on August 15, 2006, in connection with the City's approval of the North Montclair Downtown Specific Plan and its anticipated improvements. Pursuant to CEQA Guidelines Sections 15162 and 15182, no subsequent or supplemental EIR or Negative Declaration is required in connection with subsequent discretionary approvals of the same project unless: (1) substantial changes are proposed to the project that indicate new or more severe impacts on the environment; (2) substantial changes have occurred in the circumstances under which the project was previously reviewed that indicates new or more severe environmental impacts; or (3) new important information shows the project will have new or more severe impacts than previously considered; or (4) additional mitigation measures are now feasible to reduce impacts or different mitigation measures can be imposed to substantially reduce impacts.

B. The City Council finds, in connection with the proposed Paseos project (Case No. 2009-21), that substantial changes to the project or the circumstances surrounding the proposed project have not changed which would create new or more severe impacts than those evaluated in the previously certified EIR. The Paseos project conforms to the requirements of the NMDSP and is consistent with land use designations and density standards for the subject site. Staff further finds that the project will not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and that additional or different mitigation measures are not required to reduce the impacts of the project to a level of less than significant.

C. The City Council finds there is no substantial evidence the project may have a significant effect on the environment and directs staff to prepare a Notice of Exemption and a DeMinimis finding of no effect on fish and wildlife.

D. Based on these findings and all evidence in the record, the City Council concurs with staff's determination that no additional environmental review is required pursuant to CEQA in connection with the City's consideration of Case No. 2009-21 for The Paseos residential community development

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

SECTION 1. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of Variance No. 2009-21:

Variance Findings for Setback of Garages at East Boundary

- A. Because of special circumstances applicable to the subject property, including its size, shape, topography, location, or surroundings, the strict application of the provisions of Title 11 of the Montclair Municipal Code are found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications. The property is impacted along its easterly boundary by the placement of existing boundary wall enclosing the rear yards of the adjacent residential properties that encroach onto the subject site and impact the proposed development. The proposed setback variance would allow the existing wall to be retained in its present location, avoid disruption to the adjacent residential properties, and limit the impact to the proposed development of the subject site.
- B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners in the vicinity and under identical zone classifications. The project is a high-density residential development within the NMDSP and most similar to other multifamily developments within the City where detached garages have often been permitted with little to no setback requirements in order to allow better utilization of the site. The variance would allow the proposed garages to be placed on the site in a similar manner as other multi-family developments in the City. More importantly, the proposed variance applies only to three separate locations representing less than 15 percent (approximately 160 feet total) of the total 1,101-foot-long east property line.
- C. The granting of such variance will not be materially detrimental to public welfare or injurious to other property or improvements in the vicinity and zone in which the property is located. The proposed setback variance would eliminate isolated and unusable spaces that would be created behind the proposed garages and existing boundary wall. The probability of dumping, neglect, or other unwanted activities would be substantially reduced. Moreover, the garages are finished on all sides, and designed with a "flat" roof design and parapet, which is designed to prevent storm runoff from impacting adjacent properties. Further, no openings in the back or side walls of the garage buildings are proposed, and privacy to adjacent properties will not be adversely impacted.
- D. The granting of such variance will not be contrary to the objectives of any part of the adopted General Plan. The General Plan and NMDSP also place a strong emphasis on maintaining the appearance, character, and vitality of the community and on implementing the Municipal Code in an appropriate fashion.

Variance Findings for Setback of Garages at EZ Lube Boundary

- A. Because of special circumstances applicable to the subject property, including its size, shape, topography, location or surroundings, the strict application of the provisions of Title 11 of the Montclair Municipal Code are found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications. The development of the subject site is impacted by an existing, nonconforming commercial use on a property that cuts into the subject site and presents an adverse impact. Until the present use of the adjacent property is discontinued and replaced with a development that conforms to the NMDSP, the proposed setback variance for the garages in this location would allow for a permanent separation and protection of the proposed residential development.
- B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners in the vicinity and under identical zone classifications. The project is a high-density residential development in the NMDSP area and most similar to other multifamily developments within the City where detached garages have often been permitted with little to no setback requirements in order to allow better utilization of the site. The variance would allow the proposed garages to be placed on the site in a similar manner as other multifamily developments in the City.
- C. The granting of such variance will not be materially detrimental to public welfare or injurious to other property or improvements in the vicinity and zone in which the property is located. The variance would eliminate an isolated and unusable space behind the proposed garages where maintenance would be difficult. More importantly, the garage buildings are well designed with property walls or fences that will serve as a permanent and attractive means to separate the uses on both properties. The proposed garages will have no openings or roof overhangs that would adversely impact the adjacent property or its use.
- D. The granting of such variance will not be contrary to the objectives of any part of the adopted General Plan. The General Plan and NMDSP also place a strong emphasis on maintaining the appearance, character, and vitality of the community and on implementing the Municipal Code in an appropriate fashion.

SECTION 2. Based upon the findings and conclusions set forth in the paragraphs above, the City Council hereby approves the application subject to each and every condition set forth below:

- A. The variance referenced above shall apply only to the buildings described below and in the staff report and as depicted on the approved site plan. All other buildings or structures shall comply with required setbacks as prescribed in the NMDSP.
 - 1. An average two-foot (2'-0") setback for three garage buildings along the east property line.

2. A zero (0'-0") setback for the two garage buildings at the west property line of the site that is shared with the adjacent property currently developed with EZ Lube.
- B. This variance approval shall be valid for six months from the date of City Council action. If no construction drawings have been submitted to the City for plan review within this timeframe, then the approval shall automatically expire without further City action.
 - C. This variance approval shall be implemented in conjunction with entitlements and all conditions of approval granted for Case 2009-21 as contained in City Council Resolution No. 10-2837.

SECTION 3. The location and custodian of the documents and any other material, which constitute the record of proceedings upon which the City Council based its decision, is as follows: City Planner, Planning Division, Community Development Department, City of Montclair, 5111 Benito Street, Montclair, California 91763, or by telephone at (909) 625-9477.

SECTION 4. Effective Date. This Resolution shall become effective upon its adoption.

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. 10-2841 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

RESOLUTION NO. 10-2842

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING A VARIANCE FOR BUILDING HEIGHT ASSOCIATED WITH A PROPOSED 385-UNIT RESIDENTIAL DEVELOPMENT AT THE NORTHEAST CORNER OF MONTE VISTA AVENUE AND MORENO STREET (ASSESSOR'S PARCEL NOS. 1008-011-23 AND 27-28; AND 1008-161-19, 20 AND 24-26)

WHEREAS, Montclair I MGP Partners, LLC, filed an application on October 14, 2009, for a Tentative Tract Map, Precise Plan of Design (PPD), and Variances under Case No. 2009-21 in conjunction with a proposal to construct a 385-unit residential development in the 8900 and 9000 blocks of Monte Vista Avenue; and

WHEREAS, on May 15, 2006, the Montclair City Council adopted the North Montclair Downtown Specific Plan (NMDSP), establishing guidelines for development on numerous parcels of land totaling approximately 150 acres; and

WHEREAS, the NMDSP designates a portion of the site where this variance request applies as the Corridor Residential (CR) zone; and

WHEREAS, the NMDSP governs the development on the subject site and sets forth standards for development, including a building height limit of 45 feet; and

WHEREAS, the variance request applies to only one building, Building F, as depicted on the proposed site plan adjacent to Arrow Highway; and

WHEREAS, the applicant has requested approval to exceed the 45-foot building height limit of the underlying district by approximately 16'-6". If approved, the total building height at the south end of Building F would be 61'-6," as measured from finished grade to the top of the hip roof of said building; and

WHEREAS, the NMDSP requires City Council review and approval of all entitlements for projects within the boundary of the NMDSP; and

WHEREAS, the Planning Commission of the City of Montclair reviewed and recommended approval of said variances at its March 22, 2010 meeting, as contained in Planning Commission Resolution No. 10-1715; and

WHEREAS, the City Council of the City of Montclair finds the requested entitlements to be consistent with the adopted General Plan and the North Montclair Downtown Specific Plan and following good planning principles; and

WHEREAS, the City Council conducted a duly noticed public hearing on May 3, 2010, at which time all interested parties were provided an opportunity to give testimony for or against the proposal; and

WHEREAS, based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment

for the application, the City Council finds that no subsequent or supplemental environmental document is required pursuant to the California Environmental Quality Act (CEQA) in connection with the review and approval of this application based upon the following findings and determinations:

A. Pursuant to the California Environmental Quality Act (CEQA), the City certified an Environmental Impact Report (EIR) on August 15, 2006, in connection with the City's approval of the North Montclair Downtown Specific Plan and its anticipated improvements. Pursuant to CEQA Guidelines Sections 15162 and 15182, no subsequent or supplemental EIR or Negative Declaration is required in connection with subsequent discretionary approvals of the same project unless: (1) substantial changes are proposed to the project that indicate new or more severe impacts on the environment; (2) substantial changes have occurred in the circumstances under which the project was previously reviewed that indicates new or more severe environmental impacts; or (3) new important information shows the project will have new or more severe impacts than previously considered; or (4) additional mitigation measures are now feasible to reduce impacts or different mitigation measures can be imposed to substantially reduce impacts.

B. The City Council finds in connection with the proposed Paseos project (Case No. 2009-21) that substantial changes to the project or circumstances surrounding the proposed project have not changed which would create new or more severe impacts than those evaluated in the previously certified EIR. The Paseos project conforms to the requirements of the NMDSP and is consistent with land use designations and density standards for the subject site. Staff further finds that the project will not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and that additional or different mitigation measures are not required to reduce the impacts of the project to a level of less than significant.

C. The City Council finds there is no substantial evidence the project may have a significant effect on the environment and directs staff to prepare a Notice of Exemption and a DeMinimis finding of no effect on fish and wildlife.

D. Based on these findings and all evidence in the record, the City Council concurs with staff's determination that no additional environmental review is required pursuant to CEQA in connection with the City's consideration of Case No. 2009-21 for The Paseos residential community development.

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

SECTION 1. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of Variance No. 2009-21:

Variance Findings for Building Height of Building F

A. Because of special circumstances applicable to the subject property, including its size, shape, topography, location or surroundings, the strict

application of the provisions of Title 11 of the Montclair Municipal Code are found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications. Building F is proposed on the "notch"-shaped portion of the property that is impacted by a significant change in grade of approximately 15 to 16 feet from Arrow Highway, which is unique on the property and more severe than on any of the adjoining properties.

- B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant, which right is possessed by other property owners in the vicinity and under identical zone classifications. The variance would allow the property owner to develop the property pursuant to the development standards of the NMDSP as they would apply to any property owner with a similar grade and/or slope disparity such as that which exists on the subject portion of the subject site. More specifically, the increased height at the rear of the building would allow the applicant to build the majority of the "tuck-under" parking levels into the existing slope, where it will not be visible to Arrow Highway. In addition, the need for extensive excavation work is reduced significantly than would be the case if a pit were required for the proposed tuck-under parking. Moreover, without the variance, the building would have to be stepped and the possibility of providing efficient parking below the building would be compromised.
- C. The granting of such variance will not be materially detrimental to public welfare or injurious to other property or improvements in the vicinity and zone in which the property is located. The increased height would not impair the use, privacy, or views of another parcel. The only properties potentially impacted would be other buildings within the applicant's proposed development, and existing development (water tank and fire station) on either side of the proposed building. Moreover, the nearest existing residential properties/uses are approximately 520 feet to the southeast of the subject building, where privacy would not be adversely impacted.
- D. The granting of such variance will not be contrary to the objectives of any part of the adopted General Plan or the NMDSP. The variance allows the proposed building to accommodate and integrate subterranean parking as encouraged by the North Montclair Downtown Specific Plan. Because the proposal, as noted herein, meets these goals, staff believes that this finding can be made.

SECTION 2. Based upon the findings and conclusions set forth in the paragraphs above, the City Council hereby approves the application subject to each and every condition set forth below.

- A. The variance approval shall apply only to Building F adjacent to Arrow Highway at the north end of the proposed residential community at the northeast corner of Monte Vista Avenue and Moreno Street. The approved increase in height shall be 16'-6" above the 45-foot height limit for a total

building height 61'-6" for the south end of Building F, as measured from finished grade on the south side of said building to the top of the hip roof.

- B. This variance approval shall be valid for six months from the date of City Council action. If no construction drawings have been submitted to the City for plan review within this time frame, then the approval shall automatically expire without further City action.
- C. This variance approval shall be implemented in conjunction with entitlements and all conditions of approval granted for Case 2009-21, as contained in City Council Resolution No. 10-2837.

SECTION 3. The location and custodian of the documents and any other material, which constitute the record of proceedings upon which the City Council based its decision is as follows: City Planner, Planning Division, Community Development Department, City of Montclair, 5111 Benito Street, Montclair, California 91763, or by telephone at (909) 625-9477.

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. 10-2842 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

AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF ORDINANCE NO. 10-914 AUTHORIZING AN AMENDMENT TO THE CONTRACT WITH THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM	DATE: May 3, 2010 SECTION: PUBLIC HEARINGS ITEM NO.: B FILE I.D.: PER593 DEPT.: ADMIN. SVCS.
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: To provide Section 20475 (Different Level of Benefits) for local miscellaneous members.

BACKGROUND: Current agreements with San Bernardino Public Employees Association (SBPEA) and Montclair's management employees provide for the implementation of Section 20475 (Different Level of Benefits) for local miscellaneous members. This benefit requires an amendment to the City's contract with the California Public Employees' Retirement System (CalPERS). CalPERS requires adoption of an ordinance as part of the implementation process for contract amendments.

FISCAL IMPACT: This proposed contract amendment creates a two-tier retirement program by reducing the retirement benefit for miscellaneous employees hired on or after June 21, 2010. In the future, Montclair's retirement rate and annual costs would decrease as a result of this contract amendment. An actuarial valuation for this contract amendment is not required by CalPERS.

It is extremely difficult to estimate what savings the City would actually realize from this contract amendment and comparing rates between different years can be misleading. The following rate comparison is provided, however, as an example of past experience. In Fiscal Year 2001-02, miscellaneous employees were covered under the 2% @ 55 Full-formula retirement plan with a 0.015 percent employer rate. In Fiscal Year 2009-10, miscellaneous employees were covered under the 3% @ 60 Full-formula retirement plan with a 14.499 percent employer rate. Considering the current weak financial state in California, a rate reduction as significant as the 0.015 percent is not expected for at least ten years.

RECOMMENDATION: Staff recommends the City Council adopt the first reading of Ordinance No. 10-914 authorizing an amendment to the contract with the Board of Administration of the California Public Employees' Retirement System.

Prepared by: <u>Gary E. Charlton</u>	Reviewed and Approved by: <u>[Signature]</u>
Proofed by: <u>Kathy Dalton</u>	Presented by: <u>[Signature]</u>

ORDINANCE NO. 10-914

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MONTCLAIR AUTHORIZING
AN AMENDMENT TO THE CONTRACT
WITH THE BOARD OF ADMINISTRATION
OF THE CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM**

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

SECTION I. That an amendment to the contract between the City Council of the City of Montclair and the Board of Administration, California Public Employees' Retirement System (CalPERS) is hereby authorized, a copy of said amendment being attached hereto, marked "Exhibit" and by such reference made a part hereof as though herein set out in full.

SECTION II. The Mayor of the City Council is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency.

SECTION III. 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 IV. Effective Date.

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

SECTION V. 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. 10-914 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



EXHIBIT

California
Public Employees' Retirement System



AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Montclair



The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective November 1, 1962, and witnessed September 4, 1962, and as amended effective April 8, 1968, December 1, 1968, October 20, 1976, October 10, 1977, December 17, 1979, January 11, 1982, June 27, 1983, September 16, 1985, August 13, 1990, December 31, 1990, June 30, 1995, January 1, 1998, December 18, 2000, July 15, 2002 and June 27, 2005 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

A. Paragraphs 1 through 15 are hereby stricken from said contract as executed effective June 27, 2005, and hereby replaced by the following paragraphs numbered 1 through 17 inclusive:

1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 60 for local miscellaneous members, age 50 for local safety members entering membership in the safety classification on and prior to June 27, 2005 and age 55 for local safety members entering membership for the first time in the safety classification after June 27, 2005.

2. Public Agency shall participate in the Public Employees' Retirement System from and after November 1, 1962 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.

3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
 - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
 - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.

ARTICLE 10

- (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.
 - (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
- a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
- a. **PERSONS COMPENSATED ON AN HOURLY BASIS HIRED ON OR AFTER DECEMBER 1, 1968.**
6. Public Agency and the Monte Vista County Fire Protection District have agreed to a merger of their contracts, and this contract shall be a continuation of the benefits of the contract of the Monte Vista County Fire Protection District, pursuant to Section 20567.5 of the Government Code. Such merger is effective as of January 1, 1967. Legislation repealed said Section effective January 1, 1988.
7. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment before and not on or after July 15, 2002 shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).

DO NOT SIGN "L"

8. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member in employment on or after July 15, 2002 and not entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract shall be determined in accordance with Section 21354.3 of said Retirement Law (3% at age 60 Full).
9. The percentage of final compensation to be provided for each year of credited current service as a local miscellaneous member entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member entering membership in the safety classification on or prior to June 27, 2005 shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
11. The percentage of final compensation to be provided for each year of credited current service as a local safety member entering membership for the first time in the safety classification after June 27, 2005 shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
12. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 20042 (One-Year Final Compensation).
 - b. Section 20965 (Credit for Unused Sick Leave) for local miscellaneous members and local fire members only.
 - c. Sections 21624, 21626 and 21628 (Post-Retirement Survivor Allowance) for local fire members only.
 - d. Section 21572 (Increased Level of 1959 Survivor Benefits) for local miscellaneous members and local fire members only.
 - e. Section 21024 (Military Service Credit as Public Service).
 - f. Section 21573 (Third Level of 1959 Survivor Benefits) for local police members only.

- g. Section 20475 (Different Level of Benefits). Section 21362.2 (3% @ 50 Full formula) is applicable to only those local safety members entering membership in the safety classification on or prior to June 27, 2005. Section 21363.1 (3% @ 55 Full formula) is applicable to local safety members entering membership for the first time in the safety classification after June 27, 2005.

Section 21353 (2% @ 60 Full formula) is applicable to local miscellaneous members entering membership for the first time in the miscellaneous classification after the effective date of this amendment to contract.

- 13. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on October 10, 1977. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
- 14. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
- 15. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local police members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

16. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
17. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MONTCLAIR

BY _____
LORI MCGARTLAND, CHIEF
EMPLOYER SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF FILING OF A NOTICE OF COMPLETION FOR CITY OF MONTCLAIR POLICE DEPARTMENT FACILITY BID PACKAGE NO. 10-ROOFING, WATERPROOFING, SHEET METAL, AND METAL ROOFING; REDUCTION OF FAITHFUL PERFORMANCE BOND TO 10 PERCENT; AND RETENTION OF PAYMENT BOND FOR SIX MONTHS	DATE: May 3, 2010 SECTION: ADMIN. REPORTS ITEM NO.: 1 FILE I.D.: PDT765 DEPT.: PUBLIC WORKS
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CONSIDER RELEASE OF RETENTION 30 DAYS AFTER RECORDATION OF NOTICE OF COMPLETION

BUSINESS PLAN: STRATEGIC PRIORITY NOS. 4 AND 5

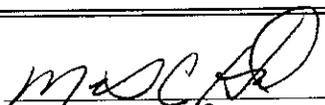
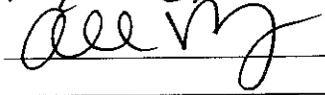
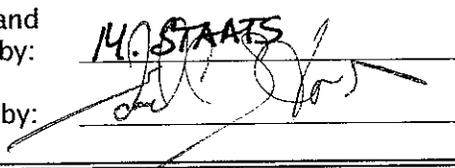
REASON FOR CONSIDERATION: State law requires Notices of Completion to be recorded with the County Recorder upon acceptance of a public works project. Notices of Completion require City Council approval.

Approval of this Notice of Completion would satisfy a portion of Strategic Priority Nos. 4 and 5 as contained in Montclair's "Business Plan."

BACKGROUND: On September 5, 2006, the City Council awarded 20 of 22 separate construction contracts necessary to construct the City's new Police Department facility. The City Council rejected the bids received for Bid Package No. 10-Roofing, Waterproofing, Sheet Metal, and Metal Roofing, and directed staff to readvertise this portion of the work. On December 4, 2006, the City Council awarded Bid Package No. 10-Roofing, Waterproofing, Sheet Metal, and Metal Roofing to Best Roofing & Waterproofing, Inc. All Bid Package No. 10-Roofing, Waterproofing, Sheet Metal, and Metal Roofing work under Agreement No. 06-182 has been completed in a satisfactory manner.

One stop notice was filed against this project by a subcontractor to Best Roofing & Waterproofing, Inc., which ultimately led to litigation. All legal issues have now been resolved at no additional cost to the City. Although named as a defendant in the action brought against Best Roofing & Waterproofing, Inc., the City was indemnified by Best Roofing & Waterproofing, Inc.

FISCAL IMPACT: Bid Package No. 10-Roofing, Waterproofing, Sheet Metal, and Metal Roofing was awarded to Best Roofing & Waterproofing, Inc., in the amount of \$1,486,168. Construction change orders totaling \$91,493 were written for this contract, reducing the total contract amount to \$1,394,675.

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

This is the final Notice of Completion required for the 22 construction contracts related to the construction of the City of Montclair Police Department facility. The table below presents a summary of the construction costs:

Total bid amount for 22 separate contracts	\$23,624,621	
Construction change orders	\$1,364,302	(+5.77%)
Final construction cost	\$24,988,923	

Other construction related expenses included the following:

• Special Roof Inspections	\$85,000
• Geotechnical/Rebar/Concrete testing	\$161,460
• Construction staking	\$50,363
• Construction management	\$2,394,766
• Miscellaneous construction costs	\$100,929
Subtotal	\$2,792,518

Total for all construction/construction-related expenses \$27,781,441

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

1. Approve the filing of a Notice of Completion for City of Montclair Police Department facility Bid Package No. 10-Roofing, Waterproofing, Sheet Metal, and Metal Roofing work.
2. Reduce Faithful Performance Bond to 10 percent.
3. Retain Payment Bond for six months.
4. Release retention 30 days after recordation of Notice of Completion.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Montclair, City Clerk's Office
5111 Benito Street/P. O. Box 2308
Montclair, CA 91763

APN NO. : 1007-711-07

(Space above this line for Recorder's Use)

NOTICE OF COMPLETION

NOTICE is hereby given that:

The undersigned is the owner of an interest of estate in the hereinafter described property, the nature of which said interest or estate is: fee

The full name and address of the undersigned is Michael C. Hudson, City Engineer
City of Montclair
5111 Benito Street
Montclair, CA 91763

The work was completed on that certain work known as Police Department Facility-Bid Package No. 10

for the undersigned City of Montclair, a Municipal Corporation, on the 22nd day of April, 2010

The City accepted the job on the 3rd day of May, 2010

The Contractor on said job was Best Roofing & Waterproofing, Inc.
18027 S. Hamilton Avenue
Gardena, CA 90248

The improvement consisted of Roofing, Waterproofing, Sheet Metal, and Metal Roofing

The property upon which said work of improvement was completed is described as: 4870 Arrow Highway
Montclair, CA

VERIFICATION

I, the undersigned, say that I am agent for the owner of the aforesaid interest or estate in the property described in the above notice.

I have read the foregoing notice and know and understand the contents thereof, and the facts stated herein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: _____ at 5111 Benito Street, Montclair, California

City Engineer, City of Montclair

AGENDA REPORT

SUBJECT: CONSIDER AUTHORIZATION TO TRANSFER AFTER-SCHOOL PROGRAM PERSONNEL GRANT FUNDS TO AFTER-SCHOOL PROGRAM SUPPLIES AND CONTRACT ACCOUNTS	DATE: May 3, 2010 SECTION: ADMIN. REPORTS ITEM NO.: 2 FILE I.D.: HSV030 DEPT.: COMMUNITY DEV.
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: The transfer of funds from personnel accounts to services and/or supplies accounts requires City Council approval.

BACKGROUND: During the Fiscal Year 2010-11 budgetary process, the Human Services Division anticipated an increase in After-School Program (ASP) personnel costs would be needed to adequately staff an expanded ASP. However, employee attrition during the fiscal year resulted in a balance of \$130,500 remaining in the ASP Personnel Account, which would be returned to the State of California After School Education and Safety (ASES) Program grant fund if not expended by the City before June 30, 2010. To avoid this outcome, staff is requesting these funds be transferred to the ASP Supplies and Contract Accounts to purchase a variety of curriculum and enrichment supplies and materials to support new and extended programs, such as tutoring and science classes.

FISCAL IMPACT: The proposed transfer shifts \$130,500 in ASP grant moneys allocated for personnel expenditures to the ASP Supplies and Contract Accounts. There would be no direct fiscal impact on the City's General Fund associated with the proposed transfer of ASP grant funds.

RECOMMENDATION: Staff recommends the City Council authorize the transfer of \$130,500 from the ASP Personnel Account to the ASP Supplies and Contract Accounts to purchase ASP services and/or supplies.

Prepared by: <u>M. Richter</u>	Reviewed and Approved by: <u>[Signature]</u>
Proofed by: <u>Christine Sniechaly</u>	Presented by: <u>[Signature]</u>

AGENDA REPORT

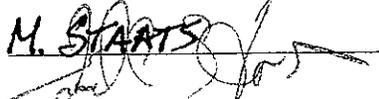
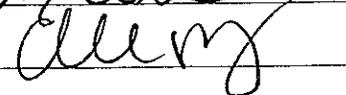
SUBJECT: CONSIDER STATUS REPORT ON EMERGENCY CONTRACTING PROCEDURES RELATED TO THE DAMAGED FLOOR IN THE COMMUNITY CENTER GYMNASIUM AND DETERMINE THERE IS A NEED TO CONTINUE THE ACTION	DATE: May 3, 2010 SECTION: ADMIN. REPORTS ITEM NO.: 3 FILE I.D.: CVC060 DEPT.: PUBLIC WORKS
BUSINESS PLAN: N/A	

REASON FOR CONSIDERATION: By City Council action on April 5, 2010, Resolution No. 10-2831 was adopted declaring a need for emergency contracting procedures for certain repairs at the Community Center gymnasium. Under Public Contract Code Section 22050, the governing body shall review the emergency action at its next regularly scheduled meeting and every regularly scheduled meeting thereafter until the action is terminated to determine, by a four-fifths majority vote, that there is a need to continue the action.

BACKGROUND: On March 10, a City staff inspection of the hardwood floor in the Community Center gymnasium revealed significant water damage. In the eastern quadrant of the gymnasium, hardwood floor panels were found to be raised, warped, and cupped to various degrees, creating a potentially hazardous condition to participants in scheduled gymnasium activities. The Acting City Manager directed a temporary prohibition of all athletic activities on the eastern quadrant of the gymnasium. Nonathletic activities will be allowed but will be subject to certain cautionary measures.

Resolution No. 10-2831 makes the necessary findings to acquire the services of any specialists that may be required to determine the cause and extent of the damage and to make the necessary repairs. It also delegates authority to the Acting City Manager to order the work done. Implicit in that delegation is the authority to sign contracts.

The City's insurance adjuster has inspected the floor and determined that the cause of the damage was water intrusion associated with construction activities at the nearby Senior Center worksite. Subsequent rainfall made it clear that runoff was entering an electrical vault, identified on the construction drawings to be "Protected in Place," and traveling through electrical conduits to the electrical room in the Community Center. The runoff resurfaced in the electrical room and migrated through a wall to the gym floor. The City's contractor has asked a flooring contractor for a price for the repair and is currently in discussions with one of its subcontractors responsible for damaging the electrical vault rather than protecting it in place. It is staff's intent to work with the City's contractor in making the necessary repairs. However, if the repair work has not commenced by May 30, the City will assume repair responsibility and hire its own contractor to perform the work. It is staff's intent to have the floor fully restored by June 30, 2010.

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

FISCAL IMPACT: If repairs are made by the City's contractor, there will be no cost to the City. There is, however, revenue being lost to the City as a result of programs being canceled or moved elsewhere. The projected revenue loss through the end of June is in excess of \$9,000. In the event that the City takes over responsibilities for repairs, the City's cost will be passed on to its contractor. The cost of the repair work may be withheld from progress payments owed the contractor, which could lead to a claim being filed by the contractor.

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

1. Receive and file status report on emergency contracting procedures related to the damaged floor in the Community Center Gymnasium.
2. Determine there is a need to continue the action.

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER
AND PAYROLL DOCUMENTATION

DATE: May 3, 2010

SECTION: ADMIN. REPORTS

ITEM NO.: 4

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 May 3, 2010, and Payroll Documentation dated March 14, 2010, finds them to be in order and recommends their approval.

FISCAL IMPACT: The Warrant Register dated May 3, 2010, totals \$954,153.94. The Payroll Documentation dated March 14, 2010, totals \$602,172.69, with \$450,050.68 being the total cash disbursement.

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

Prepared by:

Alvin Gochon
Zane Kelleck

Reviewed and
Approved by:

[Signature]
[Signature]

Proofed by:

Presented by:

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 10-30 WITH DIETZ TOWING AND AGREEMENT NO. 10-45 WITH PACIFIC TRUCK AND AUTO TOWING, INC., FOR COST RECOVERY FOR VEHICLES STORED PURSUANT TO CALIFORNIA VEHICLE CODE SECTION 14602.6, THE 30-DAY IMPOUND LAW

DATE: May 3, 2010
SECTION: AGREEMENTS
ITEM NO.: 1
FILE I.D.: TOW050
DEPT.: POLICE

BUSINESS PLAN: N/A

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 10-30 with Dietz Towing and Agreement No. 10-45 with Pacific Truck and Auto Towing, Inc., to recover costs for all vehicles towed pursuant to California Vehicle Code Section 14602.6, the 30-day impound law. The proposed Agreements have been reviewed and approved by the City Attorney and are attached for the City Council's review and consideration.

BACKGROUND: The City's current contracts with Dietz Towing and Pacific Truck and Auto Towing, Inc., govern cost-recovery funds for vehicles towed pursuant to California Vehicle Code Section 14602.6, the 30-day impound law. Under the current contracts, which are on a month-to-month basis, the City does not receive funds for vehicles that are released prior to 30 days of storage or for lien vehicles sold after the 30-day impoundment period.

Under the new Agreements, the City would receive cost-recovery funds for all vehicles towed pursuant to California Vehicle Code Section 14602.6, regardless of the number of days stored.

If approved by the City Council, proposed Agreement No. 10-30 with Dietz Towing and Agreement No. 10-45 with Pacific Truck and Auto Towing, Inc., would become effective May 4, 2010, and would remain in effect until terminated by either party, with or without cause, upon written notice to each party at least 30 days prior to the date specified for such termination.

FISCAL IMPACT: Under the current contracts, the City receives approximately \$89,200 annually from the tow companies. Should the City Council approve the proposed Agreements, annual revenue from the tow companies would be approximately \$134,000.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 10-30 with Dietz Towing and Agreement No. 10-45 with Pacific Truck and Auto Towing, Inc., for cost recovery for vehicles stored pursuant to California Vehicle Code Section 14602.6, the 30-day impound law.

Prepared by: Steve Perry

Reviewed and Approved by:

H. Robinson

Proofed by: Sharda Rajgiani

Presented by:

[Signature]

AGREEMENT FOR SERVICES

This agreement for Services is made and entered into by and between the City of Montclair (hereinafter the "City") and Dietz Towing (hereinafter the Official Police Tow Service or "OPTS") as follows:

Recitals

1. The City desires to enter into an agreement with OPTS for tow truck services resulting from calls-for-service from or by the City.
2. The provisions of this Agreement shall apply only to the towing and storage of vehicles, contracted as a result of police activity or as requested by the City.
3. "Towing Operation" shall be defined as the activity of towing vehicles for compensation within the City of Montclair. Towing operation includes the storing of vehicles and all other services performed incident to towing.
4. In order to qualify for the status of, and be authorized to refer to itself as an Official Police Tow Service, it is necessary that the OPTS accept the terms and conditions of this Agreement for Services.

Therefore, in consideration of the above, and the mutual agreements as set forth below, the parties agree as follows:

1. OPTS shall conduct business in an ethical orderly manner, endeavoring to obtain and keep the confidence of the community. Responses to calls for towing and/or service from the City shall be provided in a prompt and professional manner.
2. The OPTS is an independent contractor and will determine the method, detail, and means of providing the service under the Agreement. As an independent contractor, employees, officers, and agents shall not be construed for any purpose whatsoever to be employees of the City or be eligible for any City-provided benefits including health and life insurance, leave, deferred compensation, retirement benefits including those retirement benefits offered under CalPERS or any other benefits offered by or through CITY to its employees or officers. Regardless of the OPTS' independent contractor status all records, equipment, and storage facilities of the OPTS are subject to review and inspection by the City. The Chief of Police or his designee shall be responsible for carrying out the rights and duties of the City under this Agreement.
3. The OPTS shall comply with all applicable laws and ordinances that regulate tow units and impounds, towing, illegally parked vehicles, and impounding vehicles.
4. Tow operators shall abide by the decisions of Police Officers and shall cooperate in removing hazards, illegally parked vehicles, and in impounding vehicles.

5. The OPTS shall have capability of receiving calls from Police communications and dispatch tow units 24 hours per day, 365 days per year. Priority shall be given to calls from Police communication facilities. This priority service does not include non-hazardous citizen service calls made through Police communication facilities.
6. The OPTS shall keep its storage lot(s) open Monday through Friday (excepting holidays) for releasing vehicles from 8:00 a.m. to 5:00 p.m. OPTS may, at its discretion, release vehicles between 5:00 p.m. and 8:00 a.m.
7. Storage lots must be fenced or otherwise secured for maximum security and reasonably lighted during the hours of darkness. It is the responsibility of the OPTS to protect police stored/impounded vehicles until the vehicles have either been properly released to their owners or disposed of through the legal process.
8. The OPTS has the responsibility of safeguarding all articles left in impounded vehicles. All property left in vehicles shall be listed on the vehicle Impound/Storage Inventory Report. Any article removed for any reason shall be properly identified on the OPTS copy of the Impound/Storage Report.
9. The Impound/Storage Report shall be signed by the involved officer. The tow operator shall also sign the report. Unless directed by a Police Department supervisor, the OPTS shall not tow a vehicle without a signed Impound/Storage Report.
10. OPTS shall abide by all applicable ordinances and statutes when disposing of unclaimed vehicles and property.
11. OPTS shall maintain comprehensive, broad form, general public liability and automobile insurance against claims and liabilities from personal injury, death or property damage arising from OPTS' activities. Said insurance shall provide protection of at least Two Million Dollars (\$2,000,000.00) for any one person, and Two Million Dollars (\$2,000,000.00) for one accident or occurrence for bodily injury or death, and at least Two Million Dollars (\$2,000,000.00) for property damage. Current copies of said policies shall be provided to City and shall contain a provision that they cannot be cancelled or materially changed without thirty (30) days written notice to City. Any lapse in the insurance required hereunder shall terminate the Agreement.

OPTS shall defend, indemnify and hold harmless City, its elected and appointed official, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, including the payment of OPTS of any and all legal costs and attorneys fees, in any manner arising out of any negligent or intentional or willful acts or omissions of OPTS in the performance of this Agreement.

12. Any employee of the OPTS who operates tow trucks and towing equipment shall be appropriately licensed and certified to operate such vehicles and equipment as required by California law.

13. Rates and charges for towing and storage of vehicles contracted as a result of police activity or in the performance of duties as an OPTS shall not exceed those rates known as "CHP" rates for the local area. Rates and charges shall be posted in the office of the OPTS, visible to the public, and all bills shall be itemized. Provided, however, that any changes to the schedule of rates, fees, and charges for administrative and/or service-related costs, including the towing and storage of vehicles, shall be approved by resolution of the City Council of the City of Montclair; and further provided that prior to execution of this Agreement a fee resolution for services defined herein shall be attached to this Agreement as Exhibit 1, and by reference incorporated herein and submitted for approval by the City Council.
14. OPTS shall provide, without charge or fee, towing and service calls for City owned vehicles.
15. In the event the Police Department accepts liability for a tow, no charges will be made for storage fees to the City or other person or business.

When a vehicle is towed as evidence to a crime, officers shall designate on the Storage/Impound Report if the vehicle is related to the suspect, witness or victim. Vehicles towed under this section related to the suspect shall be charged all applicable administration, towing, and storage fees. Except as otherwise provided for in this section, fees shall not be charged on all other vehicles towed and stored under this paragraph.

Responsible parties of vehicles belonging to victims or witnesses of a crime towed under evidence sections, will be notified by the Police Department when their vehicle is ready for release. Upon verified notification, responsible parties have 72 hours to obtain their vehicles. After the 72 hours has expired, OPTS may charge storage and other applicable fees beginning on the first calendar day immediately following expiration of the 72 hour notice period.

16. Any person or persons conducting a towing operation shall maintain a storage facility within the geographic boundaries of the City of Montclair and shall abide by all the laws that govern a business within the City, and shall meet and satisfy all business licensing requirements on a timely basis.
17. In partial exchange for the privileges granted by this agreement, the OPTS shall collect all applicable towing and storage fees prior to releasing vehicles. The OPTS shall transmit one-half (1/2) of all storage fees collected related to 30-day vehicle impounds, per CVC sections 14602.6 and 14602.7, to the City and retain one-half (1/2) of such fees as compensation for its storage services. This shall apply to all vehicles towed under this Agreement whether or not they remained in storage for thirty (30) days or were released for any reason on an earlier or later date. Towing charges may be retained in full by the OPTS.

On the 5th day of each month, the OPTS shall deliver to the Chief of Police or his designee an itemized list of the storage fees collected by the OPTS for the preceding month, together with any and all payments due the City. Concurrently, OPTS shall also deliver an itemized report of all vehicles towed for the preceding month pursuant to the terms of this agreement. Information contained in the report shall include a description of the vehicle; condition of vehicle at the time of tow; condition of vehicle at the time of release to owner if applicable; OPTS report of damage to vehicle caused by towing or storage if applicable; any reported damage to vehicle by the owner at the time of release if applicable; Vehicle Identification Number; license plate number; tow and release dates; and any other information that may be requested from time-to-time by the Chief of Police or his designee.

18. It is further agreed that in partial exchange for the privileges granted by this agreement, and as authorized by state law, local ordinance, or court of competent jurisdiction the OPTS shall administer, process, and conduct the lien sale of vehicles in storage pursuant to provisions of this Agreement and collect all fees forthwith and transmit one-half (1/2) of such fees collected [per CVC sections 9800-9802 and 22851-22851.12], to the City and retain the balance of such fees as compensation for its services. This section shall apply to all vehicles towed under this Agreement and sold at lien sale. On the 5th day of each month, the OPTS shall deliver to the Chief of Police or his designee an itemized list of the lien sale fees collected by the OPTS for the preceding month, together with any and all payments due the City.
19. In the event that more than one tow service operates as an OPTS for the City, each OPTS shall accept the decision of the Chief of Police as it relates to the assignment of calls. The City will make a reasonable attempt to equally distribute the calls-for-service on a "rotation" basis. However, the City retains the right to assign calls at its discretion when it determines that a particular service or equipment is required or an OPTS is convenient to the particular call for service. If the OPTS assigned a call for service is not on scene with the necessary equipment or service within 30 minutes from the time of call to the OPTS (unless a delayed response is agreed upon by the City), the next OPTS on the rotation will be assigned the call and the previous OPTS forfeits the call. In the event that the City and/or the general public experience displays of unprofessional, unqualified, unresponsive and/or other questionable service by an OPTS, and such displays of inadequate service are reported to the City and found to be legitimate, the City, at its discretion, may elect to direct any or all calls for towing and/or service to a designated OPTS, and may maintain such designation until such time the competing OPTS can demonstrate to the City's satisfaction that it can appropriately serve the City and the general public.
20. OPTS agrees that no person shall be excluded from service in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, sexual orientation, or place of national origin. OPTS agrees to comply with all county, state, and federal laws relating to equal employment opportunity rights.

21. Any changes in ownership, location, or form of doing business of the OPTS shall be reported to the Chief of Police within 24 hours.
22. The City Manager or his designee shall have the authority to settle any claim or dispute involving the City and OPTS.
23. This Agreement is not assignable.
24. This agreement may be suspended at any time by the Chief of Police or his designee upon determination by the Chief of Police or his designee that cause exists for termination of the Agreement or that OPTS has breached any provision of this Agreement.
25. This Agreement may be terminated, without cause, by either party, with 30 days written notice.
26. Any breach of the Agreement is subject to termination of the Agreement forthwith.
27. The OPTS shall comply in all respects with the State of California requirements for Worker's Compensation coverage of its employees and annually provide such proof of coverage to the City. Proof of Worker's Compensation insurance shall also be provided upon demand by the City.
28. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties of the Agreement have caused their names to be affixed hereto by the proper officers thereof. This Agreement is signed this _____ day of _____ 2010, at Montclair, California.

**City of Montclair
A Municipal Corporation**

By: _____
Paul M. Eaton, Mayor

Attest:

City Clerk, City of Montclair

AGREEMENT FOR SERVICES

This agreement for Services is made and entered into by and between the City of Montclair (hereinafter the "City") and Pacific Truck and Auto Towing, Inc. (hereinafter the Official Police Tow Service or "OPTS") as follows:

Recitals

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Therefore, in consideration of the above, and the mutual agreements as set forth below, the parties agree as follows:

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7. Storage lots must be fenced or otherwise secured for maximum security and reasonably lighted during the hours of darkness. It is the responsibility of the OPTS to protect police stored/impounded vehicles until the vehicles have either been properly released to their owners or disposed of through the legal process.
8. The OPTS has the responsibility of safeguarding all articles left in impounded vehicles. All property left in vehicles shall be listed on the vehicle Impound/Storage Inventory Report. Any article removed for any reason shall be properly identified on the OPTS copy of the Impound/Storage Report.
9. The Impound/Storage Report shall be signed by the involved officer. The tow operator shall also sign the report. Unless directed by a Police Department supervisor, the OPTS shall not tow a vehicle without a signed Impound/Storage Report.
10. OPTS shall abide by all applicable ordinances and statutes when disposing of unclaimed vehicles and property.
11. OPTS shall maintain comprehensive, broad form, general public liability and automobile insurance against claims and liabilities from personal injury, death or property damage arising from OPTS' activities. Said insurance shall provide protection of at least Two Million Dollars (\$2,000,000.00) for any one person, and Two Million Dollars (\$2,000,000.00) for one accident or occurrence for bodily injury or death, and at least Two Million Dollars (\$2,000,000.00) for property damage. Current copies of said policies shall be provided to City and shall contain a provision that they cannot be cancelled or materially changed without thirty (30) days written notice to City. Any lapse in the insurance required hereunder shall terminate the Agreement.

OPTS shall defend, indemnify and hold harmless City, its elected and appointed official, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, including the payment of OPTS of any and all legal costs and attorneys fees, in any manner arising out of any negligent or intentional or willful acts or omissions of OPTS in the performance of this Agreement.

12. Any employee of the OPTS who operates tow trucks and towing equipment shall be appropriately licensed and certified to operate such vehicles and equipment as required by California law.

13. Rates and charges for towing and storage of vehicles contracted as a result of police activity or in the performance of duties as an OPTS shall not exceed those rates known as "CHP" rates for the local area. Rates and charges shall be posted in the office of the OPTS, visible to the public, and all bills shall be itemized. Provided, however, that any changes to the schedule of rates, fees, and charges for administrative- and/or service-related costs, including the towing and storage of vehicles, shall be approved by resolution of the City Council of the City of Montclair; and further provided that prior to execution of this Agreement a fee resolution for services defined herein shall be attached to this Agreement as Exhibit 1, and by reference incorporated herein and submitted for approval by the City Council.
14. OPTS shall provide, without charge or fee, towing and service calls for City owned vehicles.
15. In the event the Police Department accepts liability for a tow, no charges will be made for storage fees to the City or other person or business.

When a vehicle is towed as evidence to a crime, officers shall designate on the Storage/Impound Report if the vehicle is related to the suspect, witness or victim. Vehicles towed under this section related to the suspect shall be charged all applicable administration, towing, and storage fees. Except as otherwise provided for in this section, fees shall not be charged on all other vehicles towed and stored under this paragraph.

Responsible parties of vehicles belonging to victims or witnesses of a crime towed under evidence sections, will be notified by the Police Department when their vehicle is ready for release. Upon verified notification, responsible parties have 72 hours to obtain their vehicles. After the 72 hours has expired, OPTS may charge storage and other applicable fees beginning on the ~~third~~ first calendar day immediately following expiration of the 72 hour notice period.

16. Any person or persons conducting a towing operation shall maintain a storage facility within the geographic boundaries of the City of Montclair and shall abide by all the laws that govern a business within the City, and shall meet and satisfy all business licensing requirements on a timely basis.
17. In partial exchange for the privileges granted by this agreement, the OPTS shall collect all applicable towing and storage fees prior to releasing vehicles. The OPTS shall transmit one-half (1/2) of all storage fees collected related to 30-day vehicle impounds, per CVC sections 14602.6 and 14602.7, to the City and retain one-half (1/2) of such fees as compensation for its storage services. This shall apply to all vehicles towed under this Agreement whether or not they remained in storage for thirty (30) days or were released for any reason on an earlier or later date. Towing charges may be retained in full by the OPTS.

On the 5th day of each month, the OPTS shall deliver to the Chief of Police or his designee an itemized list of the storage fees collected by the OPTS for the preceding month, together with any and all payments due the City. Concurrently, OPTS shall also deliver an itemized report of all vehicles towed for the preceding month pursuant to the terms of this agreement. Information contained in the report shall include a description of the vehicle; condition of vehicle at the time of tow; condition of vehicle at the time of release to owner if applicable; OPTS report of damage to vehicle caused by towing or storage if applicable; any reported damage to vehicle by the owner at the time of release if applicable; Vehicle Identification Number; license plate number; tow and release dates; and any other information that may be requested from time-to-time by the Chief of Police or his designee.

18. It is further agreed that in partial exchange for the privileges granted by this agreement, and as authorized by state law, local ordinance, or court of competent jurisdiction the OPTS shall administer, process, and conduct the lien sale of vehicles in storage pursuant to provisions of this Agreement and collect all fees forthwith and transmit one-half (1/2) of such fees collected [per CVC sections 9800-9802 and 22851-22851.12], to the City and retain the balance of such fees as compensation for its services. This section shall apply to all vehicles towed under this Agreement and sold at lien sale. On the 5th day of each month, the OPTS shall deliver to the Chief of Police or his designee an itemized list of the lien sale fees collected by the OPTS for the preceding month, together with any and all payments due the City.
19. In the event that more than one tow service operates as an OPTS for the City, each OPTS shall accept the decision of the Chief of Police as it relates to the assignment of calls. The City will make a reasonable attempt to equally distribute the calls-for-service on a "rotation" basis. However, the City retains the right to assign calls at its discretion when it determines that a particular service or equipment is required or an OPTS is convenient to the particular call for service. If the OPTS assigned a call for service is not on scene with the necessary equipment or service within 30 minutes from the time of call to the OPTS (unless a delayed response is agreed upon by the City), the next OPTS on the rotation will be assigned the call and the previous OPTS forfeits the call. In the event that the City and/or the general public experience displays of unprofessional, unqualified, unresponsive and/or other questionable service by an OPTS, and such displays of inadequate service are reported to the City and found to be legitimate the City, at its discretion, may elect to direct any or all calls for towing and/or service to a designated OPTS, and may maintain such designation until such time the competing OPTS can demonstrate to the City's satisfaction that it can appropriately serve the City and the general public.
20. OPTS agrees that no person shall be excluded from service in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, sexual orientation, or place of national origin. OPTS agrees to comply with all county, state, and federal laws relating to equal employment opportunity rights.

21. Any changes in ownership, location, or form of doing business of the OPTS shall be reported to the Chief of Police within 24 hours.
22. The City Manager or his designee shall have the authority to settle any claim or dispute involving the City and OPTS.
23. This Agreement is not assignable.
24. This agreement may be suspended at any time by the Chief of Police or his designee upon determination by the Chief of Police or his designee that cause exists for termination of the Agreement or that OPTS has breached any provision of this Agreement.
25. This Agreement may be terminated, without cause, by either party, with 30 days written notice.
26. Any breach of the Agreement is subject to termination of the Agreement forthwith.
27. The OPTS shall comply in all respects with the State of California requirements for Worker's Compensation coverage of its employees and annually provide such proof of coverage to the City. Proof of Worker's Compensation insurance shall also be provided upon demand by the City.
28. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties of the Agreement have caused their names to be affixed hereto by the proper officers thereof. This Agreement is signed this _____ day of _____ 2010, at Montclair, California.

**City of Montclair
A Municipal Corporation**

By: _____
Paul M. Eaton, Mayor

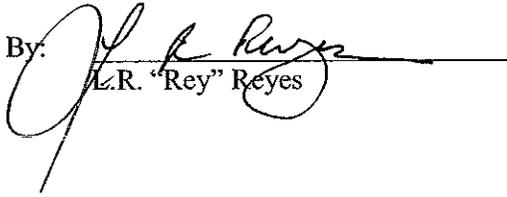
Attest:

City Clerk, City of Montclair

Approve as to Form:

City Attorney, City of Montclair

Pacific Truck and Auto Tow Inc.

By: 
L.R. "Rey" Reyes

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT
NO. 10-43 WITH THE SAN BERNARDINO
COUNTY DEPARTMENT OF AGING AND
ADULT SERVICES TO PROVIDE A SENIOR
CITIZEN NUTRITION PROGRAM

DATE: May 3, 2010
SECTION: AGREEMENTS
ITEM NO.: 2
FILE I.D.: HSV105
DEPT.: COMMUNITY DEV.

**BUSINESS
PLAN:** N/A

REASON FOR CONSIDERATION: The City Council is requested to consider a contract with the San Bernardino County Department of Aging and Adult Services to continue the Senior Citizen Nutrition Program. Agreement No. 10-43 is attached for the City Council's review and consideration.

BACKGROUND: The San Bernardino County Department of Aging and Adult Services has awarded the City a contract to provide a Senior Citizen Nutrition Program for older adults ages 60 and over. The Fiscal Year 2010-11 grant in the amount of \$94,010 would be used for part-time salaries, consultant fees, training, consumable supplies, and catering services needed to operate the program. The City of Montclair is contracted to annually serve 17,000 meals and provide 251 days of service.

The term of proposed Agreement No. 10-43 is July 1, 2010, through June 30, 2011.

FISCAL IMPACT: Should the City Council approve Agreement No. 10-43, a \$94,010 grant would be awarded to the City. The contract term may be extended for two additional one-year periods by mutual agreement of the parties. These funds have been allocated to the City through Title III of the Older Americans Act.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 10-43 with the San Bernardino County Department of Aging and Adult Services to provide a Senior Citizen Nutrition Program.

Prepared by: M. Richter
Proofed by: Christine Smickley

Reviewed and Approved by: Steve Luster
Presented by: [Signature]



County of San Bernardino

F A S

STANDARD CONTRACT

<input checked="" type="checkbox"/> New	Vendor Code		SC	Dept.	Contract Number			
<input type="checkbox"/> Change	CITYOFM731		OOA	A				
<input type="checkbox"/> Cancel								
County Department			Dept.	Orgn.	Contractor's License No.			
Department of Aging and Adult Services								
County Department Contract Representative			Telephone		Total Contract Amount			
Jeri Quick			388-0255		\$94,010			
Contract Type								
<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:								
If not encumbered or revenue contract type, provide reason:								
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount			
95200		July 1, 2010	June 30, 2011	\$94,010				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
AAF	OOA	210	200	2445		\$83,916		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
AAF	OOA	235	200	2445		\$9,832		
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount		
AAF	OOA	280	200	2445		\$262		
Project Name			Estimated Payment Total by Fiscal Year					
Elderly Nutrition Services Program			FY	Amount	I/D	FY	Amount	I/D
			2010-11	\$94,010	I			

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, Department of Aging and Adult Services, hereinafter called the County, and

Name
 City of Montclair
 Address
 5111 Benito Street
 Montclair, CA 91763
 Phone Birth Date
 (909) 626-8571
 Federal ID No. or Social Security No.
 95-6005731

hereinafter called Contractor

IT IS HEREBY AGREED AS FOLLOWS:

- WHEREAS the County desires to provide nutrition programs for the elderly; and
 - WHEREAS, the Older Americans Act of 1965 provides assistance to State and local agencies to develop nutrition programs for the elderly; and
 - WHEREAS, the County has been allocated Older Americans Act funds by the California Department of Aging for the purpose of administering nutrition programs for the elderly; and
 - WHEREAS, County finds Contractor qualified to provide nutrition programs for the elderly; and
 - WHEREAS, County desires that such services be provided by Contractor and Contractor agrees to perform these services according to the specific terms and conditions provided by the Contract.
- NOW THEREFORE, in consideration of the mutual promises contained herein, County and Contractor mutually agree to the following terms and conditions:

Auditor/Controller-Recorder Use Only	
<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

TABLE OF CONTENTS

I.	DEFINITIONS.....	3
II.	COUNTY RESPONSIBILITIES.....	5
III.	CONTRACTOR GENERAL RESPONSIBILITIES.....	5
IV.	COUNTY RESPONSIBILITIES.....	16
V.	FISCAL PROVISIONS.....	16
VI.	RIGHT TO MONITOR AND AUDIT.....	19
VII.	CORRECTION OF PERFORMANCE DEFICIENCIES.....	20
VIII.	TERM.....	21
IX.	EARLY TERMINATION.....	21
X.	GENERAL PROVISIONS.....	21
XI.	CONCLUSION.....	25
	ATTACHMENT A - SCOPE OF WORK	
	ATTACHMENT B - CLIENT COMPLAINT AND GRIEVANCE PROCEDURE	
	ATTACHMENT C - CONTRACTOR/VENDOR CONFIDENTIALITY STATEMENT (CDA 1024)	
	ATTACHMENT D - SECURITY INCIDENT REPORT FORM (CDA 1025)/SECURITY INCIDENT REPORT INSTRUCTIONS	
	ATTACHMENT E - ASSURANCE OF COMPLIANCE	
	ATTACHMENT F - DISCLOSURE OF LOBBYING ACTIVITIES (FORM)	
	ATTACHMENT G - INFORMATION SHEET	
	ATTACHMENT H - COMMUNITY FOCAL POINTS	
	ATTACHMENT I - MONTHLY NUTRITION PROGRAM REQUEST FOR REIMBURSEMENT FORM	
	ATTACHMENT J - NUTRITION PROGRAM CONTRACTOR QUARTERLY EXPENDITURE REPORT	
	ATTACHMENT K - BUDGET SUMMARY	
	ATTACHMENT L - BUDGET IN-KIND NARRATIVE STATEMENT	

I. DEFINITIONS

- A. Cash Match – Cash, other than program income, contributed to the project from local or State funds. With the exception of Community Development Block Grants (CDBG), Federal funds cannot be used as cash match.
- B. CCR – California Code of Regulations
- C. CDA – California Department of Aging
- D. CDA PM – Title III Program Manual for Area Agencies on Aging – This manual is based on Federal Regulations for Title III published March 31, 1980 (CFR, Chapter 8, Subchapter C, Part 1321), and pertinent parts of 45 CFR Subtitle A, Part 74, published June 3, 1980.
- E. CFDA – Catalog of Federal Domestic Assistance
- F. CFR – Code of Federal Regulations
- G. Congregate Nutrition Services (C-1) – Meals provided in a congregate setting for older individuals in an atmosphere that is pleasant and encourages socialization.
- H. Contract – The cover sheet, terms and conditions, attachments, addendums, and amendments, unless otherwise specified.
- I. Contractor – The entity (Contractor/Provider/Vendor) to which funds are awarded under this Contract and which is accountable to DAAS for use of these funds and is responsible for executing its provisions and services.
- J. CRFC – California Retail Food Code (Section 113700 et seq., California Health and Safety Code); replaces California Uniform Retail Food Facilities Law (CURFFL).
- K. DAAS – Department of Aging and Adult Services, and the designated Area Agency on Aging in San Bernardino County.
- L. DHS – California State Department of Health Services
- M. Disability – a condition attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in one (1) or more of the following areas of major life activity:
 - 1. Self-care
 - 2. Receptive and expressive language
 - 3. Learning
 - 4. Mobility
 - 5. Self-direction
 - 6. Capacity for independent living
 - 7. Economic self-sufficiency
 - 8. Cognitive functioning
 - 9. Emotional adjustment
- N. Elderly – Any individual who is sixty (60) years of age or older, also under “older individual.”
- O. Elderly Nutrition Program – a program which provides nutrition services, as authorized by the Older Americans Act of 1965, as amended, and which shall be provided in accordance with the provisions of this Article.
- P. Equipment – Tangible personal property with a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
- Q. Financial Statement – For non-Federal entities that expend less than \$500,000 in a fiscal year in Federal awards, a statement that reflects the contractor’s financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited.
- R. General Program Income – Meal income received in the form of contributions or donations made by the elderly for services rendered under this Contract.

- S. HACCP – Hazard Analysis Critical Control Point.
- T. HACCP Plan – a written document that delineates the formal procedures for following the HACCP principles that were developed by the National Advisory Committee on Microbiological Criteria for Foods and complies with the requirements of Section 114055, Health and Safety Code.
- U. HACCP Principles – the seven basic steps of HACCP which are:
1. The completion of hazard analysis identification by identifying the likely hazards to consumers presented by a specific food.
 2. The determination of critical control points in receiving, storage, preparation, display, and dispensing of a food.
 3. The setting of measurable critical limits for each critical control point determined.
 4. Developing and maintaining monitoring practices to determine if critical limits are being met.
 5. Developing and utilizing corrective action plans when failure to meet critical limits is detected.
 6. Establishing and maintaining a recordkeeping system to verify adherence to a HACCP plan.
 7. Establishing a system of audits to:
 - a. Initially verify the effectiveness of the critical limits set and appropriateness of the determination of critical control points.
 - b. Periodically verify the effectiveness of the HACCP plan.
- V. Home Delivered Nutrition Services (C-2) – meal provided to older individuals who are homebound.
- W. HS – Human Services – A system of integrated services, where the programs and resources of nine County departments come together to provide a rich, more complete array of services to the citizens of San Bernardino County under one coordinated effort.
- X. MIS – Management Information System
- Y. Nutrition Education – informing recipients of congregate and home-delivered meals about current facts and information which will promote improved food selection, eating habits, nutrition, health promotion, and disease prevention practices.
- Z. Nutrition Services – the procurement, preparation, transport, and service of meals, nutrition education, nutrition screening, and nutrition counseling, to eligible individuals at congregate sites or in their homes.
- AA. OAA – Older Americans Act – Provides comprehensive, coordinated, community-based systems of services to the elderly to enable them to maintain health, personal dignity, and independence.
- BB. Older Individual – A person sixty (60) years of age or older.
- CC. OMB – Office of Management and Budget.
- DD. Program Income – Revenue generated by the Contractor or subcontractor from contract-supported activities. Program income is:
1. Voluntary contributions received from a participant or responsible party as a result of services.
 2. Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement.
 3. Royalties received on patents and copyrights from contract-supported activities.
 4. Proceeds from sale of items fabricated under a contract agreement.
- EE. Provider – an entity providing nutrition services. The provider may either be an AAA providing nutrition services directly with Department approval in accordance with subsection 7320(c) of Title 22, or an entity under contract with an AAA to provide nutrition services in accordance with Section 7352 of Title 22.
- FF. Registered Dietitian – a person who shall be both:
1. Qualified as specified in Sections 2585 and 2586, Business and Professions Code, and,
 2. Registered by the Commission on Dietetic Registration.
- GG. Reimbursable Item – Allowable cost and compensable item.

- HH. SEFA – Schedule of Expenditures of Federal Awards
- II. Single Audit Entity – Non-Federal entities that expend \$500,000 or more in a fiscal year in Federal awards. Single Audit Entities must have a single or program-specific audit conducted for the year in accordance with OMB Circular A-133.
- JJ. State – State of California
- KK. Title III – Title III of the Older Americans Act
- LL. USC – United States Code
- MM. USDA – United States Department of Agriculture
- NN. Volunteer – an individual who provides services without pay, but may receive reimbursement for expenses.
- OO. W & I – California Welfare and Institutions Code

II. CONTRACTOR SERVICE RESPONSIBILITIES

Contractor shall provide all services as outlined in Scope of Work (Attachment A).

III. CONTRACTOR GENERAL RESPONSIBILITIES

- A. In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino. Contractor certifies that neither it nor its principals is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency as required by Executive Order 12549 and implemented as 45 Code of Federal Regulations part 76.
- B. Without the prior written consent of the Assistant County Administrator for Human Services, this Contract is not assignable by Contractor either in whole or in part. Contractor agrees not to enter into any subcontracts for work contemplated under this Contract without first obtaining written approval from the Assistant County Administrator – Human Services. Any subcontractor shall be subject to the same provisions as Contractor. Contractor shall be fully responsible for the performance of any subcontractor.
- C. Contractor agrees to provide or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.
- D. If during the course of the administration of this Contract, the County determines that the Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.
- E. Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance.

Said records shall be kept and maintained within the County of San Bernardino or within reasonable driving distance. County shall have the right upon reasonable notice and at reasonable hours of business to examine and inspect such records and books.

Records should include, but are not limited to, monthly summary sheets, sign-in sheets, and other primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must also comply with the appropriate Office of Management and Budget (OMB) Circulars that state the administrative requirements, cost principles and other standards for accountancy.

All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records per the preceding requirements shall be considered grounds for withholding of payments for billings submitted and for termination of the Contract.

- F. Contractor shall notify County in writing of any change in mailing address and/or physical location within ten (10) days of the change, and shall immediately notify County of changes in telephone or fax numbers.
- G. Contractor shall notify County of any continuing vacancies and any positions that become vacant during the term of this Contract that will result in reduction of services to be provided under this Contract. Upon notice of vacancies, the Contractor shall apprise County of the steps being taken to provide the services and to fill the position as expeditiously as possible. All vacancies and associated problems shall be reported to County on each periodically required report for the duration of said vacancies and/or problems.
- H. Contractor shall designate an individual to serve as the primary point of contact for the Contract. Contractor shall notify the County when the primary contact will be unavailable/out of the office for one (1) or more workdays. Contractor or designee must respond to County inquiries within two (2) County business days.
- I. Contractor shall provide a system, approved by the County, through which recipients of service shall have the opportunity to express and have considered their views and complaints regarding the delivery of services. The procedure (Attachment B) must be in writing and posted in clear view of all recipients.
- J. Contractor shall keep the County apprised of any and all actions taken by its Board of Directors which may impact on the Contract. Further, a County representative shall have the option of attending Board meetings during the term of this Contract.
- L. Information Integrity and Security

1. Information Assets

The Contractor shall have in place operational policies, procedures, and practices to protect State information assets, i.e., public, confidential, sensitive and/or personal information as specified in State Administrative Manual, Section 4841.2., GC Section 11019, Department of Finance (DOF) Management Memo 06-12, and DOF Budget Letter 06-34.

Information assets include (but are not limited to):

- Information collected and/or accessed in the administration of the State programs and services.
- Information stored in any media form, paper or electronic.

2. Encryption on Portable Computing Devices

The Contractor is required to encrypt (or use an equally effective measure), any data collected under this agreement that is confidential, sensitive, and/or personal including data stored on portable computing devices (including but not limited to, laptops, personal digital assistants, and notebook computers) and/or portable electronic storage media (including but not limited to, discs and thumb/flash drives, portable hard drives).

3. Disclosure

- a. The Contractor shall ensure that personal, sensitive and confidential information is protected from inappropriate or unauthorized access or disclosure in accordance with applicable laws, regulations and State policies. The requirement to protect information shall remain in force until superseded by laws, regulations or policies.
- b. The Contractor shall protect from unauthorized disclosure names and other identifying information, concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant.
- c. "Identifying information" shall include, but not be limited to, name, identifying number, social security number, state driver's license or state identification number, financial account numbers, symbol or other identifying characteristic assigned to the individual, such as finger or voice print or a photograph.
- d. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- e. The Contractor shall not, except as otherwise specifically authorized or required by this agreement, release any identifying information obtained under the terms of this agreement to anyone other than DAAS and/or CDA without prior written authorization from DAAS or CDA, except by court order. The Contractor may be authorized, in writing, by a participant to disclose identifying information specific to the authorizing participant.
- f. The Contractor may allow a participant to authorize the release of information to specific entities, but shall not request or encourage any participant to give a blanket authorization or sign a blank release, nor shall the Contractor accept such blanket authorization from any participant.

4. Training/Education

- a. The Contractor must provide ongoing education and training, at least annually, to all employees and subcontractors who handle personal, sensitive or confidential information. Contractor employees, subcontractors, and volunteers must complete the required Security Awareness Training module located at www.aging.ca.gov within 30 days of the start date of the Contract/Agreement or within 30 days of the start date of any new employee, subcontractor or volunteer. The Contractor must maintain certificates of completion on file and provide them to DAAS upon request. Training may be provided on an individual basis or in groups. A sign-in sheet is acceptable documentation for group training in lieu of individual certificates. If internet access is not available, a hardcopy of the training module may be provided to employees and/or volunteers for their completion.
- b. Contractor may substitute CDA's Security Awareness Training program with its own Security Training provided such training meets or exceeds CDA's training requirement. Contractors/Vendors shall maintain documentation of training and education provided to their staff, volunteers, and/or subcontractors.
- c. All employees and volunteers who handle personal, sensitive or confidential information relating to CDA's programs must participate in Security Awareness Training.

5. Health Insurance Portability and Accountability Act (HIPAA)

The Contractor agrees to comply with the privacy and security requirements of the HIPAA to the extent applicable and to take all reasonable efforts to implement HIPAA requirements. Contractor will make reasonable efforts to ensure that subcontractors comply with the privacy and security requirements of HIPAA.

6. Contractor Confidentiality Statement

The Contractor shall sign and return a Contractor/Vendor Confidentiality Statement CDA 1024 form (Attachment C) with this Agreement. This is to ensure that Contractor/Vendors are aware of, and agree to comply with, their obligations to protect CDA information assets from unauthorized access and disclosure.

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. The Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. The provision will remain in force even after the termination of the Contract.

7. Security Incident Reporting

A security incident occurs when CDA information assets are accessed, modified, destroyed, or disclosed without proper authorization, or are lost, or stolen. The Contractor must report all security incidents to DAAS immediately upon detection. A Security Incident Report form (CDA 1025) (Attachments D) must be submitted to DAAS within five (5) business days of the date the incident was detected.

8. Notification of Security Breach to Data Subjects

- a. Notice must be given by the Contractor or subcontractor to any data subject whose personal information could have been breached.
- b. Notice must be given in the most expedient time possible and without unreasonable delay except when notification would impede a criminal investigation, or when necessary measures to restore system integrity are required.
- c. Notice may be provided in writing, electronically, or by substitute notice in accordance with State law, regulation, or policy.

9. Software Maintenance

The Contractor shall apply security patches and upgrades and keep virus software up-to-date on all systems on which data collected under this agreement that is confidential, sensitive and/or personal may be used.

10. Provisions of this Article

The provisions contained in this Information Integrity and Security Paragraph shall be included in all contracts of both the contractor and its subcontractors.

11. Contractor shall ensure that all staff, volunteers and/or subcontractors performing services under this Contract comply with the terms and conditions as set forth in the Human Services Information Privacy and Security Requirements prior to providing any services. Contractor shall immediately notify the County of any suspected or actual breach of confidential information as further detailed in the requirements. These requirements specified at <http://hss.sbcounty.gov/Privacy> are hereby incorporated by this reference.

M. Elder and Dependent Adult Abuse Reporting

Contractor agrees to and shall comply with the County's Elder and Dependent Adult Abuse Reporting requirements: Under the terms of this Contract, as changes in the Elder and Dependent Adult Reporting Laws are enacted, the Contractor is bound to comply with the most current regulations.

1. Who Must Report:

In accordance with W & I Code Section 15630, all employees of the Contractor and its subcontractors are mandated reporters of elder and dependent adult abuse. Contractor assures all employees, agents, consultants or volunteers who perform services under this Contract and are mandated to report elder and dependent adult abuse will sign a statement (SOC 341A) <http://www.dss.cahwnet.gov/Forms/English/SOC341.pdf>, upon the commencement of their employment, acknowledging their reporting requirements and their compliance with them.

2. When To Report:

Mandated reporters are required to report all instances of known or suspected abuse of the elderly and dependent adults immediately or as soon as practically possible, under the following circumstances:

- a. When the mandated reporter has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, isolation, neglect, financial abuse, mental abuse or sexual abuse; or
- b. When the mandated reporter is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, neglect, financial abuse, mental abuse or sexual abuse.

3. To Whom To Report:

Incidents of elder and dependent adult abuse must be reported to the correct agency as follows:

- a. If the abuse has occurred in a long term care facility, except a state mental hospital or state developmental center, the report shall be made to the local Long-Term Care Ombudsman or local law enforcement;
- b. If the abuse has occurred in a state mental hospital or state developmental center, the report shall be made to the designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement;
- c. If the abuse occurred anywhere other than a long-term care facility or State mental hospital or State developmental center, the report shall be made to Adult Protective Services or local law enforcement.

4. How To Report:

Mandated reporters are required to take the following steps in all instances of known or suspected abuse of the elderly and dependent adults:

- a. Place an immediate telephone call to Adult Protective services (1-877-565-2020) or local law enforcement to report the incident.
- b. Within two (2) working days of making the telephonic report to the responsible agency, complete a written "Report of Suspected Dependent Adult/Elder Abuse" (SOC 341) form, <http://www.dss.cahwnet.gov/Forms/English/SOC341.pdf>. The completed form must be submitted to the same agency to which the incident was reported by telephone.

N. Contractor shall ensure that all known or suspected instances of child abuse or neglect are reported to the appropriate law enforcement agency or to the appropriate Child Protective Services agency. This responsibility shall include:

1. Assurance that all employees, agents, consultants or volunteers who perform services under this Contract and are mandated by Penal Code Sections 11164 et seq. to report child

abuse or neglect, sign a statement, upon the commencement of their employment, acknowledging their reporting requirements and their compliance with them.

2. Development and implementation of procedures for employees, agents, consultants, or volunteers who are not subject to the mandatory reporting laws for child abuse to report any observed or suspected incidents of child abuse to a mandated reporting party, within the program, who will ensure that the incident is reported to the appropriate agency.
3. Provision for or arrangement of training in child abuse reporting laws (Penal Code section 11164 et seq.) for all employees, agents, consultants, and volunteers, or verification that such persons have received training in the law within thirty (30) days of employment/volunteer activity.

O. Contractor shall obtain from the Department of Justice (DOJ) records of all convictions involving any sex crimes, drug crimes, or crimes of violence of a person who is offered employment or volunteers for all positions in which he or she would have contact with a minor, the aged, the blind, the disabled or a domestic violence client, as provided for in Penal Code section 11105.3 prior to providing any services. This includes licensed personnel who are not able to provide documentation of prior DOJ clearance. A copy of a license from the State of California is sufficient proof. The County must be immediately notified of any records showing a conviction. The County may instruct Contractor to take action to deny/terminate employment or terminate internship and/or volunteer services where the records show the person is unsuitable for employment, internship, or volunteer services.

P. Contractor shall notify the County of any staff member, paid intern or volunteer who is knowingly or negligently employed who has been convicted of any crime of violence or of any sexual crime. Contractor shall investigate all incidents where an applicant, employee, intern or volunteer has been arrested and/or convicted for any crime listed in Penal Code Section 11105.3 and shall notify the County. In the County's discretion, the County may instruct Contractor to take action to either deny/terminate employment or terminate internship and/or volunteer services where the investigation shows that the underlying conduct renders the person unsuitable for employment, internship, or volunteer services.

Contractor shall immediately notify the County concerning the arrest and/or conviction, for other than minor traffic offenses, of any paid employee, agent, consultant, intern, or volunteer staff, when such information becomes known to Contractor.

Q. Conflict of Interest

1. The Contractor shall prevent employees, consultants, or members of governing bodies from using their positions for purposes including, but

not limited to, the selection of subcontractors, that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business, or other ties. In the event that the County determines that a conflict of interest exists, funds may be disallowed by the County and such conflict may constitute grounds for termination of the Agreement.

2. This provision shall not be construed to prohibit employment of persons with whom the Contractor's officers, agents, or employees have family, business, or other ties, so long as the employment of such persons does not result in a conflict of interest (real or apparent) or increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully competed for employment with the other applicants on a merit basis.

R. Contractor agrees to and shall comply with the following indemnification and insurance requirements:

1. Indemnification – The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers (Indemnitees) from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts,

- errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. The Contractor's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
2. Additional Insured – All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
 3. Waiver of Subrogation Rights – The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.
 4. Policies Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.
 5. Severability of Interests – The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.
 6. Proof of Coverage – The Contractor shall furnish Certificates of Insurance to the County Department administering the contract evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
 7. Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
 8. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
 9. Failure to Procure Coverage – In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.
 10. Insurance Review – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that

any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

11. The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. Workers' Compensation/Employers Liability – A program of 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 including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- b. Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- 1) Premises operations and mobile equipment.
- 2) Products and completed operations.
- 3) Broad form property damage (including completed operations).
- 4) Explosion, collapse and underground hazards.
- 5) Personal injury
- 6) Contractual liability.
- 7) \$2,000,000 general aggregate limit.

- c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

- e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

- S. Contractor shall comply with all applicable laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations and performance under the terms of the Contract and shall procure all licenses and pay all fees and other charges required thereby. Contractor shall maintain all required licenses during the term of this Contract. Failure to comply with the provisions of this section may result in immediate termination of this Contract.
- T. Contractor shall comply with all applicable local health and safety clearances, including fire clearances, for each site where services are provided under the terms of this Contract.
- U. Contractor agrees to and shall comply with the County’s Equal Employment Opportunity Program and Civil Rights Compliance requirements:
 - 1. Equal Employment Opportunity Program: The Contractor agrees to comply with the provisions of the Equal Employment Opportunity Program of the County of San Bernardino and all rules and regulations adopted pursuant thereto: Executive Orders 11246, as amended by Executive Order 11375, 11625, 12138, 12432, 12250; Title VII of the Civil Rights Act of 1964; Division 21 of the California Department of Social Services Manual of Policies and Procedures; California Welfare and Institutions Code section 10000, the California Fair Employment and Housing Act; and other applicable federal, state, and county laws, regulations and policies relating to equal employment or social services to welfare recipients, including laws and regulations hereafter enacted.

The Contractor shall not unlawfully discriminate against any employee, applicant for employment, or service recipient on the basis of race, color, national origin or ancestry, religion, gender, marital status, sexual orientation, age, political affiliation or disability. Information on the above rules and regulations may be obtained from the County Human Services Contracts Unit.

2. Civil Rights Compliance: The Contractor shall develop and maintain internal policies and procedures to assure compliance with each factor outlined by state regulation. These policies must be developed into a Civil Rights Plan, which is to be on file with the County Human Services Contracts Unit within 30 days of awarding of the Contract. The Plan must address prohibition of discriminatory practices, accessibility, language services, staff development and training, dissemination of information, complaints of discrimination, compliance review, and duties of the Civil Rights Liaison. Upon request, the County shall supply a sample of the Plan format. The Contractor shall be monitored by the County for compliance with provisions of its Civil Rights Plan. Contractor is required to submit Assurance of Compliance statement (Attachment E) along with their agency's Civil Rights Plan.
- V. Contractor agrees to comply with all applicable provisions of the Americans with Disabilities Act (ADA).
 - W. Contractor shall observe the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (California Code of Regulations title 20, section 1401 et seq.).
 - X. If the amount available to Contractor under this Contract, as specified in Section IV, Paragraph A, exceeds \$100,000, Contractor agrees to comply with the Clean Air Act (42 U.S.C. Section 7606), section 508 of the Clean Water Act (33 U.S.C. section 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 C.F.R. section 1.1 et seq.).
 - Y. Contractor shall use recycled and recyclable products, whenever practicable, in fulfilling the terms of this Contract. Recycled printed products shall include a symbol identifying the recycled material.
 - Z. Contractor understands and agrees that any and all legal fees or costs associated with lawsuits concerning this Contract against the County shall be the Contractor's sole expense and shall not be charged as a cost under this Contract. In the event of any Contract dispute hereunder, each Party to this Contract shall bear its own attorney's fees and costs regardless of who prevails in the outcome of the dispute.
 - AA. Contractor shall report immediately to the County in writing any incidents or alleged fraud and/or abuse by either Contractor or Contractor's subcontract(s). Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by the County.
 - BB. The Contractor, by signing this Contract, hereby certifies to the best of his or her knowledge and belief, that:
 1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities" form (Attachment F), in accordance with its instructions.

3. The Contractor shall require that the language of this certification be included in any subcontracts at all tiers, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- CC. Contractor shall complete and submit Information Sheet (Attachment G) in accordance with its instructions.
- DD. Per DAAS contract with CDA, Article II.A.(27), Community Focal Points (Attachment H) provides Contractors with additional resources for their customers.
- EE. Contractor agrees to and shall comply with the following American Recovery and Reinvestment Act funding requirements:

1. **Use of ARRA Funds and Requirements:** This Contract may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the County for an appropriate determination.

Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement.

The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. Contractor must contact the County contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. Contractor will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the County may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

Contractor may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. Contractor must contact the County with any questions regarding registration requirements.

2. **Schedule of Expenditure of Federal Awards:** In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. Contractor agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of

Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c).

In addition, Contractor agrees to separately identify to each subcontractor and document at the time of sub-contract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds.

Contractor may be required to provide detailed information regarding expenditures so that the County may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. Contractor agrees to fully cooperate in providing information or documents as requested by the County pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Contract.

3. Contractor agree that both it and its subcontractors shall comply with Section 1553 of the Whistleblower Protection Act-ARRA, which prohibits all non-federal Contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; or (4) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued related to ARRA funds. Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of the Title XV of Division A of the ARRA.
4. Contractor agrees both it and its subcontractors shall comply with Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104).

IV. COUNTY RESPONSIBILITIES

- A. The County shall monitor and evaluate the performance of the Contractor in meeting the terms of the Contract and the quality and effectiveness of services provided based on the criteria as determined by the County.
- B. The County shall provide consultation and technical assistance in monitoring the terms of this Contract.
- C. The County shall compensate the Contractor for approved expenses in accordance with Section V of this Contract.

V. FISCAL PROVISIONS

- A. The maximum amount of funds available for payment under this Contract shall not exceed \$94,010, of which \$86,966 may be federally funded, and shall be subject to availability of funds to the County. The consideration to be paid to Contractor shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.
- B. Contractor shall be compensated on a fee-for-service basis based on the following rate, as specified in Scope of Work (Attachment A):

Congregate Site: \$5.53 per meal, up to 17,000 meals

- C. The County shall not approve any request for payment of funds until Contractor has properly filed completed reports as required under this Contract. If Contractor is not in compliance with any provision of this Contract, DAAS may withhold payment of any invoice submitted to DAAS by

Contractor until such time as suitable documentation is submitted to DAAS and/or Contractor is deemed to be in compliance by DAAS.

D. Reports

1. Contractor, at such times and in such forms as DAAS may require, shall furnish statements, records, reports, data, and information requested by DAAS pertaining to the Contractor's performance of services hereunder and other matters covered by this Contract. The forms shall be reviewed for timeliness, completeness, and correctness of the information submitted, by the Program Director or his/her designee, prior to submission to DAAS. Incomplete forms shall be returned to the Contractor for completion. (In the event of changes in these forms, DAAS shall advise the Contractor via written notice.) The Contractor shall develop and implement a process for ensuring quality control.

2. Contractor shall meet the following standards for the submission of required financial reports:

a. Accurate, current and complete disclosure of the financial results of the program shall be made in accordance with the financial reporting requirements of this Contract. The following reports are to be submitted to DAAS when indicated:

1) Monthly

- Monthly Nutrition Program Request for Reimbursement form (Attachment I) – Due to DAAS Administration by the 20th business day of the month following the month of service to the address stated below:

DAAS Administration
Attention: Nutrition Program Fiscal Clerk
686 East Mill Street
San Bernardino, CA 92415-0515

2) Quarterly

- Nutrition Program Contractor Quarterly Expenditure Report (Attachment J) – Due to DAAS Administration by the 20th business day of October, January, March, and June for the previous quarter of services to the address stated in the above paragraph.
- Quarterly reports shall be based on the Budget Summary (Attachment K).

3) Annually – The following reports are due on an annual basis no later than August 1:

- Financial Close-out Report
- Periodic Inventory Report
- Single Audit or Financial Statement
- Schedule of Expenditures of Federal Awards (SEFA)

E. Upon written demonstration of need by Contractor and at the option of County, up to 10 % of the Title III funds may be advanced to Contractor by County upon the approval of the Director of DAAS. Any such advance shall cause the amounts payable to Contractor in subsequent months to be reduced to the amount determined by dividing the balance left by the number of months remaining in the Contract term. No advance will increase the amount shown in Section V, Paragraph A.

F. If, as a result of advanced income, the project earns interest on funds awarded by DAAS, that interest shall be identified as income to the program and used for program expenditures, with full documentation on file.

G. Contractor shall expend all funds received hereunder in accordance with this Contract.

- H. DAAS reserves the right to refuse payment to the Contractor or later disallow costs for any expenditure determined by DAAS and/or CDA not to be in compliance with this Contract, or inappropriate to such activities, or for which there is inadequate supporting documentation presented, or for which prior approval is required but not granted.
- I. Contractor shall return to DAAS, immediately upon written demand, any funds provided under the Contract which are not payable for goods or services delivered prior to the termination, cancellation, or expiration of this Contract, or the dissolution of the entity.
- J. Contractor must return any unspent funds with submittal of the final invoice.
- K. Contractor shall maintain accounting records to account for the funds received under the terms and conditions of this Contract separate from any other funds administered by the Contractor. Contractor shall maintain records in accordance with generally accepted accounting principles.
- L. General program income shall be used to increase the number of elderly served by a project, to facilitate access to such meals, and to provide supportive services directly related to nutrition as defined in the Work Plan/Scope of Work (Attachment A). General program income shall be used within the program in which it was earned.
- M. Matching contributions
1. The Contractor shall provide in-kind matching contributions of a minimum of \$9,086, which is the Title III portion of the Contract multiplied by 11.11%.
 2. Allowable match shall be in compliance with the following requirements:
 3. Matching in-kind contributions must be for allowable costs as determined by CDA PM. Allowable costs include but are not limited to rent, utilities, supplies, and volunteers.
 4. To qualify as a matching in-kind contribution, indirect or Contractor allocated overhead expenses must be supported by a documented cost allocation plan.
 5. Matching in-kind contributions in excess of the minimum required in one service component may be used to match another service component within the Older Americans Act. As an example, match exceeding the minimum requirement in a transportation program may be used to offset an under match in in-home supportive services.
 6. Contractor shall provide by August 1, 2010 at Budget In-Kind Narrative statement (Attachment L) to DAAS identifying the type, rates applied and, if applicable, source/location of in-kind to be used as match for the period of the Contract. The identified in-kind match shall be reported monthly on the monthly expense reports.
 - a. Services of volunteers shall be valued at rates consistent with those ordinarily paid for similar work by the Contractor. If the Contractor does not have similar work, the rate shall be consistent with those in the labor market. In either case, a reasonable amount of employee benefits may be included.
 - b. All other in-kind contributions shall be valued at current market value.
 7. Costs incurred by the Contractor or subcontractor must be verifiable from the records of the Contractor or subcontractor.
 8. Non-Matching Contributions are local funding that does not qualify as matching contributions and/or is not being budgeted as matching contributions (e.g., Title V, overmatch, etc.).
- N. The County shall pay Contractor for the authorized services of the previous month. Under normal conditions, Contractor shall expect payment approximately 30 days after submission of a correctly prepared invoice.
- O. Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall

promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

- P. Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- Q. Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- R. County is not liable for the payment of any taxes, other than applicable sales or use tax, resulting from this Contract however designated, levied or imposed, unless County would otherwise be liable for the payment of such taxes in the course of its normal business operations.
- S. The Contractor shall request a budget amendment, in writing, submitted to the Director of DAAS, in advance of expenditures: 1) when aggregate expenditures are expected to exceed an approved budgeted line item by more than fifteen (15%) percent; or 2) to add a new budget line item. No budget revision may result in an increase of the maximum dollar amount stated in Paragraph A, of this Section. The written request must specify the changes requested, by line item and amount, and must include justification. Prior to implementation of a budget revision, the County shall approve (or deny) the budget revision request. The County has the authority to approve line item budget changes to the budget herein, as long as these changes do not exceed the total contract amount. County shall notify the Contractor in writing of the status of the budget revision request within fourteen (14) calendar days of receipt of the Contractor's written request. The County reserves the right to deny the Contractor's invoice for expenditures in excess of the approved budgeted line item amount.

VI. RIGHT TO MONITOR AND AUDIT

- A. County shall have the absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract.
- B. County or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Auditor General, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Full cooperation shall be given by Contractor in any auditing or monitoring conducted.
- C. Contractor shall cooperate with County in the implementation, monitoring and evaluation of this Contract and comply with any and all reporting requirements established by this Contract.
- D. All records pertaining to service delivery and all fiscal, statistical and management books and records shall be available for examination and audit by county, federal and state representatives for a period of three years after final payment under the Contract or until all pending county, state, and federal audits are completed, whichever is later. Records of the Contractor which do not pertain to the services under this Contract may be subject to review or audit unless provided in this or another Contract. Technical program data shall be retained locally and made available upon the County's reasonable advance written notice or turned over to County. If said records are not made available at the scheduled monitoring visit, Contractor may, at County's option, be required to reimburse County for expenses incurred due to required rescheduling of monitoring visit(s). Such reimbursement will not exceed \$50 per hour (including travel time) and be deducted from the following month's claim for reimbursement.

- E. Contractor shall provide all reasonable facilities and assistance for the safety and convenience of County's representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of the Contractor.
- F. Upon County request, Contractor shall hire a licensed Certified Public Accountant, approved by the County, who shall prepare and file with County, within 60 days after the termination of the Contract, a certified fiscal audit of related expenditures during the term of the Contract and a program compliance audit.
- G. Pursuant to OMB Circular A-133, Contractors expending \$500,000 or more in federal funds within the Contractor's fiscal year must have a single audit or program-specific audit performed. A copy of the audit performed in accordance with OMB Circular A-133 shall be submitted to the County within thirty (30) days of completion, but no later than nine months following the end of the Contractor's fiscal year.

VII. CORRECTION OF PERFORMANCE DEFICIENCIES

- A. Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- B. In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - 1. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at sole discretion of County; and/or
 - 2. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
 - 3. Withhold funds pending duration of the breach; and/or
 - 4. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "2" of this paragraph; and/or
 - 5. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

C. Appeal Procedures

If Contractor disagrees with any decision or action taken by the County or DAAS related to this Contract, Contractor may choose to file a formal grievance by following the procedures below:

- 1. The Contractor shall file a formal written grievance with the DAAS Deputy Director of Administrative Services ("DAAS Deputy Director") within fifteen (15) business days after the Contractor is aware of the factors or conditions precipitating the contract dispute. The written grievance shall set forth the subject of the grievance, identify the specific clause in dispute and shall provide a detailed statement of the grievance, including dates, names, places, and the specific remedy or action requested. The filing address is 686 East Mill Street, San Bernardino, California, 92415-0640. The DAAS Deputy Director shall provide a written response to Contractor within fifteen (15) business days of receipt of the grievance.
- 2. If Contractor is not satisfied with the DAAS Deputy Director's response, Contractor may file a written grievance appeal, which shall include a statement by the Contractor as to why the DAAS Deputy Director's response is not satisfactory, to the Director of DAAS within fifteen (15) business days of receipt of the DAAS Deputy Director's response. The filing address is 686 East Mill Street, San Bernardino, California, 92415-0640. The Director of DAAS shall provide a written response to Contractor within fifteen (15) business days. The Director of DAAS shall have final authority for the decision on the grievance except as provided below.

3. If Contractor is not satisfied with the DAAS Director's response, Contractor may file a written grievance appeal, which shall include a statement by the Contractor as to why the DAAS Director's response is not satisfactory, to the Assistant County Administrator (ACA) of the Human Services within fifteen (15) business days of receipt of the DAAS Director's response. The filing address is 385 North Arrowhead Avenue, Fifth Floor, San Bernardino, California, 92415-0128. The Assistant County Administrator shall provide a written response to Contractor within fifteen (15) business days. The Assistant County Administrator shall have final authority for the decision on the grievance except as provided below.
4. For those appeals which involve CDA programmatic policies and directives issued to the County and contained within this Contract, the following applies. If Contractor is not satisfied with the ACA's decision, the written grievance may be registered in writing with the CDA, Case Management Branch, 1300 National Drive, Suite 200, Sacramento, California, 95834, within fifteen (15) business days following receipt of the Director of DAAS' decision. Contractor shall submit to CDA the original written grievance along with a copy of the DAAS Deputy Director's written response, the Contractor's appeal to the Director of DAAS, the Director of DAAS' decision, the Contractor's appeal to the Assistant County Administrator, and the Assistant County Administrators' decision. CDA shall have final authority for the decision on the grievance

VIII. TERM

This Contract is effective as of July 1, 2010 and expires June 30, 2011 but may be terminated earlier in accordance with provisions of Section IX of the Contract. The Contract term may be extended for two additional one-year periods by mutual agreement of the parties.

IX. EARLY TERMINATION

- A. The County may terminate the Contract immediately under the provisions of Section VII, Paragraph B, Item 5 of the Contract. In addition, the Contract may be terminated without cause by the County by serving a written notice to the Contractor thirty (30) days in advance of termination. The Director of DAAS is authorized to exercise the County's rights with respect to any termination of this Contract.
- B. Contractor shall only be reimbursed for costs and uncancelable obligations incurred prior to the date of termination. Contractor shall not be reimbursed for costs incurred after the date of termination.

X. GENERAL PROVISIONS

- A. When notices are required to be given pursuant to this Contract, the notices shall be in writing and mailed to the following respective addresses listed below.

Contractor: City of Montclair
5111 Benito Street
Montclair, CA 91763

County: County of San Bernardino
Human Services
Attn: Contracts Unit
150 S. Lena Road
San Bernardino, CA 92415-0515

- B. Nothing contained in this Contract shall be construed as creating a joint venture, partnership or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.
- C. Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

D. Property

1. Unless otherwise provided for in this Section, property refers to all assets, capitalized or non-capitalized, used in operation of this Contract.
 - a. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc.
 - b. Property does not include consumable office supplies such as paper, pencils, typing ribbons, file folders, etc.
2. Property meeting all of the following criteria is subject to the capitalization requirements. Subject property must:
 - a. Have a normal useful life of at least 1 year;
 - b. Have a unit acquisition cost of at least \$5000 (e.g., four identical assets which cost \$3000 each, for a \$12,000 total would not meet this capitalization requirement); and
 - c. Be used to conduct business under this Contract.
3. Non-capitalized properties are those items that do not meet all three requirements in Section X, Paragraph D, Item 2, above.
4. Additions, improvements, and betterments to assets meeting all of the conditions in Section X, Paragraph D, Item 2 above must be capitalized. Additions typically involve physical extensions of existing units. Improvements and betterments typically do not increase the physical size of the asset. Instead, improvements and betterments enhance the condition of an asset (e.g., extend life, increase service capacity, and lower operating costs). Examples of assets that might be improved and bettered include roads, bridges, curbs and gutters, tunnels, parking lots, streets and sidewalks, drainage, and lighting systems.
5. Intangibles are property which lack physical substance but give valuable rights to the owner and can be capitalized or non-capitalized. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer printer, terminal, etc.).

Costs include all amounts incurred to acquire and to ready the intangible asset for its intended use. Typical intangible property costs include the purchase price, legal fees, and other costs incurred to obtain title to the asset.
6. The Contractor shall record the following information when property is acquired:
 - a. Date acquired;
 - b. Property description (include model number);
 - c. Property identification number (serial number);
 - d. Location of property;
 - e. Cost or other basis of valuation;
 - f. Fund source; and

g. Rate of depreciation (or depreciation schedule), if applicable.

The Contractor shall keep track of property purchased with Contract funds, whether capitalized or not. The Contractor shall maintain and submit to DAAS annually with the closeout, a current inventory of property furnished or purchased by either the Contractor or the subcontractor with funds awarded under the terms of this Contract or any predecessor contracts for the same purpose. The Contractor shall use the Report of Project Property Furnished/Purchased with Agreement Funds (CDA 32), unless otherwise directed by DAAS.

7. Prior to disposal of any property purchased by the Contractor or the subcontractor with funds from this Contract, the Contractor must obtain approval from DAAS regardless of the acquisition value. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from the Department. The Contractor shall use the Request to Dispose of Property (CDA 248) to dispose of property.
8. The Contractor shall immediately investigate, and within five (5) days fully document the loss, destruction, or theft of such property.
9. DAAS reserves title to all DAAS-purchased or financed property not fully consumed in the performance of this Contract, unless otherwise required by federal law or regulations or as otherwise agreed by the parties.
10. Contractor shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the project, and shall assume responsibility for replacement or repair of such property during the period of the project, until the Contractor has complied with all written instructions from DAAS regarding the final disposition of the property.
11. In the event of the Contractor's dissolution or upon termination of this Contract, the Contractor shall provide a final property inventory to DAAS. DAAS reserves the right to require the Contractor to transfer such property to another entity, or to DAAS.
12. To exercise the above right, no later than 120 days after termination of the Contract or notification of the Contractor's dissolution, DAAS will issue specific written disposition instructions to the Contractor.
13. The Contractor shall use the property for the purpose for which it was intended under the Contract. When no longer needed for that use, the Contractor shall use it, if needed, and with written approval of DAAS for other purposes in the following order:
 - a. Another DAAS program providing the same or similar service; or
 - b. Another DAAS -funded program.
14. Contractor may share use of the property and equipment or allow use by other programs, upon written approval of the Director of DAAS. As a condition of the approval, DAAS may require reimbursement under this Contract for its use.
15. The Contractor or subcontractor shall not use equipment or supplies acquired under this Contract with federal and/or State monies for personal gain or to usurp the competitive advantage of a privately owned business entity.
16. If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the budget.
17. All equipment purchases of \$500.00 or more require the written approval of the Director of DAAS or his/her designee prior to purchase.

F. The state and County shall have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation. The Federal Government (Department of Health and Human Services) reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use for Federal Government purposes, such software modification, and documentation.

Proprietary software packages that are sold or leased to the general public are not subject to the ownership provisions.

- G. County shall have Power of Attorney to pay delinquent debts and unpaid wages for work provided under this Contract from accounts payable to Contractor in the event debts and wages have not been paid on a current basis.
- H. No waiver of any of the provisions of the Contract shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under the Contract shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- I. Any alterations, variations, modifications, or waivers of provisions of the Contract, unless specifically allowed in the Contract, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties as an amendment to this Contract. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
- J. If any provision of the Contract is held by a court of competent jurisdiction to be unenforceable or contrary to law, it shall be modified where practicable to the extent necessary so as to be enforceable (giving effect to the intention of the Parties) and the remaining provisions of the Contract shall not be affected.
- K. This Contract shall be governed by and construed in all aspects in accordance with the laws of the State of California without regard to principles of conflicts of laws. The Parties agree to the exclusive jurisdiction of the federal court located in the County of Riverside and the state court located in the County of San Bernardino, for any and all disputes arising under this Contract, to the exclusion of all other federal and state courts.

XI. CONCLUSION

- A. This Contract, consisting of twenty-five (25) pages and Attachments A through L, is the full and complete document describing services to be rendered by Contractor to County including all covenants, conditions and benefits.
- B. The signatures of the Parties affixed to this Contract affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.
- C. **IN WITNESS WHEREOF**, the Board of Supervisors of the County of San Bernardino has caused this Contract to be subscribed to by the Clerk thereof, and Contractor has caused this Contract to be subscribed in its behalf by its duly authorized officers, the day, month and year written.

COUNTY OF SAN BERNARDINO

City of Montclair

(Print or type name of corporation, company, contractor, etc.)

▶ _____
Gary 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 Welch
Clerk of the Board of Supervisors
of the County of San Bernardino.

By _____
Deputy

By ▶ _____
(Authorized signature - sign in blue ink)

Name Paul M. Eaton
(Print or type name of person signing contract)

Title Mayor
(Print or Type)

Dated _____

Address 5111 Benito Street
Montclair, CA 91763

Approved as to Legal Form	Reviewed by Contract Compliance	Presented to BOS for Signature
▶ _____ Jacqueline Carey-Wilson, Deputy County Counsel	▶ _____ Lory Klopfer, HS Contracts Unit	▶ _____ Collen Krygier, Director
Date _____	Date _____	Date _____

San Bernardino County
Elderly Nutrition Program
Scope of Work

This Scope of Work contains the measurable objectives mandated by the Department of Aging and Adult Services (DAAS) and the California Department of Aging (CDA) required of the Elderly Nutrition Program (ENP) Provider. The Scope of Work specifies and establishes monthly, quarterly, and annual time frames and constitutes the primary document for on-going monitoring and annual Program and Fiscal monitoring. It will be used to measure the Provider's efforts towards providing quality nutrition services.

Contractor: City of Montclair

Service Area: Montclair

I. Program Description:

- A. Purpose – The purpose of the ENP is to provide nutrition services as described in the Older Americans Act (OAA) of 1965, as amended, and to assist older individuals in California to live independently, by promoting better health through improved nutrition, and reduced isolation through programs coordinated with nutrition-related supportive services.
- B. Definition – Nutrition Services means the procurement, preparation, transport, and service of meals, nutrition education, nutrition screening, and nutrition counseling, to eligible individuals at congregate sites or in their homes.
- C. Goals – to maintain or improve the physical, psychological, and social well being of older individuals, by providing or securing appropriate nutrition services.
- D. Objectives:
 - 1. Give preference to older individuals in greatest economic or social need with particular attention to low-income minority individuals.
 - 2. Serve meals that provide one-third (1/3) of the Recommended Dietary Allowances (RDA's) and are safe and of good quality.
 - 3. Promote and maintain high food safety and sanitation standards.
 - 4. Promote good health behaviors through nutrition education and nutrition screening of participants.
 - 5. Promote or maintain coordination with other nutrition-related supportive services for older individuals.
- E. Target Population – The ENP Provider shall target individuals who are sixty (60) years of age or older, minorities, low income and living in rural areas of the County of San Bernardino.

II. Eligibility for Nutrition Services:

- A. Congregate Meals – Individuals eligible to receive a meal at a congregate nutrition site are:
 - 1. Any older individual.
 - 2. The spouse of any older individual.
 - 3. A person with a disability, under age sixty (60) who resides in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided.
 - 4. A disabled individual who resides at home with and accompanies an older individual who participates in the program.
- B. Volunteer Meals:
 - 1. A volunteer under age sixty (60) may be offered a meal if doing so will not deprive an older individual of a meal.
- C. Home-Delivered Meals – Individuals eligible to receive a home-delivered meal are:
 - 1. Any older individual who is frail, as defined below, and homebound by reason of illness, disability, or isolation:
 - a) "Frail" means that an older individual is determined to be functionally impaired because the individual either:
 - (1) Is unable to perform at least two (2) activities of daily living, including bathing, toileting, dressing, feeding, breathing, transferring and mobility and associated

San Bernardino County
Elderly Nutrition Program
Scope of Work

tasks, without substantial human assistance, including verbal reminding, physical cueing or supervision.

- (2) Due to a cognitive or other mental impairment, requires substantial supervision because the older individual behaves in a manner that poses a serious health or safety hazard to the individual or to others.
2. A spouse of a person in sub-section (C)(1) above, regardless of age or condition, if an assessment concludes that it is in the best interest of the homebound older individual.
3. An individual with a disability who resides at home with older individuals if an assessment concludes that it is in the best interest of the homebound older individual who participates in the program.
4. Priority shall be given to older individuals in sub-section (C)(1) above.

III. Requirements for Nutrition Services:

A. Congregate Meals:

1. Each Congregate Meal Provider shall:
 - a) Include procedures for obtain the views of participants about the services received.
 - b) Not preclude the service of a meal to a participant who has failed to make a reservation when food is available.
 - c) Ensure each Congregate Meal participant completes sections I and IV of the Client Intake Sheet (provided by DAAS) on the first day of service and annually thereafter.
 - d) Maintain appropriate documentation on each client. Documentation shall be kept on file to be monitored by DAAS.
2. Each Congregate Meal site shall meet all of the following:
 - a) Have a paid staff or volunteer designated to be responsible for the day-to-day activities at each site, and physically be on-site during the time that ENP activities are taking place.
 - b) Have restrooms, lighting, and ventilation, which meet the requirements of CURFFL.
 - c) Have equipment, including tables and chairs that are sturdy and appropriate for older individuals. Tables shall be arranged to assure ease of access and encourage socialization.

B. Home-Delivered Meals:

1. Develop and implement criteria to assess the level of need for home-delivered nutrition services of each eligible participant.
 - a) An initial determination of eligibility may be accomplished by telephone. This initial contact with the participant shall include completion of sections I, II, III, and IV of the Client Intake Sheet (provided by DAAS).
 - b) A written assessment shall be done in the home within two (2) weeks of beginning meal service, and shall include an assessment of the type of meal appropriate for the participant in their living environment.
 - c) An older individual eligible for receiving home-delivered meals shall be assessed for need of nutrition-related supportive services, and referred as necessary.
 - d) Re-assessment of need shall be determined quarterly. Such re-assessment shall be done in the home of the participant at least every other quarter. Each quarter's re-assessment shall include completion of sections I, II, III, and IV of the Client Intake Sheet (provided by DAAS).
2. Provide written instructions, in the language of the majority of the participants, for handling and re-heating of the meals.
3. Establish a waiting list for home-delivered meals whenever the home-delivered meal providers are unable to provide meals to all eligible individuals. The decision to place eligible recipients of a home-delivered meal on a waiting list, and their position on such a list, shall be based on greatest need and-or in accordance with policy established by the home-delivered meal provider, in consultation with DAAS.

San Bernardino County
Elderly Nutrition Program
Scope of Work

4. Provide home-delivered meals in pre-packaged divided trays (hot or frozen meals).
5. Maintain appropriate documentation on each client. Documentation shall be kept on file to be monitored by DAAS.

IV. Program Outcomes:

A. Total Number of Meals to be Served: 17,000**

1. A minimum of 95% of the total number of meals is to be provided. The Director of DAAS must approve requests to serve less than 95% of the total number of meals to be provided. All such requests must be in writing.

Program: C-1 (Congregate Meals)	Program C-2 (Home-Delivered Meals)
# of Days of Service: 251	# of Days of Service:
Number of Meals: 17,000	Number of Meals:
Sites to be Served: Montclair Community/Senior Center	Areas to be Served:

V. Staffing:

A. Manager or Director:

1. The ENP provider shall have a manager on staff who shall conduct the day-to-day management and administrative functions of the ENP, and either have (1), (2), or (3):
 - a) Possess an associate degree in institutional food service management, or a closely related field, such as, but not limited to, restaurant management, plus two (2) years experience as a food service supervisor, or,
 - b) Demonstrate experience in food service, such as, but not limited to, cooking at a restaurant, and within twelve (12) months of hire successfully complete a minimum of twenty (20) hours specifically related to food service management, business administration, or personnel management at a college level. Prior to completion of meeting the hours, this individual's performance shall be evaluated through quarterly monitoring by a registered dietitian, or,
 - c) Two years experience managing food services. Such experience shall be verified and approved by a registered dietitian prior to hire.
2. The ENP Provider shall maintain documentation on file of the qualifications of the Program Manager or staff.
3. If the Provider has more than one site, the Manager/Director shall monitor the sites on a bi-monthly basis. The bi-monthly visit shall be for the purpose of monitoring the food service practices of the employees and the implementation of the program requirements at the site level. Documentation of each visit shall be maintained on file for DAAS review.

B. Personnel – Paid Staff/Volunteers:

1. There shall be sufficient qualified paid staff or volunteer staff with the appropriate education and experience to carry out the requirements of the ENP. The total number of staff should be based on the method and level of services provided and size of the service area.
2. Contractor is encouraged to hire multi-lingual/multi-cultural staff to increase low-income and ethnic minority program participation in accordance with federal mandates.
3. Contractor shall recruit for vacant positions in an open and competitive application process free of discriminatory questions. Written job descriptions for all paid and volunteer staff shall be maintained.
4. Contractor shall complete a written work performance evaluation on all paid and volunteer staff at least annually.
5. All staff, paid and volunteer, that will be handling food must be in possession of a current Food Handlers Card.
6. Volunteers shall be recruited and used in any phase of the program operation where qualified.

San Bernardino County
Elderly Nutrition Program
Scope of Work

7. Volunteers shall be screened and selected through a formal process that assesses their capabilities.
8. Volunteers shall receive the same training as paid staff.
9. Volunteers that are paid through other job training programs are not considered volunteers and must be paid the agreed upon rate charged for regular paid staff.
10. The ENP Provider shall maintain a written Volunteer Policy that describes how volunteers are recruited, screened, what topics they are taught at orientation, and how often their performance is evaluated.

C. Registered Dietitian:

1. Each ENP Provider shall establish and administer nutrition services with the advice of a Registered Dietitian in accordance with Section 339 of the OAA, and follow the general requirements in Title 22, Division 1.8, Section 7500.
2. The Registered Dietitian will provide the following activities to meet the mandated requirements:
 - a) At a minimum, quarterly monitor for safe food handling and sanitation practices of food facilities.
 - b) Review and approve the content of staff training prior to presentation.
 - c) Develop, or review and approve the cycle menus.
 - d) Provide input, review, and approve the Nutrition Education Plan prior to presentation.
 - e) Provide technical support and assistance as needed.

VI. **Staff Training Activities:**

- A. A yearly written Staff Training Plan shall be developed, implemented, and maintained on file by the ENP Provider, as required in Title 22, Division 1.8, Section 7636.7(c).
- B. The Provider's Registered Dietitian shall review and approve the content of the Plan prior to presentation.
- C. The Staff Training Plan must identify who is to be trained, who will conduct the training, content of the training, and when it is scheduled.
- D. A copy of the Staff Training Plan that has been approved by the Provider's Registered Dietitian must be submitted to DAAS by September 1st of the FY it is being provided in. The DAAS Registered Dietitian will review and approve the Staff Training Plan and return it to the Provider. The DAAS approved Staff Training Plan must be kept on file.
- E. A minimum of four (4) hours of staff training shall be provided annually for paid and volunteer food service staff, including congregate and home-delivered meal staff.
- F. Training sessions shall be evaluated by those receiving the training.
- G. The ENP Provider shall maintain documentation of each training session on file. Documentation includes, but is not limited to, sign-in sheets, agendas, handouts, and completed evaluations.
- H. All staff, paid and volunteer, shall be oriented and trained to perform their assigned responsibilities and tasks. Training, at a minimum, shall include:
 1. Food safety, prevention of food borne illness, and HACCP principles.
 2. Accident prevention, instruction on fire safety, first aid, choking, earthquake preparedness, and other emergency procedures.
 3. Elder Abuse Law and reporting procedures.

VII. **Senior Participants:**

A. Satisfaction Survey:

1. The ENP Provider shall conduct a Client Satisfaction Survey at least annually. The Survey instrument must be approved by DAAS prior to its use, and all findings from the Survey must be used to improve services. The Provider must keep the completed Surveys and the tabulated results on file. A copy of the tabulated results must be submitted to DAAS by March 3rd of the FY it is being conducted for.

San Bernardino County
Elderly Nutrition Program
Scope of Work

- B. Complaint Procedures:
 1. Each Provider shall have a written Complaint Procedure.
 2. The Complaint Procedure will be available for the participants and will provide them the opportunity to provide positive as well as negative feedback to the Program Manager.
 3. The Provider shall have an assessment tool readily accessible for the seniors attending the congregate site or receiving a home-delivered meal.
- C. Nutrition Education Services for Participants:
 1. Nutrition Education shall be provided a minimum of four (4) times per year to participants in congregate and home-delivered meal programs.
 - a) Nutrition Education for congregate sites is defined as demonstrations, presentation, lectures or small group discussions, all of which may be augmented with printed materials.
 - b) Nutrition Education for home-delivered meal participants may consist solely of printed material that is in conjunction with a congregate meal Nutrition Education presentation.
 2. Nutrition Education shall be based on the particular need of congregate and home-delivered meal participants. An annual Needs Assessment shall be performed by the ENP Provider to make this determination.
 3. The Nutrition Education Plan and annual Needs Assessment must be submitted to DAAS by September 1st of the FY it is being provided in.
 4. Nutrition Education sessions must be reported monthly to DAAS using the Nutrition Education Monthly Service Unit Report.

Nutrition Education Units of Service:

Program: C-1 (Congregate Meals)	Program: C-2 (Home-Delivered Meals)
# of Units to be Provided: 1,200	# of Units to be Provided:
# of Sites to be Presented at: 1	# of Participants to be Presented to:

VIII. Menu Planning Guidelines/Menu Requirements:

- A. A minimum of a 3-month cycle shall be planned and submitted to DAAS.
- B. Menu cycles shall include the availability of seasonal foods.
- C. Health, cultural, ethnic and regional dietary practices shall be considered in menu planning, food selection, and meal preparation.
- D. The menu cycle shall be approved by the Provider's Registered Dietitian and upon approval forwarded to the DAAS Registered Dietitian for certification. Menus shall be submitted to the DAAS Registered Dietitian forty-five (45) days prior to the menu start date. Allow thirty (30) days for the menu certification process. Menus will be returned to the Provider at least fifteen (15) days prior to the menu start date. ENP Providers are required to have menus certified prior to the menu start date. All signatures on the menu shall be original signatures.
- E. A copy of the certified menu must be posted in a spot conspicuous to clients at each congregate site.
- F. Copies of the menus shall be made available to the participants upon request.
- G. When planning the menus, the California Daily Food Guide and the Dietary Guidelines for Americans (DGA) are to be considered. Menus shall conform to the following criteria referenced in the sources:
 1. Provide an average of 550-750 calories per meal.
 2. Limit total fat to no more than 25-30% of the calories averaged for the week.
 3. Choose and prepare foods with low amounts of salt, soy sauce and other high sodium items.
 4. Include good sources of dietary fiber such as whole grains and cooked dry beans at least four times a week.
 5. Include a variety of foods and preparation methods with consideration to color, combinations, texture, size, shape, taste, and preference of the participants served.

San Bernardino County
Elderly Nutrition Program
Scope of Work

6. Dietary Reference Intake Values:

1. Table one (1) represents the most current Dietary Reference Intakes (DRI) values and daily compliance range for target nutrients. The values provided are based on the U.S. Department of Agriculture (USDA) Food Guide calculated for one (1) meal for a woman over seventy (70) years of age whose activity level is sedentary. This example represents a majority of the older adult population served by the ENP statewide.

a. The nutrients selected for this Table are based on the target nutrients to:

- i. Promote health and prevent disease
- ii. Prevent deficiencies
- iii. Indicate diet quality
- iv. Manage disease

Table 1
Target Nutrients

Nutrient	Target Value * per meal	Daily Compliance Range
Calories (Kcal)	>550 Kcal	>550 – 700 Kcal
Protein	14 gm	14 gm (in the entrée)
Fat (% of total calories)	30%	<35% weekly average
Vitamin A (ug)	250 ug	> 250 ug 3 out of 5 days /wk or 4 out of 7 days/wk
Vitamin C (mg)	25 mg	25 mg
Vitamin B6 (mg)	0.5 mg	>0.5 mg
Vitamin B12 (ug) **	0.8 ug	0.8 ug **
Calcium (mg)	400 mg	>400 mg
Magnesium (mg)	140 mg	>140 mg
Zinc (mg) **	2.6 mg	>2.6 mg **
Sodium (mg)	<800 mg	<1,200 mg (over 1,000 mg place an icon on the menu)
Fiber (gm)	>7 gm	>7 gm
Potassium (gm) **	1565 mg	1565 mg **
Vitamin D	200 IU	200 IU
Vitamin E **	5 IU	Provide education **

*Target Value: This value represents one-third of the DRI for a 1600 calorie range. The 1600 calorie range was chosen based on the requirements for a 70-year-old sedentary female. If a majority of the senior population served by the AAA ENP Program differs from the above example, use your ENP predominate demographic characteristics to calculate target nutrient values.

** If these elements are not provided to the level noted as a weekly average, the Program must educate the participants on how to obtain these elements.

NOTE: Fortified foods should be used to meet vitamin B12 needs.

San Bernardino County
Elderly Nutrition Program
Scope of Work

Recommended sodium content was liberalized based on the information from the Mathematical study data which indicated that, for many participants, the ENP meal provides 40-50 percent of the participants' daily intake.

7. Component Meal Pattern Requirements:

1. The California 1600-calorie component meal pattern has been developed to reflect the new DGA requirements for those programs that are not using computerized nutrient analysis.
2. The ENP Provider has the discretion to allow occasional flexibility in planning meals that may not meet the meal pattern, but does meet the nutrient value requirements. Fortified food products and combination dishes used in a menu may not match the meal pattern, but may provide for the required nutrient values. For example, a fortified snack bar as a dessert could be used to boost the nutrient value of a boxed lunch or special occasion meal.
3. Items that provide the following target nutrients should be identified on the menu when using a component meal pattern template:
 - a. Vitamin C – Provide one-third (1/3) of the DRI for vitamin C each meal – 25 mg (for a 1600-calorie menu).
 - b. Vitamin A – Provide one-third (1/3) of the DRI for vitamin A at least three (3) times per week, 250 µg (for a 1600-calorie menu).
 - c. Sodium – meals that contain over 1,000 mg of sodium must be noted on the menu as a high sodium meal.
4. Table two (2) describes the elements in the California 1600-calorie meal pattern. Serving sizes are based on the USDA Food Guide Pyramid. This sample component meal pattern does not assure that meals meet one-third (1/3) of the DRI's and the DGA. Meals will require specific types of fruits and vegetables, whole grains, and high fiber foods in order to assure the target nutrients are provided. The component meal pattern may be deficient in vitamins E, B12, and Zinc, requiring additional nutrition education for participants on the selection of foods that are good sources of these nutrients.
 - a. The meal pattern in Table two (2) below is based on the minimum requirements for a sedentary female 70 years of age. If the majority of the population served by a provider falls within another requirement range (i.e. active 60 year old men), the serving sizes and minimum number of servings required can be adjusted to meet the service population. ENP Providers should verify the population served and develop menu criteria accordingly.

Table 2
California 1600 Calorie per Day Component Meal Pattern
Minimum Recommended Elements

Food Group	Required servings for 550 calories per meal	Serving sizes for 1600 calorie level
Lean meat or beans	1 serving 2 ounces per meal	2 ounces = 1 serving
Vegetable	1 – 2 servings	½ cup = 1 serving
Fruit	1 serving	½ cup = 1 serving
Bread or Grain At least ½ whole grain	1 – 2 servings	1 slice Bread = 1 serving ½ cup of rice or pasta = 1 serving
Low-fat milk or milk alternate	1 serving	1 cup or equivalent measure

San Bernardino County
Elderly Nutrition Program
Scope of Work

Fat	Optional	
Dessert	Optional - limit sweets use fruit	Select foods high in fiber and low in fat and sugar

(1) The number of servings per meal estimates provision of one-third of the DRIs.

(2) Caloric value (1,600 Kcal/day) based on a 70-year-old female, "sedentary" physical activity level using Table 3 - Estimated Caloric Requirements in Each Gender and Age Group at Three Levels of Physical Activity, from the DGA 2005.

H. Meal Components – required for both computerized and component menus:

1. Protein – meat, fish, poultry, legumes, eggs, and cheese:
 - a) A minimum of 2.0 ounces of cooked, edible portions of meat, fish, poultry, legumes, eggs, cheese, (or a combination thereof) providing at least 14 grams of protein. Programs should consider the preferences of the participants they serve.
 - b) Legumes should not be counted as both vegetable and protein. ENP Providers may use other protein sources to provide the occasional vegetarian meal.
2. Vegetables (1-2 ½ cup servings):
 - a) Vegetables as a primary ingredient in soups, stews, casseroles, or other combination dishes should total ½ cup per serving.
 - b) Raw leafy vegetables (salads) should equal 1-cup if they are to be considered a serving.
3. Fruit (1 serving):
 - a) A serving of fruit equals:
 - (1) 1 medium sized whole fruit
 - (2) ½ cup fresh, chopped, cooked, frozen, or canned drained fruit
 - (3) ½ cup 100% fruit juice
 - b) Fresh, frozen, or canned fruit should be packed in juice, light syrup, or without sugar. Fruit packed in high sugar content syrup may be rinsed before using.
4. Breads/Grains (1 ounce equivalent serving):
 - a) One-half of the daily intake of grains should be from whole grains. Grains that are processed (not whole) must be fortified.
5. Milk (8 fl. oz.):
 - a) Each meal shall contain eight (8) fluid ounces of fortified skim, low fat, or buttermilk. If religious preference precludes the acceptance of milk with the meal, it may be omitted from the menu (however, an equivalent substitute must be used).
6. Fat (Optional):
 - a) Each meal may contain fat components to increase the palatability and acceptability of the meal.
 - b) When selecting and preparing meat, poultry, dry beans, and milk or milk products, make choices that are lean, low fat, or fat free.
 - c) Consume less than 10% of calories from saturated fatty acids and less than 300 mg/day of cholesterol, and keep trans fatty acid consumption as low as possible.
 - d) Keep total fat intake between 20 to 35 percent of calories, with most fats coming from sources of polyunsaturated and monounsaturated fatty acids such as fish, nuts, and vegetable oils.
7. Dessert (Optional):
 - a) Dessert may be provided as an option to satisfy the caloric requirements or for additional nutrients. Use fruit as a dessert as often as possible and limit sweets. The fruit, grains, and dairy products served as dessert can count towards the fruit, grain, or dairy requirements. Desserts that are low in fat and/or low in sugar are encouraged.

San Bernardino County
Elderly Nutrition Program
Scope of Work

- b) When a dessert contains ½ cup of fruit per serving, it may be counted as a serving of fruit.
 - c) When a dessert contains the equivalent of 1 serving (1 ounce) starches/grains per serving, it may be counted as a serving of starches/grains (example: rice pudding or oatmeal cookie).
 - d) When a dessert contains the equivalent of ½ cup of milk per serving, it may be counted as ½ serving of milk.
8. Condiments and Product Substitutes:
- a) Sugar substitutes, pepper, herbal seasonings, lemon, vinegar, non-dairy coffee creamer, salt, and sugar may be provided, but should not be counted as fulfilling any part of the nutritive requirements.
 - b) Condiments such as salad dressings, ketchup, soy sauce, mustard, and mayonnaise do not need to be counted in a menu analysis if they are served "on the side" and are not combined with the food.
9. Sodium:
- a) The commitment to reduce sodium in the meals stems from the fact that nutrition-related chronic diseases remain the primary cause of death among people aged 65 and older. California has a diverse population, and the ENPs in the State provide culturally appropriate meals for many ethnicities. Asian meals traditionally have higher sodium levels. Programs that choose to provide culturally appropriate meals, but are concerned with the sodium content of the meals, may consider:
 - (1) Using low sodium soy sauce or diluting soy sauce with water to produce low sodium soy sauce;
 - (2) Offering soy sauce as a condiment to be added by the senior;
 - (3) Providing Nutrition Education on sodium;
 - (4) Continuing to work with the sodium levels of meals, making small steps to reduce the risk of developing kidney stones, and possibly decrease bone loss with age;
 - (5) Not providing potassium chloride salt substitutes;
 - (6) Noting meals that have more than 1000 mg of sodium on the menu as such: "This meal contains more than 1000 mg of sodium," or using an icon denoting a high sodium meal; and
 - (7) Using low sodium versions of high sodium foods when available and feasible with budget allowances.
- I. Meal Component/Nutrient Analysis:
- 1. A meal component/nutrient analysis of the entire menu cycle conducted and/or approved by a Registered Dietitian shall be done to ensure compliance with Title 22, Division 1.8, Section 7638.5.
 - a) Computerized Nutrient Analysis Requirements
 - (1) Although not required, use of computerized nutrient analysis is strongly recommended and will help ensure and verify the nutritional adequacy of meals.
 - The goal of assessing nutrient intakes of groups is to determine the prevalence of inadequate or excessive nutrient intakes within a particular group of individuals. While meal patterns serve as a basic framework for menu planning, providers are encouraged to use computerized nutrient analysis because it provides specific information on nutrients the menu may not be providing. The information that a menu is not supplying all of the desired nutrients will guide the development of future menus. As required menu elements are expanded, it is more difficult to meet all of the requirements on a daily basis. ENP Providers should focus on:
 - (a) Vitamin A
 - (b) Vitamin C

San Bernardino County
Elderly Nutrition Program
Scope of Work

- (c) Protein
- (d) Fat
- (e) Sodium
- (f) Fiber

- (2) Not all nutrient guidelines will be met with each meal. However, areas that do not meet the requirements should be the focus of future menu revisions and nutrition education.
- (3) The following nutrients should be included in the analysis when the computerized nutrient analysis method is used: calories; protein; carbohydrates; total fat; saturated fat; total fiber; vitamins A, C, D, E, K, thiamin, riboflavin, niacin, B6, folate, B12, calcium, chromium, copper, iron, magnesium, sodium, and zinc. In addition to meeting one-third of the DRIs, the menus should also follow the DGA.

IX. Food Procurement:

- A. Food procurement procedures shall comply with Title 22, CRFC standards, and HACCP best practices guidelines.
- B. All food shall be of good quality and shall be obtained from sources that conform to Federal, State, and local regulatory standards for quality, sanitation, and safety.
- C. To the extent possible, providers are encouraged to participate in group food purchasing.
- D. A comparative cost analysis shall be performed either by the ENP Provider or its group purchasing organization on an on-going basis to obtain the highest quality food for the lowest price available.

X. Food Storage:

- A. Food storage procedures shall comply with Title 22, CRFC standards, and HACCP best practices guidelines.
- B. Adequate and suitable space free from vermin, dirt, and contamination or adulteration shall be provided for the storage of food and beverages, and cooking, serving, and eating supplies.

XI. Food Production:

- A. Food production procedures shall comply with Title 22, CRFC standards, and HACCP best practices guidelines.
- B. Food production and meal service shall be under the supervision of a trained staff in food service management to ensure food service sanitation and the practice of hygienic food handling techniques are followed. This person shall function with the advice of the Provider's Registered Dietitian.
- C. Meals shall be served as indicated on the certified menus. In the event that a menu substitution must occur, the following procedure must be followed:
 - 1. The Provider's Registered Dietitian must approve all menu substitutions.
 - 2. A Menu Substitution Form must be completed and signed by the Provider's Registered Dietitian.
 - 3. The completed Menu Substitution form shall be kept on file for DAAS review.
- D. Production Control:
 - 1. Production schedules or worksheets must be available in the food preparation area.
 - 2. Food shall be prepared in sufficient quantities to serve all participants. Careful planning shall minimize the leftover food and prevent waste.
 - 3. Standardized recipes shall be used to ensure consistency of quality and quantity and adherence to menu guidelines.
 - 4. Appropriate utensils for correct and consistent portion control shall be available and used at each site.

San Bernardino County
Elderly Nutrition Program
Scope of Work

E. Meal Service/Temperature Monitoring:

1. All food for congregate sites shall be packaged and transported in a manner in which it is protected from potential contamination and maintains appropriate hot and cold food temperatures.
2. Meals shall be served to seniors "offer versus serve" – meaning participants are to be given an opportunity to decline a menu item. Food trays shall not be served ahead of time.
3. Temperature Checks:
 - a) All hot, cold, and frozen potentially hazardous meal components, including milk, shall be checked daily immediately prior to dispatch from the central kitchen.
 - b) All hot, cold, and frozen potentially hazardous meal components, including milk, shall be checked at satellite congregate sites upon delivery and at all congregate sites immediately before meal service.
 - c) The ENP Provider must have written procedures for monitoring food temperature.
 - d) The ENP Provider must use a form to document food temperatures daily (i.e. Food Temperature Log).
 - e) The ENP Provider shall have a staff member review the completed Food Temperature Logs at random a minimum of every other month. If problems are discovered, an action plan must be developed to resolve the issue.
 - f) All completed Food Temperature Logs must be maintained on file for DAAS review.
4. To maintain quality in prepared foods, holding times shall be kept to a minimum. Long periods of holding hot foods at required temperatures diminishes the nutrient content and palatability of foods.
5. Holding time shall not exceed 2 hours between the end of production and the beginning of food service at the congregate site.
6. Milk and milk products shall be provided in individual, commercially filled containers, or shall be poured by a staff member directly from commercially filled bulk containers into the glass or cup from which it is consumed.
7. Single service utensils and tableware shall be used one time only and then discarded.
8. Safety of the food after it has been served at the congregate site and then removed by the participant from the congregate site is the sole responsibility of the participant and may be consumed by the participant as he/she deems it appropriate.
9. The Provider shall have a sign posted in the congregate site stating, "Food removed from the congregate site is at your own risk."

XII. Food Service Requirements:

- A. The ENP Provider shall ensure that the following forms are available, completed **daily**, and maintained at each nutrition site for a minimum of 12 months:
 1. Food Temperature Log – one should be available for congregate meals and one for home delivered meals if hot foods are delivered to the client.
 2. Cleaning Schedule
 3. Equipment Temperature Log – for all dish machines, refrigerators, and freezers.
 4. Production Schedule – applicable only if food is cooked at the site.
 5. The current Environmental Health inspection shall be available at the site for review.
 6. Staff and volunteers who are handling food shall possess a current food handlers' card that shall be available for review.

XIII. Program Requirements:

- A. Client Intake Sheets:
 1. The ENP Provider will ensure that each participant completes the Client Intake Sheet form (provided by DAAS) to determine his or her level of nutritional risk. Forms shall be completed for:

San Bernardino County
Elderly Nutrition Program
Scope of Work

- a) Congregate Meal Participants – at the beginning of service and then annually thereafter for clients who remain on the program.
 - (1) Sections I and IV are required for congregate meals.
 - b) Home-Delivered Participants – at the beginning of service and then quarterly thereafter for clients who remain on the program.
 - (1) Sections I, II, III, and IV are required for home-delivered meals.
 2. ENP Providers who are required to complete their own data entry into the SAMS System must enter the annual and quarterly Client Intake Sheets into the database in a timely manner.
 3. ENP Providers who are not required to complete their own data entry must send the Client Intake Sheets to DAAS for data entry into the SAMS System.
- B. Outreach/Marketing Activities:
1. ENP Providers are required to provide outreach in the community through community organizations and other groups. All outreach and marketing activities shall be documented and kept on file for the annual monitoring visit conducted by DAAS.
 2. ENP Providers shall develop and have handouts, brochures, and/or signs available in languages other than English and posted in locations such as churches, community service locations, and small stores serving the minority communities.
- C. Emergency Procedures:
1. ENP Providers shall have a written Emergency/Disaster Plan.
 2. Each nutrition site shall have an evacuation plan posted identifying the emergency exits and assembly areas.
 3. Staff must be knowledgeable of emergency procedures.
 4. Where feasible and appropriate, ENP Providers shall make arrangements for the availability of meals to participants during a major disaster, as defined in 42 U.S.C., Chapter 68, Section 5122 (2). Such arrangements shall be included in the Emergency/Disaster Plan.
- D. Donations and Confidentiality:
1. An Eligible individual who receives a meal shall be given the opportunity to contribute to the cost of the meal
 2. The ENP Provider shall develop a suggested contribution/donation amount. When developing this contribution/donation amount, the income ranges of the older individuals in the community and the Provider's other sources of income shall be considered.
 3. A sign indicating the suggested contribution for eligible individuals and the fee for guests shall be posted near the contribution container at each congregate meal site. A guest fee shall cover all meal costs.
 4. No eligible individual shall be denied participation because of failure or inability to contribute.
 5. The Provider shall ensure that the amount of the eligible participant's contribution is kept confidential.
 6. The ENP Provider shall establish written procedures to protect contributions and fees from loss, mishandling, and theft (i.e. Contribution/Donation Procedures). Such Procedures shall be kept on file for DAAS review.
 7. All contributions and fees shall be identified as program income and used to increase the number of meals served, to facilitate access to such meals, and to provide nutrition-related supportive services.
- E. "No Soliciting" Sign:
1. The ENP Provider shall ensure that a "No Soliciting" sign is posted on the door leading to the congregate nutrition site. No soliciting of any kind is permitted on the premises during the lunch hours for services or goods promoted by businesses.

San Bernardino County
Elderly Nutrition Program
Scope of Work

F. Coordination:

1. If applicable, develop a fair and equitable policy and procedure for referring participants to the appropriate transportation provider for securing public transportation to and from nutrition sites and have the policy available for review by DAAS.
2. Include the following statement on all advertising, brochures, poster, etc., "**Funding for this service has been provided by the San Bernardino County Department of Aging and Adult Services through a grant award from the California Department of Aging.**"
3. Coordinate service with other County departments and local agencies by providing time for presentations or special activities that promote a community based system of care for the participants attending nutrition sites.

G. Reporting:

1. All fiscal and program data must be reported monthly (i.e. Request for Reimbursement, Rosters, Monthly Service Unit Report, etc.). All reports are due to DAAS by the 20th business day of the month following the month of service. DAAS will provide training as needed.
2. The Provider shall maintain support files including, but not limited to, invoices, payroll, Client Intake Sheets, and any other supporting documents to substantiate monthly reports.
3. ENP Providers are required to report all known or suspected cases of elder abuse to DAAS Adult Protective Service or law enforcement immediately by telephone. A written report must be sent within two (2) working days. Abuse of an elder or dependent adult means physical abuse, neglect, intimidation, cruel punishment, fiduciary abuse, abandonment, isolation, or other treatment resulting in physical harm or pain or mental suffering or the deprivation by a care custodian of goods or services which are necessary to avoid physical harm or mental suffering.
4. Maintain records, by month, that support claimed in-kind expenditures.
5. Report expenditures funded with Deferred Income by September 30th of the FY in which it is being claimed.
6. Develop and have on hand for review by DAAS, a cost allocation plan which explains the methods used to allocate costs between congregate and home-delivered meals or any other program funded by DAAS.
7. In the event additional funds become available, the Provider will use the funds to increase the number of meals being provided to participants by either increasing the number of individuals attending its present sites, or by opening new sites in communities not already served by the Provider. Exceptions to this requirement must be fully documented in writing and submitted to the Director of DAAS for prior approval.
8. Other Reporting Requirements:
 - a) SAMS (Social Assistance Management System):
 - (1) The following reports are to be completed and submitted to DAAS by the 5th business day of the month following the month of service if the Provider is serving **less than 500 clients** per month:
 - (a) Client Intake Sheets for any new clients or any annual or quarterly assessments completed in the month.
 - (b) Meal Rosters
 - (2) Providers that are serving **more than 500 clients** shall secure the appropriate licensing, have a dedicated staff responsible for maintaining the client tracking software, obtain and maintain an Internet Service Provider and the appropriate hardware that can support the program. These Providers shall be responsible for entering the following data into SAMS by the 20th business day of the month following the month of service:

San Bernardino County
Elderly Nutrition Program
Scope of Work

- (a) Client Intake Sheets for any new clients or any annual or quarterly assessments completed in the month.
 - (b) Rosters
 - (c) Routes (if applicable)
 - b) Nutrition Education Monthly Service Unit Report
 - (1) The Nutrition Education Monthly Service Unit Report is a tool that is used to report the number of Nutrition Education service units that have been provided to participants. This report is to be completed and submitted to DAAS by the 20th business day of the month following the month of service. Copies of any handouts presented to the participants as a component of the Nutrition Education shall be attached to the Nutrition Education Monthly Service Unit Report.
- H. Disposal of Equipment:
- 1. If the Provider wishes to dispose of equipment purchased with Nutrition grant funding, they must submit a request, in writing, to DAAS. The request shall state the equipment description, the location of the equipment, and the reason for disposal.
 - 2. Provider shall submit a list of equipment purchased with grant funding by location.

**CLIENT COMPLAINT AND GRIEVANCE PROCEDURES
Older Americans Act Programs**

(Instructions: The service recipient is to read, sign, and receive a copy of this form. The original of the form is to be filed in the service recipient's case file maintained by contractor. The reverse side of this form may be used to file a complaint or grievance with the contractor/service provider.)

If you believe you have been discriminated against, or that there has been a violation of any laws or regulations, or if you have a problem regarding services received, you have the right to file a grievance.

The following procedures are to be followed when filing a grievance:

1. Identify the complaint/grievance in writing and discuss it with the contractor/service provider.

Time frame: Within 1 week of discrimination/violation/problem.

If resolved at this level, no further action is required. If no resolution is apparent within 15 business days, proceed with Step 2.

2. Forward the written complaint/grievance to the **Deputy Director of Administration** at the following address:

Department of Aging and Adult Services
686 East Mill Street
San Bernardino, CA 92415-0640
ATTN: **Deputy Director**

Time frame: Within 1 week of Step 1.

If resolved at this level, no further action is required. If no resolution is apparent within 15 business days, proceed with Step 3.

3. If no solution is apparent after Steps 1-2 have been exhausted, forward copy of written grievance to:

Human Services Group, Contract Administrator
150 S. Lena Road
San Bernardino, CA 92415-0515

You will be contacted within 15 business days of any actions being taken.
Please note: Each of these steps must be completed in the sequence shown.

If you believe that your civil rights have been violated, please contact:

Deputy Director, Administration
Department of Aging and Adult Services
686 East Mill Street
San Bernardino, CA 92415-0640

GRIEVANCE PROCEDURE CERTIFICATION

This is to certify that I have read, understood, and received a copy of the Client Complaint and Grievance Procedures for Older Americans Act Programs.

Signature of Service Recipient

Date

GRIEVANCE NOTICE

Your Name:
Date of Occurrence:
Approximate Time of Occurrence:
Name of Service Provider:
Address of Service Provider:
Nature of Grievance:
Resolution:

Resolved by: _____
Signature

Date

Signature of Service Recipient

Date

DEPARTMENT OF AGING
CONTRACTOR/VENDOR CONFIDENTIALITY STATEMENT
 CDA 1024 (REV 1/07)

CERTIFICATION

I hereby certify that I have reviewed this Confidentiality Statement and will comply with the following Statements.

CONTRACTOR/VENDOR NAME:

CONTRACT NUMBER:

AUTHORIZED SIGNATURE:

PRINTED NAME AND TITLE OF PERSON SIGNING:

In compliance with Government Code 11019.9, Civil Code 1798 Et. Seq., Management Memo 06-12 and Budget Letter 06-34 the California Department of Aging (CDA) hereby requires the Contractor/Vendor to certify that:

- confidential information shall be protected from disclosure in accordance with all applicable laws, regulations and policies.
- all access codes which allow access to confidential information will be properly safeguarded.
- activities by any individual or entity that is suspected of compromising confidential information will be reported to CDA by completing a Security Incident Report, CDA 1025.
- any wrongful access, inspection, use, or disclosure of confidential information is a crime and is prohibited under State and federal laws, including but not limited to California Penal Code Section 502; California Government Code Section 15619, California Civil Code Section 1798.53 and 1798.55, and Health Insurance Portability and Accountability Act.
- any wrongful access, inspection, use, disclosure, or modification of confidential information may result in termination of this Contract/Agreement.
- obligations to protect confidential information obtained under this Contract/Agreement will continue after termination of the Contract/Agreement with CDA.
- all employees/subcontractors of the Contractor/Vendor will complete the required Security Awareness Training module located at www.aging.ca.gov, within 30 days of the start date of this Contract/Agreement or within 30 days of the start date of any new employee or subcontractor. Contractor/Vendor may substitute CDA's Security Awareness Training program with its Security Training provided such training meets or exceeds CDA's training requirement.
- all employees/subcontractors of the Contractor/Vendor will be notified of CDA's confidentiality and data security requirements.
- CDA or its designee will be granted access by the Contractor or Vendor to any computer-based confidential information within the scope of the Contract.
- I agree to protect the following types of confidential information which include but not limited to:
 - Social Security number
 - Medical information
 - Claimant and employer information
 - Driver License information
 - Information about individuals that relate to their personal life or identifies or describes an individual
 - Other agencies' confidential and proprietary information
 - Criteria used for initiating audit selection
 - Methods agencies use to safeguard their information (computer systems, networks, server configurations, etc.)
 - Any other information that is considered proprietary, a copyright or otherwise protected by law or contract.
- I agree to protect confidential information by:
 - Accessing, inspecting, using, disclosing or modifying information only for the purpose of performing official duties
 - Never accessing, inspecting, using, disclosing, or modifying information for curiosity, personal gain, or any non-business related reason
 - Securing confidential information in approved locations
 - Never removing confidential information from the work site without authorization.

CALIFORNIA DEPARTMENT OF AGING (CDA)
 SECURITY INCIDENT REPORT
 CDA 1025 (New 07/07)

INCIDENT INFORMATION		
1. AGENCY/CONTRACTOR NAME:	2. AGENCY/CONTRACTOR INFORMATION SECURITY OFFICER'S NAME:	
3. AGENCY/CONTRACTOR ADDRESS:		4. AGENCY/CONTRACTOR TELEPHONE:
5. DATE/TIME OF INCIDENT: <input type="checkbox"/> UNKNOWN	6. DATE INCIDENT DETECTED: <input type="checkbox"/> UNKNOWN	7. INCIDENT REPORTED TO: <input type="checkbox"/> CALIFORNIA DEPARTMENT OF AGING <input type="checkbox"/> DISTRICT ATTORNEY <input type="checkbox"/> CA HWY PATROL <input type="checkbox"/> ATTORNEY GENERAL <input type="checkbox"/> OTHER:
8. INCIDENT LOCATION : *		
9. DESCRIPTION OF INCIDENT:		
10. MEDIA DEVICE TYPE, IF APPLICABLE:	11. WAS THE PORTABLE STORAGE DEVICE ENCRYPTED? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> UNKNOWN	
12. IF NO, EXPLAIN:		
13. DESCRIBE THE COSTS ASSOCIATED WITH RESOLVING THIS INCIDENT:		14. TOTAL ESTIMATED COST OF INCIDENT:\$
15. TYPE OF PERSONALLY IDENTIFIABLE INFORMATION (CHECK ALL THAT APPLY): <input type="checkbox"/> NO PERSONAL INFORMATION <input type="checkbox"/> SOCIAL SECURITY NUMBER <input type="checkbox"/> HEALTH OR MEDICAL INFORMATION <input type="checkbox"/> FINANCIAL ACCOUNT NUMBER <input type="checkbox"/> NAME <input type="checkbox"/> DRIVER'S LICENSE/STATE ID NUMBER <input type="checkbox"/> OTHER (SPECIFY)		
16. IS A PRIVACY DISCLOSURE NOTICE REQUIRED? <input type="checkbox"/> Yes <input type="checkbox"/> No *IF A PRIVACY DISCLOSURE NOTICE IS REQUIRED, ATTACH A SAMPLE OF THE NOTIFICATION.	17. NUMBER OF INDIVIDUALS AFFECTED:	18. DATE NOTIFICATION(S) MADE TO THE INDIVIDUAL:
19. HAVE THOSE RESPONSIBLE FOR THE INCIDENT BEEN IDENTIFIED?		

<input type="checkbox"/> YES <input type="checkbox"/> NO COMMENT:		
20. CORRECTIVE ACTIONS TAKEN TO PREVENT FUTURE OCCURRENCES:		
21. ESTIMATED COST OF CORRECTIVE ACTIONS: \$	22. DATE CORRECTIVE ACTIONS WILL BE FULLY IMPLEMENTED:	
SIGNATURES		
23. PRINT - AGENCY/CONTRACTOR INFORMATION SECURITY OFFICER:	SIGNATURE:	DATE:
24. PRINT - AGENCY/CONTRACTOR PRIVACY OFFICER:	SIGNATURE:	DATE:
25. PRINT - AUTHORIZED SIGNATURE/DIRECTOR:	SIGNATURE:	DATE:

DEPARTMENT OF AGING
SECURITY INCIDENT REPORT
INSTRUCTIONS

The following instructions will assist in completing the form. All questions must be completed, even when the response is a future action.

1. Agency/Contractor Name - Provide your agency, contractor, vendor, department, board, bureau or commission's full name.
2. Agency/Contractor Information Security Officer's Name - Provide your agency's Information Security Officer's Name.
3. Agency/Contractor Address - Provide your agency/contractor's address.
4. Telephone - Provide your agency/contractor's telephone number.
5. Date/Time of Incident - Provide the date/time when the incident occurred. If unknown, select the "Unknown" checkbox.
6. Date Incident Detected - Provide the date the incident was discovered.
7. Incident Reported To - Select the appropriate checkbox. If applicable, select the other checkbox and describe to whom the incident was reported.
8. Incident Location - Provide the location where the incident occurred. For example, if a laptop was stolen from an employee's home, suggested content is "Employee's Home, Roseville, CA"; or if the incident occurred at the agency's headquarters office, suggested content is "Agency's Headquarters, 123 Any Street, Sacramento, CA."
9. Description of Incident - include the following in the description:
 - When the incident occurred and how it was discovered.
 - The effect of the incident on the business and infrastructure of your agency.
 - The number of people (inside your agency and outside your agency) affected by this incident.
 - The effects, if any, of this incident on people, businesses or services outside of your agency.
 - The details of any law enforcement investigation of this incident, such as which agency investigated it, when, and the report number.
 - Any personal, confidential, or sensitive information involved/disclosed.
10. Media Device Type, If Applicable - Provide the type of media or device involved in the incident, such as paper (fax, mail, etc.) or electronic (CD, floppy drive, laptop, PDA, email, etc.).
11. Was the Portable Storage Device Encrypted? - Check the appropriate box.
12. If NO, Explain - Describe why the storage device was not encrypted.
13. Describe the Costs Associated with Resolving this Incident - Provide a cost estimate of resolving the incident. Cost should include everything necessary to resolve the incident, including hardware, software, staff time, contracting services, and any other pertinent costs that were triggered due to the incident. The estimate should also include costs associated with a disclosure notification (such as preparation, postage, call center activation, etc.).

14. Total Estimated Cost of Incident - **Provide the total cost associated with handling the incident as it relates only to information technology. For example, if a state vehicle was stolen with a state-issued laptop in it, do not include the cost of the state vehicle.**
15. Type of Personally Identifiable Information - **If applicable, check the appropriate type(s) of personally identifiable information that applies in this incident.**
16. Is a Privacy Disclosure Notice Required? - **Check appropriate box. Sample – If yes, attach a sample copy of the notification sent to the affected individuals. DO NOT provide a sample that includes personally identifiable information.**
17. Number of Individuals Affected - **Identify the number of individuals whose personally identifiable information was breached/disclosed.**
18. Date Notification(s) Made to the Individual - **Provide the date that the Notification was made to the affected individuals.**
19. Have Those Responsible for the Incident Been Identified? - **Check the appropriate box. If applicable, add comment.**
20. Corrective Actions Taken To Prevent Future Occurrences - **Provide a detailed description of the corrective actions taken by the agency to prevent future occurrences of a similar incident occurring again.**
21. Estimated Cost of Corrective Actions - **Provide cost estimations to implement the corrective actions. For example, hardware and/or software may need to be upgraded, installed or purchased; new policies may need to be developed; additional training may need to be given. Include all related costs, such as staff time, contracting services, and hardware or software purchases.**
22. Date Corrective Actions Will Be Fully Implemented - **Provide a date when the corrective actions were, or will be, fully implemented.**
23. Print – Agency/Contractor Information Security Officer
24. Print – Agency/Contractor Privacy Officer - **This is required only in those instances where personally identifiable information is involved. If personally identifiable information is involved and no disclosure notice is required, the Privacy Officer's signature is still required.**
25. Print – Authorized Signature/Director

ASSURANCE OF COMPLIANCE

ASSURANCE OF COMPLIANCE WITH ALL APPLICABLE LAWS
RELATING TO
NONDISCRIMINATION IN STATE AND FEDERALLY ASSISTED PROGRAMS

CONTRACTOR

HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, the Food Stamp Act of 1977-Section 272.6, The Americans with Disabilities Act of 1990, Government Code (GC) Section 11135 and California Code of Regulations (CCR) Title 22 Section 98000-98413, Title 24 of the California Code of Regulations, Section 3105A(e) and other applicable federal and state laws, as well as their implementing regulations (including 45 CFR, Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42), by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of race, color, national origin, political affiliation, religion, marital status, sex, age or disability be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state assistance; and HEREBY GIVES ASSURANCE THAT, it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE AGENCY HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination will be prohibited.

BY ACCEPTING THIS ASSURANCE, the agency agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws and regulations and permit authorized County, state and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, County shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code Section 10605, or Government Code Section 11135-39, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the agency directly or through contract, license, or other provider services, as long as it receives federal or state assistance; and shall be submitted annually with the required Civil Rights Plan Update.

DATE

SIGNATURE

ORGANIZATION

ADDRESS

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the Information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

INFORMATION SHEET (one Information Sheet per Vendor)

CONTRACTOR SHALL COMPLETE SECTION I OF THIS FORM AND RETURN TO:

SAN BERNARDINO COUNTY
 Department of Aging and Adult Services
 Attn: CONTRACTS

SECTION I: CONTRACTOR INFORMATION			
Contractor Name:			
Address (including City, State and Zip Code):			Phone:
Web Site:	Email:	Fax:	
Site Name for Services (if Different from Contractor):			
Address (including City, State and Zip Code):			Phone:
Web Site:	Email:	Fax:	
Clinic Contact:		Title:	
Contract Signature Authority:			
Name:		Name:	
Title:		Title:	
Signature:		Signature:	
Phone #: ()	E-Mail:	Phone #: ()	E-Mail:
Claim Signature Authority:			
Name:		Name:	
Title:		Title:	
Signature:		Signature:	
Phone #: ()	E-Mail:	Phone #: ()	E-Mail:
SECTION II: DAAS INFORMATION			
Contract Mailing Address:		Contracts Unit:	
San Bernardino County Department of Aging and Adult Services Contracts Unit 686 E. Mill Street San Bernardino, CA 92415-0920		<i>Unit Fax #: 909-891-9150</i>	

COMMUNITY FOCAL POINTS LIST

 CCR Title 22, Article 3, Section 7302(a)(14), 45 CFR Section 1321.53(c), OAA 2006 306(a)

Adelanto Senior Center	11565 Cortez Street	Adelanto	92301	(760) 246-7736
Apple Valley Senior Center	14933 Wakita Road	Apple Valley	92307	(760) 247-3155
Baker Valley Senior Center	P.O. Box 28	Baker	92309	(760) 733-4485
Barstow Senior Center	555 Melissa	Barstow	92311	(760) 256-9111
Big Bear Valley Senior Center	42651 Big Bear Blvd.	Big Bear	92314	(909) 584-0323
Bloomington Senior Center	18317 Valley Blvd.	Bloomington	92316	(909) 877-4310
Bonnie Baker Senior Center	149350 Ukiah Trail	Big River	92242	(760) 665-2667
Casa Ramona Senior Center	1524 W. 7 th St.	San Bernardino	92311	(909) 889-0011
Chino Senior Center	13170 Central Ave.	Chino	91710	(909) 591-9836
Delmann Heights Senior Center	2969 North Flores	San Bernardino	92405	(909) 887-2115
El Mirage Senior Club	1488 Milton	El Mirage	92301	(760) 388-4429
George White Senior Center	856 S. Nuevo Ave.	Fontana	92335	(909) 822-4493
Gibson Senior Center	250 N. Third St.	Upland	91786	(909) 981-4501
Grand Terrace Senior Center	22627 Grand Terrace Rd.	Grand Terrace	92313	(909) 824-1491
Havasu Lake Senior Center	So. 17 Mile Rd.	Havasu Lake	92363	(760) 858-4336
Hesperia Senior Center	16292 Lime St.	Hesperia	92345	(760) 244-1680
Highland Senior Center	3102 E. Highland Ave.	Highland	92369	(909) 862-8104
Hinkley Senior Center	35779 Mt. View	Hinkley	92347	(760) 253-4677
Home of Neighborly Senior Center	839 N. Mt. Vernon	San Bernardino	92311	(909) 885-3491
Hootman Senior Center	2929 School Rd.	Running Springs	92382	(909) 867-3176
Hutton Senior Center	660 Colton Ave.	Colton	92324	(909) 370-6168
James Brulte Senior Center	1120 Baseline Rd.	Rancho Cucamonga	91730	(909) 477-2780
Jessie Turner Senior Center	6396 Citrus Ave.	Fontana	92336	(909) 428-8372
Josephine Knopf Senior Center	8384 Cypress Ave.	Fontana	82335	(909) 428-8376

ATTACHMENT H

Landers Senior Center	58380 Reche Rd.	Landers	92285	(760) 364-3936
Leisure Shores Senior Center	24658 San Moritz Dr.	Crestline	92325	(909) 338-5036
Luque Senior Center	292 East "O" Street	Colton	92324	(909) 370-5087
Lucerne Valley Senior Club	10431 Allen Way	Lucerne Valley	92356	(760) 248-2248
Mentone Senior Center	1331 Opal Ave.	Mentone	92359	(909) 794-0327
Montclair Senior Center	5111 Benito	Montclair	91763	(909) 625-9462
Mountain Communities Senior Center	675 Grandview Rd.	Twin Peaks	92391	(909) 337-1824
Needles Senior Center	1699 Bailey	Needles	92363	(760) 326-5643
Newberry Springs Senior Center	3383 Newberry Rd.	Newberry Springs	92365	(760) 257-3284
Oldtimers Foundation Senior Center	8572 Sierra Ave.	Fontana	92335	(909) 829-0384
Ontario Community Senior Center	225 East "B" St.	Ontario	92764	(909) 395-2021
Perris Hill Park Senior Center	780 E. 21 st St.	San Bernardino	92418	(909) 384-5436
Phelan Senior Center	9856 Sheep Creek Rd.	Phelan	92371	(760) 868-8067
Pinon Hills Senior Center	10433 Mountain Rd.	Pinon Hills	92371	(760) 868-8637
Red Mountain Senior Center	P.O. Box 824	Red Mountain	92558	(760) 374-2201
Redlands Community Senior Center	111 W. Lugonia	Redlands	92373	(909) 798-7579
Redlands Joslyn Senior Center	21 Grant St.	Redlands	92373	(909) 798-7550
Rialto Senior Center	14111 S. Riverside Ave.	Rialto	92376	(909) 877-9706
San Bernardino Senior Center	600 W. 5 th St.	San Bernardino	92410	(909) 384-5430
Trona Senior Center	13187 Market St.	Trona	93562	(760) 372-5889
Victorville Activity Center	15075 Hesperia Rd.	Victorville	92392	(760) 245-7047
Victorville Senior Center	14874 South Mojave Dr.	Victorville	92392	(760) 245-5018
Wonder Valley Senior Center	80526 ½ Amboy Rd.	Twentynine Palms	92277	(760) 367-1678
Wrightwood Senior Center	P.O. Box 607	Wrightwood	92397	(760) 249-3854
Yucaipa Senior Center	12202 First St.	Yucaipa	92399	(909) 797-1177
Yucca Valley Senior Center	57088 29 Palms Hwy	Yucca Valley	92284	(760) 228-5453

Following are the addresses of the Department of Aging and Adult Services offices.

City	Address	Zip	Phone
Barstow	536 East Virginia Way	92311	(760) 256-5544
Needles	1300 Bailey Avenue	92363	(760) 326-9328
Rancho Cucamonga	9445 Fairway View Place	91730	(909) 948-6200
San Bernardino	686 E. Mill Street	92415	(909) 891-3900
Victorville	17270 Bear Valley Road, Suite 108	92395	(760) 843-5100
Yucca Valley	56357 Pima Trail	92284	(760) 228-5390

MONTHLY NUTRITION PROGRAM REQUEST FOR REIMBURSEMENT
(Due on the 5th working day of the following month)

FY

2010-2011

COUNTY OF SAN BERNARDINO
DEPARTMENT OF AGING & ADULT SERVICES

CONTRACTOR NAME AND ADDRESS:

CFDA#s:

MONTH:

CONGREGATE SITES C 1

HOME DELIVERED MEALS C 2

of Meals Provided as Entered into SAMS
(X) Reimbursable Cost Per Meal
= REQUEST FOR REIMBURSEMENT

\$ -
\$ -

Prepared By: _____
Signature *

Date: _____

Approved By: _____
Signature *

Date: _____

Check this box if you sold any equipment purchased with Nutrition grant funds during the month being reported.

IMPORTANT:
1. Invoice must be signed by Contractor or invoice will be returned for signature.
2. Monthly Invoice must be accompanied by separate Contractor Monthly Expenditure Report.

NUTRITION PROGRAM Contractor Quarterly Expenditure Report.
 (Submit quarterly by the 5th working day October, January, March and June for the previous quarter of service)

FY 2010-2011

COUNTY OF SAN BERNARDINO
 DEPARTMENT OF AGING & ADULT SERVICES

CONTRACTOR NAME AND ADDRESS:

CFDA#

MONTH:

CONGREGATE SITES C 1

HOME DELIVERED MEALS C 2

	EXPENDITURES:	A + B = C		TOTAL MONTHLY EXPENSE
		CASH	IN-KIND	
1.	Personnel	\$ -	\$ -	\$ -
2.	Staff Travel and Training			-
3.	Equipment (including One-Time-Only purchases)			-
4.	Consultants			-
5.	Catered Food			-
6.	Raw Food			-
7.	Other Expenses			-
	a. Consumable Supplies			-
	b. Insurance			-
	c. Repair & Maintenance			-
	d. Rent/Building Space			-
	e. Utilities			-
	f. Vehicle Operations			-
	g. Miscellaneous			-
8.	Indirect Costs			-
9.	Total Expenditures (add lines 1-8)	\$ -	\$ -	\$ -

	DEDUCTIONS FROM EXPENDITURES:	CASH	IN-KIND	TOTAL DEDUCTIONS
10.	Program Income (income not from DAAS)	\$ -		\$ -
11.	Deferred Income			-
12.	Matching Cash			-
13.	Matching In-Kind			-
14.	Non-Match Cash			-
15.	Non-Match In-Kind			-
16.	Total Deductions (add lines 10-15)	\$ -	\$ -	\$ -
TOTAL EXPENDITURES LESS DEDUCTIONS (line 9 less line 16)				\$ -

Prepared By: _____
Signature *

Date: _____

Approved By: _____
Signature *

Date: _____

Check this box if you sold any equipment purchased with Nutrition grant funds during the the month being reported.

***CONTRACTOR MUST SIGN INVOICE FOR PAYMENT, OR INVOICE WILL BE RETURNED FOR SIGNATURES!**

CITY OF MONTCLAIR
BUDGET LINE ITEMS FOR NUTRITION SERVICES

Fiscal Year 2010/2011

CONGREGATE SITES C-1 HOME DELIVERED MEALS C-2 **Section I: Prepare this section based on annual estimated cost to serve the meals.**

		a	b	C=a+b
		Cost to Provider for the year		
Expenditure Category:		Cash	In-Kind	Annual Expense
1	Personnel	68,294	48,500	116,794
2	Staff Travel & Training	400		400
3	Equipment			
4	Consultants	2,000		2,000
5	Catered Food	73,814		73,814
6	Raw Food			
7	Other Expenses:			
	a. Consumable Supplies	9,263		9,263
	b. Insurance	5,000		5,000
	c. Repair & Maintenance			
	d. Rent/Building Space			
	e. Utilities			
	f. Vehicle Operations	7,650		7,650
	g. Miscellaneous	2,090		2,090
8.	Indirect Cost			
9.	Nutrition Education	262		262
Total Expenditures (add lines 1-9)		168,773	48,500	217,273

County Contract Revenue Sources:			
	Title IIIC	81,168	81,168
	NSIP	12,580	12,580
	One Time Only		
	CDBG - DAAS		
	CDBG -ECD		
	County Funding		
	Nutrition Education	262	262
Total County Contract Revenue Sources		94,010	94,010

Other Revenue Sources:			
	Program Income	27,656	27,656
	Deferred Income		
	Matching Cash	47,107	47,107
	Matching In-Kind	48,500	48,500
	Non-Match Cash		
	Non-Match In-Kind		
Total Other Revenue Sources		123,263	123,263
Total Revenue		217,273	217,273

Section II: Prepare this section based on estimated number of meals that will be served multiplied by meal cost per unit.

D	E	f=d*e
Estimated annual number of meals	Proposed meal cost per unit	Annual Budget
17,000	\$5.53	\$94,010

Budget In-Kind Narrative

Provide information regarding specific in-kind to be used as match. Include site location, if applicable, descriptions, rates and other relevant information. The Total should equal the amount of in-kind reported as match on your budget summary.

Description*	Site/Location	Rate	Total In-Kind Match

*(Identify type of in-kind: rent, volunteer services, etc.)

DATE OF SUBMISSION _____

PROVIDER NAME _____

San Bernardino County-DAAS Form 332
 Revised 01/08/2001

AGENDA REPORT

SUBJECT: CONSIDER REDEVELOPMENT AGENCY BOARD OF DIRECTORS' AWARD OF CONTRACT TO LSC CONSTRUCTION IN THE AMOUNT OF \$21,300	DATE: May 3, 2010
	SECTION: AGREEMENTS
	ITEM NO.: 3
CONSIDER REDEVELOPMENT AGENCY BOARD OF DIRECTORS' APPROVAL OF AGREEMENT NO. 10-47 WITH LSC CONSTRUCTION FOR THE 9916 CENTRAL AVENUE IMPROVEMENT PROJECT PHASE 2	FILE I.D.: RDA 685
	DEPT.: REDEVELOPMENT
CONSIDER AUTHORIZATION OF A \$2,200 CONSTRUCTION CONTINGENCY	

BUSINESS PLAN: N/A

REASON FOR CONSIDERATION: The Redevelopment Agency Board of Directors is requested to consider award of a contract to and approval of an agreement with LSC Construction for the 9916 Central Avenue Improvement Project Phase 2. Agreement No. 10-47 is attached for the Redevelopment Agency Board's review and consideration.

BACKGROUND: The City of Montclair Redevelopment Agency Board of Directors, at its meeting of February 16, 2010, authorized staff to advertise for bids for the 9916 Central Avenue Improvement Project Phase 2.

The City of Montclair Redevelopment Agency Fiscal Year 2009-10 Budget includes funding for the second phase of the remodeling of a single-family residence owned by the Redevelopment Agency located at 9916 Central Avenue (former Neighborhood Partnership Housing Services administrative offices). The improvements to the single-family residence would include bathroom improvements for ADA compliance, new flooring, new lighting, interior and exterior painting, and new planting materials in the rear and side yards. It is anticipated that the property would be used by the Human Services Division to carry out certain programs.

On Thursday, April 8, 2009, the Agency Secretary received and opened five bid proposals for the 9916 Central Avenue Improvement Project Phase 2. The bid results are as follows:

Prepared by: <u>Christine P. Caldwell</u>		Reviewed and Approved by: <u>MJ STAATS</u>
Proofed by: <u>MJ STAATS</u>		Presented by: <u>[Signature]</u>

<i>Contractor</i>	<i>Bid Amount</i>
LSC Construction	\$21,300.00
Engineer's Estimate	\$21,500.00
PUB Construction, Inc.	\$25,524.00
Damon, Inc.	\$26,420.00
Pacific Construction Co., Inc.	\$32,100.00
Finesse, Inc.	\$48,495.00

Following the bid opening, all proposals were reviewed for completeness and accuracy. The bid proposal of the apparent low bidder, LSC Construction, provided all of the required documents and was deemed the lowest responsible bidder for the project. After a reference check of LSC Construction, it appears the company has the personnel, equipment, and job experience necessary to complete this contract in accordance with the plans and specifications.

FISCAL IMPACT: The 9916 Central Avenue Improvement Project Phase 2 has been included in the Redevelopment Agency Fiscal Year 2009-10 Budget.

RECOMMENDATION: Staff recommends the Redevelopment Agency Board of Directors take the following actions related to the 9916 Central Avenue Improvement Project Phase 2:

1. Award a contract to LSC Construction in the amount of \$21,300.
2. Approve Agreement No. 10-47 with LSC Construction.
3. Authorize a \$2,200 construction contingency.

KNOW ALL MEN BY THESE PRESENTS: That the following Agreement is made and entered into as of the date executed by the Agency Secretary and Chairman, by and between **LSC Construction**, hereinafter referred to as "CONTRACTOR" and the Montclair Redevelopment Agency, hereinafter referred to as "AGENCY."

A. Recitals.

- (i) Pursuant to Notice Inviting Sealed Bids or Proposals, bids were received, publicly opened, and declared on the date specified in said notice.
- (ii) AGENCY did accept the bid of CONTRACTOR.
- (iii) AGENCY has authorized the Agency Secretary and Chairman to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:

FOR THE CONSTRUCTION OF

9916 CENTRAL AVENUE IMPROVEMENT PROJECT PHASE 2

"PROJECT" hereinafter.

B. Resolution.

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

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

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

3. **TERMS OF CONTRACT:** The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within the time specified in the Special Provisions. CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher, for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. Agency may deduct the amount thereof from any moneys due or that may become due the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

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

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

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

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

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

- (1) Public Liability - Bodily Injury (not auto) \$1,000,000 each person; \$2,000,000 each accident.
- (2) Public Liability - Property Damage (not auto) \$500,000 each accident; \$1,000,000 aggregate.
- (3) Contractor's Protective - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
- (4) Contractor's Protective - Property Damage \$500,000 each accident; \$1,000,000 aggregate.

- (5) Automobile - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
 - (6) Automobile - Property Damage \$500,000 each accident.
- c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:
- (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;
 - (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to AGENCY by registered mail.
- d. Each such policy of insurance provided for in paragraph b. shall:
- (1) Be issued by an insurance company approved in writing by AGENCY, which is qualified to do business in the State of California;
 - (2) Name as additional insureds the AGENCY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
 - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
 - (4) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by AGENCY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."
 - (5) Otherwise be in form satisfactory to AGENCY.
- e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

5. CONTRACTOR'S LIABILITY: The City of Montclair Redevelopment Agency and its respective officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof, or for any of the materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, whatsoever arising out of or in connection with the performance of the project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of AGENCY, its employees, servants, or independent contractors who are directly responsible to AGENCY during the progress of the project or at any time before its completion and final acceptance.

The CONTRACTOR will indemnify AGENCY against and will hold and save AGENCY harmless from any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of AGENCY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of AGENCY, its employees, servants, or independent contractors who are directly responsible to AGENCY, and in connection therewith:

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
- b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or AGENCY covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the AGENCY harmless therefrom.
- c. In the event AGENCY is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the project, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to AGENCY any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

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

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

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

8. CONTRACT PRICE AND PAYMENT: AGENCY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **April 8, 2010**.

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

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

CITY OF MONTCLAIR REDEVELOPMENT AGENCY, CALIFORNIA

By: _____
Chairman

Attest: _____
Agency Secretary

CONTRACTOR:

Company Name

Address

City

By: _____
Title

By: _____
Title

By: _____
Title

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 10-48-I-85, AN IRREVOCABLE ANNEXATION AGREEMENT WITH FABIAN AND ELOISA RODRIGUEZ FOR 11303 WESLEY AVENUE (APN 1013-043-31)	DATE: May 3, 2010
	SECTION: AGREEMENTS
	ITEM NO.: 4
BUSINESS PLAN: N/A	FILE I.D.: SEW080
	DEPT.: COMMUNITY DEV.

REASON FOR CONSIDERATION: Irrevocable Annexation Agreements are subject to City Council review and approval.

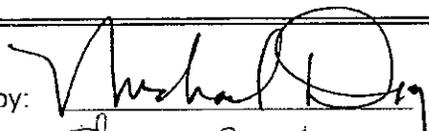
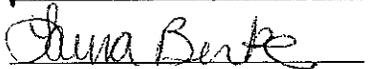
BACKGROUND: The proposed Irrevocable Annexation Agreement would permit the property owners of the subject parcel located in unincorporated County territory to connect to the City's sewer main in Grand Avenue, with the Agreement requiring annexation of the property when feasible at a future date.

The subject property is experiencing septic system failure, creating an emergency need for the sewer connection. If approved by the City Council, the Agreement is also subject to approval by the Local Agency Formation Commission (LAFCO). The proposed Agreement and sewer connection request is consistent with City policy and meets all applicable City requirements. Following City Council and LAFCO approvals, the Agreement is recorded against the property and becomes binding on future owners, heirs, successors, or assigns.

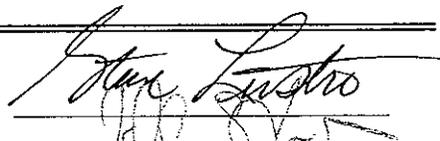
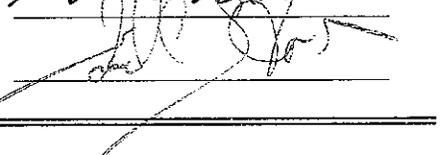
FISCAL IMPACT: There would be no fiscal impact as a result of execution of the Irrevocable Annexation Agreement.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 10-48-I-85, an Irrevocable Annexation Agreement with Fabian and Eloisa Rodriguez for the property at 11303 Wesley Avenue.

Prepared by:

Reviewed and
Approved by:

Proofed by:

Presented by:

AGREEMENT NO. 10-48-I-85

**AN IRREVOCABLE AGREEMENT TO ANNEX
TO THE CITY OF MONTCLAIR**

(Fabian and Eloisa Rodriguez, 11303 Wesley Avenue)

This agreement is entered into this 3rd day of May, 2010, between Fabian and Eloisa Rodriguez, husband and wife as joint tenants, hereinafter referred to as "Owner," and the City of Montclair, hereinafter referred to as "City."

WHEREAS, Owner is the legal property owner of the real property located at 11303 Wesley Avenue, also referenced as San Bernardino County Tax Assessor Parcel No. (APN) 1013-042-31, shown as Exhibit "A" attached, and is further described as follows:

Lot 29 of Tract Map No. 6678 as per Map recorded in Book 92, Page(s) 73 and 74 of Maps, in the office of the County Recorder of San Bernardino County, State of California.

WHEREAS, the subject property is a 5,910 square-foot (.14 acres) corner lot on the southeast corner of Grand and Wesley Avenues within the unincorporated San Bernardino County area that is a part of the Sphere of Influence of the City of Montclair; and

WHEREAS, the subject property is developed with a duplex (two units) and a detached 2-car garage; and

WHEREAS, the Owner desires to connect to and utilize the City's sanitary sewer system for the above described property, said system otherwise being available only to properties within the City of Montclair corporate limits; and

WHEREAS, Owner desires to annex to the City of Montclair; and

WHEREAS, the City is willing to consent to the connection of said property to the sewer main only on the condition that the property be annexed to the City at the earliest possible time; and

WHEREAS, the City intends to pursue annexation of Owner's property plus other property, but said annexation will cause delay, which would create a substantial hardship for Owner of said property; and

WHEREAS, the agreements, conditions, and covenants contained herein are made for the direct benefit of the land subject to this Agreement and described herein and shall create an equitable servitude upon the land and operate as a covenant

running with the land for the benefit of the Owner of the land and his heirs, successors, and assigns.

NOW THEREFORE, the parties do agree as follows:

1. Owner does hereby give irrevocable consent to annex to the City of Montclair at such time as the annexation may be properly approved through appropriate legal proceedings, and Owner does further agree to provide all reasonable cooperation and assistance to the City in the annexation proceedings. Said cooperation is contemplated to include signing any applications of consent prepared by the City, and submitting any evidence reasonably within the control of the Owner to the various hearings required for the annexation. Said cooperation does not include, however, any obligation on behalf of the Owner to institute any litigation of judicial proceeding whatsoever to force annexation to the City.

2. The City of Montclair does hereby agree to authorize the connection of said property, proposed to be developed on Owner's property, to the sewer main located in Grand Avenue. Said connection to the sewer main shall be permitted by the City at such time as all applicable permits have been obtained and associated fees have been paid.

3. Owner agrees to pay such annexation fees and costs, and other municipal charges as would ordinarily be charged in the annexation of property to the City. Said fees shall be payable when the same becomes due and payable. (In some circumstances, these fees may be borne by the City).

4. Owner shall pay all fees and charges and make all deposits required by the City to connect to and use the sewer, and Owner agrees to be bound by all City ordinances, rules, and regulations with respect to the sewer system. Owner agrees to pay monthly sewer charges beginning on the date this agreement is approved by the City Council.

5. This agreement shall be recorded with the Office of the Recorder of the County of San Bernardino.

6. Owner shall install any and all future improvements upon said property to the City's standards, except that the County standard(s) shall apply when more restrictive than the City standard(s).

7. Owner shall execute this agreement on behalf of himself, his heirs, successors, and assigns, and said agreement shall be irrevocable without the prior written consent of both parties hereto.

8. The benefit to the subject property shall inure to the benefit of subsequent owners, their heirs, successors, and assigns; and the agreements, conditions, and covenants contained herein shall be binding upon them and upon the land.

EXECUTED THIS 3RD DAY OF MAY, 2010.

Owner: Fabian Rodriguez, a married man

Fabian Rodriguez

Eloisa Rodriguez, a married woman

Eloisa Rodriguez

City: The Mayor and City Clerk of the City of Montclair have been authorized to execute this agreement on behalf of the City of Montclair at a regularly scheduled meeting of the City Council on May 3, 2010.

Mayor of the City of Montclair

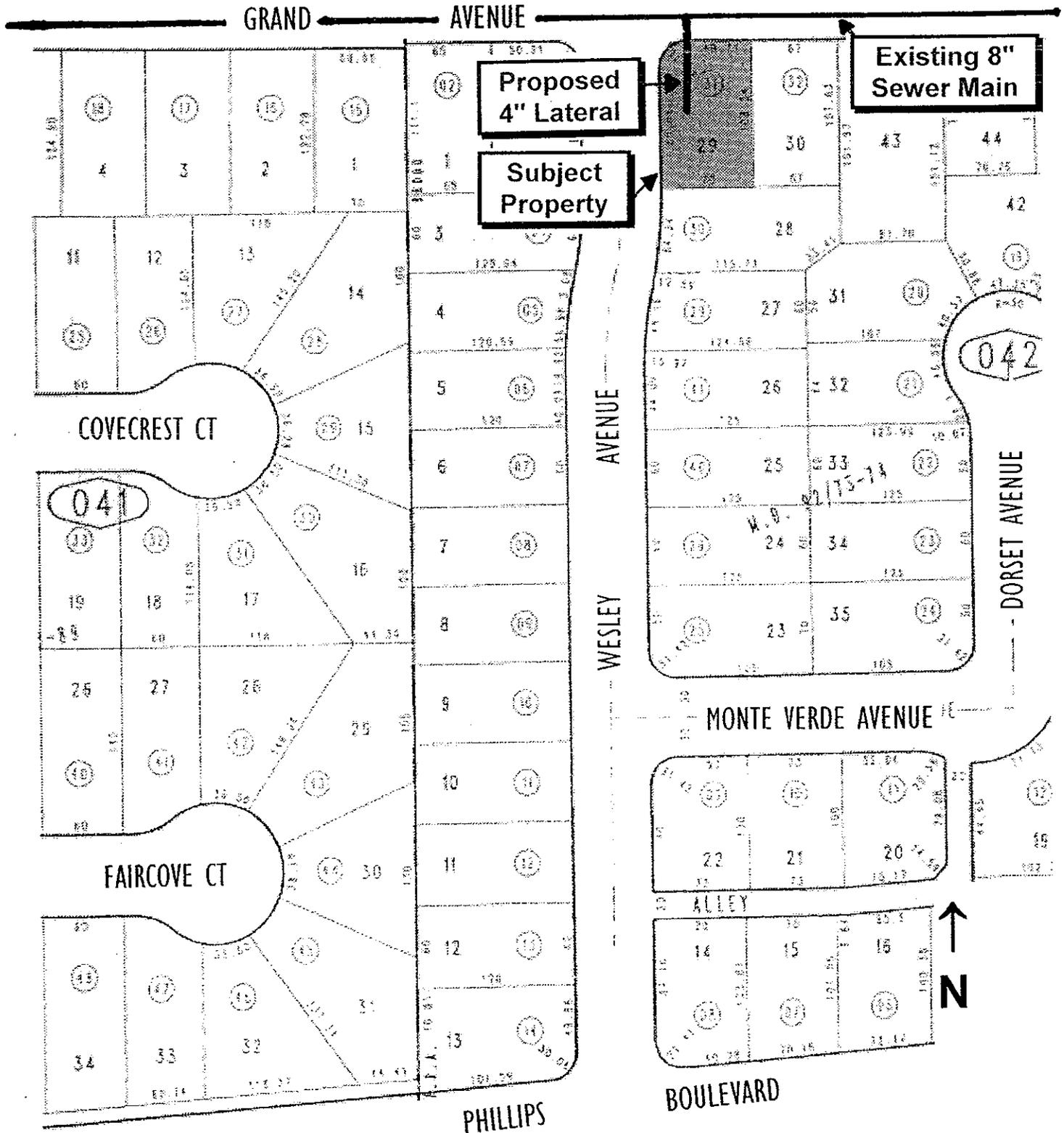
City Clerk of the City of Montclair

EXHIBIT "A"

VICINITY MAP / UTILITY PLAN

Annexation Agreement No. 10-48-I-85

Fabian and Eloisa Rodriguez, 11303 Wesley Avenue



AGENDA REPORT

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 10-2839 DECLARING THE NEED FOR EMERGENCY CONTRACTING PROCEDURES AND AUTHORIZING PERFORMANCE RELATED TO BLOCK WALL CONSTRUCTION AT ALMA HOFMAN PARK	DATE: May 3, 2010 SECTION: RESOLUTIONS ITEM NO.: 1 FILE I.D.: PRK200 DEPT.: PUBLIC WORKS
CONSIDER APPROPRIATION OF \$10,000 FROM PARK DEVELOPMENT FUND FOR REMOVAL AND RECONSTRUCTION OF BLOCK WALL AT ALMA HOFMAN PARK	

BUSINESS

PLAN: N/A

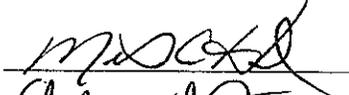
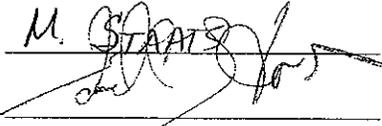
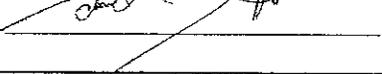
REASON FOR CONSIDERATION: San Bernardino County has offered to fund and construct a water feature at Alma Hofman Park known as a splash pad. The County and City have previously entered into Agreement No. 10-10 for the construction of this facility. An unforeseen issue involving an existing block wall has developed, necessitating additional work and emergency contracting procedures. The City Council is being asked to make the necessary findings to declare a need for emergency contracting procedures for removal and replacement of the block wall. Under Public Contract Code Section 22050, a four-fifths majority vote is required.

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 construction contract was awarded by San Bernardino County to Micon Construction for this project. The construction plans called for an existing block wall to be incorporated into a new structure to house the splash pad equipment. When construction began, it became apparent that the existing block wall was not structurally adequate for this purpose. It was determined that the wall would have to be removed and reconstructed.

Micon Construction has submitted a change order request to San Bernardino County for \$11,624 that includes the following items of work:

- Demolish, remove, and dispose of existing block wall and footing
- Construct new block wall footing and wall approximately 45 feet long
- Patch/replace/repair small portion of concrete curb adjacent to building
- Attach chain link fence wall extension at maintenance building
- Paint new block wall to match adjacent structures (two coats)

San Bernardino County has asked the City to share in the cost of this unexpected work, and pay \$10,000 of the requested change order. In order to meet the proposed July 2, 2010, opening date for the splash pad, and in order to avoid delay claims from the County's contractor, there is not sufficient time for the City to advertise and receive bids for the work. Staff recommends the City Council adopt Resolution No. 10-2839 and

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

contract directly with Micon Construction, already on site, for the wall removal and replacement.

FISCAL IMPACT: The total project cost for the splash pad, according to San Bernardino County's project manager, is \$750,000, all of which is being borne by the County. The County has asked the City to fund \$10,000 of the \$11,624 change order. The funds would come from the City's Park Development Fund.

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

1. Adopt Resolution No. 10-2839 declaring the need for emergency contracting procedures and authorize performance related to block wall construction at Alma Hofman Park.
2. Appropriate \$10,000 from Park Development Fund for removal and reconstruction of block wall at Alma Hofman Park.

RESOLUTION NO. 10-2839

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MONTCLAIR DECLARING THE NEED
FOR EMERGENCY CONTRACTING PROCEDURES
AND AUTHORIZING PERFORMANCE RELATED
TO BLOCK WALL CONSTRUCTION AT ALMA
HOFMAN PARK**

WHEREAS, Section 20160, *et seq.*, of the California Public Contract Code defines the process to be used by cities in the acquisition of construction services for public projects; and

WHEREAS, Section 20162 of the California Public Contract Code requires construction contracts in excess of \$5,000 be advertised and let to the lowest responsible bidder; and

WHEREAS, Section 20168 of the California Public Contract Code allows the legislative body of a city, in the case of an emergency and by a four-fifths vote, to pass resolution to forego customary bid procedures when it is determined that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, and/or property by taking any necessary steps to procure equipment, services, and supplies for those purposes; and

WHEREAS, upon adoption of the resolution, the agency may expend any sum required in the emergency, provided the agency complies with Chapter 2.5 (commencing with Section 22050) of the California Public Contract Code; and

WHEREAS, Section 22050 of the California Public Contract Code provides a contracting procedure to be used in the event of an emergency; and

WHEREAS, the City of Montclair and San Bernardino County entered into Agreement No. 10-10 for construction of a splash pad at Alma Hofman Park; and

WHEREAS, San Bernardino County has developed plans, specifications, and bid documents for construction of said splash pad; and

WHEREAS, San Bernardino County awarded a construction contract to Micon Construction for construction of said splash pad; and

WHEREAS, said plans, specifications, and bid documents include the use of an existing block wall as one of four walls to house splash pad equipment; and

WHEREAS, during construction, it became apparent that the existing block wall was not suitable for the new use intended; and

WHEREAS, Micon Construction has submitted a change order request to San Bernardino County for removal of the existing wall and construction of a new wall; and

WHEREAS, San Bernardino County has asked the City to contract directly with Micon Construction for removal of the existing wall and construction of a new wall; and

WHEREAS, time is of the essence so as not to delay the July 2, 2010, completion date and subject San Bernardino County to delay claims from its contractor.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair, in accordance with Sections 20168 and 22050 of the California Public Contract Code, does hereby make the following findings:

SECTION 1. The emergency will not permit a delay that would result from a competitive solicitation for bids, and the action is necessary to respond to the emergency.

SECTION 2. Based on substantial evidence set forth by City staff, which testimony is hereby incorporated by reference, the public interest and necessity demand the immediate expenditure of public money to safeguard property without the customary public bid procedures for such public improvements.

SECTION 3. The Acting City Manager is delegated the authority to enter into a contract with Micon Construction to perform any and all work necessary to remove and reconstruct an existing wall at Alma Hofman Park.

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. 10-2839 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

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
APRIL 19, 2010, AT 7:56 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Eaton called the meeting to order at 7:56 p.m.

II. ROLL CALL

Present: Mayor Eaton; Council Member Ruh; and Acting City
Manager Starr

III. APPROVAL OF MINUTES

**A. Minutes of the Regular Personnel Committee Meeting of
April 5, 2010.**

Moved by Acting City Manager Starr, seconded by Council Member
Ruh, and carried unanimously to approve the minutes of the
Personnel Committee meeting of April 5, 2010.

IV. PUBLIC COMMENT – None

V. CLOSED SESSION

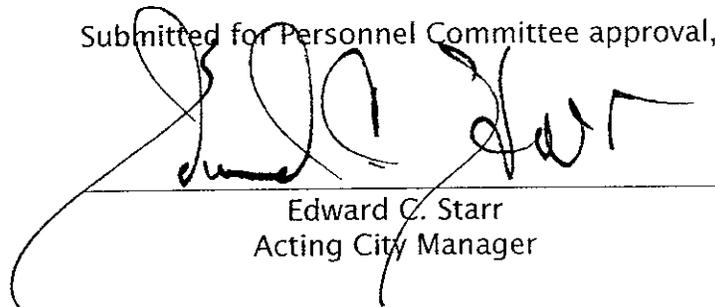
At 7:57 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 8:02 p.m., the Personnel Committee returned from Closed Session.
Mayor Eaton stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 8:02 p.m., Mayor Eaton adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
Acting City Manager