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

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

July 19, 2010

7:00 p.m.

MONTCLAIR

Mayor Paul M. Eaton

Mayor Pro Tem J. John Dutrey

Council Member Leonard Paulitz

Council Member Carolyn Raft

Council Member Bill Ruh

City Manager Edward C. Starr

City Attorney Diane E. Robbins

City Clerk Donna M. Jackson

CITY OF MONTCLAIR

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

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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. Presentation of Check by Chino Basin Water Conservation District for Irrigation System Retrofit and Recycled Water Conversion at Six City Parks

B. Presentation of 2010 Home Beautification Awards

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. First Reading - Consider Adoption of Ordinance No. 10-915 Amending Section 9.24 of Title 9 of the Montclair Municipal Code Related to the City Storm Drain System [CC] 5

Page No.

VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Minutes of Regular Joint Council/Agency/MHC Meeting of July 6, 2010

B. Administrative Reports

1. Consider Receiving and Filing of Treasurer's Report [CC] 23

2. Consider Approval of Warrant Register and Payroll Documentation [CC] 24

3. Consider Receiving and Filing of Treasurer's Report [RDA] 25

4. Consider Approval of Warrant Register [RDA] 26

5. Consider Receiving and Filing of Treasurer's Report [MHC] 27

6. Consider Approval of Warrant Register [MHC] 28

7. Consider Approval of Stipulation and Order for Judgment for Acquisition of Real Property in the Matter of *City of Montclair v. Keith Alan Ealy, Et Al.* [CC]

   Consider Authorizing City Manager to Modify Stipulation and Order for Judgment as may be Necessary Prior to Signing [CC]

   Consider Authorizing City Manager to Sign Stipulation and order for Judgment [CC] 29

8. Consider Approval of the Filing of a Notice of Completion for Construction of the Mission Boulevard Improvement Phase 7 Project; 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] 47

9. Consider Authorization to Purchase Four 2010 Ford Crown Victoria Police Interceptor Sedans from Hemborg Ford [CC] 49

10. Consider Authorization to Advertise for Bid Proposals for Construction of the Alma Hofman Park Lighting and Landscape Irrigation Replacement Project [CC] 50

11. Consider Authorization to Advertise for Bid Proposals for the Replacement of Playground Equipment at Alma Hofman Park Project [CC] 51

12. Consider Declaring Certain City Property and Unclaimed Property in Police Custody as Surplus and Available for Auction [CC] 52

Page No.

C. Agreements

1. Consider Approval of Agreement No. 10-86 Amending Agreement Nos. 08-57 and 09-116 with John M. and Brenda Goller Construction Management Services for Services Associated with the Youth and Senior Center Projects [CC] 60

2. Consider Approval of Agreement No. 10-87 with the County of San Bernardino for Participation in the Work Release Program [CC] 66

3. Consider Approval of Agreement No. 10-88 Amending Agreement No. 07-86 with the County of San Bernardino to Administer a Women-infant-Children Program at the Montclair Medical Clinic [CC] 74

4. Consider Approval of Agreement No. 10-90, an Employment Agreement between the City of Montclair/City of Montclair Redevelopment Agency/Montclair Housing Corporation and Edward C. Starr [CC/RDA/MHC] 78

D. Resolutions

1. Consider Redevelopment Agency Board of Directors' Adoption of Resolution No. 10-03 Making Certain Findings with Respect to Public Improvements to be Financed by the City of Montclair Redevelopment Agency [RDA]

Consider City Council's Adoption of Resolution No. 10-2856 Making Certain Findings with Respect to Public Improvements to be Financed by the City of Montclair Redevelopment Agency [CC] 81

2. Consider Adoption of Resolution No. 10-2857 Authorizing Submission of Fiscal Year 2010-11 Used Oil Payment Program Application to the Department of Resources Recycling and Recovery [CC]

Consider Designating Mayor Paul M. Eaton or His Designee as the Person Authorized to Execute All Necessary Documents for the Purpose of Securing Payment Funds [CC] 89

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE

A. Response to Council Inquiry Related to Public Sidewalks in Residential Areas of the City [CC] 93

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 July 6, 2010 95

XII. ADJOURNMENT OF CITY COUNCIL AND REDEVELOPMENT AGENGY 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, August 2, 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 July 15, 2010.

AGENDA REPORT

SUBJECT:	CONSIDER ADOPTION OF ORDINANCE NO. 10-915 AMENDING SECTION 9.24 OF TITLE 9 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE CITY STORM DRAIN SYSTEM FIRST READING	**DATE:**	July 19, 2010
		SECTION:	PUBLIC HEARINGS
		ITEM NO.:	A
		FILE I.D.:	STD200
BUSINESS PLAN:	N/A	**DEPT.:**	PUBLIC WORKS

REASON FOR CONSIDERATION: The City Council is requested to consider approval of certain revisions to the Municipal Code as they relate to City Storm Drain System regulations pursuant to new requirements adopted by the Santa Ana Regional Water Quality Control Board and to reconcile discrepancies with Section 1.04 of the Municipal Code related to Administrative Citations. Proposed Ordinance No. 10-915 addresses these revisions.

BACKGROUND: On January 29, 2010, the Santa Ana Regional Water Quality Control Board adopted Order No. R8-2010-0036 National Pollutant Discharge Elimination System (NPDES) No. CAS618036, Waste Discharge Requirements for the San Bernardino County Flood Control District, the County of San Bernardino, and the Incorporated Cities of San Bernardino County within the Santa Ana Region. NPDES No. CAS618036 establishes requirements for each affected agency to update and/or revise its municipal code to comply with NPDES No. CAS618036. The Order contains exceptions to prohibited discharges, revised spill-containment systems, and compliance with best management practices. Changes are, therefore, required to Section 9.24 of the Montclair Municipal Code.

The City's existing Storm Drain System ordinance as set forth in Section 9.24 of the Montclair Municipal Code contains enforcement mechanisms and sanctions for violations. On June 15, 2009, the City Council adopted Resolution No. 09-2799 revising the schedule of fines for administrative citations, including those in Section 9.24. Staff has determined the schedule of fines specified in this resolution for violations of Section 9.24 is too severe for the City's residents, businesses, and general public. Staff has also found inconsistencies between Section 9.24 and recent changes made to Section 1.04-Administrative Citations. Therefore, revisions are also proposed to reconcile these differences and address the fines.

In conjunction with the second reading and adoption of Ordinance No. 10-915, staff will also recommend the adoption of Resolution No. 10-2853 repealing Resolution No. 09-2799 and establishing new fines related to violations of Section 9.24 of the Municipal Code. Unless otherwise specified in Exhibit A to Resolution No. 10-2853, the

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

administrative fine for violations of the Montclair Municipal Code enforced pursuant to the provisions of Chapter 1.04 of Title 1 of the Montclair Municipal Code will be as follows:

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

FISCAL IMPACT: Adoption of proposed Ordinance No. 10-915, along with adoption of proposed Resolution No. 10-2853, will have an unknown fiscal impact because it is impossible to predict the number of future violators and violations.

RECOMMENDATION: Staff recommends the City Council adopt the first reading of Ordinance No. 10-915 amending Section 9.24 to Title 9 of the Montclair Municipal Code related to the City Storm Drain System.

ORDINANCE NO. 10-915

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING CHAPTER 9.24 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO THE CITY STORM DRAIN SYSTEM

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

SECTION I. Amendment to Code. Chapter 9.24 of Title 9 of the Montclair Municipal Code is hereby amended as follows:

9.24.020 Scope.

A. Authority. This Chapter is enacted pursuant to authority conferred by law including, but not limited to, the Federal Clean Water Act (33 U.S.C. 1251, *et seq.*), the Code of Federal Regulations (CFR) Part 122, Porter Cologne Act, and National Pollutant Discharge Elimination System Permit issued by the Regional Water Quality Control Board, Santa Ana Region.

B. Purpose. The purpose of this Chapter is to ensure the future health, safety, and general welfare by controlling and/or eliminating nonstormwater discharges into the City Storm Drain System. This will be accomplished by eliminating all nonpermitted discharges to the City Storm Drain System; controlling the discharge from spills, dumping, or disposal of materials other than stormwater; and reducing pollutants in stormwater discharges to the maximum extent practicable.

The intent of this Chapter is to protect and enhance the water quality of our watercourses, water bodies, groundwater, and wetlands in a manner pursuant to and consistent with the regulations listed in this Chapter.

9.24.060 Spill-containment systems.

A. Persons storing chemicals or chemical waste outdoors shall be required to install spill containment subject to requirements established by the City Engineer and in accordance with applicable federal, state, regional board, and San Bernardino County standards. Persons storing any other materials or equipment that are potential sources of stormwater pollution are also required to install spill containment.

B. No person shall operate a spill-containment system that could allow incompatible materials and/or wastes to mix, thereby creating hazardous or toxic substances in the event of failure of one or more containers.

C. Spill-containment systems shall consist of a system of dikes, walls, barriers, berms, and/or other devices. Structural best management practices shall be designed to contain spillage from containers and to minimize the buildup of stormwater from precipitation and runoff from roofs and outside areas. Spill-containment systems shall also be constructed of impermeable and nonreactive materials to the materials and/or wastes being contained.

D. Any spill-containment system shall have the entire contained area covered with an approved solid roof structure to prevent rainwater from entering the containment area.

E. Spilled and/or leaked materials and/or wastes and any accumulated precipitation shall be removed from the spill-containment system in as timely a manner as is necessary to prevent the overflow of the spill-containment system.

F. Unless otherwise approved by the City Engineer, all chemicals or wastes discharged within the spill-containment system shall be disposed of in accordance with all applicable federal, state, and local rules; regulations; and laws and shall not be discharged into the City's sanitary sewer system, the City Storm Drain System, or onto the ground.

9.24.070 Compliance with best management practices (BMPs).

Any person undertaking any activity or operation in the City that could potentially cause or contribute to stormwater pollution or a discharge to stormwater to the City Storm Drain System shall implement best management practices (BMPs) as listed in the current California Storm Water Quality Association Handbooks to reduce pollutants in stormwater runoff and reduce nonstormwater discharges to the City Storm Drain System to the maximum extent practicable or to the extent required by law.

9.24.110 Notice of Intent and compliance with general permits.

A. Each industrial discharger, discharger associated with construction activity, or other discharger described in any NPDES permit including, but not limited to, the general construction permit and the general industrial permit shall submit to the Santa Ana Regional Water Quality Control Board a Notice of Intent or other required document and submit a copy to the City. Discharger shall comply with all activities required by the applicable NPDES Permit.

B. Each discharger identified in an individual NPDES permit, discharge order, or waste discharge requirements related to stormwater discharges shall comply with and undertake all activities required by such permit, order, or requirements.

9.24.230 Prohibited discharges.

The following activities are prohibited:

A. Discharging of nonstormwater runoff directly or indirectly to the City Storm Drain System or any street or lined or unlined drainage ditch, which leads to the public storm drain system unless such discharge is allowed under Section 9.24.240 of this Chapter or is permitted by an NPDES permit. If such discharge is permitted by Section 9.24.240 of this Chapter or an NPDES permit but causes the City to violate any portion of its NPDES permit for stormwater discharges, such discharge is also prohibited.

B. Throwing, depositing, placing, leaving, maintaining, or keeping or permitting to be thrown, deposited, placed, left, maintained or kept any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, or accumulations in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit, or other drainage structure, business place, or upon any public or private lot of land in the City so that the same might be or become a pollutant.

C. Throwing or depositing litter in any fountain, pond, lake, stream, or any other body of water in a park or elsewhere within the City.

9.24.240 Exceptions to prohibited discharges.

The following discharges are exempt from the prohibited discharges listed in Section 9.24.230 of this Chapter:

A. Discharges for which an approval has been issued by the Regional Board Office or State Board including discharges authorized under NPDES permits issued by the State or Regional Boards.

B. Discharges from potable waterline flushing and other potable water sources.

C. Discharges from firefighting and fire hydrant testing and flushing.

D. Discharges from landscape irrigation, lawn watering, and other irrigation activities.

E. Diverted stream flows.

F. Rising groundwaters and natural springs.

G. Uncontaminated groundwater infiltration (as defined in 40 CFR Part 35.2005(20).

H. Passive foundation drains.

I. Air conditioning condensate.

J. Water from crawlspace pumps.

K. Passive footing drains.

L. Noncommercial vehicle washing, *e.g.*, residential car washing (excluding engine degreasing) and car washing for fundraisers by nonprofit organizations.

M. Flows from riparian habitats and wetlands.

N. Dechlorinated swimming pool discharges (cleaning wastewater and filter backwash shall not be discharged into the Storm Drain System or to the Waters of the U.S).

O. Emergency fire fighting flows (*i.e.*, flows necessary for the protection of life and property) do not require BMPs and need not be prohibited). Appropriate BMPs to reduce the discharge of pollutants consistent with the MEP standard must be implemented when they do not interfere with health and safety issues.

P. Waters not otherwise containing wastes as defined in California Water Code Section 13050(d).

Q. Other types of discharges identified and recommended by the permittee and approved by the Regional Board.

9.24.270 Notice of Violation.

When the City Engineer or his or her authorized representative finds that any discharger has failed to comply with a Notice of Correction or has violated or continues to violate any prohibition, limitation, or requirement contained in this Chapter; any NPDES stormwater permit; or the Basin Plan, the City may serve upon such person a written Notice of Violation stating the nature of the violation and the penalties for noncompliance. At a minimum, the Notice of Violation shall require that the discharger submit to the City Engineer, within a time period specified in the notice, a plan indicating the cause of the violation and corrective actions that will be taken to prevent recurrence. A discharger shall be guilty of a separate offense for every day during any portion of which any

violation of any provision of this Chapter is committed, continued, or permitted by the discharger.

9.24.280 Administrative Orders.

The City Engineer may require compliance with any prohibition, limitation, or requirement contained in this Chapter; any NPDES stormwater permit; or the Basin Plan by issuing an Administrative Order enforceable in a court of law or by directly seeking court action. Administrative Orders may include Compliance Orders, Stop Work Orders, Cease and Desist Orders, Termination of Service Orders, and Immediate Termination of Service Orders.

A. Compliance Orders. The City Engineer or his or her designee may issue a Compliance Order to any discharger who fails to correct a violation of this Chapter, any NPDES stormwater permit, or the Basin Plan. The order shall be in writing, specify the violation(s), and require appropriate compliance measures within a specified time period. The Compliance Order may include the following terms and requirements:

1 Specific steps and time schedules for compliance as reasonably necessary to eliminate an existing prohibited discharge or illegal connection or to prevent the imminent threat of a prohibited discharge.

2. Specific requirements for containment, cleanup, removal, storage, installation of overhead covering, or proper disposal of any pollutant having the potential to contact stormwater runoff.

3. Installation of stormwater treatment devices, containment structures, wash racks, and addition and removal of stormwater drains.

4. Any other terms or requirements reasonably calculated to prevent imminent threat of or continuing violations of this Chapter including, but not limited to, requirements for compliance with best management practices guidance documents promulgated by any federal, state, or regional agency.

The City Engineer or his or her designee may adopt a proposed compliance schedule submitted by the user or may adopt a revised compliance schedule if, in his or her judgment, the proposed compliance schedule would allow the user to cause harm to the receiving waters and/or the City Storm Drain System.

B. Stop Work Order. The City Engineer or Building Official may serve a written Stop Work Order on any person engaged in doing, or causing to be done, new construction, tenant improvements, alterations, or additions if:

1. No construction permit has been granted by the City.

2. Work has begun prior to the submittal of a written WQMP and subsequent approval by the City Engineer or his or her designee.

3. Violations of this article are found at the site of the new construction, tenant improvements, alterations, or additions.

Any person served a Stop Work Order shall stop such work forthwith until written authorization to continue is received from the City Engineer or Building Official. A Stop Work Order shall require the discharger to pay a One Thousand Dollar ($1,000) penalty fee to the City for the issuance thereof.

C. Cease and Desist Order. When the City Engineer or his or her designee finds that any industrial and/or commercial discharger has violated or threatens to violate any prohibition, limitation, or requirement contained in this Chapter; any NPDES stormwater permit or the Basin Plan; or NPDES Storm Water Permit, the City may issue a Cease and Desist Order directing the discharger to:

1. Immediately discontinue any illicit connection or prohibited discharge to the City's stormwater drainage system.

2. Immediately contain or divert any flow of water off the property where the flow is occurring in violation of any provision of this Chapter.

3. Immediately discontinue any other violation of this Chapter.

A Cease and Desist Order shall require the discharger to pay a One Thousand Dollar ($1,000) penalty fee to the City for the issuance thereof.

D. Termination of Service. When the City Engineer finds any industrial and/or commercial discharger who has a direct connection into the City's storm-water drainage system or has violated an Administrative Order, the City Engineer may terminate storm drain service to the discharger. The discharger shall be liable for all costs for termination of storm drain service incurred by the City. This provision is in addition to any other statutes, rules, or regulations authorizing termination of service for delinquency payment or for any other reasons. Storm drain service shall be reinstituted by the City Engineer after the discharger has complied with all the provisions of the Administrative Order. The discharger shall also be liable for all costs for reinstituting storm drain service.

E. Immediate Termination of Service. The City Engineer may immediately suspend storm drain service and any nonstormwater discharge permit when such suspension is necessary, in the opinion of the City Engineer, to stop an actual or threatened discharge that presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment or which significantly or could significantly cause pollution to the receiving waters, ground, and/or storm drainage system of the City. Any industrial and/or commercial discharger notified that its storm drain service has been suspended shall immediately cease and eliminate the discharge into the City stormwater drainage system.

In the event of failure to comply voluntarily with the Termination of Service Order, the City Engineer shall take appropriate steps including immediate severance of all applicable storm drain connections. All persons responsible for a discharge that may endanger the health or welfare of the community or the environment shall be liable for all costs incurred by the City in terminating storm drain service. Storm drain service shall be reinstituted by the City Engineer after the actual or threatened discharge has been eliminated. A detailed written statement, submitted by the industrial and/or commercial discharger describing the cause of the harmful contribution and the measures to prevent any future occurrence, shall be submitted to the City Engineer within ten working days of the date of storm drain service termination.

9.24.490 Prohibited Discharges of Construction Sites

A. Any construction project that requires a Water Quality Management Plan shall be prohibited from allowing the following discharges into the storm drain system:

1. Discharges that could have an impact on human health or the environment; cause or threaten to cause pollution, contamination, or nuisance; discharges that exceed any applicable water quality standard contained in a Statewide Water Quality Control Plan or local Basin Plan; and discharges containing a hazardous substance equal to or in excess of a reportable quantity listed in Federal Regulations 40 CFR Parts 117 and 302.

2. Materials that can cause or contribute to pollution or a violation of any applicable water quality standards including, but are not limited to, sediments; solid or liquid chemicals spills; wastes from paints, stains, sealants, glues, limes, pesticides, or herbicides; wood preservatives or solvents; asbestos fibers, paint flakes or stucco fragments; fuels, oils, or lubricants; hydraulic, radiator, or battery fluids; fertilizers; vehicle/equipment wash water or concrete wash water; concrete, detergent, or floatable wastes; wastes from any engine/equipment steam cleaning or chemical degreasing; and chlorinated potable water line flushings.

B. Unless exempted or authorized by an NPDES permit, all nonstormwater discharges require prior approval by the local stormwater agency or the State Water Resources Control Board.

1. During construction, temporary storage of such materials identified above must occur in designated areas physically separated from potential stormwater runoff, with ultimate disposal in accordance with federal, state, regional, County, and City requirements.

2. Dewatering of contaminated groundwater or discharging contaminated solids via surface erosion is prohibited.

SECTION II. Severability.

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

SECTION III. Effective Date.

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

SECTION IV. Posting.

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

APPROVED AND ADOPTED this XX day of XX, 2010.

_____
Mayor

ATTEST:

_____
City Clerk

I, Donna M. Jackson, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 10-915 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

RESOLUTION NO. 10-2853

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR REPEALING RESOLUTION NO. 09-2799 AND REVISING THE SCHEDULE OF FINES FOR ADMINISTRATIVE CITATIONS

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

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

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

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

WHEREAS, the City Council of the City of Montclair adopted Resolution No. 09-2799 setting fines for violations of the Municipal Code in order to protect the health, safety, and welfare of its residents, businesses, and general public; and

WHEREAS, the City Council of the City of Montclair now desires to modify the fees as set forth in Resolution No. 09-2799.

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

Section 1. The Schedule of Administrative Fines as set forth in Exhibit A is hereby adopted and shall be applied effective the 18th day of August, 2010.

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

APPROVED AND ADOPTED this XX day of XX, 2010.

_____
Mayor

ATTEST:

_____
City Clerk

I, Donna M. Jackson, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 10-2853 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

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

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

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

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

Chapter 4.20 (Bingo Games)				
All Violations	Requirements and standards for Bingo games	$1,000	$2,500	$5,000
Chapter 4.24 (Card Rooms)				
MMC §4.24.010	Gaming club prohibited	$1,000	$2,500	$5,000
Chapter 4.28 (Closing-Out Sales)				
MMC §4.28.020	Permit required	$1,000	$2,500	$5,000
MMC §4.28.050	Conduct of sale	$1,000	$2,500	$5,000
MMC §4.28.060	Removal of signs and cleaning of premises	$1,000	$2,500	$5,000
Chapter 4.40 (Dances)				
MMC §4.40.010	License required	$1,000	$2,500	$5,000
MMC §4.40.090	Hours of dancing	$1,000	$2,500	$5,000
MMC §4.40.110	Intoxicating liquor	$1,000	$2,500	$5,000
Chapter 4.44 (Fortune Telling)				
MMC §4.44.020	Fraudulent practice unlawful	$1,000	$2,500	$5,000
MMC §4.44.030	License, permit, and fees required	$1,000	$2,500	$5,000
Chapter 4.48 (Hypnotism)				
MMC §4.48.020	License, permit, and fees required	$1,000	$2,500	$5,000
Chapter 4.52 (Live Entertainment)				
MMC §4.52.020	Live entertainment permit required	$1,000	$2,500	$5,000
MMC §4.52.030	Hours of live entertainment	$1,000	$2,500	$5,000
MMC §4.52.100	Business license required - Adult business performer	$1,000	$2,500	$5,000
MMC §4.52.130	Display of license/ID card by adult performer	$1,000	$2,500	$5,000
MMC §4.52.140	Register of adult performers required	$1,000	$2,500	$5,000
Chapter 4.53 (Adult Businesses)				
MMC §4.53.030	Business license required - Adult business	$1,000	$2,500	$5,000
MMC §4.53.060	Adult business operating standards	$1,000	$2,500	$5,000

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

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

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

Title 7 (Public Peace, Morals, and Welfare)				
Chapter 7.04 (Graffiti)				
MMC §7.04.060	Furnishing graffiti implements to minors	$1,000	$2,500	$5,000
MMC §7.04.070	Sale of graffiti implements at swap meet/yard sale	$250	$500	$1,000
MMC §7.04.080	Accessibility to graffiti implements	$250	$500	$1,000
MMC §7.04.090	Maintenance of graffiti prohibited	$250	$500	$1,000
Title 8 (Vehicles and Traffic)				
Chapter 8.16 (Designated Streets)				
MMC §8.16.020	Truck routes	Equal to penalty set forth in CVC §42030	Twice the penalty set forth in CVC §42030	Three times the penalty set forth in CVC §42030
Title 9 (Public Services and Public Places)				
Chapter 9.08 (Public Improvements)				
MMC §9.08.010	Public improvement permit required	$1,000	$2,500	$5,000
Chapter 9.12 (Public Parks)				
MMC §9.12.040	Vandalism in parks	$1,000	$2,500	$5,000
Chapter 9.20 (Sewer Systems)				
All Violations	Standards and requirements for construction, use, and maintenance of sewer systems	$1,000	$2,500	$5,000
Chapter 9.24 (Storm Drain System)				
MMC §9.24.490	Prohibited Discharges of Construction Sites	$1,000	$2,500	$5,000
Title 10 (Buildings & Construction)				
Chapter 10.04 (Uniform Codes for the Abatement of Dangerous Buildings)				
All Violations	Dangerous buildings	$500	$2,500	$5,000
Chapter 10.08 (Building Code)				
All Violations	Minimum building standards	$500	$2,500	$5,000

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

Montclair Municipal Code §11.22.040	Prohibited uses	$250	$500	$1,000
Chapter 11.24 (AP - Administrative Professional)				
All Violations	Use and development standards for AP zone	$250	$500	$1,000
Chapter 11.26 (C-2 - Restricted Commercial)				
All Violations	Use and development standards for C-2 zone	$250	$500	$1,000
Chapter 11.28 (C-3 - General Commercial)				
All Violations	Use and development standards for C-3 zone	$250	$500	$1,000
Chapter 11.30 (MIP - Manufacturing Industrial Park)				
All Violations	Use and development standards for MIP zone	$250	$500	$1,000
Chapter 11.32 (M-1 - Limited Manufacturing)				
All Violations	Use and development standards for M-1 zone	$250	$500	$1,000
Chapter 11.34 (M-2 - General Manufacturing)				
All Violations	Use and development standards for M-2 zone	$250	$500	$1,000
Chapter 11.36 (SL - Small-Lot, Detached-Housing Overlay)				
All Violations	Use and development standards for SL zone	$250	$500	$1,000
Chapter 11.40 (Adult-Oriented Business)				
All Violations	Zoning criteria for adult-oriented businesses	$1,000	$2,500	$5,000
Chapter 11.42 (Alcoholic Beverages - Regulations of Sale)				
All Violations	Zoning criteria for on-sale and off-sale liquor establishments	$1,000	$2,500	$5,000
Chapter 11.44 (Amusement Game Arcades)				
All Violations	Zoning criteria for amusement game arcades	$1,000	$2,500	$5,000
Chapter 11.48 (Children's Day-Care Facilities)				
All Violations	Zoning criteria for children's day-care facilities	$1,000	$2,500	$5,000
Chapter 11.50 (Drive-In Businesses)				
All Violations	Zoning criteria for drive-in businesses	$1,000	$2,500	$5,000

Chapter 11.52 (Foster Homes)				
All Violations	Zoning criteria for foster homes	$1,000	$2,500	$5,000
Chapter 11.54 (Hazardous Waste Facilities)				
All Violations	Zoning criteria for hazardous waste facilities	$1,000	$2,500	$5,000
Chapter 11.68 (Seasonal and Promotional Outdoor Sales)				
All Violations	Zoning criteria for seasonal and promotional outdoor sales	$250	$500	$1,000
Chapter 11.70 (Service Stations)				
All Violations	Zoning criteria for service stations	$1,000	$2,500	$5,000
Chapter 11.72 (Signs)				
All Violations	Zoning criteria for signs	$250	$500	$1,000
Chapter 11.80 (Precise Plan of Design)				
MMC §11.80.010	Precise plan of design required	$500	$1,000	$2,500
MMC §11.80.090	Violation of precise plan of design	$500	$1,000	$2,500
California Civil Code				
CCC §2929.3	Maintenance of vacant residential property	$1,000	$1,000	$1,000

AGENDA REPORT

SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT	**DATE:**	July 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	1
BUSINESS PLAN:	N/A	**FILE I.D.:**	FIN520
		DEPT.:	ADMIN. SVCS.

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

BACKGROUND: Included in your agenda is a copy of the Treasurer's Report for the period ending June 30, 2010.

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

RECOMMENDATION: Staff recommends the City Council receive and file the Treasurer's Report for the month ending June 30, 2010.

Prepared by:

Proofed by: Kathy Dalton

Reviewed and Approved by:

Presented by:

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION	**DATE:**	July 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	2
		FILE I.D.:	FIN540
BUSINESS PLAN:	N/A	**DEPT.:**	ADMIN. SVCS.

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

BACKGROUND: Mayor Pro Tem Dutrey has examined the Warrant Register dated July 19, 2010, and Payroll Documentation dated May 23, 2010, finds them to be in order and recommends their approval.

FISCAL IMPACT: The Warrant Register dated July 19, 2010, totals $1,597,276.21. The Payroll Documentation dated May 23, 2010, totals $619,020.28, with $445,556.43 being the total cash disbursement.

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

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: _____ Presented by: _____

AGENDA REPORT

SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT	**DATE:**	July 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	3
		FILE I.D.:	FIN510
BUSINESS PLAN:	**N/A**	**DEPT.:**	REDEVELOPMENT

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

BACKGROUND: Included in your agenda is a copy of the Treasurer's Report for the period ending June 30, 2010.

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

RECOMMENDATION: Staff recommends the Agency Board of Directors receive and file the Treasurer's Report for the month ending June 30, 2010.

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: Kathy Dalton Presented by: _____

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER	**DATE:**	July 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	4
		FILE I.D.:	FIN530
BUSINESS PLAN:	N/A	**DEPT.:**	REDEVELOPMENT

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

BACKGROUND: Vice Chairman Dutrey has examined the Warrant Register dated 06/01/10 - 06/30/10 in the amounts of $9,029.04 for Project I; $174.03 for Project II; $1,780,797.30 for Project III; $1,163,743.35 for Project IV; $1,686,262.99 for Project V and finds it to be in order.

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

RECOMMENDATION: Vice Chairman Dutrey recommends approval of the Warrant Register for the period ending June 30, 2010.

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: Kathy Dalton Presented by: _____

AGENDA REPORT

SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT	**DATE:**	July 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	5
BUSINESS PLAN:	N/A	**FILE I.D.:**	FIN525
		DEPT.:	MHC

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

BACKGROUND: Included in your agenda is a copy of the Treasurer's Report for the period ending June 30, 2010.

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

RECOMMENDATION: Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending June 30, 2010.

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: Kathy Dalton Presented by: _____

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER	**DATE:**	July 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	6
		FILE I.D.:	FIN545
BUSINESS PLAN:	N/A	**DEPT.:**	MHC

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

BACKGROUND: Vice Chairman Dutrey has examined the Warrant Register dated 06/01/10 - 06/30/10 in the amount of $41,669.83 for the Montclair Housing Corporation and finds it to be in order.

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

RECOMMENDATION: Vice Chairman Dutrey recommends approval of the Warrant Register for the period ending June 30, 2010.

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: Kathy Dalton Presented by: _____

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF STIPULATION AND ORDER FOR JUDGMENT FOR ACQUISITION OF REAL PROPERTY IN THE MATTER OF *CITY OF MONTCLAIR V. KEITH ALAN EALY, ET AL.*

CONSIDER AUTHORIZING CITY MANAGER TO MODIFY STIPULATION AND ORDER FOR JUDGMENT AS MAY BE NECESSARY PRIOR TO SIGNING

CONSIDER AUTHORIZING CITY MANAGER TO SIGN STIPULATION AND ORDER FOR JUDGMENT

DATE: July 19, 2010

SECTION: ADMIN. REPORTS

ITEM NO.: 7

FILE I.D.: STA110

DEPT.: PUBLIC WORKS

BUSINESS PLAN: **STRATEGIC PRIORITY NO. 6**

REASON FOR CONSIDERATION: As part of the City's acquisition of right-of-way for the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project, a condemnation action was initiated against one property owner. A settlement has now been reached with that property owner, and a Stipulation and Order for Judgment has been given by the Superior Court. The Stipulation and Order for Judgment requires City Council approval. A copy of the Stipulation and Order for Judgment is attached for the City Council's review and consideration.

Approval of the subject Stipulation and Order for Judgment will satisfy a portion of Strategic Priority No. 6 as contained in Montclair's "Business Plan."

BACKGROUND: After several months of unsuccessful negotiations to acquire property owned by Mr. Keith Alan Ealy located at 10745-10751 Monte Vista Avenue, the City Council initiated a condemnation action with the adoption of Resolution No. 08-2782, a Resolution of Necessity, at its meeting on January 5, 2009. The subject property is required for construction of the Monte Vista Avenue/Union Pacific Grade Separation Project. The construction of a bridge over the railroad tracks will cut off access from the subject property to Monte Vista Avenue. The condemnation action was authorized by the City Council with the understanding that staff was to continue working with the property owner towards a settlement.

A tentative settlement was achieved in May 2009 pending the results of a Phase 1 and, if necessary, a Phase 2 Environmental Assessment. The tentative agreement also placed a ceiling of $25,000 on the amount of money that the property owner would have to spend should an environmental cleanup (Phase 3-Remediation) be required. If costs exceeded $25,000, the City would either pick up the additional cost or void the settlement. Staff

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: _____ Presented by: _____

fully expected, based on similar environmental assessments done as part of the acquisitions of adjacent parcels, that some contamination probably existed and some cleanup would be required.

The Phase 2 Environmental Assessment was completed May 25, 2010, with a finding that contamination did, indeed, exist; but the extent of contamination was far less than had existed on the adjacent parcels already acquired by the City. The estimated cost of cleanup, including a 10 percent contingency, was under $30,000.

Notwithstanding the tentative settlement reached in May 2009, Mr. Ealy informed the City that he should not be responsible for the cleanup; and furthermore, he had additional issues for which he felt he was entitled to further compensation. In order to bring this matter to a close, the City has agreed to waive the cleanup requirement in exchange for Mr. Ealy agreeing to drop any further claims of compensation.

The attached Stipulation and Order for Judgment has been reviewed and approved by the City's attorney, Mr. Mark Easter with Best Best & Kreiger LLP, and by Mr. Ealy and his attorney, Mr. Michael Kehoe with Palmieri, Tyler, Wiener, Wilhelm & Waldron LLP. However, neither Mr. Ealy nor Mr. Kehoe has signed the Stipulation and Order for Judgment; and until they have signed, there is always a possibility that changes may be requested. In addition to requesting authorization for the City Manager to sign the Stipulation and Order for Judgment, it is further requested that the City Manager be authorized to make changes as he deems necessary in order to bring this matter to an expeditious close.

FISCAL IMPACT: In Closed Session on May 18, 2009, the City Council agreed to a compensation package of $1,350,000 for the subject property. It was an all-inclusive settlement agreement without identifying how the money would be apportioned for property, relocation expenses, purchase price differential payments, or other assorted claims the property owner might have. The Stipulation and Order for Judgment does break down these costs. Furthermore, there is no deduction for environmental cleanup. The City's final acquisition cost for this property is $1,350,000.

When the City adopted Resolution No. 09-2782, it was required to deposit funds in a state escrow account equal to the appraised value and compensation package being offered to the property owner. The City deposited $979,840. The property owner was entitled to and has already withdrawn all the funds deposited in escrow. In addition to this payment, we have also paid for relocation of Mr. Ealy's place of residence ($1,175); Mr. Ealy's primary business, Purple Crane ($81,000); and his secondary business, Hund Mann ($18,384). All payments made thus far total $1,080,399, leaving Mr. Ealy owed $269,601.

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

1. Approve a Stipulation and Order for Judgment for acquisition of real property in the matter of *City of Montclair v. Keith Alan Ealy, et al.*

2. Authorize City Manager to modify the Stipulation and Order for Judgment as may be necessary prior to signing.

3. Authorize City Manager to sign the Stipulation and Order for Judgment.

MARK A. EASTER, Bar No. 143435
Mark.easter.@bbklaw.com
BEST BEST & KRIEGER LLP
3750 University Avenue
P.O. Box 1028
Riverside, California 92502
Telephone: (951) 686-1450
Telecopier: (951) 686-3083

Attorneys for Plaintiff,
CITY OF MONTCLAIR

EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

CITY OF MONTCLAIR, a municipal corporation,

Plaintiff,

v.

KEITH ALAN EALY, an unmarried man;
ALAN PAULSON, an unmarried man;
CALCOUNTIES TITLE NATION COMPANY, formerly CALIFORNIA COUNTIES TITLE COMPANY, a California corporation;
TAX COLLECTOR, COUNTY OF SAN BERNARDINO;
STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT;
DOES 1-100, Inclusive;
AND ALL PERSONS UNKNOWN CLAIMING AN INTEREST IN THE PROPERTY,

Defendants.

Case No. CIVRS 900974
Judge: Honorable Keith B. Davis
Dept: R6

STIPULATION AND ORDER

FOR JUDGMENT IN CONDEMNATION (ASSESSOR PARCEL NOS. 1011-301-014 AND 1011-301-05)

Complaint Filed: 02/03/09

Trial Date: None

RVLIT\LDUNHAM\751171.2

IT IS HEREBY STIPULATED, by and between Plaintiff CITY OF MONTCLAIR ("City") and Defendants KEITH ALAN EALY and PURPLE CRANE SERVICES, INC. ("Defendants") as follows:

1. Defendant Keith Alan Ealy ("Ealy") owns the real property described in the City's Complaint as Assessor Parcel Nos. 1011-301-014 and 1011-301-05 ("Property"), more particularly described in Exhibit "A" attached hereto. Purple Crane Services, Inc. ("Purple Crane") is a business owned by Ealy who operates the business on the Property. This Stipulation concerns all possible interests of Ealy and Purple Crane Services, Inc. (collectively, "Defendants").

2. This Stipulation is entered into between the City and each of the Defendants, as the interests of all other parties with an interest in the Property have been addressed, as set forth herein.

3. The Property being acquired herein is for the public right-of-way and the construction of the Monte Vista Avenue/Union Pacific Railroad Grade Separation Project in Montclair, California ("Project). The City is granted this authority pursuant to section 37350.5 of the California Government Code, and Code of Civil Procedure sections 1240.110 and 1240.120. The Property, following the negotiated settlement approved by all of the parties, shall be condemned in fee to the City for the total sum of One Million Three Hundred Fifty Thousand Dollars ($1,350,000.00) ("Settlement Amount"). The above payment shall constitute payment of just compensation for the real property, severance damages, precondemnation damages, loss or damages to fixtures, equipment, and/or inventory, relocation assistance, loss of business goodwill, litigation expenses, attorneys' fees, costs, interest, and damages in complete settlement of all claims (known and unknown), causes of action and demands of all Defendants against the City by reason of the taking of the Property, and for any and all claims (known and unknown) arising from or relating to this action, steps preliminary to this action, or the acquisition of the Property for the Project.

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RIVERSIDE, CALIFORNIA 92502

4. Record owner Keith Alan Ealy was named as a Defendant in this action based on information contained in a Litigation Guarantee obtained by the City in preparation for the commencement of these eminent domain proceedings, and was personally served on February 7, 2009. Defendant Ealy filed his Answer to the Complaint on March 10, 2009, and wishes to voluntarily enter into this Stipulation.

5. Defendant Purple Crane Services, Inc. filed an Answer to the Complaint on March 10, 2009. The Court rejected the Answer, as Purple Crane was not named as a defendant in the Complaint in Eminent Domain filed by the City. The Court then added Purple Crane Services, Inc. as a defendant to the City's Complaint. On March 10, 2009, Defendant Purple Crane, along with the record owner and Defendant Ealy, filed a Cross-Complaint for Inverse Condemnation. The Cross-Complaint was dismissed in its entirety on April 7, 2009.

6. On February 3, 2009, the City deposited, in the State of California Condemnation Deposits Fund, the sum of Nine Hundred Seventy Nine Thousand Eight Hundred Forty Dollars ($979,840.00), as probable just compensation for possession of the Property. On April 9, 2009, Defendants submitted an Ex Parte Order re Application for Withdrawal of a Portion of the Condemnation Deposit by Defendant Ealy and Withdrawal of Condemnation Deposit by Defendant Alan Paulson. The Order was signed on April 9, 2009, permitting the withdrawal of $926,199.49 to Palmieri, Tyler, Wiener, Wilhem & Waldron LLP Client Trust Fund Account in trust for Keith Alan Ealy and $53,640.51 to Defendant Alan Paulson.

7. Pursuant to an Order for Prejudgment Possession, which the City served on the record owners on December 11, 2009, the City was entitled to take possession of the Property on February 1, 2010. The City now has possession of the Property.

8. On January 16, 2009, prior to the City filing this action, Ealy filed San Bernardino County Superior Court Case No. CIVRS 900427 against the City, asserting claims for inverse condemnation damages arising out of the same Project and Resolution of Necessity adopted by the City on January 5, 2009. Ealy agrees that upon entry of this Stipulation, Case No. CIVRS 900427 shall be dismissed without prejudice and in its entirety, and that all claims arising from that action shall be deemed to have been resolved in this action and pursuant to the

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terms of this Stipulation.

9. Defendants each represent and warrant that there are no existing deeds of trust, liens, property taxes or other encumbrances on the Property.

10. Defendants each represent and warrant that they are not aware of any other persons or entities with an interest in the Property or persons who are entitled to any of the compensation or payments made pursuant to this Agreement.

11. Upon approval of this Stipulation by the Montclair City Council, the City shall pay Ealy, within 30 days, the sum of $269,601.00, which is the sum of $1,350,000.00 less the sum of $979,840.00 previously withdrawn by Defendants, less the sum of $100,559.00 previously paid Defendants for moving expenses. If payment is not received by Ealy by July 31, 2010, interest shall accrue on the unpaid balance, effective August 1, 2010, at the rate of $4.07 per day, until paid. Payment shall be in the form of a check made payable to the Palmieri, Tyler, Weiner, Wilhelm and Waldron Trust Account in the amount of $269,601.00, plus any accrued interest. The Defendants agree to accept this payment in full settlement and compromise of this action, and agree that such payment shall fully and forever discharge and release all claims and causes of action, whether now known or unknown, which the Defendants have against the City arising from this action, this acquisition, or the Project.

12. The Parties agree that the $1,350,000.00 settlement amount shall be allocated as follows: a) $1,079,601.00 for the real property; b) $125,559.00 for defendants' relocation assistance payments; c) $70,000.00 for Defendant Ealy's purchase price differential payment; d) $55,000.00 for defendants' various claims for pre-condemnation damages; and e) $19,840.00 for defendants' fixtures and equipment.

13. The Parties agree that the settlement amount is exclusive of any payment by the Defendants for environmental remediation on the Property.

14. The Parties agree that upon payment of compensation as set forth above, the Property shall be condemned in fee simple absolute to the City as against all Defendants, and all interests of Defendants in and to the Property will be terminated.

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15. By execution of this Stipulation, the Defendants, on behalf of themselves and their successors and assigns, hereby acknowledge that this Stipulation provides for full payment for the acquisition of the Property by the City, and the Defendants hereby expressly and unconditionally waive any additional claims they may have against the City for loss of goodwill, severance damages, relocation assistance benefits, payment for fixtures and equipment, inventory, interest, claims for inverse condemnation or unreasonable precondemnation conduct, including any and all claims for business relocation, business interruption, or loss of business goodwill by the Hund Mann dog-breeding business owned and operated by Defendant Ealy, or any other compensation, damages or benefits, arising from or relating to this action, steps preliminary to this action, or the acquisition of the Property for the Project, other than as already expressly provided for in this Stipulation.

16. Defendants represent that they have authority to enter into this Stipulation and have made no assignment or hypothecation affecting this Agreement.

17. The City and the Defendants, and each of them, waive trial, statement of decision, notice of entry of judgment, notice of entry of final order of condemnation and the right of appeal of this judgment.

18. The Judgment in Condemnation and Final Order of Condemnation, each in the form and content as submitted herewith and made a part hereof, may be signed forthwith and entered by the Court without the need for any further act by the City or the Defendants.

19. Each party shall bear its own attorneys' fees, litigation expenses and costs of suit, except as expressly provided in this Stipulation.

20. This Stipulation is a settlement of claims in order to avoid litigation and shall not in any manner be construed as an admission of the fair market value of the Property, or of liability by any party to this Stipulation.

21. This Stipulation may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

SIGNATURES ON FOLLOWING PAGE

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3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

Dated: July___, 2010.

BEST BEST & KRIEGER LLP

By: _____
MARK A. EASTER
Attorneys for Plaintiff
CITY OF MONTCLAIR

Dated: July___, 2010.

CONSENT TO STIPULATION

By: _____
EDWARD C. STARR, City Manager
CITY OF MONTCLAIR

Dated: July___, 2010.

PALMIERI, TYLER, WIENER, WILHELM & WALDRON LLP

BY: _____
MICHAEL H. LEIFER
MICHAEL I. KEHOE
Attorneys for Defendants
KEITH ALAN EALY AND PURPLE CRANE SERVICES, INC.

Dated: July___, 2010.

CONSENT TO STIPULATION:

By: _____
KEITH ALAN EALY, Defendant

Dated: July___, 2010.

CONSENT TO STIPULATION:

By: _____
PURPLE CRANE, SERVICES, INC.
Its: _____

ORDER

IT IS SO ORDERED.

Dated: _____

_____
JUDGE OF THE SUPERIOR COURT

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

EXHIBIT "A"

PAGE 1 OF 5

A PART OF THAT PARCEL OF LAND DESCRIBED IN DEED TO KEITH ALAN EALY, AN UNMARRIED MAN, RECORDED FEBRUARY 25, 2002, DOCUMENT NO. 2002-0087402 OF OFFICIAL RECORDS OF SAN BERNARDINO COUNTY SAID PARCEL DESCRIBED IN SAID DEED AS FOLLOWS: (DEED RESTATED AS RECORDED)

PARCEL 1

THE NORTH 50 FEET OF THE FOLLOWING DESCRIBED PROPERTY MEASURED ALONG THE WEST LINE THEREOF.

THAT PORTION OF LOT 2, BLOCK 29, ACCORDING TO THE MAP OF MONTE VISTA TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE(S) 34 OF MAPS, AND AMENDED MAP THEREOF, RECORDED IN BOOK 15, PAGE(S) 20 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF MONTE VISTA STREET, 232 FEET SOUTH OF THE SOUTH LINE OF RAILROAD AVENUE, AS SHOWN ON AMENDED MAP OF MONTE VISTA TRACT;

THENCE SOUTH ALONG THE EAST LINE OF MONTE VISTA STREET, 100 FEET;

THENCE EAST AT RIGHT ANGLES TO A POINT ON THE WEST LINE OF PROPERTY CONVEYED TO PETER WYLIE BALFOUR, ET UX, BY DEED RECORDED JUNE 8, 1949, IN BOOK 2414, PAGE(S) 547 OF OFFICIAL RECORDS;

THENCE NORTHEASTERLY ALONG THE WEST LINE OF SAID BALFOUR PROPERTY TO THE NORTHWEST CORNER THEREOF, SAID POINT BEING ON THE NORTH LINE OF PROPERTY CONVEYED TO ALFRED A. THARP, ET UX, BY DEED RECORDED JUNE 26, 1944, IN BOOK 1695, PAGE(S) 15, OF OFFICIAL RECORDS;

THENCE WEST ALONG THE NORTH LINE OF SAID THARP PROPERTY, 232 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING THERE FROM THE FOLLOWING DESCRIBED LAND; BEGINNING AT SAID POINT OF BEGINNING; THENCE SOUTH 00° 59' 47" EAST ALONG THE EAST LINE OF MONTE VISTA STREET, 50 FEET; THENCE NORTH 89° 25' 35" EAST A DISTANCE OF 28.96 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM SAID POINT NORTH 89° 25' 35" EAST A DISTANCE OF 190.02 FEET

Exhibit A Page 1

EXHIBIT "A"

Continued from page 1

TO A POINT ON THE WEST LINE OF PROPERTY CONVEYED TO PETER WYLIE BALFOUR, ET UX, BY DEED RECORDED JUNE 8, 1949, IN BOOK 2414, PAGE(S) 547 OF OFFICIAL RECORDS; THENCE NORTH 12° 31' 44" EAST A DISTANCE OF 51.34 FEET ALONG THE WEST LINE OF SAID BALFOUR PROPERTY TO THE NORTHWEST CORNER THEREOF, SAID POINT BEING ON THE NORTH LINE OF PROPERTY CONVEYED TO ALFRED A. THARP, ET UX, BY DEED RECORDED JUNE 26, 1944, IN BOOK 1695, PAGE(S) 15, OF OFFICIAL RECORDS; THENCE SOUTH 89 ° 25' 35" WEST A DISTANCE OF 201.49 FEET; THENCE SOUTH 00° 59' 47 " EAST A DISTANCE OF 50.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE PARCEL OF LAND CONTAINS 0.03 ACRES (1,461 SF) MORE OR LESS

PARCEL 2:
THE SOUTH 50 FEET OF THE FOLLOWING DESCRIBED PROPERTY MEASURED ALONG THE WEST LINE THEREOF;

THAT PORTION OF LOT 2, BLOCK 29, ACCORDING TO MAP OF MONTE VISTA TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE(S) 34 OF MAPS, AND THE AMENDED MAP THEREOF RECORDED IN BOOK 15, PAGE(S) 20 OF MAPS, DESCRIBED AS FOLLOWS:

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THENCE NORTHEASTERLY ALONG THE WEST LINE OF SAID BALFOUR PROPERTY TO THE NORTHWEST CORNER THEREOF, SAID POINT BEING ON THE NORTH LINE OF PROPERTY CONVEYED TO ALFRED A THARP, ET UX, BY DEED RECORDED JUNE 26, 1944, IN BOOK 1695, FAGE(S) 15 OF OFFICIAL RECORDS;

THENCE WEST ALONG THE NORTH LINE OF SAID THARP PROPERTY, 232 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

2

Exhibit A Page 2

EXHIBIT "A"

Continued from page 2

EXCEPTING THERE FROM THE FOLLOWING DESCRIBED LAND; BEGINNING AT SAID POINT OF BEGINNING; THENCE SOUTH 00° 59' 47" EAST ALONG THE EAST LINE OF MONTE VISTA STREET, A DISTANCE OF 100.00 FEET; THENCE NORTH 89° 25' 35" EAST A DISTANCE OF 28.42 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM SAID POINT NORTH 89° 25' 35" EAST A DISTANCE OF 178.56 FEET TO A POINT ON THE WEST LINE OF PROPERTY CONVEYED TO PETER WYLIE BALFOUR, ET UX, BY DEED RECORDED JUNE 8, 1949, IN BOOK 2414, PAGE(S) 547 OF OFFICIAL RECORDS; THENCE NORTH 12° 31' 44" EAST A DISTANCE OF 51.33 FEET ALONG THE WEST LINE OF SAID BALFOUR PROPERTY; THENCE SOUTH 89 ° 25' 35" WEST A DISTANCE OF 190.02 FEET; THENCE SOUTH 00° 59' 47 " EAST A DISTANCE OF 50.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE PARCEL OF LAND CONTAINS 0.03 ACRES (1,434 SF) MORE OR LESS

PREPARED BY ME OR UNDER MY DIRECTION

BY: Douglas H Mays 12-8-08

DOUGLAS H. MAYS, P.E.; DATE
C21062; EXPIRES; SEPTEMBER 29, 2009

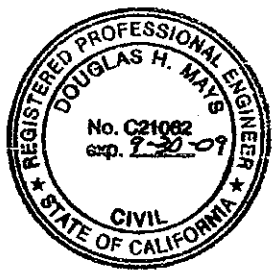
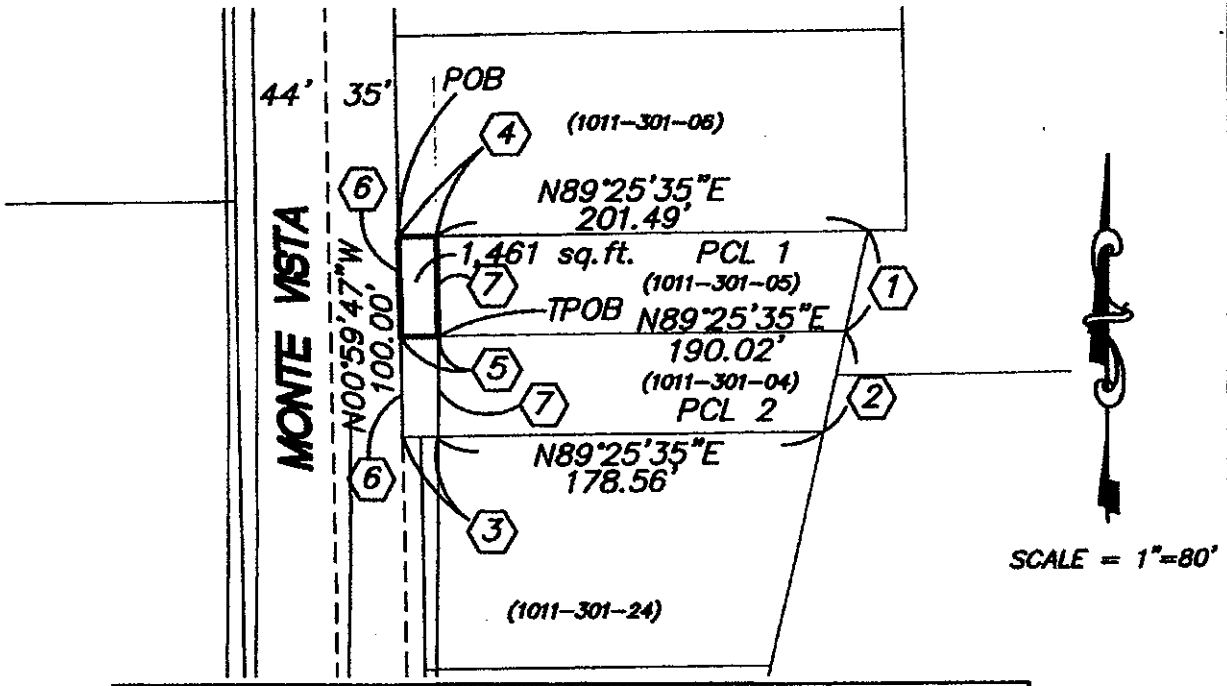


Exhibit A Page 3

EXHIBIT 'A'

PAGE 4 OF 5

ASSESSORS PARCEL NUMBER
1011-301-04,05



1	N12°31'44"E	51.34'	5	N89°25'35"E	28.96'
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3	N89°25'35"E	28.42'	7	S00°22'39"E	50.00'
4	N89°25'35"E	29.50'			

REGISTERED PROFESSIONAL ENGINEER
DOUGLAS HAROLD MAYS
No. 21062
Exp. 09/30/09
CIVIL
STATE OF CALIFORNIA

BASIS OF BEARINGS:

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

PREPARED BY ME OR UNDER MY DIRECTION

BY: Douglas H Mays 12-8-08

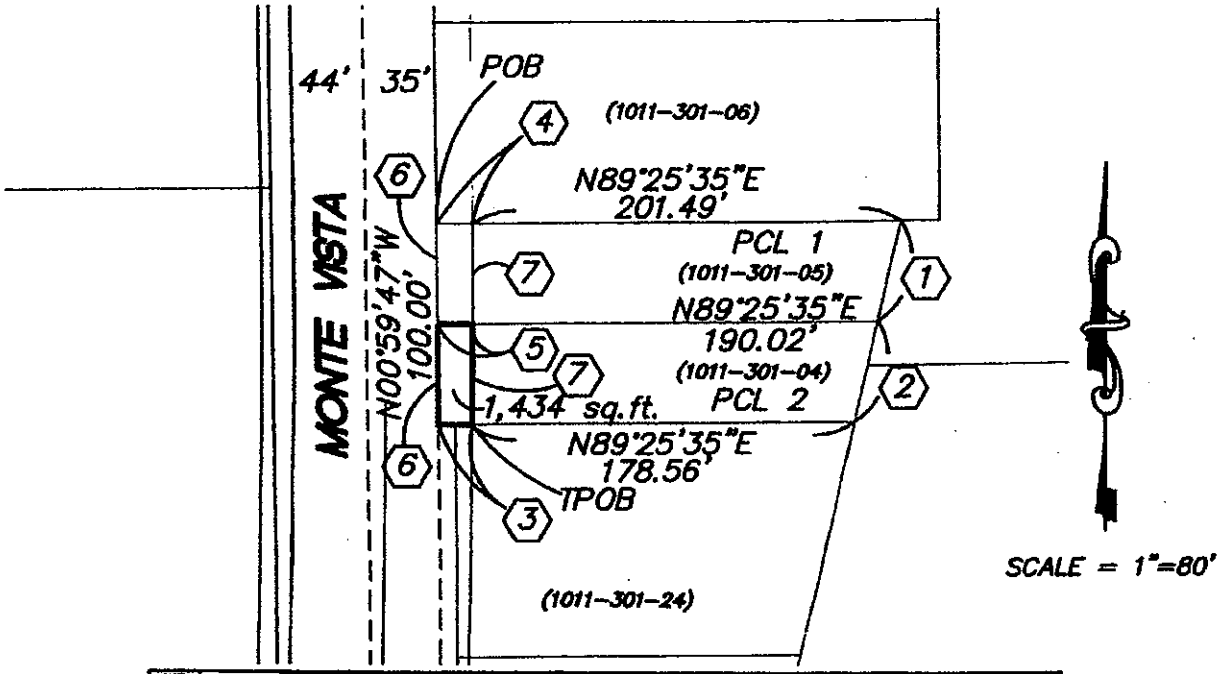
DOUGLAS H. MAYS DATE
CIVIL ENGINEER, P.E. C21062
EXPIRES: SEPTEMBER 30, 2009

Exhibit A Page 4

EXHIBIT 'A'

PAGE 5 OF 5

ASSESSORS PARCEL NUMBER
1011-301-04,05



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REGISTERED PROFESSIONAL ENGINEER
DOUGLAS HAROLD MAYS
No. 21062
Exp. 09/30/09
CIVIL
STATE OF CALIFORNIA

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PREPARED BY ME OR UNDER MY DIRECTION

BY: Douglas H Mays 12-8-08

DOUGLAS H. MAYS DATE
CIVIL ENGINEER, P.E. C21062
EXPIRES: SEPTEMBER 30, 2009

Exhibit A Page 5

EXHIBIT "B"

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THENCE WEST ALONG THE NORTH LINE OF SAID THARP PROPERTY, 232 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

Exhibit A Page 6

EXHIBIT "B"

Continued from page 1

EXCEPTING THERE FROM THE FOLLOWING DESCRIBED LAND; BEGINNING AT SAID POINT OF BEGINNING; SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 00° 59' 47" EAST ALONG THE EAST LINE OF MONTE VISTA STREET A DISTANCE OF 50.00 FEET; THENCE NORTH 89° 25' 35" EAST A DISTANCE OF 28.96 FEET; THENCE NORTH 00° 59' 47" WEST A DISTANCE OF 50.00 FEET; THENCE SOUTH 89° 25' 35" WEST A DISTANCE OF 29.50 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE PARCEL OF LAND CONTAINS 0.22 ACRES (9,787 SF) MORE OR LESS

PARCEL 2:

THE SOUTH 50 FEET OF THE FOLLOWING DESCRIBED PROPERTY MEASURED ALONG THE WEST LINE THEREOF;

THAT PORTION OF LOT 2, BLOCK 29, ACCORDING TO MAP OF MONTE VISTA TRACT, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE(S) 34 OF MAPS, AND THE AMENDED MAP THEREOF RECORDED IN BOOK 15, PAGE(S) 20 OF MAPS, DESCRIBED AS FOLLOWS:

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EXCEPTING THERE FROM THE FOLLOWING DESCRIBED LAND; BEGINNING AT SAID POINT OF BEGINNING; THENCE SOUTH 00° 59' 47" EAST ALONG THE EAST LINE OF MONTE VISTA STREET, 50.00 FEET TO THE TRUE POINT OF BEGINNING;

Exhibit A Page 7

EXHIBIT "B"

Continued from page 2

THENCE FROM SAID POINT SOUTH 00° 59' 47" EAST ALONG THE EAST LINE OF MONTE VISTA STREET A DISTANCE OF 50.00 FEET; THENCE NORTH 89° 25' 35" EAST A DISTANCE OF 28.42 FEET; THENCE NORTH 00° 59' 47" WEST A DISTANCE OF 50.00 FEET; THENCE SOUTH 89° 25' 35" WEST A DISTANCE OF 28.96 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE PARCEL OF LAND CONTAINS 0.21 ACRES (9,214 SF) MORE OR LESS

PREPARED BY ME OR UNDER MY DIRECTION

BY: Douglas H Mays 12-8-08

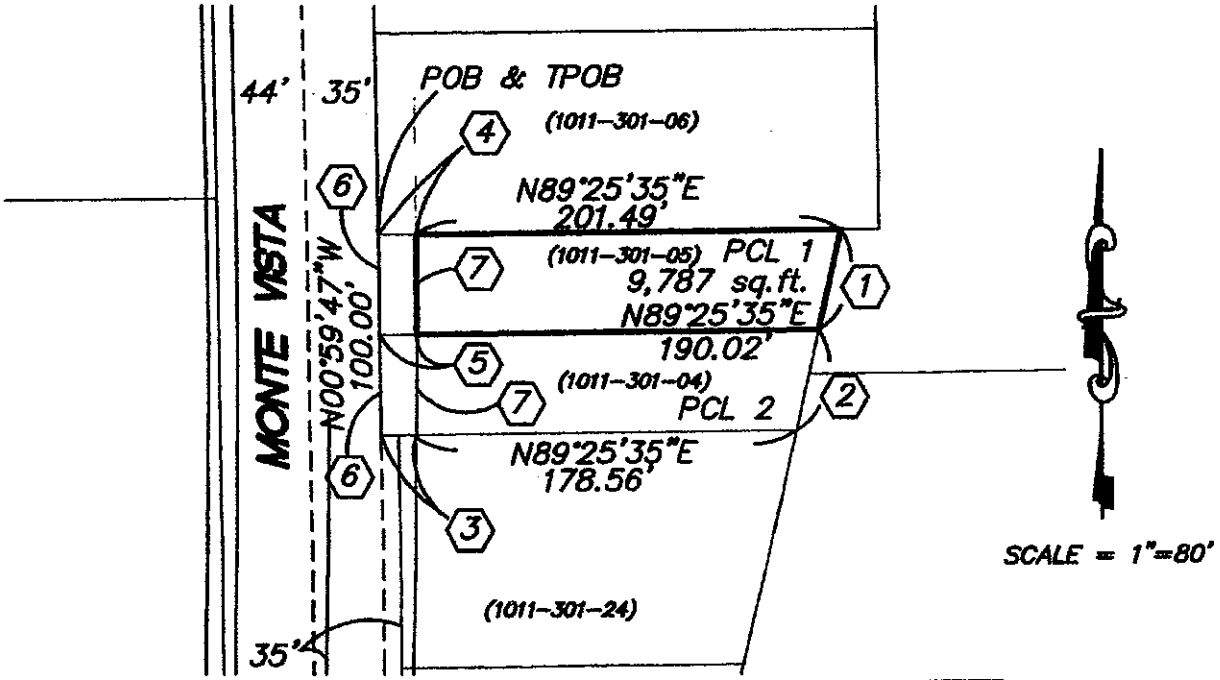
DOUGLAS H. MAYS, P.E.; DATE
C21062; EXPIRES; SEPTEMBER 29, 2009

Exhibit 4 page 8

EXHIBIT "B"

PAGE 4 OF 5

ASSESSORS PARCEL NUMBER
1011–301–04,05



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4	N89°25'35"E	29.50'			

REGISTERED PROFESSIONAL ENGINEER
DOUGLAS HAROLD MAYS
No. 21062
Exp. 09/30/09
CIVIL
STATE OF CALIFORNIA

BASIS OF BEARINGS:

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

PREPARED BY ME OR UNDER MY DIRECTION

BY: Douglas H Mays 12-8-08

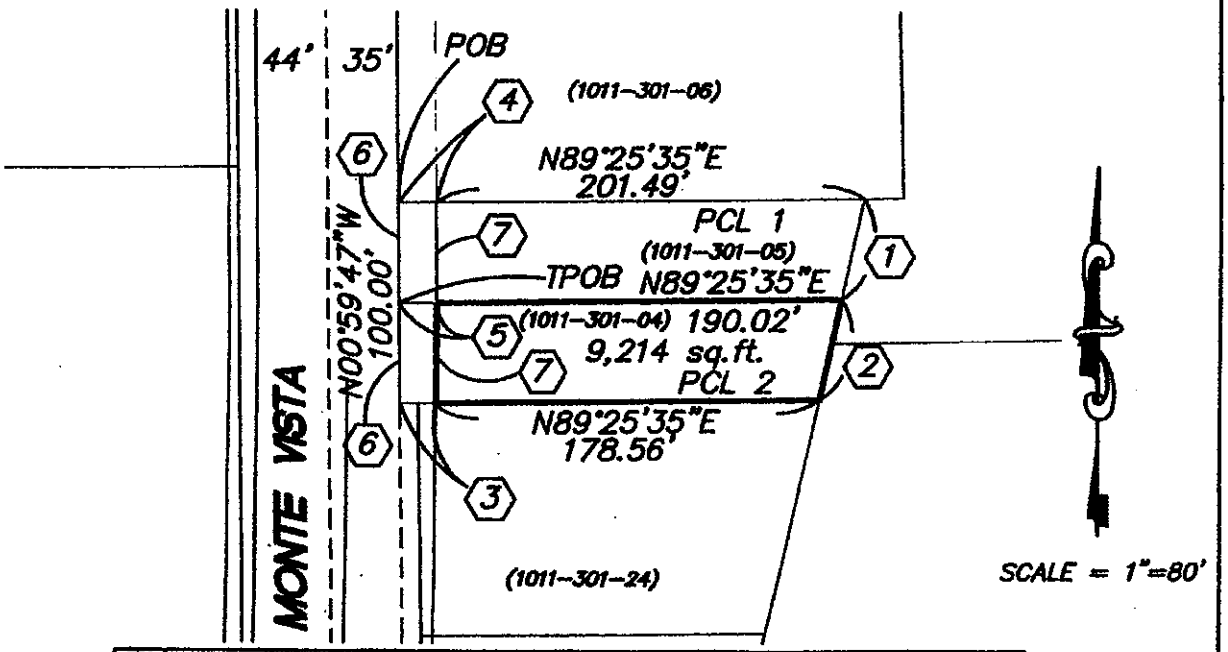
DOUGLAS H. MAYS — DATE
CIVIL ENGINEER, P.E. C21062
EXPIRES: SEPTEMBER 30, 2009

Exhibit A Page 9

EXHIBIT "B"

PAGE 5 OF 5

ASSESSORS PARCEL NUMBER
1011-301-04,05



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REGISTERED PROFESSIONAL ENGINEER
DOUGLAS HAROLD MAYS
No. 21062
Exp. 09/30/09
CIVIL
STATE OF CALIFORNIA

PREPARED BY ME OR UNDER MY DIRECTION

BY: Douglas H. Mays 12-8-08

DOUGLAS H. MAYS — DATE
CIVIL ENGINEER, P.E. C21062
EXPIRES: SEPTEMBER 30, 2009

Exhibit A Page 10

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF THE FILING OF A NOTICE OF COMPLETION FOR CONSTRUCTION OF THE MISSION BOULEVARD IMPROVEMENT PHASE 7 PROJECT; REDUCTION OF FAITHFUL PERFORMANCE BOND TO 10 PERCENT; AND RETENTION OF PAYMENT BOND FOR SIX MONTHS

CONSIDER RELEASE OF RETENTION 30 DAYS AFTER RECORDATION OF NOTICE OF COMPLETION

DATE: July 19, 2010

SECTION: ADMIN. REPORTS

ITEM NO.: 8

FILE I.D.: SSP178

DEPT.: PUBLIC WORKS

BUSINESS PLAN: **STRATEGIC PRIORITY NO. 3, GOAL 3**

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 No. 3, Goal 3, as contained in Montclair's "Business Plan."

BACKGROUND: On November 16, 2010, Gentry Brothers, Inc., was awarded a contract for construction of the Mission Boulevard Improvement Phase 7 Project and entered into Agreement No. 09-117. All work required pursuant to Agreement No. 09-117 has been satisfactorily completed. Work included new median islands; landscaping and irrigation; pavement reconstruction; curb, gutter, and sidewalk construction; installation of a new traffic signal and intersection improvements at the Pipeline Avenue intersection; and restriping.

FISCAL IMPACT: During the course of construction, it was necessary to adjust a few quantities as well as modify the project scope of services through construction change orders. The changes ultimately increased the total construction cost from the awarded amount of $1,042,590 to the final cost of $1,192,999, a $150,409 increase.

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

1. Approve the filing of a Notice of Completion for construction of the Mission Boulevard Improvement Phase 7 Project.

2. Reduce the Faithful Performance Bond to 10 percent.

3. Retain the Payment Bond for six months.

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: _____ Presented by: _____

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. : N/A (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 Mission Boulevard Improvement Phase 7 Project

for the undersigned City of Montclair, a Municipal Corporation, on the 19th day of July, 2010

The City accepted the job on the 16th day of July 2010

The Contractor on said job was Gentry Brothers, Inc.
384 Live Oak
Irwindale, Ca. 91706

The improvement consisted of Street Improvements

The property upon which said work of improvement was completed is described as: 5200-5600 Mission Blvd.

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 PURCHASE FOUR 2010 FORD CROWN VICTORIA POLICE INTERCEPTOR SEDANS FROM HEMBORG FORD	**DATE:**	July 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	9
		FILE I.D.:	VEH450
BUSINESS PLAN:	N/A	**DEPT.:**	POLICE

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of four Ford Crown Victoria Police Interceptor sedans. Expenditures in excess of $20,000 require City Council approval.

BACKGROUND: The City Council approved the purchase of four 2010 Ford Crown Victoria Police Interceptor sedans to replace four 2004 high-mileage vehicles in the Police Department Fiscal Year 2010-11 Budget.

The following vendors responded to a bid request for the vehicle purchase:

Vendor	*Bid Amount*
Wondries Ford	$24,252
Hemborg Ford	$22,739
Clippinger Ford	$22,696

Clippinger Ford's bid was for 2008 models, which are no longer available. Hemborg Ford's bid was for 2010 models that would be available within 30 days of placing the order.

FISCAL IMPACT: The cost per vehicle would be $22,739 including sales tax, document fees, and tire tax, for a total of $90,954 for four vehicles.

RECOMMENDATION: Staff recommends the City Council authorize the purchase of four 2010 Ford Crown Victoria Police Interceptor sedans from Hemborg Ford.

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: _____ Presented by: _____

AGENDA REPORT

SUBJECT:	CONSIDER AUTHORIZATION TO ADVERTISE FOR BID PROPOSALS FOR CONSTRUCTION OF THE ALMA HOFMAN PARK LIGHTING AND LANDSCAPE IRRIGATION REPLACEMENT PROJECT	**DATE:**	July 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	10
		FILE I.D.:	PRK200
BUSINESS PLAN:	STRATEGIC PRIORITY NOS. 4 AND 5	**DEPT.:**	PUBLIC WORKS

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

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

BACKGROUND: The Fiscal Years 2009-2013 Capital Improvement Program includes funding for Alma Hofman Park improvements. This project includes lighting improvements throughout Alma Hofman Park pathways and parking lot. Work also includes replacement of an outdated and inefficient landscape irrigation system.

Replacement of the lighting equipment and irrigation system is expected to begin in October 2010, with an expected completion date in December 2010.

FISCAL IMPACT: The project is entirely funded by the Roberti-Z'berg-Harris Urban Open-Space and Recreation Grant Program contract. The cost of advertising this project should not exceed $3,500.

RECOMMENDATION: Staff recommends the City Council authorize staff to advertise for bid proposals for construction of the Alma Hofman Park Lighting and Landscape Irrigation Replacement Project.

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: _____ Presented by: _____

AGENDA REPORT

SUBJECT:	CONSIDER AUTHORIZATION TO ADVERTISE FOR BID PROPOSALS FOR THE REPLACEMENT OF PLAYGROUND EQUIPMENT AT ALMA HOFMAN PARK PROJECT	**DATE:**	July 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	11
		FILE I.D.:	PRK200/EQS230
BUSINESS PLAN:	**STRATEGIC PRIORITY NOS. 4 AND 5**	**DEPT.:**	PUBLIC WORKS

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

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

BACKGROUND: The Fiscal Years 2009-2013 Capital Improvement Program includes funding for Alma Hofman Park improvements. Replacement of playground equipment includes the removal of the existing playground apparatus and installation of new equipment for both youth and toddlers. A rubberized playground surface will replace the existing wood chip material.

Construction of the playground equipment is expected to begin in September 2010 with an expected completion date in October 2010.

FISCAL IMPACT: The project is entirely funded by the Proposition 40 - Per Capita Grant Program. The cost of advertising this project should not exceed $3,500.

RECOMMENDATION: Staff recommends the City Council authorize staff to advertise for bid proposals for the Replacement of Playground Equipment at Alma Hofman Park Project.

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

AGENDA REPORT

SUBJECT:	CONSIDER DECLARING CERTAIN CITY PROPERTY AND UNCLAIMED PROPERTY IN POLICE CUSTODY AS SURPLUS AND AVAILABLE FOR AUCTION	**DATE:**	July 19, 2010
		SECTION:	ADMIN. REPORTS
		ITEM NO.:	12
		FILE I.D.:	EQS051/052
BUSINESS PLAN:	N/A	**DEPT.:**	POLICE

REASON FOR CONSIDERATION: The City Council is requested to declare certain City property and unclaimed property in police custody as surplus so it may be made available for auction.

BACKGROUND: The items included on the attached lists are considered as surplus City property or as unclaimed property in police custody. Upon being declared as surplus by the City Council, they will be available for auction.

FISCAL IMPACT: There is no estimation as to the proceeds to be received through auction of these items.

RECOMMENDATION: Staff recommends the City Council declare certain City property and unclaimed property in police custody as surplus and available for auction.

Prepared by: C. Weirke

Reviewed and Approved by: [signature]

Proofed by: Sharon Oggiman

Presented by: [signature]

CITY OF MONTCLAIR
PROPERTY AUCTION LOG

Police — June 2010 — 1

AUCTION #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE AUCTIONED	SERIAL #	CITY TAG
A		1	White Storage cabinet		
B		1	Oak Desk		15481
C		1	Oak Form/Mail Box		
D		1	Oak Roll dest extension		
F		1	Yellow plastic eye wash station		
G		1	Cannon Adding machine, Model MP21DIII	60711160	
H		1	Minolta 35mm camera, Freedom Zoom Panorama	56805182	
I		1	Stainless steel, wall mounted; telephone booth		
J		1	Box of emergency lighting		
K		5	G.E. mobile VHF radios, model MVS	7502959,7502965,7782575,8126018,8126025	
L		15	Data 911, Mobile data computers, model MDS2000	6154,6155,6156,6157,6158,6159,6160,6162,6164,6163,6166,6167,6168,6169,6170	7,15348,15350,15352,15354,15355,15356,15358,15359,15360,15361
M		13	Motorola mobile radio speakers		
N		3	Federal emergency sirens		
O		2	Code 3 power sources		

CITY OF MONTCLAIR
PROPERTY AUCTION LOG

AUCTION #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE AUCTIONED	SERIAL #	CITY TAG
P		8	Ballistic helmets		
Q		2	"Trek", single Trek Mtn. bikes	1691597, 1766706	
R		1	Metal evidence locker, 36'X70"X24"		
S		1	Metal evidence locker, 36'X70"X24"		
T		8	Flourescent light fixtures, "Prudential Lighting" 8'		
U		64	"Bali" 1" mini-blinds, off white, misc.lenghts/widths		
V		8	3/4" conduit, 10' lengths		
W		4	1" conduit, 10' lengths		
X		1	Oak lateral file cabinet		
Z		5	Heavy duty circuit breaker boxes		
AA		4	Floor mount benches, 1'X3"		
BB		2	Floor mount benches, 1'X5'		
CC		1	Transient voltage surge protector		
DD		14	Heavy duty electrical transformers		
EE		1	Wall mounted shelve 30"X30"		

CITY OF MONTCLAIR
PROPERTY AUCTION LOG

AUCTION #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE AUCTIONED	SERIAL #	CITY TAG
FF		2	Wall mounted shelve 30"X36"		
GG		1	"Sharp" carousel microwave oven	158027	
HH		1	Brown leather desk chair w/arms		12013

CITY OF MONTCLAIR
PROPERTY AUCTION LOG

DEPARTMENT Administative Services MONTH June/2010 PAGE 1 of 3

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE AUCTIONED	SERIAL #	CR #	PRICE SOLD FOR
15184	1		1	PC - KMN	IMGB14023863		
15732	2		1	PC - Dell	83SKR01		
15312	3		1	PC - Dell	IVNFR		
15202	4		1	PC	19960165		
15334	5		1	PC - Dell	DNC1D01		
15189	6		1	PC - KMN	IMGB14023860		
15303	7		1	PC - Dell	9YDMK01		
15627	8		1	PC			
15612	9		1	PC			
15718	10		1	PC			
14545	11		1	HP LaserJet 4L Printer	USBB141925		
15486	12		1	LCD Princeton	WCCC4901613		
15928	13		1	PC			
	14		1	PC - HP	US91662765		
15755	15		1	PC - KMN	520003A		

CITY OF MONTCLAIR
PROPERTY AUCTION LOG

DEPARTMENT Administative Services MONTH June/2010 PAGE 2 of 3

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE AUCTIONED	SERIAL #	CR #	PRICE SOLD FOR
16157	16		1	PC - KMN			
	17		108	Fujitsu Phones			
15471	18		1	PC - Dell	EXT0P		
15654	19		1	PC			
15951	20		1	PC - Enpower			
5	21		1	PC - Generic			
15214	22		1	PC - PCS	19960176		
16171	23		1	Printer - Ecosys FS-C53030N	GPN6Y18715		
	24		1	Fax - Panasonic KXFL511	5KCWD277673		
	25		1	TV - Emerson	7019423372		
	26		1	Cisco 2500 Router	25336594		
15417	27		1	Monitor Viewsonic	22Y012401682		
15581	28		1	Clie	4018453		
15580	29		1	Clie	4018460		
15605	30		1	Clie	4018484		

CITY OF MONTCLAIR
PROPERTY AUCTION LOG

DEPARTMENT Administative Services MONTH June/2010 PAGE 3 of 3

TAG #	ID #	ESTIMATED VALUE	QUANTITY	DESCRIPTION OF ITEM TO BE AUCTIONED	SERIAL #	CR #	PRICE SOLD FOR
16212	31		1	Server	1005493001		
	32		1	Scanner - Epson	J7XW004003		
15207	33		1	Monitor - View Sonic	GQ01610777		
	34		1	Printer - Canon	EVE76994		
15066	35		1	Printer - HP	SG87D130XF		
	36		1	Cisco Router 1600	JMX04156WDB		
15203	37		1	HP Switch	SG90460126		
15132	38		1	3com Hub	72BV1031F86		
15625	39		1	Viewsonic Monitor	22Y012401685		
	40		1	TV - Zenith	62123130179		
14832	41		1	HP Plotter	ESB5406925		
16164	42		1	Microfiche Reader	140943		
15010	43		1	Genicom Printer			
14158	44		1	HP LPQ 500 Printer			

CITY OF MONTCLAIR

PROPERTY AUCTION LOG

DEPARTMENT Fire MONTH June, 2010 PAGE 1

TAG #	QTY	EST VALUE	DESCRIPTION OF ITEM TO BE AUCTIONED	SERIAL #	CR # City TAG #	PRICE SOLD FOR
1	5		Desks			
2	12		Chairs			
3	1		Lock out Kit			
4	1		LaserJet IIIp Printer	3103J61260	14842	
5	2		Bags of Rope			
6	2		Ice Chests			
7	4		Multi-Casualty Vests			
8	1		Minolta 35 mm Camera	92355391		
9	3		Cots			

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 10-86 AMENDING AGREEMENT NOS. 08-57 AND 09-116 WITH JOHN M. AND BRENDA GOLLER CONSTRUCTION MANAGEMENT SERVICES FOR SERVICES ASSOCIATED WITH THE YOUTH AND SENIOR CENTER PROJECTS	**DATE:**	July 19, 2010
		SECTION:	AGREEMENTS
		ITEM NO.:	1
		FILE I.D.:	HSV151
BUSINESS PLAN:	**STRATEGIC PRIORITY NO. 3, GOAL 3**	**DEPT.:**	PUBLIC WORKS

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

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

BACKGROUND: The City entered into Agreement No. 08-57 with John M. and Brenda Goller Construction Management Services to assist the City with the construction of the Montclair Youth and Senior Centers and other related construction work. Agreement No. 08-57 was subsequently modified by Agreement No. 09-116, which expanded the scope of services to include:

- Reroofing of various City facilities
- Buildout of Police Department Facility Expansion Area
- Addition of sliding glass doors to City Hall and Recreation for handicap accessibility
- Modification to pottery room to provide for bleacher storage
- Painting and carpeting for Library
- Inclusion of Information Technology Division modifications to the Youth Center

Agreement No. 08-57 anticipated all construction being completed by June 30, 2010. This completion date was not modified by Agreement No. 09-116, even with additional work being added. Unfortunately, the City's construction contractor has not been able to maintain the construction schedule. It is now anticipated that completion of the Senior Center will be no sooner than August 31, 2010.

FISCAL IMPACT: Under the terms of the original agreement and the subsequent amendment, the fee for construction management services is $613,157. Approval of Agreement No. 10-86 would provide for two additional months of construction management services at $23,000 per month and an additional two months of services, through October 31, 2010, on a time and materials basis, not to exceed $23,000 per month. The increase could potentially be as much as $92,000 depending on the work effort required in the final two months of the contract.

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

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

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 10-86 amending Agreement Nos. 08-57 and 09-116 with John M. and Brenda Goller Construction Management Services for services associated with the Youth and Senior Center Projects.

CITY OF MONTCLAIR
AMENDMENT TO AGREEMENT NOS. 08-57 AND 09-116
WITH JOHN M. AND BRENDA GOLLER
CONSTRUCTION MANAGEMENT SERVICES
FOR
MODIFICATION TO SCOPE OF SERVICES FOR
YOUTH AND SENIOR CENTER PROJECTS

This agreement is made and entered into this _____ day of _____, 2010, by and between the CITY OF MONTCLAIR, a municipal corporation ("City") and John M. and Brenda Goller Construction Management Services, a California Corporation ("Consultant"), and collectively ("Parties").

RECITALS

WHEREAS, Parties have previously entered into Agreement No. 08-57 effective on July 1, 2008, and subsequently modified by Agreement No. 09-116 effective on November 16, 2009, for construction management services in conjunction with the construction of the City of Montclair Youth Center and Senior Center at Alma Hofman Park; and

WHEREAS, Paragraph 1. TERM of Agreement No. 08-57 specified that the term of said Agreement should commence on July 1, 2008, and remain in effect for a period of 24 months until tasks described in said Agreement are completed, but in no event later than October 31, 2010; and

WHEREAS, City's construction contractor now estimates work will continue through August 31, 2010; and

WHEREAS, Parties mutually agree that there is a need to continue Consultant's services beyond the 24-month period specified in Paragraph 1. TERM of Agreement No. 08-58; and

WHEREAS, Paragraph 5. PAYMENT of Agreement No. 08-57 specified Consultant's compensation to be provided in Exhibit B; and

WHEREAS, Exhibit B was replaced by Exhibit B-1 under Agreement No. 09-116; and

WHEREAS, Exhibit B-1 included no payments beyond June 30, 2010.

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

AGREEMENT

1. Replace Paragraph 1. TERM of Agreement No. 08-57 with the following:

   1. TERM: This Agreement shall commence on July 1, 2008, and shall remain and continue in effect until tasks described herein are completed, but in no event later than October 31, 2010, unless sooner terminated or extended pursuant to the provisions of this Agreement.

2. Modify Paragraph 5. PAYMENT of Agreement No. 08-57 by substituting the attached Exhibit B-2 for Exhibit B.

3. All other terms of Agreement No. 08-57 shall remain the same and be incorporated herein as though fully set forth.

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

CONSULTANT:

JOHN M. AND BRENDA GOLLER CONSTRUCTION MANAGEMENT SERVICES

By_____
John M. Goller, President

Date_____

By_____
Brenda Goller, Sec./Treas.

Date_____

CITY:

CITY OF MONTCLAIR

_____
Paul M. Eaton/Mayor

Date_____

ATTEST:

_____
Donna M. Jackson/City Clerk

Date_____

APPROVED AS TO FORM:

_____
Diane E. Robbins/City Attorney

EXHIBIT B-2

Payment Schedule

2008		2009		2010	
July	$24,025.29	January	$23,700.00	January	$28,888.89
August	$23,499.35	February	$23,700.00	February	$28,888.89
September	$21,700.00	March	$23,700.00	March	$28,888.89
October	$21,700.00	April	$23,700.00	April	$28,888.89
November	$26,700.00	May	$23,956.36	May	$28,888.89
December	$21,700.00	June	$27,875.36	June	$28,888.89
		July	$23,700.00	July	$23,000.00
		August	$23,700.00	August	$23,000.00
		September	$23,700.00	September	$23,000.00
		October	$27,588.89	October*	$23,000.00
		November	$27,588.89		
		December	$27,588.89		
Total	$139,324.64		$300,498.39		$265,333.34

*Payment for October 2010 shall be prorated at $1,095.24 per workday (1/21 of $23,000) for each day worked for a total not to exceed $23,000.

AGENDA REPORT

SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 10-87 WITH THE COUNTY OF SAN BERNARDINO FOR PARTICIPATION IN THE WORK RELEASE PROGRAM	**DATE:**	July 19, 2010
		SECTION:	AGREEMENTS
		ITEM NO.:	2
		FILE I.D.:	PDT975/SBC275
BUSINESS PLAN:	N/A	**DEPT.:**	POLICE

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 10-87 with the County of San Bernardino for participation in the Work Release Program offered through the San Bernardino County Sheriff's Department (SBSD). Proposed Agreement No. 10-87 is attached for the City Council's review and consideration.

BACKGROUND: The Montclair Police Department has traditionally used the services of local car wash businesses to maintain the interior and exterior of its patrol and administrative vehicles. San Bernardino County, through its Sheriff's Department, conducts and administers a Work Release Program for the performance of work by persons committed to the custody of the Sheriff. SBSD would contract with the City of Montclair to provide workers to wash and detail vehicles and perform other duties, as needed, under the direct supervision of Montclair City employees.

The City of Montclair would be responsible for the transportation of said workers and the provision of necessary safety equipment.

FISCAL IMPACT: Approval of proposed Agreement No. 10-87 would require the City to pay a $100 administration fee upon implementation of the three-year agreement. Implementation of the Agreement would reduce the cost of auto detailing, which is typically included in the Public Works Department's Vehicle Maintenance Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 10-87 with the County of San Bernardino for participation in the Work Release Program.

Prepared by: _____ Reviewed and Approved by: _____

Proofed by: _____ Presented by: _____

County of San Bernardino

F A S

STANDARD CONTRACT

FOR COUNTY USE ONLY

☒ New ☐ Change ☐ Cancel	Vendor Code	Dept. SC	Dept. A	Contract Number
County Department: SHERIFF		Dept.: SHR	Orgn.: SHR	Contractor's License No.
County Department Contract Representative: MARIO QUESADA, CAPTAIN		Telephone: (909)387-0640		Total Contract Amount: $

Contract Type: ☒ Revenue ☐ Encumbered ☐ Unencumbered ☐ Other:

If not encumbered or revenue contract type, provide reason:

Commodity Code	Contract Start Date	Contract End Date	Original Amount	Amendment Amount
	7/1/10	6/30/13	$	$

Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No	Amount
AAA	SHR	SHR		9970	WORKREL	$
						$
						$

Project Name: Work Release Program

Estimated Payment Total by Fiscal Year

FY	Amount	I/D	FY	Amount	I/D

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

Name: City of Montclair — hereinafter called CONTRACTOR

Address: 5111 Benito Street

Montclair, CA 91763

Telephone: (909) 626-8571 — Federal ID No. or Social Security No.:

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

WITNESSETH

WHEREAS, The County of San Bernardino, hereinafter referred to as COUNTY, conducts and administers a work program, through the Sheriff's Department, hereinafter referred to as SHERIFF, under Penal Code Sections 4024.2 and 4024.3, for the performance of work by persons committed to the custody of the SHERIFF.

WHEREAS, the CONTRACTOR desires that participants in said work program be placed with it for work under the direction and control of the CONTRACTOR,

NOW, THEREFORE, it is hereby agreed as follows:

Auditor/Controller-Recorder Use Only

☐ Contract Database	☐ FAS
Input Date	Keyed By

1. SHERIFF may place inmates performing work under the aforesaid program with the CONTRACTOR. The number of participants shall depend upon the work available and the ability of the CONTRACTOR to administer and control the work program.

2. On placement of persons under this agreement by the SHERIFF with the CONTRACTOR, the work of the participants will be under the direct supervision and control of the CONTRACTOR and will not be under the supervision or control of the SHERIFF.

3. CONTRACTOR will assign a Crew Supervisor to oversee the inmates assigned to its agency.

4. CONTRACTOR will be supplied with a Crew Supervisor Instruction Booklet by staff of the Work Release Program.

5. CONTRACTOR shall ensure that each Crew Supervisor does not fraternize with, engage services of, accept services from, do favors for, or engage in a romantic, intimate or sexual relationship with participants.

6. CONTRACTOR shall pay to COUNTY a one hundred dollar ($100) contract administration fee upon implementation of this contract.

7. The work performed by program participants will consist of manual labor to improve or maintain levees or public facilities, including, but not limited to streets, parks, and schools and/or manual labor as approved by the SHERIFF.

8. CONTRACTOR shall ensure the work, supervision, and treatment of the participants shall in all ways conform to applicable law, including but not limited to, California Penal Code Sections 4024.2 and 4024.3.

9. The CONTRACTOR will not provide any security guards and the CONTRACTOR's employee(s) working with participants will not physically restrain any participants that might leave the work area. The SHERIFF will be notified by the end of the day of any participants who did not arrive for scheduled work assignment or left the work area without permission.

10. The CONTRACTOR will provide transportation for participants working under this agreement to and from the work sites, as needed, from pickup points agreed to between the SHERIFF and the CONTRACTOR.

11. Equipment operations will be performed only by qualified CONTRACTOR's employees, with the exception of small power equipment such as weed trimmers, power lawn mowers and hedge trimmers. Work participants must demonstrate proficiency with such tools to the satisfaction of the CONTRACTOR before being allowed to operate said tools. CONTRACTOR must provide necessary safety equipment (such as eye, toe, and shin guards) as required by the California Occupational Safety and Health Administration while participants are operating any equipment. As with all other aspects of this contract, CONTRACTOR assumes all defense and liability for any injuries or damage which may occur while participants are operating power equipment.

12. The CONTRACTOR will provide work program participants with safety equipment such as signs, hard hats and red vests, required to safely perform any work assigned under this contract.

13. The CONTRACTOR's employees will provide safety instructions, explain the work to be done, and direct the work of program participants placed under this contract.

14. In the event that an injury to a participant occurs, the CONTRACTOR shall be responsible for completing an inmate injury report and submitting it to the Work Release Officer at Glen Helen Rehabilitation Center. The SHERIFF will be responsible for paying all medical bills and the subject CONTRACTOR agrees to reimburse SHERIFF for any and all costs incurred as they relate to the reported injury. SHERIFF is not required to provide worker's compensation coverage for inmate work release program participants pursuant to Penal Code Sections 4024.2 and 4024.3. However, should an injured participant successfully pursue a worker's compensation or liability lawsuit through either venue, the CONTRACTOR shall pay all legal and adjusting expenses and any awards settlements or judgments.

15. The term of this contract shall be for a period of three years commencing upon its execution by the San Bernardino County Board of Supervisors. Notwithstanding the foregoing, this contract may be terminated at any time, with or without cause, by CONTRACTOR or by SHERIFF, upon written notice given to the other party at least thirty (30) days prior to the date specified for said termination. In the event of such termination, each party shall fully pay and discharge all obligations in favor of the other, accruing prior to the date of such termination, and each party shall be released from all obligations or performance which would otherwise accrue subsequent to the date of termination. Notwithstanding the foregoing, COUNTY may terminate this contract at any time, without advance notice to CONTRACTOR, in the event CONTRACTOR fails to comply with any term of this agreement.

16. NOTICES - Any notice required under this contract shall be deemed given when personally delivered or deposited in the U.S. mail, certified, postage prepaid, addressed as follows:

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

COUNTY: San Bernardino County Sheriff's Department
Bureau of Administration/Contracts Unit
P.O. Box 569
San Bernardino, CA 92402-0569

17. 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 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 indemnities. The CONTRACTOR's indemnification obligation applies to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

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.

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".

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.

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.

18. INSURANCE - 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 any way affecting the indemnity herein provided and in addition thereto, the CONTRACTOR shall secure and maintain throughout the Contract 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 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 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 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. If the County's Risk Manager determines that there is no reasonably priced coverage for volunteers, evidence of participation in a volunteer insurance program may be substituted.

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 nonowned 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 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. Proof of Coverage - CONTRACTOR shall immediately furnish certificates of insurance to the SHERIFF evidencing the insurance coverage, including endorsements, above required prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated to expire without thirty (30) days written notice to the SHERIFF, and CONTRACTOR shall maintain such insurance from the time CONTRACTOR commences performance of services hereunder until the completion of such services. Within sixty (60) days of the commencement of this contract, CONTRACTOR shall furnish certified copies of the policies and all endorsements.

F. Insurance Review - The above insurance requirements are subject to periodic review by the COUNTY. The County's Risk Manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever the Risk Manager determines that any of the above insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, if the Risk Manager determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager 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 such reduction or waiver for the entire term of the contract and 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.

G. The CONTRACTOR may accomplish the insurance requirements herein through a State approved self-insurance program.

19. The Sheriff of San Bernardino County shall have the authority to exercise the COUNTY's rights and authority under this contract, including the right to give notice of termination of this contract, at his sole discretion.

20. This contract represents the full and complete understanding of the parties with respect to the subject matter hereto, and this contract supersedes all prior oral and written agreements or understanding between the parties with respect to the subject matter hereto. This contract shall be governed by the laws of the State of California. Venue for any lawsuit pertaining to this contract shall be Superior Court of California, County of San Bernardino, San Bernardino District. Any amendment to this contract shall be in writing signed by both parties.

COUNTY OF SAN BERNARDINO

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

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD
Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

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

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

Name _____
(Print or type name of person signing contract)

Title _____
(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
► _____	► _____	► _____
County Counsel, Steven Singley, Deputy		Department Head
Date _____	Date _____	Date _____