

CITY OF MONTCLAIR

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

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

April 15 2013

7:00 p.m.

As a courtesy please silence your cell phones and other electronic devices while the meeting is in session. Thank you.

The CC/SA/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 and Successor Agency and Montclair Housing Corporation Boards of Directors

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. Proclamation Declaring the Week of April 28, 2013, Through May 4, 2013, as "Childhood Cancer Awareness Week" in the City of Montclair
- B. Proclamation Declaring May 2, 2013, as "National Day of Prayer" in the City of Montclair
- C. Proclamation Declaring the Month of April 2013 as "DMV/Donate Life California Month" in the City of Montclair
- D. 2013 Volunteer of the Year Award

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, Successor Agency Board of Directors, and Montclair Housing Corporation Board of Directors. (Government Code Section 54954.3)

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

VII. PUBLIC HEARINGS - None

VIII. CONSENT CALENDAR

A. Approval of Minutes

1. Minutes of the Adjourned City Council Meeting of February 12, 2013 [CC]
2. Minutes of the Regular Joint Council/Successor Agency Board/MHC/MHA Meeting of April 1, 2013 [CC/SA/MHC/MHA]

B. Administrative Reports

- | | |
|--|----|
| 1. Consider Receiving and Filing of Treasurer's Report [CC] | 4 |
| 2. Consider Approval of Warrant Register and Payroll Documentation [CC] | 5 |
| 3. Consider Receiving and Filing of Treasurer's Report [SA] | 6 |
| 4. Consider Approval of Warrant Register [SA] | 7 |
| 5. Consider Receiving and Filing of Treasurer's Report [MHC] | 8 |
| 6. Consider Approval of Warrant Register [MHC] | 9 |
| 7. Consider Approval of the Filing of a Notice of Completion, Reduction of Faithful Performance Bond to 10 Percent, and Retention of Payment Bond for Six Months for the Repairs and Modifications to the Montclair Police Department Above Ground Fuel Storage Tank System Project [CC] | |
| Consider Release of Retention 30 Days After Recordation of Notice of Completion [CC] | 10 |

C. Agreements

- | | |
|---|----|
| 1. Consider Approval of Agreement No. 13-28, a Property Tax Administrative Fee Release and Settlement Agreement Between the City of Montclair and the County of San Bernardino [CC] | 12 |
|---|----|

D. Resolutions - None

IX. PULLED CONSENT CALENDAR ITEMS

X. RESPONSE - None

XI. COMMUNICATIONS

- A. City Attorney
- B. City Manager/Executive Director

- C. Mayor/Chairman
- D. Council/MHC Board
- E. Committee Meeting Minutes *(for informational purposes only)*
 - 1. Minutes of the Code Enforcement Committee Meeting of March 18, 2013 23
 - 2. Minutes of the Personnel Committee Meeting of April 1, 2013 26

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

The next regularly scheduled City Council, Successor Agency Board, and Montclair Housing Corporation Board meetings will be held on Monday, May 6, 2013, 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, Successor Agency Board, and 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 Deputy City Clerk at (909) 625-9416. 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, Yvonne L. Smith, Deputy 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 north door of Montclair City Hall on April 11, 2013.

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: April 15, 2013
SECTION: ADMIN. REPORTS
ITEM NO.: 1
FILE I.D.: FIN520
DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending March 31, 2013, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending March 31, 2013.

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 March 31, 2013.

Prepared by:

Michael Pustinoski
Yvonne L. Smith

Reviewed and
Approved by:

Donald L. Parker
[Signature]

Proofed by:

Presented by:

AGENDA REPORT

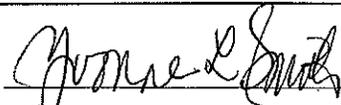
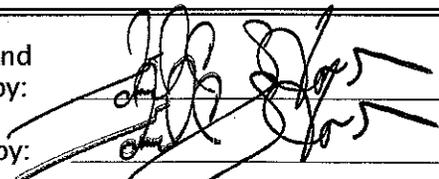
SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION	DATE: April 15, 2013
	SECTION: ADMIN. REPORTS
	ITEM NO.: 2
	FILE I.D.: FIN540
	DEPT.: ADMIN. SVCS.

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

BACKGROUND: Mayor Pro Tem Ruh has examined the Warrant Register dated April 15, 2013, and Payroll Documentation dated March 10, 2013; finds them to be in order; and recommends their approval.

FISCAL IMPACT: The Warrant Register dated April 15, 2013, totals \$1,039,745.60. The Payroll Documentation dated March 10, 2013, totals \$611,265.68, with \$408,781.43 being the total cash disbursement.

RECOMMENDATION: Staff recommends the City Council approve the above referenced Warrant Register and Payroll Documentation as presented.

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

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: April 15, 2013

SECTION: ADMIN. REPORTS

ITEM NO.: 3

FILE I.D.: FIN510

DEPT.: SUCCESSOR RDA

REASON FOR CONSIDERATION: The City Council acting as successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending March 31, 2013, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending March 31, 2013.

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

RECOMMENDATION: Staff recommends the City Council acting as successor to the Redevelopment Agency Board of Directors receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending March 31, 2013.

Prepared by:

Michael Piotrowski

Reviewed and
Approved by:

Donald L. Parks

Proofed by:

Gwonne L. Smith

Presented by:

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER **DATE:** April 15, 2013
SECTION: ADMIN. REPORTS
ITEM NO.: 4
FILE I.D.: FIN530
DEPT.: SUCCESSOR RDA

REASON FOR CONSIDERATION: The City Council acting as successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending March 31, 2013, pursuant to state law.

BACKGROUND: Vice Chairman Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 03.01.13-03.31.13 in the amounts of \$4,687.33 for Project I; \$-3,921.33 for Project II; \$40,229.75 for Project III; \$30,571.73 for Project IV; \$26,452.75 for Project V; \$848 for the Mission Boulevard Joint Redevelopment Project; and \$0.00 for the Redevelopment Obligation Retirement Funds and finds it to be in order.

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

RECOMMENDATION: Vice Chairman Ruh recommends the City Council as successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending March 31, 2013.

Prepared by:

Michael Piotrowski

Reviewed and
Approved by:

Donald Barka

Proofed by:

Yvonne L. Smith

Presented by:

[Signature]

AGENDA REPORT

SUBJECT: CONSIDER RECEIVING AND FILING OF
TREASURER'S REPORT

DATE: April 15, 2013

SECTION: ADMIN. REPORTS

ITEM NO.: 5

FILE I.D.: FIN525

DEPT.: MHC

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending March 31, 2013, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending March 31, 2013.

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 March 31, 2013.

Prepared by:

Michael Profford
Gordon Smith

Reviewed and
Approved by:

Robert L. Fisher

Proofed by:

Presented by:

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER **DATE:** April 15, 2013
SECTION: ADMIN. REPORTS
ITEM NO.: 6
FILE I.D.: FIN545
DEPT.: MHC

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending March 31, 2013, pursuant to state law.

BACKGROUND: Vice Chairman Ruh has examined the Warrant Register dated 03.01.13-03.31.13 in the amount of \$71,260.47 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 Ruh recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending March 31, 2013.

Prepared by:

Michael Pustynski
Gonnie L Smith

Reviewed and
Approved by:

Ronald Barka
[Signature]

Proofed by:

Presented by:

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF THE FILING OF A NOTICE OF COMPLETION, REDUCTION OF FAITHFUL PERFORMANCE BOND TO 10 PERCENT, AND RETENTION OF PAYMENT BOND FOR SIX MONTHS FOR THE REPAIRS AND MODIFICATIONS TO THE MONTCLAIR POLICE DEPARTMENT ABOVE GROUND FUEL STORAGE TANK SYSTEM PROJECT	DATE: April 15, 2013 SECTION: ADMIN. REPORTS ITEM NO.: 7 FILE ID.: STA540 DEPT.: PUBLIC WORKS
CONSIDER RELEASE OF RETENTION 30 DAYS AFTER RECORDATION OF NOTICE OF COMPLETION	

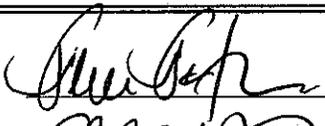
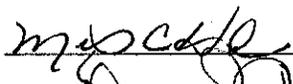
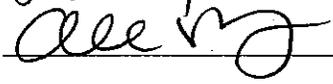
REASON FOR CONSIDERATION: State law requires Notices of Completion to be recorded with the County Recorder upon acceptance of a public works project. The City Council is requested to consider approval of the filing of a Notice of Completion with the Office of the San Bernardino County Recorder and related actions concerning the Repairs and Modifications to the Montclair Police Department Above Ground Storage Fuel Tank System Project.

BACKGROUND: On January 22, 2013, Charles E. Thomas Company was awarded a contract for construction of the Repairs and Modifications to the Montclair Police Department Above Ground Storage Fuel Tank System Project and entered into Agreement No. 12-35 with the City. All work required under Agreement No. 12-35 has been satisfactorily completed. Work included removal and replacement of fuel tank fill tubes, ground-level fuel fill boxes, AQMD-approved vapor recovery and ventilation, and regulated signage.

FISCAL IMPACT: Charles E. Thomas Company was awarded a construction contract for \$22,005.52 that included a construction contingency of \$2,995. The project was funded by Contingency funds. During the course of construction, it was necessary to adjust a few quantities through construction change orders. The changes ultimately increased the total construction cost from the awarded amount of \$22,005.52 to the final cost of \$24,223.52, an increase of \$2,218.

RECOMMENDATION: Staff recommends the City Council take the following actions related to completion of the Repairs and Modifications to the Montclair Police Department Above Ground Storage Fuel Tank System Project:

1. Approve the filing of a Notice of Completion with the Office of the San Bernardino County Recorder.
2. Reduce the Faithful Performance Bond to 10 percent.
3. Retain the Payment Bond for six months.
4. Release retention 30 days after recordation of Notice of Completion.

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

RECORDING REQUESTED BY:

City of Montclair

AND WHEN RECORDED MAIL DOCUMENT AND
TAX STATEMENT TO:

NAME: **City of Montclair**

STREET ADDRESS: **5111 Benito Street**

CITY, STATE & ZIP
CODE: **Montclair, CA 91763**

Government Code 6103

(Space above this line for Recorder's Use Only)

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

Michael C. Hudson
Public Works Director

The full name and address of the undersigned is

City Engineer
5111 Benito Street
Montclair, CA 91763

The work was completed on that certain work known as:

Repairs and Modifications to the Montclair Police Department Above Ground Fuel Tank System

for the undersigned City of Montclair,
a Municipal Corporation, on the

4th

day of

April, 2013

The City accepted the job on the

8th

day of

April, 2013

The Contractor on said job was

Charles E. Thomas Company
13701 South Alma Avenue
Gardena, Ca. 90249

The improvement consisted of:

Fuel Tank Repairs

The property upon which said work of improvement was completed is described as:

4870 Arrow Highway Montclair, CA 91763

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: April 15, 2013

at 5111 Benito Street, Montclair, California

Michael C. Hudson
Public Works Director
City Engineer

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO, 13-28, A PROPERTY TAX ADMINISTRATIVE FEE RELEASE AND SETTLEMENT AGREEMENT BETWEEN THE CITY OF MONTCLAIR AND THE COUNTY OF SAN BERNARDINO

DATE: April 1, 2013
SECTION: AGREEMENTS
ITEM NO.: 1
FILE I.D.: SBC315
DEPT.: ADMIN. SVCS.

REASON FOR CONSIDERATION: The California Supreme Court recently issued a decision in *City of Alhambra et al. v. County of Los Angeles*, ruling that Los Angeles County improperly calculated Property Tax Administration Fees (PTAFs) for 47 plaintiff cities in Los Angeles County. The ruling applies to each of California's 58 counties—the majority of which adopted a methodology in 2006 that inappropriately incorporated Triple Flip and Vehicle License Fee Swap assessments when calculating PTAFs.

The County of San Bernardino is proposing to enter into a Settlement Agreement with the City regarding PTAFs in compliance with the Court's ruling. A copy of proposed Settlement Agreement No. 13-28 between the City of Montclair and the County of San Bernardino is attached for the City Council's review and consideration.

BACKGROUND: On November 19, 2012, The California Supreme Court ruled in *City of Alhambra et al. v. County of Los Angeles* that the County of Los Angeles's method of calculating PTAFs was not consistent with legislative intent and violated Revenue and Taxation Code Section 97.75. Under the California Supreme Court's ruling, Montclair and other cities throughout the state stand to receive a refund of excessive PTAFs.

In its ruling, the California Supreme Court neglected to determine the extent of the retroactive application of the decision; the application of the statute of limitations; the interest rate, if any, due on any refunds; and whether refunds for past years are subject to various claims-filing requirements.

Cities argue that PTAF dollars collected in violation of state laws should be reimbursed back to Fiscal Year 2006-07, when counties throughout California first adopted a PTAF collection methodology contrary to legislative intent. Conversely, many counties argue they should only be required to go back one year with no interest. However, statute of limitation laws provide that counties may be required to go back three years or further if tolling agreements are in place; state law also provides for a statutory 3 percent interest rate. The California Supreme Court remanded the case to the trial courts as a result of the unresolved issues.

Prepared by: _____

M. Fenton

Reviewed and Approved by: _____

[Signature]

Proofed by: _____

Andrew Phillips

Presented by: _____

Settlement Agreement

Rather than wait for the trial courts to reach a decision regarding *City of Alhambra et al. v. County of Los Angeles*, San Bernardino County officials have agreed to retroactively reimburse to cities a portion of collected PTAF revenue, without accrued interest. County officials also agree to change the formula for calculating PTAF to comply with the Court's decision effective with Fiscal Year 2012-13 and all subsequent fiscal years.

San Bernardino County's Chief Administrative Officer contacted Montclair's City Manager offering to provide a settlement of \$217,093—representing the amount of PTAFs overcharged to the City from Fiscal Year 2009-10 through Fiscal Year 2011-12. The reimbursed amount excludes interest.

In March 2013, the City Council approved a prospective PTAF Tolling Agreement with San Bernardino County—the Agreement runs from Fiscal Year 2012-13 through Fiscal Year 2017-18.

Entering into proposed Agreement No. 13-28 would settle all retroactive disputes between Montclair and San Bernardino County regarding excessive collection of PTAFs between Fiscal Year 2006-07 through Fiscal Year 2011-12.

FISCAL IMPACT: Approval of proposed Agreement No. 13-28 would provide the City with a one-time refund payment in the amount of \$217,039 from San Bernardino County for excessive PTAF charges collected between Fiscal Year 2006-07 and Fiscal Year 2011-12.

If the City Council elects to not approve proposed Agreement No. 13-28, final determination would await the outcome of the trial court's decision as mandated by the California Supreme Court. The trial court will be deciding on the effective retroactive application of its decision and whether interest should be applied to mandated refunds. It may take the trial court several months or possibly several years to issue a judicial decision.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 13-28, a Property Tax Administration Fee Release and Settlement Agreement between the City of Montclair and the County of San Bernardino.

Alternatively, the City Council may elect to not approve Agreement No. 13-28, a Property Tax Administration Fee Release and Settlement Agreement between the City of Montclair and the County of San Bernardino, and wait until the trial courts have settled all issues related to *City of Alhambra v. County of Los Angeles*.

**PROPERTY TAX ADMINISTRATION FEE
RELEASE AND SETTLEMENT AGREEMENT**

This Release and Settlement Agreement ("Agreement") is made by and between the County of San Bernardino ("County") and the City of Montclair ("City"), (individually, "Party," or collectively, the "Parties").

This Agreement shall be effective at the time that the last party to this Agreement executes same and provides proof of that signing to the Parties to this Agreement (the "Effective Date").

I. RECITALS

A. A dispute arose between the County and the City regarding the amount of property tax administration fees ("PTAF") charged to City by the County and County officers, beginning in Fiscal Year 2006-07, pursuant to various provisions of the Revenue and Taxation Code. The City contended that the County charged more for PTAF than the statutory mandate allows, whereas the County contended that it charged PTAF within its statutory authority (the "PTAF Dispute").

B. This same dispute exists on a statewide level between other California counties and many cities located within those counties' territory as well as between the County and other cities located in this County.

C. On November 19, 2012, the California Supreme Court issued a decision in *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707 resolving the PTAF Dispute. In the decision, the court held that the method used by counties to calculate PTAF is improper. As a result, the County has implemented the *City of Alhambra* decision

for the current (2012-13) and future fiscal years for the calculation of PTAF.

D. In accordance with the Supreme Court decision, the *City of Alhambra* case is currently on remand (Los Angeles Superior Court Case No. S185457) to the trial court. The County expects that during the remand proceedings, the Superior Court will resolve the following issues: (i) the extent of the retroactive application of the *City of Alhambra* decision; (ii) the applicable Statute of Limitations; (iii) the interest rate, if any, due on any refunds, and; (iv) whether refunds for past years are subject to various claims-filing requirements ("PTAF Issues"). The Parties acknowledge that resolution of these remaining PTAF Issues through the court system could take many years. Any and all liability and damages resulting from these remaining PTAF Issues, and any and all amounts owed by the County to the City pursuant to the *City of Alhambra* decision for fiscal years 2006-07 through 2011-12, are referred to herein as "County PTAF Liability."

E. The Parties desire to avoid the additional expense, delay, and uncertainty that would result from the continuing litigation over the PTAF Issues and have agreed to settle amicably said dispute and any underlying claims and litigation between them including the County PTAF Liability, rather than engage in protracted and costly litigation.

II. SETTLEMENT TERMS

A. **SETTLEMENT PAYMENT.** The County, in consideration of the performance of this Agreement by City, shall pay to City and City accepts the total sum of \$217,093 (the "Settlement Amount") in full satisfaction of the County PTAF Liability and full resolution of the PTAF Dispute, as set forth in Exhibit "A." The Settlement Amount shall be paid by County to City within thirty (30) calendar days after the Effective Date, except that if City has filed a lawsuit against the County, then payment will be made within

thirty (30) calendar days after the Dismissal Date, as defined in subparagraph B below. The payment shall be made by warrant or electronic funds transfer in accordance with existing payment protocols between County and City. If the City wants to change existing payment protocols with the County, then the City shall timely provide to County such information as may be necessary for the remittance of this payment, no later than ten (10) calendar days after the Effective Date.

B. DISMISSAL OF CLAIM AND LAWSUIT, IF ANY. (i) On the Effective Date of this Agreement, if City has filed any claim with the County pertaining to the PTAF Dispute or the County PTAF Liability, such claim shall be deemed settled and released in accordance with this Agreement. (ii) Within fifteen (15) calendar days of the Effective Date of this Agreement, if City has filed any lawsuit pertaining to the PTAF Dispute or the County PTAF Liability, City shall take all necessary steps to dismiss the lawsuit with prejudice and shall provide to County a file-stamped copy of such dismissal. The date of the County's receipt of the City's proof of dismissal shall be the "Dismissal Date."

C. MUTUAL RELEASES. Each and every Party to this Agreement, on behalf of that Party, and its representatives, trustees, predecessors, successors, assigns, affiliates, subrogors, subrogees, assignees, assignors, subsidiaries, agents, employees, servants, officers, elected official, directors, and attorneys ("Releasors") release every other Party to this Agreement and every other Parties' representatives, trustees, predecessors, successors, assigns, affiliates, subrogors, subrogees, assignees, assignors, subsidiaries, agents, employees, servants, officers, elected officials, directors, and attorneys ("Releasees") from any and all disputes, damages, actions, causes of action, suits, rights, demands, controversies, entitlement to equitable relief, liabilities, fees, costs, interest, and

any other claims, of any nature whatsoever, known or unknown, suspected or unsuspected, whether in tort or in contract or statutory or under any other theory, arising out of, in connection with, or relating in any way to the PTAF Dispute and/or the County PTAF Liability.

D. RELEASE OF UNKNOWN CLAIMS / WAIVER OF CIVIL CODE

SECTION 1542. Each Party to this Agreement expressly, voluntarily, and knowingly waives and relinquishes all rights arising out of, in connection with, or relating in any way to the PTAF Dispute or the County PTAF Liability to which it or its Releasors would be entitled now or at any time hereafter under Section 1542 of the Civil Code, as against the other Parties to this Agreement and their Releasees, and does so understanding and acknowledging the significance of such specific waiver. Section 1542 of the Civil Code provides:

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

Initials

Initials

E. ATTORNEYS' FEES AND COSTS. The Parties to this Agreement will each bear their own attorneys' fees and other costs and expenses arising in any way from the PTAF Dispute and/or the County PTAF Liability. To the extent that any Party seeks to enforce this Agreement and a court finds that the position taken by the opposing Party was "without substantial justification," then attorneys' fees for enforcement of the Agreement shall be allowable.

F. **COMPROMISE.** This Agreement is the result of a compromise and settlement of disputed claims, and nothing set forth in it shall be deemed or construed as an admission of any liability by any of the Parties to any of the other Parties or the Releasees.

G. **MUTUAL DRAFTING.** The Parties, having mutually drafted this Agreement, agree that no Party to the Agreement will be deemed to have been the primary author of this Agreement or any portion of it. The Parties therefore agree that Section 1654 of the Civil Code and other legal principles or laws that call for the construction of ambiguous or uncertain terms against the drafting party shall not apply or be invoked for any purpose whatsoever.

H. **NO ASSIGNMENT.** The Parties have not assigned any of the claims, demands, or causes of action that are released and discharged under this Agreement.

I. **COUNTERPARTS.** This Agreement may be executed in several counterparts and by fax copies and, as so executed, will constitute one agreement, binding on the Parties to this Agreement, notwithstanding that such Parties are not signatories to the original or the same counterparts.

J. **WARRANTIES OF COMPREHENSION, CONSENT AND AUTHORITY.** Each person executing this Agreement warrants that he or she comprehends the terms of this Agreement and further warrants that he or she is executing this Agreement freely on the advice of the undersigned counsel and that, if signing on behalf of an entity, he or she has the right and authority to execute the Agreement on that entity's behalf.

K. **INTEGRATED AGREEMENT.** This Agreement is the final expression of the Parties' agreement with respect to the settlement of the PTAF Dispute and the County

PTAF Liability and supersedes all prior written or oral communications between the Parties. The Parties cannot amend, alter, modify, or otherwise change this Agreement, except by a writing executed by all Parties hereto and expressly stating that it is an amendment to this Agreement. The Parties will make no claim, and waive any right they now have or may have, based upon any alleged oral alteration, oral amendment, or oral modification, except as set forth expressly in a written amendment executed as provided in this paragraph.

L. SEVERABILITY. If any provision of the Agreement is held invalid, the remainder of the Agreement shall nevertheless remain in full force and effect in all other circumstances, so long as the essential purpose of the Agreement can still be achieved by both sides to the settlement embodied in this Agreement.

M. BREACH. The Parties agree that this Agreement shall be deemed breached and a cause of action accrued thereon immediately upon the commencement by any Party of any action or proceeding contrary to the terms of this Agreement. In any such action or proceeding, this Agreement may be pleaded as a defense or may be asserted by way of counter-claim or cross-complaint.

N. MISTAKE. The Parties fully understand and declare that if the facts under which this Agreement is executed are found hereafter to be different from the facts now believed by them to be true, they assume the risk of such possible differences in facts and hereby agree that this Agreement shall be, and will remain, effective, notwithstanding such differences in facts.

O. INCORPORATION OF RECITALS. The Recitals to this Agreement, stated above, are hereby incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates shown below.

CITY OF MONTCLAIR

Paul M. Eaton
Mayor

Date _____

ATTEST:

APPROVED AS TO FORM:

Yvonne L. Smith
Deputy City Clerk

Diane E. Robbins
City Attorney

COUNTY OF SAN BERNARDINO

Gregory C. Devereaux
Chief Executive Officer

Date _____

**APPROVED AS TO FORM:
JEAN RENE BASLE
COUNTY COUNSEL**

By _____
Kevin L. Norris
Deputy County Counsel

Doc # 2A777985

EXHIBIT "A"

EXHIBIT "A"
PTAF RELEASE AND SETTLEMENT AGREEMENT

**Property Tax Administrative Fee for
Fiscal Years 2009-10 through 2011-12**

Entity: CITY OF MONTCLAIR

Tolling Agreement: No

Settlement Amount:

Fiscal Year 2009-10	\$70,094.76
Fiscal Year 2010-11	\$71,452.34
Fiscal Year 2011-12	\$75,546.01
Total	\$217,093.11

EXHIBIT "A"
PTAF RELEASE & SETTLEMENT AGREEMENT

#2A82877

**MINUTES OF THE MEETING OF THE MONTCLAIR
CODE ENFORCEMENT COMMITTEE HELD ON
MONDAY, MARCH 18, 2013, AT 6:00 P.M. IN THE
CITY HALL CONFERENCE ROOM, 5111 BENITO
STREET, MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Council Member Paulitz called the meeting to order at 6:00 p.m.

II. ROLL CALL

Present: Council Member Paulitz, Council Member Dutrey, City Manager Starr; Director of Community Development Lustro, Director, Office of Public Safety/Police Chief Jones, Deputy City Manager/Director, Office of Economic Development Staats, City Attorney Robbins

III. APPROVAL OF MINUTES

A. Minutes of Code Enforcement Committee Meeting of January 22, 2013

It was the consensus of the Code Enforcement Committee to approve the minutes of the Code Enforcement Committee meeting of January 22, 2013.

IV. PUBLIC COMMENT

None.

V. OLD BUSINESS

A. Update - applicant's appeal of specific conditions related to the Conditional Use Permit at the former Déjà Vu Showgirls, 5282 Mission Boulevard.

Community Development Director Lustro commented that the item was continued again until March 26, 2013. He has asked the County for a copy of the staff report when it is available so we will know what conditions have been modified. He still plans on attending the hearing.

B. Draft amendment to Chapter 11.42 MMC ("CUPs for off-sale liquor establishments")

Community Development Director Lustro reminded the Committee that, per ABC, if we allow an off-sale license, CUP or not, we cannot restrict (condition) their privilege to sell alcohol under a Type 20 license.

Discussion followed regarding Type 20 licenses and/or crafting a code amendment. Rosa Rangel, the owner of Montclair Florist, was contacted and the cost of the ABC license and CUP were discussed. Council Member Dutrey asked if there was a minor use permit at a lesser cost; he knows of other cities that have them. The cost of a CUP in Montclair is approximately \$2,400, which includes the mailing labels and postage for noticing owners within a 300-foot radius, staff's time to review the application, preparation of a staff report, making the statutory findings, preparation of the resolution, and presentation to the Planning Commission. Council Member Paulitz asked if there was any way to mitigate the costs. Council Member Dutrey asked for a survey of other cities and Council Member Paulitz suggested moving forward with drafting of the amendment. Community Development Director Lustro stated he will try to have a draft ready for review at the April meeting.

C. Demolition of 9369 and 9379 Central Avenue

Community Development Director Lustro updated the Committee that gas and electric service has been severed from the dermatology building but gas service was still connected to the former Long John Silver's building. The good news was that both buildings should be demolished within 30 days and there is a "for sale" sign posted on the property.

VI. NEW BUSINESS

A. Code Enforcement Officer Andrade

Community Development Director Lustro updated the Committee that Code Enforcement Officer Jackie Andrade was still out on leave, but staff is recommending that retired Senior Fire Inspector Richard Rivera be hired back to work 35 hours per week filling in until Code Enforcement Officer Andrade returns from maternity leave.

B. Montclair Plaza

Council Member Dutrey asked for an update regarding Montclair Plaza. He commented that as he sat on the I-10 freeway off-ramp, he just looked at the east end of the mall and how dated it looked. City Manager Starr commented that he will attempt to re-contact

Carmen Spinoso, whose firm is in charge of leasing at the Plaza and has taken the lead on the proposed expansion.

C. Access to Emergency Calls

Council Member Dutrey asked if he and Council Member Paulitz could have access to Police and Fire Department calls. Director, Office of Public Safety/Police Chief Jones will take care of getting them available access to review the Patrol Sergeants log via email.

VII. DISTRIBUTION OF LIST OF PROBLEM PROPERTIES / Q&A

Director Lustro stated that a current list of problem properties is included in the agenda packet for the Committee's reference and asked if there were any questions. Discussion followed.

VIII. NEXT MEETING

The next Code Enforcement Committee meeting is scheduled for Monday, April 15, 2013, at 6:00 p.m. in the City Hall Conference Room.

IX. ADJOURNMENT

At 6:28 p.m., Council Member Paulitz adjourned the Code Enforcement Committee.

Submitted for Code Enforcement
Committee approval,



Laura Berke
Administrative Secretary

**MINUTES OF THE REGULAR MEETING OF THE
MONTCLAIR PERSONNEL COMMITTEE HELD ON
MONDAY, APRIL 1, 2013, AT 8:10 P.M. IN THE
CITY ADMINISTRATIVE OFFICES, 5111 BENITO
STREET, MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Ruh called the meeting to order at 8:10 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Ruh; Council Member Raft; City Manager Starr

III. APPROVAL OF MINUTES

**A. Minutes of the Regular Personnel Committee Meeting of
March 18, 2013**

Moved by City Manager Starr, seconded by Council Member Raft,
and carried unanimously to approve the minutes of the regular
Personnel Committee meeting of March 18, 2013.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

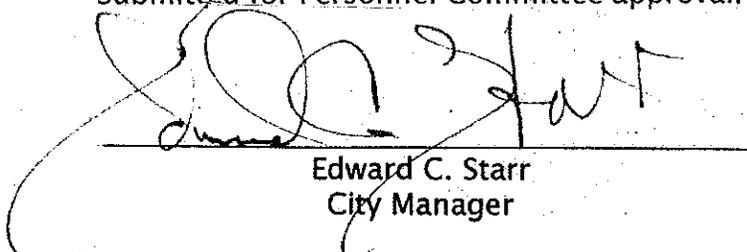
At 8:11 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 8:28 p.m., the Personnel Committee returned from Closed Session.
Mayor Pro Tem Ruh stated that no announcements would be made at this
time.

VI. ADJOURNMENT

At 8:28 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval.



Edward C. Starr
City Manager