

AGENDA
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF
MORENO VALLEY
BOARD OF LIBRARY TRUSTEES

February 24, 2009

SPECIAL PRESENTATIONS – 6:00 P.M.
REGULAR MEETING – 6:30 P.M.

City Council Closed Session

First Tuesday of each month – 6:00 p.m.

City Council Study Sessions

Third Tuesday of each month – 6:00 p.m.

City Council Meetings

Second and Fourth Tuesdays – 6:30 p.m.

City Hall Council Chamber - 14177 Frederick Street

Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, in compliance with the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to the City Clerk's office at 951.413.3001 at least 48 hours before the meeting. The 48-hour notification will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Bonnie Flickinger, Mayor Pro Tem
Jesse L. Molina, Council Member

Richard A. Stewart, Mayor

Robin N. Hastings, Council Member
William H. Batey II, Council Member

AGENDA
CITY COUNCIL OF THE CITY OF MORENO VALLEY
February 24, 2009

CALL TO ORDER

SPECIAL PRESENTATIONS

1. Officer of the Quarter - Corporal Sean Vickers
2. Officer of the Year - Officer Sean Brown
3. Employee of the Quarter - Cathy Parada
4. National Career and Technical Education Month
5. Recognition of 2008 Volunteer of the Year – Gerald Bagley

**AGENDA
JOINT MEETING OF THE
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO
VALLEY AND THE BOARD OF LIBRARY TRUSTEES**

**REGULAR MEETING - 6:30 PM
FEBRUARY 24, 2009**

CALL TO ORDER

(Joint Meeting of the City Council, Community Services District, Community Redevelopment Agency, and the Board of Library Trustees - actions taken at the Joint Meeting are those of the Agency indicated on each Agenda item)

PLEDGE OF ALLEGIANCE

INVOCATION - Pastor James G. Belle, Moreno Valley Apostolic Faith Church

ROLL CALL

INTRODUCTIONS

PUBLIC COMMENTS ON MATTERS ON THE AGENDA WILL BE TAKEN UP AS THE ITEM IS CALLED FOR BUSINESS, BETWEEN STAFF'S REPORT AND CITY COUNCIL DELIBERATION (SPEAKER SLIPS MAY BE TURNED IN UNTIL THE ITEM IS CALLED FOR BUSINESS.)

PUBLIC COMMENTS ON MATTERS NOT ON THE AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL WILL BE HEARD PRIOR TO CITY COUNCIL REPORTS AND CLOSING COMMENTS. IN THE EVENT THAT THE AGENDA ITEM FOR SUCH PUBLIC COMMENTS HAS NOT BEEN CALLED BY 9:00 P.M., IT SHALL BE CALLED AS THE NEXT ITEM OF BUSINESS FOLLOWING THE CONCLUSION OF ANY ITEM BEING HEARD AT 9:00 P.M. Those wishing to speak should submit a BLUE speaker slip to the Bailiff. There is a three-minute time limit per person. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council member, staff member or other person.

JOINT CONSENT CALENDARS (SECTIONS A-D)

All items listed under the Consent Calendars, Sections A, B, C, and D are considered to be routine and non-controversial, and may be enacted by one motion unless a member of the Council, Community Services District, Redevelopment Agency or the Board of Library Trustees requests that an item be removed for

separate action. The motion to adopt the Consent Calendars is deemed to be a separate motion by each Agency and shall be so recorded by the City Clerk. Items withdrawn for report or discussion will be heard after public hearing items.

A CONSENT CALENDAR - CITY COUNCIL

A .1 ORDINANCES - READING BY TITLE ONLY

Recommendation: Waive reading of all Ordinances.

A .2 APPROVE AND AUTHORIZE CONSTRUCTION COOPERATIVE AGREEMENT WITH THE STATE OF CALIFORNIA FOR THE SR-60/NASON INTERCHANGE IMPROVEMENTS PROJECT NO. 98-25897 (Report of: Public Works Department)

Recommendation:

1. Approve the Construction Cooperative Agreement with the State of California for the construction phase of the SR-60/Nason Street Interchange Improvements project; and
2. Authorize the Mayor to execute the Construction Cooperative Agreement with the State of California.

A .3 SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES FOR PART 1, PHASE 2, AND PHASE 3 DESIGN OF THE IRONWOOD AVENUE IMPROVEMENTS FROM DAY STREET TO BARCLAY DRIVE PROJECT NO. 10-41570027 (Report of: Public Works Department)

Recommendation:

1. Approve the "Second Amendment to Agreement for Professional Consultant Services" for Part 1, Phase 2, and Phase 3 design with AEI-CASC Engineering, Inc., 937 South Via Lata, Suite 500, Colton, California 92324 to provide Professional Consultant Services, extend the agreement from March 31, 2010 to July 31, 2011, and increase the agreement amount by the "not-to-exceed" fee of \$301,149;
2. Authorize the City Manager to execute the "Second Amendment to Agreement for Professional Consultant Services" for Part 1, Phase 2, and Phase 3 with AEI-CASC Engineering, Inc;
3. Authorize an increase to the Purchase Order with AEI-CASC

Engineering, Inc., in the amount of \$361,378.80 (\$301,149 amount plus 20% contingency) when the Second Amendment to Agreement has been signed by all parties (Account No. 897.91727); and

4. Authorize the Public Works Director/City Engineer to execute any subsequent Amendments to the Agreement for Professional Consultant Services with AEI-CASC Engineering, Inc., up to but not to exceed the Purchase Order contingency in the amount of \$60,229.80, subject to the approval of the City Attorney.

A .4 APPROVAL OF ANNUAL STATEMENT OF INVESTMENT POLICY
(Report of: Financial & Administrative Services Department)

Recommendation:

Staff recommends that the City Council approve the Annual Statement of Investment Policy.

A .5 ORDINANCE NO. 784 AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF MORENO VALLEY AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (RECEIVED FIRST READING AND INTRODUCTION ON JANUARY 27, 2009 ON A 5-0 VOTE) (Report of: Human Resources Department)

Recommendation:

Adopt Ordinance No. 784 authorizing an amendment to the City's CalPERS contract with the California Public Employees' Retirement System to include Section 20903, Two Years of Additional Service Credit.

Ordinance No. 784

An Ordinance of the City Council of the City of Moreno Valley, California, Authorizing an Amendment to the Contract Between the City Council of the City of Moreno Valley and the Board of Administration of the California Public Employees' Retirement System

A .6 ORDINANCE NO. 785 AMENDING THE OFFICIAL ZONING ATLAS OF SAID CITY, TO INCLUDE A CHANGE OF ZONE (PA07-0088) FROM BP (BUSINESS PARK) TO LI (LIGHT INDUSTRIAL)

FOR AN APPROXIMATE 104.9 ACRE PORTION OF THE SITE, INCLUDING A CHANGE OF ZONE FOR AN 87 FOOT AREA BETWEEN PARCELS 2 AND 3 FROM BP (BUSINESS PARK) TO CC (COMMUNITY COMMERCIAL) AND CHANGE OF ZONE FOR 126 FEET OF LAND BETWEEN PARCELS 1 AND 4 FROM CC (COMMUNITY COMMERCIAL) TO LI (LIGHT INDUSTRIAL), ALL ENCOMPASSED WITHIN AN APPROXIMATELY 158 ACRE SITE (INCLUDING RELEVANT OFFSITE IMPROVEMENTS DRAINAGE) COMMERCIAL LAND USES) ON THE PROPERTY LOCATED SOUTH OF AND ADJACENT TO HIGHWAY 60 BETWEEN REDLANDS BOULEVARD AND THEODORE STREET ALONG FUTURE EUCALYPTUS (FIR AVENUE) (RECEIVED FIRST READING AND INTRODUCTION ON FEBRUARY 10, 2009 ON A 5-0 VOTE) (Report of: Community Development Department)

Recommendation:

Adopt Ordinance No. 785 for a Change of Zone (PA07-0088), to change the zone on approximately 104.9 acres of a 158 acre site from BP (Business Park) to LI (Light Industrial) to allow for industrial warehouse buildings greater than 50,000 square feet, subject to the findings included in resolution.

Ordinance No. 785

An Ordinance of the City Council of the City of Moreno Valley, California, Amending the Official Zoning Atlas of Said City, to Include a Change of Zone (PA07-0088) From BP (Business Park) To LI (Light Industrial) for an Approximate 104.9 Acre Portion of the Site, Including a Change of Zone for a 87 Foot Area Between Parcels 2 and 3 from BP (Business Park) To CC (Community Commercial) and Change of Zone for 126 Feet of Land Between Parcels 1 and 4 from CC (Community Commercial) To LI (Light Industrial), All Encompassed Within an Approximately 158 Acre Site (Including Relevant Offsite Improvements and Drainage) Commercial Land Uses) on the Property Located South of and Adjacent to Highway 60 Between Redlands Boulevard and Theodore Street Along Future Eucalyptus (Fir Avenue)

- A .7 PA04-0058 – APPROVAL OF PROPOSED RESOLUTION SUMMARY VACATION OF A DRAINAGE DEDICATION, CONVEYED FOR PUBLIC USE BY A DECLARATION OF DEDICATION RECORDED SEPTEMBER 17, 1980 AS INSTRUMENT NO. 169556 OF OFFICIAL RECORDS OF SAID COUNTY (Report of: Public Works Department)

Recommendation:

1. Approve and adopt Resolution No. 2009-13, summarily vacating all of the drainage dedication conveyed for public use by a declaration of dedication recorded September 17, 1980 as instrument No. 169556 of official records of said county; and

Resolution No. 2009-13

A Resolution of the City Council of the City of Moreno Valley, California, Ordering the Summary Vacation of a Drainage Dedication at the End of Bridal Trail Road

2. Instruct the City Clerk to certify said resolution and transmit a copy of the resolution to Land Development for further processing to the County Recorder's office for recordation.

A .8 CITY COUNCIL REPORTS ON REIMBURSABLE ACTIVITIES
(Report of: City Clerk's Department)

Recommendation:

Receive and file the Reports on Reimbursable Activities for the period of February 4-17, 2009.

A .9 CALIFORNIA OFFICE OF TRAFFIC SAFETY (OTS) GRANT
FUNDING OPPORTUNITY (Report of: Police Department)

Recommendation:

Staff recommends that the City Council approve the grant application and authorize acceptance (if granted) of the California Office of Traffic Safety grant in the amount of \$196,615.17, entitled "DUI Enforcement and Awareness Program."

A .10 ADOPT A MITIGATED NEGATIVE DECLARATION (MND) FOR
REALIGNMENT OF RECHE VISTA DRIVE FROM THE
INTERSECTION OF PERRIS BOULEVARD AND HEACOCK
STREET TO THE NORTH CITY LIMITS PROJECT NO. 01-12566722
(Report of: Public Works Department)

Recommendation:

Adopt a Mitigated Negative Declaration (MND) for the Realignment of Reche Vista Drive from the Intersection of Perris Boulevard and Heacock Street to the North City Limits, Project No. 01-12566722.

A .11 MINUTES- SPECIAL MEETING OF FEBRUARY 3, 2009 (Report of: City Clerk's Department)

Recommendation:
Approve as submitted.

A .12 MINUTES - REGULAR MEETING OF FEBRUARY 10, 2009 (Report of: City Clerk's Department)

Recommendation:
Approve as submitted.

A .13 AUTHORIZATION TO AWARD THE CONSTRUCTION CONTRACT FOR LASSELLE STREET WIDENING FROM JOHN F. KENNEDY DRIVE TO ALESSANDRO BOULEVARD PROJECT NO. 06-50182725 (Report of: Public Works Department)

Recommendation:

1. Waive minor irregularities of the lowest Bidder's Proposal and award the construction contract for Lasselle Street Widening from John F. Kennedy Drive to Alessandro Boulevard to Wheeler Paving, Inc., 8432 63rd Avenue, Riverside, CA 92509, determined as the lowest responsive and responsible bidder;
2. Authorize the City Manager to execute a construction contract with Wheeler Paving, Inc.;
3. Authorize the issuance of Purchase Orders for Wheeler Paving, Inc., in the amount of \$3,491,773.80 (Base Bid \$2,743,351.50 plus Additive Bid Item "A" \$8,410.00, Additive Bid Item "C" \$152,500.00 and Additive Bid Item "D" \$5,550.00, plus 20% contingency of \$581,962.30) when the contract has been signed by all parties (\$391,773.80 from Account No. 501.82725 and \$3,100,000.00 from 415.72927); and
4. Authorize the Public Works Director/City Engineer to execute any subsequent change orders to the construction contract with Wheeler Paving, Inc., up to but not exceeding the Purchase Orders combined contingency amount of \$581,962.30, subject to the approval of the City Attorney.

- A .14 RESOLUTION IN SUPPORT OF MARCH JOINT POWERS AUTHORITY'S REQUEST TO OBTAIN A RETIRED SPACE SHUTTLE ORBITER TO BE DISPLAYED AT THE MARCH FIELD AIR MUSEUM (Report of: City Manager's Office)

Recommendation:

Adopt Resolution No. 2009-17 in support of the March Joint Powers Authority's request to obtain a retired Space Shuttle Orbiter to be displayed at the March Field Air Museum.

Resolution No. 2009-17

A Resolution of the City Council of the City of Moreno Valley, California, Supporting the Request of the March Joint Powers Authority Approving Completion of the Request for Information to Obtain a Retired Space Shuttle Orbiter to be Housed and Displayed as Part of the March Air Field Museum

- A .15 CONSIDERATION OF RESOLUTION AMENDING RESOLUTION 2003-67, SUPPORTING A JOINT LAND USE STUDY TO ASSURE COMPATIBLE LAND USES NEAR MARCH RESERVE BASE AND APPOINT A REPRESENTATIVE TO THE MARCH OPERATIONS ASSURANCE TASK FORCE (Report of: City Manager's Office)

Recommendation:

Approve and adopt Resolution 2009-15, amending Resolution No. 2003-67 in support of a joint land use study to assure compatible land uses near March Air Reserve Base to protect the future aviation operations of the United States military.

Resolution No. 2009-15

A Resolution of the City Council of the City Of Moreno Valley, California, Amending Resolution No. 2003-67 in Support of a Joint Land Use Study to Assure Compatible Land Uses Near March Air Reserve Base to Protect the Future Aviation Operations of the United States Military

B CONSENT CALENDAR - COMMUNITY SERVICES DISTRICT

- B .1 ORDINANCES - READING BY TITLE ONLY

Recommendation: Waive reading of all Ordinances.

- B .2 ACCEPTANCE OF ONE TIME GRANT MONIES FROM THE CALIFORNIA DEPARTMENT OF EDUCATION, CHILD DEVELOPMENT SERVICES, FOR INSTRUCTIONAL MATERIALS AND ADOPTION OF THE RESOLUTION TO CERTIFY THE APPROVAL OF THE GOVERNING BOARD (Report of: Parks and Community Services)

Recommendation:

1. Authorize the Acceptance of One Time Grant Money in of \$2,648 for (FY) 2008/2009 from the California Department of Education, Child Development Division, for the Purpose of Purchasing Instructional Materials and Supplies for the Child Development Program; and
2. Adopt Resolution No. CSD 2009-01 to certify the approval of the governing board to enter into this transaction with the California Department of Education for the purpose of purchasing instructional materials and supplies for the child development program and to authorize the designated personnel, as shown on the resolution, to sign contract documents for FY 2008/2009.

Resolution No. CSD 2009-01

A Resolution of the Moreno Valley Community Services District of the City of Moreno Valley, California, Certifying the Approval of the Governing Board to Enter into a Transaction with the California Department of Education for the Purpose of Providing Child Care and Development Services and to Authorize Designated Personnel to Sign Contract Documents for FY 2008/09

- B .3 MINUTES - REGULAR MEETING OF FEBRUARY 10, 2009 (Report of: City Clerk's Department)

Recommendation:

Approve as submitted.

C CONSENT CALENDAR - COMMUNITY REDEVELOPMENT AGENCY

- C .1 ORDINANCES - READING BY TITLE ONLY

Recommendation: Waive reading of all Ordinances.

- C .2 AUTHORIZE THE GRANT OF ROADWAY EASEMENTS FOR THE

PARTIAL ACQUISITION OF ASSESSOR PARCEL NUMBERS 291-191-001, 002, 003, 005, AND 006 FOR DAY STREET ROADWAY IMPROVEMENTS FROM ALESSANDRO BOULEVARD TO COTTONWOOD AVENUE PROJECT NO. 02-89266920 (Report of: Public Works Department)

Recommendation:

1. Authorize the grant of roadway easements for the partial acquisition of the Community Redevelopment Agency (RDA) parcels known as Assessor Parcel Numbers (APN) 291-191-001, 002, 003, 005, and 006; and
2. Authorize the Executive Director to execute the roadway easements for the partial acquisition of the RDA parcels known as APN 291-191-001, 002, 003, 005, and 006.

C .3 MINUTES - REGULAR MEETING OF FEBRUARY 10, 2009 (Report of: City Clerk's Department)

Recommendation:

Approve as submitted.

D CONSENT CALENDAR - BOARD OF LIBRARY TRUSTEES

D .1 ORDINANCES - READING BY TITLE ONLY

Recommendation: Waive reading of all Ordinances.

D .2 MINUTES - REGULAR MEETING OF FEBRUARY 10, 2009 (Report of: City Clerk's Department)

Recommendation:

Approve as submitted.

E PUBLIC HEARINGS

Questions or comments from the public on a Public Hearing matter are limited to five minutes per individual and must pertain to the subject under consideration. Those wishing to speak should complete and submit a GOLDENROD speaker slip to the Bailiff.

E .1 AFFORDABLE HOUSING AGREEMENT WITH HABITAT FOR HUMANITY RIVERSIDE AND PUBLIC HEARING TO CONSIDER THE TRANSFER OF TITLE OF TWO LOTS (CONTINUED FROM

NOVEMBER 25, 2008) (Report of: Economic Development Department)

Recommendation: That the City Council and RDA

1. Conduct a joint public hearing pursuant to the California Community Redevelopment Law (California Health and Safety Code, Section 33000 et seq.) at which it will hear and consider information concerning the transfer of title of Assessor's Parcels 292-202-044 and 045 and the Affordable Housing Agreement by and between the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley and Habitat for Humanity Riverside;

2. Adopt Resolution No. 2009-14, approving an Affordable Housing Agreement with the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley, and Habitat for Humanity Riverside, Inc. for the conveyance and development of land, making certain findings, and approving the use of funds; and

Resolution No. 2009-14

A Resolution of the City Council of the City of Moreno Valley, California, Approving an Affordable Housing Agreement with the Redevelopment Agency of the City of Moreno Valley and Habitat for Humanity Riverside, Inc. for the Conveyance and Development of Land, Making Certain Findings, and Approving the Use of Funds

3. Adopt Resolution No. RDA 2009-02, approving an Affordable Housing Agreement with the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley and Habitat for Humanity Riverside, Inc. for the conveyance and development of land, making certain findings, and approving the use of funds.

Resolution No. RDA 2009-02

A Resolution of the Redevelopment Agency of the City of Moreno Valley, California, Approving an Affordable Housing Agreement with the City of Moreno Valley and Habitat for Humanity Riverside, Inc. for the Conveyance and Development of Land, Making Certain Findings, and Approving the Use of Funds

F ITEMS REMOVED FROM CONSENT CALENDARS FOR DISCUSSION OR SEPARATE ACTION

G REPORTS

- G .1 MID YEAR BUDGET REVIEW (Report of: Financial & Administrative Services Department)

Recommendation:

1. Receive and file this report;
2. Approve recommended mid-year budget appropriation adjustments; and
3. Authorize the City Manager to make mid-year budget reductions to maintain current year expenditures within projected revenue levels and to prepare for next fiscal year's significant budgetary challenges.

- G .2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY ESTABLISHING A HIRING FREEZE FOR ALL VACANT CITY POSITIONS AND ADDRESSING THE USE OF CONTRACTORS AND TEMPORARY EMPLOYEES UNDER LAYOFF CONDITIONS (Report of: City Clerk's Department)

Recommendation:

Adopt Resolution No. 2009-16 establishing a hiring freeze for all vacant city positions and addressing the use of contractors and temporary employees under layoff conditions.

Resolution No. 2009-16

A Resolution of the City Council of the City of Moreno Valley Establishing a Hiring Freeze for all Vacant City Positions and Addressing the Use of Contractors and Temporary Employees Under Layoff Conditions

- G .3 CITY MANAGER'S REPORT (Informational Oral Presentation - not for Council action)

H LEGISLATIVE ACTIONS

- H .1 ORDINANCES - 1ST READING AND INTRODUCTION - NONE

H .2 ORDINANCES - 2ND READING AND ADOPTION - NONE

H .3 ORDINANCES - URGENCY ORDINANCES - NONE

H .4 RESOLUTIONS - NONE

PUBLIC COMMENTS ON ANY SUBJECT NOT ON THE AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL

Those wishing to speak should complete and submit a BLUE speaker slip to the Bailiff. There is a three-minute time limit per person. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council member, staff member or other person.

CLOSING COMMENTS AND/OR REPORTS OF THE CITY COUNCIL, COMMUNITY SERVICES DISTRICT, OR COMMUNITY REDEVELOPMENT AGENCY

Materials related to an item on this Agenda submitted to the City Council/Community Services District/Community Redevelopment Agency or the Board of Library Trustees after distribution of the agenda packet are available for public inspection in the City Clerk's office at 14177 Frederick Street during normal business hours.

CLOSED SESSION

A Closed Session of the City Council, Community Services District and Community Redevelopment Agency of the City of Moreno Valley will be held in the City Manager's Conference Room, Second Floor, City Hall. The City Council will meet in Closed Session to confer with its legal counsel regarding the following matter(s) and any additional matter(s) publicly and orally announced by the City Attorney in the Council Chamber at the time of convening the Closed Session.

• PUBLIC COMMENTS ON MATTERS ON THE CLOSED SESSION AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL

There is a three-minute time limit per person. Please complete and submit a BLUE speaker slip to the City Clerk. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council member, staff member or other person.

The Closed Session will be held pursuant to Government Code:

- 1 SECTION 54956.9(a) - CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
 - a Case: *Moreno Valley Unified School District vs. County of Riverside*
Court: Superior Court of California County of Riverside
Case No: RIC 502670
 - b Case: *City of Moreno Valley, Community Redevelopment Agency of the City of Moreno Valley v. County of Riverside, et al.*
Court: San Diego Superior Court
Case No: 37-2007-00082461-CU-PT-CTL
- 2 SECTION 54956.9(b)(1) - CONFERENCE WITH LEGAL COUNSEL - SIGNIFICANT EXPOSURE TO LITIGATION

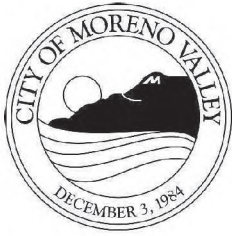
Number of Cases: 2
- 3 SECTION 54956.9(c) - CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION

Number of Cases: 2
- 4 SECTION 54957.6 - LABOR NEGOTIATIONS

- a) Agency Representative: Robert G. Gutierrez
Employee Organization: MVCEA
- b) Agency Representative: Robert G. Gutierrez
Employee Organization: MVMA
- c) Agency Representative: Robert G. Gutierrez
Employee Organization: Moreno Valley Confidential
Management Employees

REPORT OF ACTION FROM CLOSED SESSION, IF ANY, BY CITY ATTORNEY

ADJOURNMENT



APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	<i>CAF</i>
CITY MANAGER	<i>CAF</i>

Report to City Council

TO: Mayor and City Council

FROM: Chris A. Vogt, P.E., Public Works Director/City Engineer

AGENDA DATE: February 24, 2009

TITLE: APPROVE AND AUTHORIZE CONSTRUCTION COOPERATIVE AGREEMENT WITH THE STATE OF CALIFORNIA FOR THE SR-60/NASON INTERCHANGE IMPROVEMENTS PROJECT PROJECT NO. 98-25897

RECOMMENDED ACTION

Staff recommends that the City Council:

1. Approve the Construction Cooperative Agreement with the State of California for the construction phase of the SR-60/Nason Street Interchange Improvements project.
2. Authorize the Mayor to execute the Construction Cooperative Agreement with the State of California.

BACKGROUND

The overall purpose of the Route 60/Nason Street Interchange Improvements project is to improve the Route 60/Nason Street interchange ramps through reconstruction and realignment, while providing a design that will accommodate future ultimate bridge widening improvements needed to serve anticipated future traffic demand.

Right-of-way acquisition is currently under way. Southern California Edison (SCE) and Eastern Municipal Water District (EMWD) relocation plans are 100% complete, and both SCE and EMWD have agreed to work with the City to relocate their facilities no later than December 2009. Design plans are complete and are undergoing final review.

DISCUSSION

To proceed with advertisement, the City must follow Caltrans guidelines and procedures in order to obtain their approval. Caltrans requires the local agency to enter into a "Construction Cooperative Agreement" (District Agreement No. 8-1406) in order to proceed with construction. The "Construction Cooperative Agreement" sets forth the City's responsibilities and Caltrans' responsibilities, both in terms of scope and financial responsibility. The agreement requires that the City fund 100% of the construction cost, including preparation of contract documents and advertising, awarding and administering the construction contract. Caltrans has agreed to allow the City to advertise, award, and administer the project. Caltrans will provide quality assurance and oversight of all work done by the City at no cost to the City. The Construction Cooperative Agreement will terminate upon satisfactory completion of the project or on December 31, 2014, whichever occurs first. The agreement may be extended by mutual agreement should any claims or other legal challenges occur.

Once the City obtains approval from Caltrans, it can proceed to advertise the project. The project is expected to be advertised in October 2009, with construction starting in February 2010.

ALTERNATIVES

1. Approve the Construction Cooperative Agreement with the State of California for the construction phase of the SR-60/Nason Street Interchange Improvements project, and authorize the Mayor to execute the Construction Cooperative Agreement with the State of California. *Staff recommends this alternative.*
2. Do not approve the Construction Cooperative Agreement with the State of California for the construction phase of the SR-60/Nason Street Interchange Improvements project, and do not authorize the Mayor to execute the Construction Cooperative Agreement with the State of California. *Staff does not recommend this alternative. This alternative will result in delaying the construction of needed improvements.*

FISCAL IMPACT

The Agreement allows the City to proceed with the construction phase of this project. The project is funded using federal funds and matching Measure "A" funds (Fund 125). The City has successfully obtained approximately \$7.4 million of federal funds, portions of which have been used for design and right-of-way. Remaining federal funds for construction consist of Surface Transportation Program (\$1.77 million) and Transportation Efficiency Act of the 21st Century (\$4.5 million) demonstration funds. Portions of the project are also eligible for Transportation Uniform Mitigation Fee funding (TUMF), and it is anticipated the balance of construction will be funded using Measure "A" funds. **There is no impact to the General Fund.**

AVAILABLE CONSTRUCTION FUNDS

TEA 21 Demonstration Funds	\$4,500,000
STPL Discretionary Funds	\$1,770,000
Measure "A" Matching Funds (125.89720).....	\$1,354,000
TUMF & Additional Measure "A" Funds (Anticipated FY 09/10	\$9,847,000
Budget Request)	
Total Available Funds	\$17,471,000

ESTIMATED CONSTRUCTION COSTS

Estimated Construction and Construction Support Costs.....	\$17,471,000
Total Estimated Construction Costs	\$17,471,000

ANTICIPATED PROJECT SCHEDULE:

Complete Right-of-Way Acquisition Phase.....	June 2009
Complete Utility Relocation Construction Phase	December 2009
Interchange Construction Start Date	February 2010
Interchange Construction End Date	February 2011

CITY COUNCIL GOALS

PUBLIC SAFETY:

Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

PUBLIC FACILITIES AND CAPITAL PROJECTS:

Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

POSITIVE ENVIRONMENT:

Create a positive environment for the development of Moreno Valley's future.

SUMMARY

This Construction Cooperative Agreement is required by Caltrans and sets forth the details of the City's and Caltrans' responsibilities pertaining to the construction activities for the proposed SR-60/Nason Interchange improvement project.

ATTACHMENT

Attachment "A" – Construction Cooperative Agreement

Prepared By:
 Margery A. Lazarus
 Senior Engineer, P.E.

Department Head Approval
 Chris A. Vogt, P.E.
 Public Works Director/City Engineer

Concurred By:
 Prem Kumar, P.E.
 Deputy Public Works Director/Assistant City Engineer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

W:\CapProj\CapProj\PROJECTS\Marge - 98-25897 Route 60-Nason Interchange\CC Reports\Construction Co-op Agmt Staff Report\98-25897 - Const. Co-op Agreement Staff Report - 02-24-09.doc)

08-Riv-60-PM 18.1/18.9
(KP 29.1/30.2)
Reconstruct Interchange at
SR-60/Nason Street
In the City of Moreno Valley
EA 323001
District Agreement No. 8-1406

CONSTRUCTION COOPERATIVE AGREEMENT

This AGREEMENT, entered into effective on _____, 2009, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the

CITY OF MORENO VALLEY, a body politic and
a municipal corporation of the State of California,
referred to herein as "CITY."

RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within CITY's jurisdiction.
2. CITY intends to reconstruct and realign all four ramps at the State Route 60/Nason Street Interchange, install traffic signals, and widen Nason Street between the eastbound ramps and Fir Avenue, in the City of Moreno Valley, referred to herein as "PROJECT."
3. CITY is willing to fund one hundred percent (100%) of all capital outlay and support costs using their Local and Federal funding sources, except that the costs of STATE's Independent Quality Assurance (IQA) and Independent Assurance Testing will be borne by STATE.
4. CITY desires to contribute Federal Demonstration (DEMO) funds in the amount of \$4,500,000 and CITY's local matching funds in the amount of \$1,125,000 and Surface Transportation Program Local (STPL) funds in the amount of \$1,770,219 and CITY's local matching funds in the amount of \$229,351 toward a portion of construction capital outlay costs of PROJECT. The PROJECT cost estimate is shown on Exhibit A attached hereto and made a part of this Agreement.

Attachment "A"

5. The parties agree that CITY will prepare the contract documents and advertise, award, and administer the construction contract for PROJECT.
6. Project Approval and Environmental Document; Plans, Specifications, and Estimate (PS&E); and Right of Way for PROJECT were covered in a prior Cooperative Agreement executed by STATE and CITY on August 24, 2004, (District Agreement No. 8-1163).
7. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.
8. The parties now define herein below the terms and conditions under which PROJECT is to be constructed, financed, owned, operated, and maintained.

SECTION I

CITY AGREES:

1. All PROJECT work performed by CITY, or performed on CITY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, and concurrence at appropriate stages of development.
2. To permit STATE to monitor, participate, and oversee the selection of personnel who will provide construction support services for PROJECT. CITY agrees to consider any request by STATE to avoid a contract award or discontinue the contracted services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
3. To fund one hundred percent (100%) of all PROJECT construction capital and support costs (using Local and Federal funding sources) required for satisfactory completion of PROJECT, including, but not limited to, "State-furnished material (SFM)", and source inspection, except for costs of STATE's IQA and Independent Assurance Testing. In the event additional funds are required to complete PROJECT, CITY shall be responsible for those costs using funds other than STATE funds.
4. To not use STATE's funds for any PROJECT capital and support costs.
5. To submit a written request for any State-furnished material (SFM) identified in the PROJECT PS&E a minimum of forty-five (45) days in advance of the need for such materials. To then pay STATE, within fifteen (15) days of receipt of STATE's billing, the actual cost invoiced for the requested SMF. CITY may take delivery of the SFM after STATE's receipt of CITY's payment and at the location directed by STATE.

6. STATE shall perform source inspection as outlined in STATE's Construction Manual, Construction Manual Supplement for Local Agency Resident Engineer, and Local Agency Structure Representative Guideline. CITY shall reimburse STATE for all direct and indirect costs incurred for any source inspection performed by STATE.
7. To deposit with STATE within thirty (30) days of receipt of STATE's billing thereof the amount of said bill, which amount represents the estimated cost of source inspection, as referred to in Article 6 of this Section I.
8. To pay STATE upon completion of all work on PROJECT and within thirty (30) days of receipt of a detailed statement made upon final accounting of costs therefore, any amount, over and above the aforesaid deposits for SFM and source inspection, required to complete CITY's financial obligations assumed pursuant to this Agreement.
9. To advertise, award, and administer the construction contract for PROJECT in accordance with requirements of the Local Agency Public Construction Act and the California Labor Code, including its prevailing wage provisions. Workers employed in the performance of work contracted for by CITY, and/or performed under encroachment permit, are covered by provisions of the California Labor Code in the same manner as are workers employed by STATE's contractors. The use of any Federal funds towards PROJECT construction will mandate the inclusion and enforcement of all applicable Federal labor mandates.
10. Construction by CITY of those portions of PROJECT which lie within the SHS right of way shall not commence until CITY's contract plans involving such work, the utility relocation plans, and the right of way certification have been reviewed and accepted by STATE and encroachment permits have been issued to CITY and CITY's contractor.
11. CITY's construction contractor shall maintain in force, until completion and acceptance of the PROJECT construction contract, a policy of General Liability Insurance, including coverage of Bodily Injury Liability and Property Damage Liability, that complies with all coverage requirements with Section 7-1.12 of STATE's then effective Standard Specifications. Such policy shall contain an additional insured endorsement naming STATE and its officers, agents, and employees as additional insureds. This insurance coverage shall be evidenced by a Certificate of Insurance in a form satisfactory to STATE which shall be delivered to STATE before the issuance of an encroachment permit to CITY's construction contractor.
12. To require the construction contractor to furnish both a payment and a performance bond, naming CITY as obligee with both bonds complying with the requirements set forth in Section 3-1.02 of STATE's current Standard Specifications prior to performing any PROJECT construction work. CITY shall defend, indemnify, and hold harmless STATE and its officers, agents, and employees from all claims and suits by stop notice claimants related to the construction of PROJECT.
13. To have PROJECT constructed by contract to the satisfaction of and subject to STATE's acceptance in accordance with the STATE accepted PROJECT PS&E.

14. Contract administration procedures shall conform to STATE's Construction Manual, Local Assistance Procedures Manual (if Federal funds are used), and the PROJECT encroachment permits.
15. Construction within the existing or ultimate SHS right of way shall comply with STATE's Standard Specifications, the PROJECT Special Provisions, and STATE's Construction Manual.
16. If any existing utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, CITY shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal.

The costs for the PROJECT's positive identification and location, protection, relocation, or removal of utility facilities whether inside or outside STATE's right of way shall be determined in accordance with Federal and California laws and regulations, and STATE's policies, procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts.

17. All survey work shall conform to the methods, procedures, and requirements of STATE's Surveys Manual and STATE's Staking Information Booklet.
18. PROJECT material testing and Quality Control/Assurance shall conform to STATE's Construction Manual, Construction Manual Supplement for Local Agency Resident Engineer, Local Agency Structure Representative Guideline and STATE's California Test Methods, and shall be performed by a material-tester certified by STATE, at CITY's expense.
19. All PROJECT work, except as set forth in this Agreement, is to be performed by CITY. Should CITY request that STATE perform any portion of PROJECT work not set forth in this Agreement, CITY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed agreement.
20. To furnish, at CITY's expense and subject to the approval of STATE, a field site representative who is a licensed civil engineer in the State of California to perform the functions of a Resident Engineer. The Resident Engineer shall not be an employee or subcontractor of the entity, if any, that prepared the PROJECT PS&E or an employee of the construction contractor.
21. If the Resident Engineer is not also a registered Landscape Architect, CITY will furnish, at CITY expense and subject to approval of STATE, a registered Landscape Architect to perform the function of an Assistant Resident Engineer/Inspector who is responsible for both daily on-site inspections and final decisions including, but not limited to, any highway planting and the irrigations systems that comprise a portion of the PROJECT work. Final decisions shall continue to be subject to the satisfaction and approval of STATE.

22. At PROJECT's expense, to furnish sufficient qualified support staff, subject to the approval of STATE, to assist the Resident Engineer in, but not limited to, structure representative, construction surveys, soils and foundation tests, measurement and computation of quantities, testing of construction materials, checking shop drawings, preparation of estimates and reports, preparation of the mandated "As-Built" drawings, and other inspection and staff services necessary to assure that the construction is being performed in accordance with the PROJECT PS&E. Said qualified support staff shall be independent of the design engineering company and construction contractor, except that the PROJECT designer may be retained to check shop drawings, do soils foundation tests, test construction materials, and perform construction surveys.
23. Within one hundred eighty (180) days following the completion and acceptance of the PROJECT construction contract, to furnish STATE with a complete set of "As-Built" plans (hard copy and electronic formats) in accordance with STATE's then current CADD Users Manual, Plans Preparation Manual, and STATE practice. The submittal must also include all STATE requested contract records, including survey documents and Records of Surveys (to include monument perpetuation per the Land Surveyor Act, section 8771, including but not limited to preconstruction monumentation documents and a post construction Record of Survey). CITY shall also submit corrected full-sized hardcopy structure plans.
24. To retain or cause to be retained for audit by STATE or other government auditors for a period of four (4) years from the date of final payment under the PROJECT contract, or four (4) years from STATE payment of the final voucher, whichever is longer, all records and accounts relating to PROJECT construction. CITY shall retain said records and accounts longer for such periods as are required in writing by STATE.
25. Upon completion of PROJECT construction, CITY will operate and maintain, at CITY's cost, any part of PROJECT located outside of the existing SHS right of way (including CITY underpasses and overcrossings of then existing SHS right of way), until any subsequent acceptance of any part of PROJECT into the SHS by STATE, approval by Federal Highway Administration, if required, and conveyance of acceptable title to STATE.
26. If CITY cannot complete PROJECT as originally scoped, scheduled, and estimated, CITY will, only with STATE's prior written consent, amend the PROJECT PS&E for a suitable resolution to ensure an alternate form of modified PROJECT that will, at all times, provide a safe and operable SHS.
27. If CITY terminates the PROJECT prior to completion, STATE shall require CITY, at CITY's expense, to return the SHS right of way to its original condition or to a safe and operable condition acceptable to STATE. If CITY fails to do so, STATE reserves the right to finish PROJECT or place PROJECT in a safe and operable condition and STATE will bill CITY for all actual expenses incurred and CITY agrees to pay said bill within thirty (30) days of receipt.
28. If unanticipated cultural, archaeological, paleontological or other protected materials are encountered during PROJECT construction, CITY shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and a plan is

approved for the removal or protection of that material. The costs for any removal or protection of that material shall be covered as a PROJECT cost contemplated by this Agreement.

SECTION II

STATE AGREES:

1. At no cost to CITY, to provide IQA to assure that CITY's PROJECT work is performed in full compliance with the approved PROJECT PS&E and in accordance with STATE's then effective policies, procedures, standards, and practices. This IQA function includes both the obligation and the authority to reject noncompliant PROJECT work and materials accepted by CITY, to order any actions needed for public safety or the preservation of property on the SHS, and to assure compliance with all provisions of the encroachment permit(s) issued by STATE to CITY and CITY's contractor.
2. Upon proper application by CITY and by CITY's contractor, to issue, at no cost to CITY and CITY's contractor, the necessary encroachment permits for required work within the SHS right of way as more specifically defined elsewhere in this Agreement.
3. To provide, at CITY's cost, any SFM as shown on the PROJECT PS&E as determined by STATE to be appropriate and available during construction of PROJECT. Upon receipt of CITY's request for any such SFM, STATE will order those materials and STATE's Project Manager will have an invoice submitted to CITY for the costs of those materials. Upon receipt of those materials and CITY's payment, STATE will make those SFM materials available to CITY at a STATE designated site.
4. Independent assurance testing, specialty testing, and approval of the type of asphalt and concrete plants shall be by STATE, at STATE's expense.
5. To submit an invoice to CITY for the estimated direct and indirect cost of source inspection, pursuant to Article 6 of Section I, prior to start of PROJECT construction and upon receipt of said estimate from STATE's representative.
6. Upon completion of PROJECT and all work incidental thereto, to furnish CITY with a detailed statement of the SFM and source inspection costs to be borne by CITY. To thereafter refund to CITY, promptly after completion of STATE's final accounting of said PROJECT costs, any amount of CITY's deposits, required in Articles 5 and 6 of Section I, remaining after actual SFM and source inspection costs to be borne by CITY have been deducted or to bill CITY for any additional amount required to complete CITY's financial obligations assumed pursuant to this Agreement.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of the PROJECT construction phase administered by CITY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by CITY conform with then existing STATE standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT, nor does it involve any validation to verify and recheck any work performed by CITY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by CITY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE pursuant to an amendment to this agreement, that is not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and CITY will pay or authorize STATE to reimburse itself from then available PROJECT funds.
3. CITY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits and/or agreements from appropriate regulatory agencies, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said PROJECT permits, agreements, and/or approvals, those said costs shall be paid for by CITY, as a PROJECT cost.
4. CITY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s), and/or environmental approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
5. If there is a legal challenge to the environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), environmental commitments and/or environmental approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
6. If, during performance of PROJECT construction, new information is obtained which requires additional environmental documentation to comply with the California Environmental Quality Act (CEQA) and if applicable, the National Environmental Policy Act (NEPA), this Agreement will be amended to include completion of those additional tasks.
7. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed,

released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.

8. During PROJECT construction, representatives of CITY and STATE will cooperate and consult with each other to assure that all PROJECT work is accomplished according to the PROJECT PS&E and STATE's then applicable policies, procedures, standards, and practices. Satisfaction of these requirements shall be verified by STATE's IQA representatives who are authorized to enter CITY's property during construction for the purpose of monitoring and coordinating construction activities.
9. PROJECT PS&E changes shall only be implemented by contract change orders that have been reviewed and concurred with by STATE's representative(s). All changes affecting public safety or public convenience, all design and specification changes, and all major changes as defined in STATE's Construction Manual shall be approved by STATE in advance of performing that work. Unless otherwise directed by STATE's representative, change orders authorized as provided herein will not require an encroachment permit rider. All changes shall be shown on the "As-Built" plans.
10. CITY shall provide a construction contract claims process acceptable to STATE and shall process any and all claims through CITY's claims process. STATE's representative will be made available to CITY to provide advice and technical input in any claims process.
11. In the event that STATE proposes and/or requires a change in design standards, implementation of those new or revised design standards shall be done in accordance with STATE's Highway Design Manual, Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with CITY in a timely manner regarding the effect of proposed and/or required PROJECT changes and cooperate with CITY to determine a source of funding for said PROJECT changes.
12. The party that discovers hazardous materials (HM) will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.
13. STATE, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

CITY, independent of PROJECT, is responsible for any HM-1 found outside existing SHS right of way. CITY will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

14. If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities.

Any management activity cost related to HM-2 is a PROJECT construction cost.

15. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
16. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
17. STATE, in exercising its authority under section 591 of the Vehicle Code, has included all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code as applicable to the PROJECT areas open to public traffic. CITY shall take all necessary precautions for safe operation of CITY's vehicles, the construction contractor's equipment and vehicles and/or vehicles of personnel retained by CITY to assure the protection of the traveling public and STATE employees from injury and damage from such vehicles or equipment.
18. Upon PROJECT completion and acceptance, subject to the approval of STATE, CITY will operate and maintain those PROJECT facilities at its own cost until a Maintenance Agreement is executed or an existing agreement, if any, is amended to incorporate the maintenance of these new PROJECT facilities located on the SHS.
19. Upon satisfactory completion of all PROJECT work under this Agreement, as determined by STATE, actual ownership and title to materials, equipment, and appurtenances installed within the operating SHS right of way for SHS operations will be vested in STATE, and materials, equipment, and appurtenances installed for non-SHS operations both inside (overcrossings and underpasses for local traffic) and outside of the SHS right of way will automatically be deemed to be under the control of CITY or an appropriate third party as determined by CITY.
20. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
21. Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction conferred upon CITY or arising under this Agreement. It is understood and agreed that, CITY will fully defend, indemnify, and save harmless STATE and all of its officers and employees from all

claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

22. Neither CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction conferred upon STATE or arising under this Agreement. It is understood and agreed that, STATE will fully defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
23. Prior to the commencement of any construction activity within the SHS right of way, either STATE or CITY may terminate this Agreement by written notice to the other party.
24. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
25. This Agreement shall terminate upon the satisfactory completion of all post-PROJECT construction obligations of CITY and the delivery of required PROJECT construction documents, with concurrence of STATE, or on December 31, 2014 whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction-related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related claims are settled, dismissed or paid.

SIGNATURES ON FOLLOWING PAGE:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

CITY OF MORENO VALLEY

WILL KEMPTON
Director

By: _____
RICHARD A. STEWART
Mayor

By: _____
RAYMOND W. WOLFE, PhD
District Director

Attest: _____
JANE HALSTEAD
City Clerk

APPROVED AS TO FORM AND
PROCEDURE:

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
Attorney,
Department of Transportation

By: _____
ROBERT D. HERRICK
City Attorney

CERTIFIED AS TO FUNDS:

By: _____
District Budget Manager

CERTIFIED AS TO FINANCIAL
TERMS AND POLICIES:

By: _____
Accounting Administrator

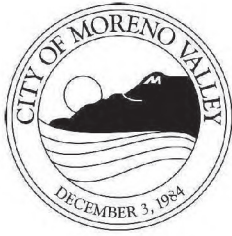
EXHIBIT A

EA #: 223001
 Project Manager: Jason Bennecke

Agreement #: 8-1406
 Sponsoring Agency: City of Moreno Valley

Project Location: In Riverside County, on State Route (SR) 60 from Postmile 18.1 to Postmile 18.9. Reconstruct Interchange at SR-60/Nason Street in the City of Moreno Valley

Administrated Phases of Work	Phase	Local Programs Funds		Local Program Funds		State Funds	Other Funds	Totals
		Federal %: 80.00	Match%: 20.00	Federal %: 88.53	Match%: 11.47			
		Fund Type: DEMO	Fund Type: Local	Fund Type: STW	Fund Type: Local	Fund Type: N/A	Fund Type: City Funds	
SUPPORT								
DA&SD	0							\$0.00
FS&E	1							\$0.00
RAW Support	2							\$0.00
Construction Support	3	\$450,000.00	\$112,500.00	\$177,022.00	\$22,935.00		\$1,137,543.00	\$1,900,000.00
CAPITAL								
RAW Capital	9							\$0.00
Construction Capital	4	\$4,050,000.00	\$1,012,500.00	\$1,593,197.00	\$206,416.00		\$8,708,575.00	\$15,570,688.00
TOTALS		\$4,500,000.00	\$1,125,000.00	\$1,770,219.00	\$229,351.00	\$0.00	\$9,846,118.00	\$17,470,688.00



APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>CAF</i>
CITY MANAGER	<i>RM</i>

Report to City Council

TO: Mayor and City Council

FROM: Barry Foster, Economic Development Director
Chris A. Vogt, Public Works Director/City Engineer

AGENDA DATE: February 24, 2009

TITLE: SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES FOR PART 1, PHASE 2, AND PHASE 3 DESIGN OF THE IRONWOOD AVENUE IMPROVEMENTS FROM DAY STREET TO BARCLAY DRIVE PROJECT NO. 10-41570027

RECOMMENDED ACTION

Staff recommends that the City Council:

1. Approve the "Second Amendment to Agreement for Professional Consultant Services" for Part 1, Phase 2, and Phase 3 design with AEI-CASC Engineering, Inc., 937 South Via Lata, Suite 500, Colton, California 92324 to provide Professional Consultant Services, extend the agreement from March 31, 2010 to July 31, 2011, and increase the agreement amount by the "not-to-exceed" fee of \$301,149.
2. Authorize the City Manager to execute the "Second Amendment to Agreement for Professional Consultant Services" for Part 1, Phase 2, and Phase 3 with AEI-CASC Engineering, Inc. in the form attached hereto.
3. Authorize an increase to the Purchase Order with AEI-CASC Engineering, Inc., in the amount of \$361,378.80 (\$301,149 amount plus 20% contingency) when the Second Amendment to Agreement has been signed by all parties (Account No. 897.91727).
4. Authorize the Public Works Director/City Engineer to execute any subsequent Amendments to the Agreement for Professional Consultant Services with AEI-CASC Engineering, Inc., up to but not to exceed the Purchase Order contingency in the amount of \$60,229.80, subject to the approval of the City Attorney.

BACKGROUND

The Ironwood Avenue improvement project, from Day Street to Barclay Drive will provide much needed street and related improvements to assist with traffic management enhancements on an important arterial thoroughfare and congested intersection. This project utilizes funding from the Redevelopment Agency (RDA) through the 2007 RDA bond issue and qualifies for Transportation Uniform Mitigation Fee (TUMF) programmed funds for Riverside County as administered through the Western Riverside Council of Governments (WRCOG).

On May 27, 2008, the City Council awarded the Ironwood Avenue Improvements Project from Day Street to Barclay Drive, Part 1, Phase 1, only for the 35% design, Planning Application and Environmental Documentation (PA&ED) portion of the contract to AEI-CASC Engineering, Inc. (AEI-CASC). AEI-CASC was selected as the preferred consultant because of their clear understanding of the scope of work and the firm's personnel being well qualified to provide these services.

On November 17, 2008, the Public Works Director/City Engineer approved the First Amendment to Agreement with AEI-CASC, utilizing \$4,560 from contingency, for additional traffic analysis.

DISCUSSION

The Ironwood Avenue improvements from Day Street to Barclay Drive will construct one (1) additional lane plus a right turn lane on the south side of Ironwood Avenue between Day Street and Barclay Drive, and modifications to the intersection of Ironwood Avenue and Day Street to facilitate a smooth transition through the intersection for east and west bound traffic on Ironwood Avenue and Box Springs Road, and improve the northbound traffic from Day Street turning east off of Day Street onto Ironwood Avenue to enter future development south of Ironwood at Athens Street. Ironwood Avenue becomes Box Springs Road just west of Day Street. Ironwood Avenue is designated as a minor arterial street with ultimate build-out to four (4) lanes.

AEI-CASC has completed the first portion of the project planning and environmental work, Part 1, Phase 1, PA&ED, consisting of preparation of the planning, environmental, preliminary right-of-way engineering, preliminary plans, and the preliminary engineer's estimate. City staff recommends that AEI-CASC be authorized to proceed with the Part 1, Phase 2 and Phase 3 portions of the work which consist of completing the final Plans, Specifications, and Estimate (PS&E) for street improvements, installation of two traffic signals, storm drain, and retaining walls, right-of-way acquisition, bid services, and design support services during construction.

ALTERNATIVES

1. Approve the “Second Amendment to Agreement for Professional Consultant Services” for Part 1, Phase 2, and Phase 3 design with AEI-CASC Engineering, Inc., 937 South Via Lata, Suite 500, Colton, California 92324 to provide Professional Consultant Services, extend the agreement from March 31, 2010 to July 31, 2011, and increase the agreement amount by the “not-to-exceed” fee of \$301,149, authorize the City Manager to execute the “Second Amendment to Agreement for Professional Consultant Services” for Part 1, Phase 2, and Phase 3 with AEI-CASC Engineering, Inc. in the form attached hereto, authorize an increase to the Purchase Order with AEI-CASC Engineering, Inc., in the amount of \$361,378.80 (\$301,149 amount plus 20% contingency) when the Second Amendment to Agreement has been signed by all parties (Account No. 892.80127), and authorize the Public Works Director/City Engineer to execute any subsequent Amendments to the Agreement for Professional Consultant Services with AEI-CASC Engineering, Inc., up to but not to exceed the Purchase Order contingency in the amount of \$60,229.80, subject to the approval of the City Attorney. *This alternative will allow for completion of the design for the needed improvements.*

2. Do not approve the “Second Amendment to Agreement for Professional Consultant Services” for Part 1, Phase 2, and Phase 3 design with AEI-CASC Engineering, Inc., 937 South Via Lata, Suite 500, Colton, California 92324 to provide Professional Consultant Services, extend the agreement from March 31, 2010 to July 31, 2011, and increase the agreement amount by the “not-to-exceed” fee of \$301,149, do not authorize the City Manager to execute the “Second Amendment to Agreement for Professional Consultant Services” for Part 1, Phase 2, and Phase 3 with AEI-CASC Engineering, Inc. in the form attached hereto, do not authorize an increase to the Purchase Order with AEI-CASC Engineering, Inc., in the amount of \$361,378.80 (\$301,149 amount plus 20% contingency) when the Second Amendment to Agreement has been signed by all parties (Account No. 892.80127), and do not authorize the Public Works Director/City Engineer to execute any subsequent Amendments to the Agreement for Professional Consultant Services with AEI-CASC Engineering, Inc., up to but not to exceed the Purchase Order contingency in the amount of \$60,229.80, subject to the approval of the City Attorney. *This alternative will delay the needed improvements.*

FISCAL IMPACT

This project will be funded by City of Moreno Valley RDA funds and qualifies for TUMF program funds. The agreement for the consultant’s services for this project is for Part 1, Phase 2 and Phase 3. Once the design is complete, there is sufficient funding available to complete construction.

TOTAL BUDGETED FUNDS:

Total Funding (Fund 897.91727)..... \$3,000,000

TOTAL ESTIMATED PROJECT RELATED COSTS:

Consultant Preliminary Design Cost for Part 1, Phase 1 \$199,000

Administrative Cost for Part 1, Phase 1..... \$35,000

Second Amendment to Agreement for Professional Consultant

Services, Part 1, Phase 2, and Phase 3 \$361,000

City Administrative Costs for Part 1, Phase 2, and Phase 3* \$45,000

Anticipated Right-of-Way Acquisition Services Costs..... \$180,000

Anticipated Construction Cost..... \$1,992,000

Anticipated Construction Support Cost..... \$97,000

Total Estimated Project Related Costs..... \$2,909,000

** Staff will provide project related administrative services.*

Total Remaining Budget Amount \$91,000

ANTICIPATED PROJECT SCHEDULE FOR IRONWOOD AVENUE:

Council Award Professional Consultant Services Contract February 2009

Notice to Proceed for Final Design..... March 2009

Complete Right-of-Way Acquisitions August 2009

Complete 100% PS&E Complete..... October 2009

Construction Begins January 2010

Construction Complete..... July 2010

CITY COUNCIL GOALS

PUBLIC SAFETY:

Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

PUBLIC FACILITIES AND CAPITAL PROJECTS:

Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

SUMMARY

AEI-CASC has completed the first portion of the project planning and environmental work, Part 1, Phase 1, PA&ED. City staff is now recommending that AEI-CASC be authorized to proceed with the next part of the work Phase 2 and Phase 3 which consist of completing the final Plans, Specifications, and Estimate (PS&E) for street improvements, installation of two traffic signals, storm drain, and retaining walls, right-of-way acquisition, bid services, and design support services during construction. When construction is complete, the improvements will include one (1) additional lane plus a

right turn lane on the south side of Ironwood Avenue between Day Street and Barclay Drive, and modifications to the intersection of Ironwood Avenue and Day Street to facilitate a smooth transition through the intersection for east and west bound traffic on Ironwood Avenue and Box Springs Road, and improve the northbound traffic from Day Street turning east off of Day Street onto Ironwood Avenue.

ATTACHMENTS

Attachment "A" – Location Map

Attachment "B" – "Second Amendment to Agreement for Professional Consultant Services" for Part 1, Phase 2, and Phase 3 Design, Project No.10-41570027

Prepared By:
 Christopher L. Wiberg, P.E.
 Senior Engineer

Department Head Approval:
 Chris A. Vogt, P.E.
 Public Works Director/City Engineer

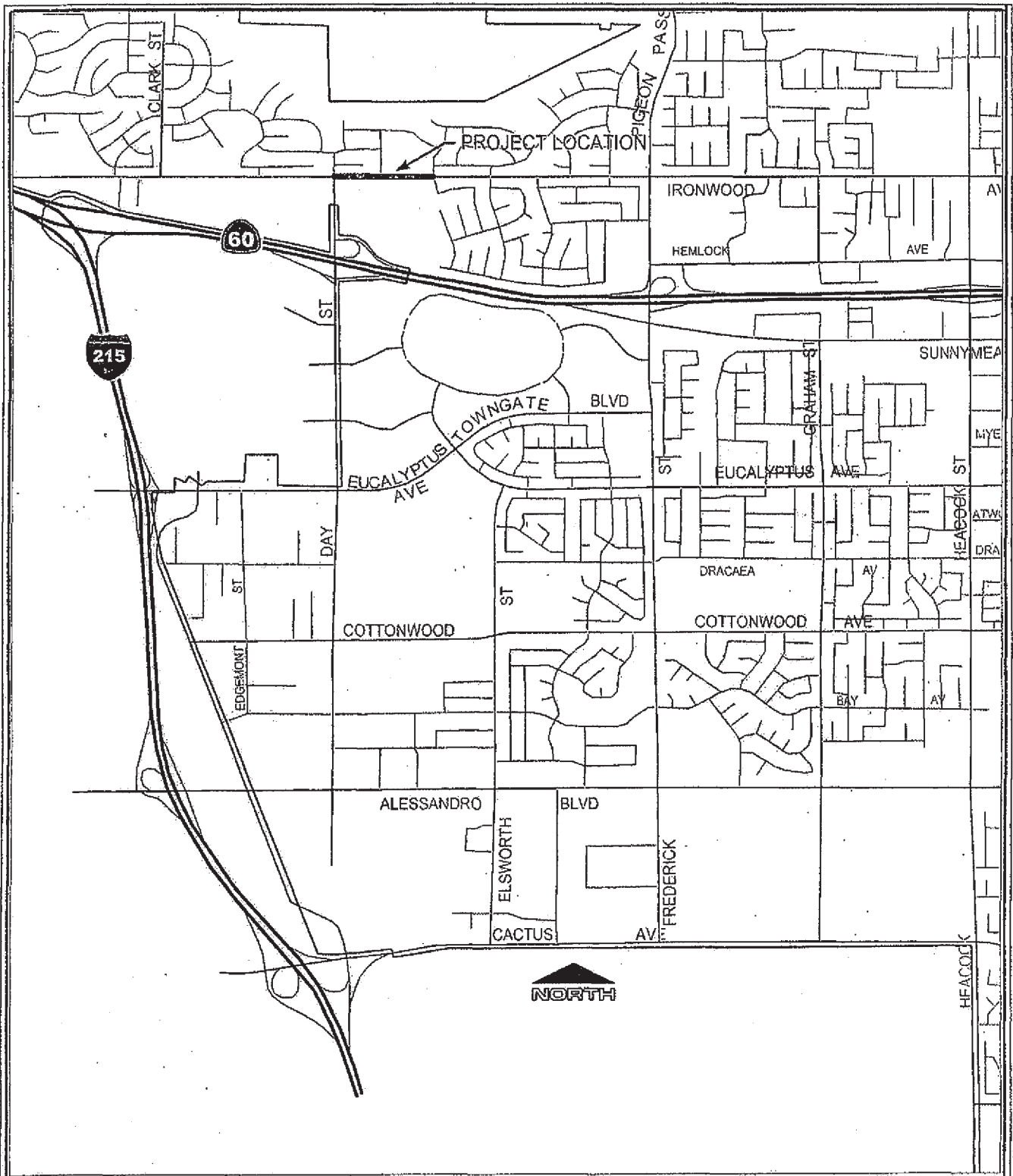
Concurred By:
 Prem Kumar, P.E.
 Deputy Public Works Director/Assistant City Engineer

Department Head Approval:
 Barry Foster
 Economic Development Director

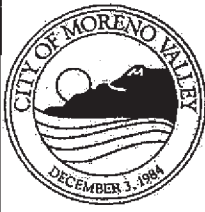
Concurred By:
 Michele Patterson
 Acting Redevelopment Division Manager

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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LOCATION MAP



LOCATION MAP
Public Works Department
Capital Projects Division

Attachment "A"

**Ironwood Avenue Improvements,
From Day Street to Barclay Drive
Project No. 10-41570027**

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**SECOND AMENDMENT TO AGREEMENT
FOR PROFESSIONAL CONSULTANT SERVICES
PROJECT NO. 10-41570027**

This Second Amendment to Agreement is by and between the CITY of MORENO VALLEY, a municipal corporation, hereinafter referred to as "City," and AEI-CASC Engineering, Inc., a California corporation, hereinafter referred to as "Consultant." This Second Amendment to Agreement is made and entered into effective on the date the City signs this Amendment.

RECITALS:

Whereas, the City and Consultant entered into an Agreement entitled "AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES," hereinafter referred to as "Agreement," dated June 12, 2008.

Whereas, the Consultant is providing consultant design services for the **Ironwood Avenue Improvements from Day Street to Barclay Drive.**

Whereas the Agreement was amended on November 17, 2008 to increase the scope of work for the professional consultant design services in the First Amendment to Agreement for Professional Consultant Services.

Whereas, it is desirable to amend the Agreement to expand the scope of the work to be performed by the Consultant as was more particularly described in Section 1 of this Second Amendment.

Whereas, the Consultant has submitted a Proposal dated February 20, 2008, for the separate part/phased work and this Second Amendment will expand the scope of work to include Part 1, Phase 2 and Phase 3 design and additional scope of work included in Exhibit "B-2." A copy of said Proposal is attached as Exhibit "B-2" to the Second Amendment and is incorporated herein by this reference.

Attachment "B"

**AMENDMENT TO AGREEMENT FOR
PROFESSIONAL CONSULTANT SERVICES
PROJECT NO. 10-41570027**

SECTION 1 AMENDMENT TO ORIGINAL AGREEMENT:

1.1 The Agreement termination date is extended from March 31, 2010 to July 31, 2011.

1.2 The City is exercising the option for Part 1, Phase 2, and Phase 3 (100% design and right-of-way acquisition) services identified in Exhibit "B" to the Agreement and hereby the Scope of Work and Cost Proposal in Exhibit "B-2" to the Amendment, entitled "Expanded Scope and Fee for Part 1, Phase 2, and Phase 3, Ironwood Avenue Improvements from Day Street to Barclay Drive, Project No. 10-41570027" and is hereby incorporated into this Second Amendment to the Agreement.

1.3 The City agrees to pay the Consultant and the Consultant agrees to receive a "Not-to-Exceed" fee of \$301,149 for Part 1, Phase 2 and Phase 3, as set forth in the above-referenced revised proposal, in consideration of the Terms of Payment as set forth in Exhibit "B-2" of the Second Amendment to Agreement.

1.4 The total "Not to Exceed" fee for this contract is \$472,655 (\$166,946 for the original Agreement, plus \$4,560 for the First Amendment to Agreement, plus \$301,149 for the Second Amendment to Agreement).

SECTION 2

2.1 Except as otherwise specifically provided in this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

SIGNATURE PAGE TO FOLLOW

**AMENDMENT TO AGREEMENT FOR
PROFESSIONAL CONSULTANT SERVICES
PROJECT NO. 10-41570027**

IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement.

City of Moreno Valley

AEI-CASC Engineering, Inc.

BY: _____
City Manager

BY: _____

TITLE: _____
(President or Vice President)

Date

Date

INTERNAL USE ONLY

APPROVED AS TO LEGAL FORM:

City Attorney

Date

RECOMMENDED FOR APPROVAL:

Department Head
(if contract exceeds \$15,000)

Date

BY: _____

TITLE: _____
(Corporate Secretary)

Date

Attachments: Exhibit "B-2" – Expanded Scope and Fee for Part 1, Phase 2, and Phase 3

W:\CapProj\CapProj\PROJECTS\Chris - 09-89280127 Ironwood-Day St to Barclay\Design Phase\Consultant -\Agreement\AEI-CASC 2nd Amendment-additional phases on orig proposal 1-15-09.DOC

AEI-CASC CONSULTING

January 26, 2009

Christopher L. Wiberg
City of Moreno Valley
14177 Frederick Street
Moreno Valley, CA 92552

Subject: Expanded Scope and Fee for Part 1, Phase 2, and Phase 3
Ironwood Avenue Improvements from Day Street to Barclay Drive
Project No. 10-41570027

Dear Mr. Wiberg:

In accordance with the City's request, AEI-CASC Engineering, Inc. is pleased to submit this scope and fee for the additional work associated with Part 1, Phase 2, and Phase 3 of the Ironwood Avenue Improvements Project from Day Street to Barclay Drive.

Generally, the original Scope and Fee as presented in our February 20, 2008 proposal is in force with the exception of the deletion of outside plan checking services. The additional work associated with Phases 2 and 3 will include, but are not limited to, a retaining wall on Ironwood from Day Street to Athens Street, a storm drain extending south from the intersection of Ironwood Avenue and Athens Street, a traffic signal at Ironwood Avenue and Athens Drive, as well as street improvements and traffic signal for Day Street at Canyon Springs Plaza, and street improvements at the southwest corner of Box Springs Road and Day Street (see attached scope for details). The updated not-to-exceed fee for Phases 2 and 3 is \$301,149 (see attached not-to-exceed fee for details).

We look forward to proceeding with this work upon your authorization. Should you have any questions or require any further information, please contact me at the number below.

Sincerely,


Steve Hosford, P.E.
Project Manager

Enclosure: Expanded Scope of Work for Part 1, Phases 2 and 3
Detailed not-to-exceed fee for Part 1, Phases 2 and 3

cc: Project File

Phase 2: 100% Level Completion

1. **Project Management, Schedules, and Project Controls** – AEI-CASC will provide up to 167 hours of specific Project Management coordination time in support of the Phase 2: 100% Completion for Ironwood Avenue and the Day Street Improvements. Time is to be billed only as incurred. Additional time will be billed on a time and material basis in accordance with our standard hourly fee rate schedule.
2. **Preliminary Engineering**
 - a. *Day Street Project Site Map Development*
 - i. Topographic Mapping
 - *Targeting & Control* – Run Horizontal Control from the existing monuments utilizing electronic stations and data collectors. Vertical control is established from City/County benchmarks, Set and paint approximately four targets on Day Street between the S.R. Freeway and Box Springs / Ironwood.
 - *Fly and Photograph* - Furnish one set of 9"by 9" contact prints of the aerial photography. Compile approximately 250 feet wide strip along Day Street between the S.R. Freeway and Box Springs / Ironwood.
 - *Mapping* - Download the survey data for use in preparing the Day Street base plan. Field verify improvements within the Street Widening segments of the project limits that may be hidden by vegetation in the aerial photograph.
 - ii. Cross Section Surveying – Provide Cross Section Field Surveying at a minimum interval of 50 feet in the vicinity of the Canyon Springs Plaza entrance intersection improvements.
 - iii. Base Map Preparation - Right of Way information, based on record maps, tract maps, and other available data is added to the topographic map to provide a comprehensive base map for the project.
 - b. *Day Street Intersection and Box Springs Retaining Wall Geotechnical Investigations* - Prepared as described in the RFP and the Additions and Exceptions Section of the original proposal. A total of 1 boring to a depth of 5 feet are proposed for the subject intersection at Day Street and Canyon Springs Plaza and a total of 2 borings to depths of 5 to 10 feet are proposed for the proposed retaining wall on the south side of Box Springs Road west of Day Street.
 - c. *Athens Storm Drain Drainage Analysis* – Using data collected during the Ironwood Preliminary Engineering phase and data provided by the developer's engineer, AEI-CASC conducts a brief drainage analysis to confirm pipe sizes, catch basin sizes, and detention basin for the proposed storm drain system originating at the intersection of Ironwood Avenue and Athens Street and outletting to an existing Caltrans Inlet.
 - d. *Day Street Utility Investigation* - Conduct utility investigations for the Day Street, including the first notifications is conducted as described in the RFP and the Project Approach.
 - e. *Day Street and Canyon Springs Plaza Traffic Signal Preliminary Engineering*
 - i. Collect counts (via sub-consultant) at the intersection of Day Street and Canyon Plaza Entrance: TMC for AM and PM peaks, as well as 24 hour counts on a typical weekday.
 - ii. Conduct Traffic Signal Warrant Analysis for the above entrance. The traffic for the analysis will be generated by using counts and distributing some trips from the Shopping Center to the east. Since the data for the location will be limited, only the following warrants may be reviewed: Minimum Volume Warrant (Warrant 1), Interruption of Continuous Traffic Warrant (Warrant 2), Systems Warrant (Warrant 7), Four-Hour Volume Warrant (Warrant 9).
 - iii. LOS Analysis for Day Street/Canyon Plaza Entrance and Day Street/Box Springs Road/Ironwood Avenue. The LOS analysis for the Day Street/Canyon Plaza Entrance intersection will be conducted using existing traffic, and the addition of the Shopping Center (Fry's) traffic to determine the required geometrics. The LOS analysis for the Day Street/Box Springs Road/Ironwood Avenue intersection will be conducted based on existing geometrics, existing traffic, and the addition of the Shopping Center (Fry's) traffic. Since the City is not anticipating

making immediate improvements to the intersection of Day Street and Ironwood Avenue, especially with respect to an additional westbound left-turn lane, this task will review the LOS of this intersection to find out how it performs in the present with the addition of Fry's traffic to existing traffic.

- iv. Back of Queue and Storage Review. As the Canyon Plaza Entrance signal (if warranted) and the Ironwood Avenue signal on Day Street may be closely spaced, queue storage may be an issue. The storage will be reviewed and minimum lengths will be recommended. (Based on HCS analyses Q-Ratio outputs).
 - v. Conduct Synchro Analyses. In this task the two intersections, i.e. Day/Ironwood-Box Springs and Day/Canyon Plaza entrance will be evaluated together via Synchro. The deliverables will be two Synchro files (AM and PM) for one traffic scenario - for opening day with project.
 - vi. Provide Input for Design to AEI-CASC. This task will require working interactively with AEI-CASC to help develop them develop geometrics and lane layouts based on the analyses.
- f. *Day Street at Canyon Springs Plaza Entrance Geometric Layout Plans* – Prepare a 40-Scale Plan View Geometric Layout of Day Street from the S.R. 60 Freeway Ramps to Box Springs / Ironwood showing the proposed improvements of the four way intersection at Canyon Springs Plaza, any raised medians, and striping modifications. This layout is presented to the City prior to commencing with the 65% Plans of Day Street.
3. **65% Complete Plans, Specifications, and Estimate**
- a. *General Plans (Cover, Legend, Notes, etc)* – Prepare the Title Sheet and Typical Section Sheet as described in the RFP. The improvements to Ironwood Avenue from Day to Barclay, Day Street at the Canyon Springs Plaza Entrance, Box Springs Road at the west side of Day Street and the Athens Storm Drain are all prepared under one plan package.
 - b. *65% Complete Street Improvement Plans* – Prepare Street Plan and Profiles of Box Springs Road from approximately 450 feet west of Day Street to Day Street, Ironwood Avenue from Day Street to Barclay Street, and Day Street in the vicinity of the Canyon Springs Plaza entrance and Cross Sections at 50 foot intervals of the street widening segments.
 - c. *65% Complete Traffic Signal Plans, Interconnect Plans, Signing and Striping, and Traffic Control Plans* - Prepare 20 Scale Traffic Signal Plans at Ironwood and Athens and at Day Street and Canyon Springs Plaza Entrance and prepare Traffic Signal Modification plans at Day Street and Ironwood, prepare 40-scale Striping Plans in the limits of the street improvements, and 40-scale Traffic Control Plans as described in the RFP and the project limits described.
 - d. *65% Complete Retaining Wall Plans* – Prepare 40-Scale Retaining Wall plans for the south side of Box Springs Road from approximately 450 west of Day Street to Day Street and on Ironwood Avenue from Day Street to Barclay Street.
 - e. *65% Complete Drainage Improvement Plans* - Prepare Drainage Plans of the Storm Drain from Athens Street to the Caltrans inlet based on the findings of the Drainage Analysis and by Grading Plans and topography provided by the developer's engineer.
 - f. *65% Complete Specifications* – Is prepared as described in the RFP.
 - g. *65% Complete Quantities and Cost Estimate* – The Quantities and Cost Estimate receive a general progress update to achieve or exceed a 65% level of completion. The Cost Estimate for the improvements at the southwest corner of Day Street and Box Springs road will be segregated and presented as a Bid Alternate.

- h. *In-House Review* – The 65% Complete Plans and calculations, etc are reviewed by independent AEI-CASC Engineering Staff for plan check prior to the submittal to the City. Redline comments are documented and comments are reviewed and addressed by the project design team before submitting plans, specifications, or cost estimate to the City.

Deliverables: Once all comments concerning the 65% Complete plan review are addressed, copies of the redline comments and responses to comments, plus copies of the 65% package are forwarded to the city.

4. 2nd & 3rd Utility Notifications

- a. *2nd Notice – Prepare to Relocate* – At the completion of the 65% level plans, the Second Utility notice is sent to the utility companies as described in the RFP. Letters to any utility not responding to the first utility notification will be urged to respond.
- b. *3rd Notice – Notice to Relocate* – At the completion of the 95% level plans, the Third Utility notice is sent to the utility companies as described in the RFP.

Deliverables: Updated files of letters and responses and spreadsheet.

- 5. Right of Way Legal Descriptions and Plats** – Prepare up to a total of five consisting of two legal descriptions and plats for the south side of Box Springs Road directly west of Day Street, and one legal description and plat for Ironwood Avenue from Day Street to Barclay, one legal and plat on the east of Day Street at the Canyon Springs Plaza Entrance for the parcels requiring right of way acquisition and one legal description and plat for the drainage easement of the storm drain south of Athens Street. Legal descriptions are signed and sealed by a Licensed Land Surveyor prior to being submitted for review.

6. Right of Way Appraisals – For two parcels on the south side of Box Springs Road west of Day Street.

- a. Mail a notification letter and acquisition policies brochure to the property owner, requesting permission to conduct an on-site inspection of the property, advising them of their right to accompany the appraiser at the time of the inspection, and requesting information regarding the property appraised which could influence the appraised value.
- b. Review title information pertaining to respective ownerships and will review drawings and other pertinent information relative to the parcel.
- c. Inspect each property personally with the owner (if possible) and document the inspection with photographs for use in the report.
- d. Appraiser will inventory all improvements affected by the proposed taking including notes on their manner of disposition (i.e., pay-for and remove vs. move back).
- e. Appraiser will perform market research to support the selected appraisal methodologies and will document and confirm comparable sales information.
- f. Appraiser will prepare a narrative appraisal report that conforms to the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal study and report are intended to serve as an acquisition appraisal and will be prepared in a summary format consistent with the specifications for narrative appraisal reports.
- g. OPC will receive and analyze the completed appraisal reports and will reconcile the real estate and fixtures and equipment conclusions as necessary.

7. 95% Plans, Specifications and Estimate

- a. *General Plans (Cover, Legend, Notes, etc)* – Receives a General Progress Update to achieve or exceed a 95% level of completion.

- b. *Street Improvement Plans*- Receives a General Progress Update to achieve or exceed a 95% level of completion.
- c. *Traffic Signal Plans, Interconnect Plans, Signing and Striping, and Traffic Control Plans* – Receives a General Progress Update to achieve or exceed a 95% level of completion.
- d. *Retaining Wall Plans*_– Receives a General Progress Update to achieve or exceed a 95% level of completion.
- e. *Drainage Improvement Plans* – Receives a General Progress Update to achieve or exceed a 95% level of completion.
- f. *Storm Water Pollution Prevention Plan* – The SWPP is prepared as described in the RFP and Exceptions or Additions section of this proposal.
- g. *Quantities and Cost Estimate*_– Receives a General Progress Update to achieve or exceed a 95% level of completion.
- h. *Specifications* – Receives a General Progress Update to achieve or exceed a 95% level of completion. The Bid Schedule for the improvements at the southwest corner of Day Street and Box Springs road will be segregated and presented as a Bid Alternate.
- i. *In-House Review* - The 95% Complete Plans and calculations, etc are reviewed by independent AEI-CASC Engineering Staff for plan check prior to the submittal to the City. Redline comments are documented and comments are reviewed and addressed by the project design team before submitting plans, specifications, or cost estimates to the City.
- j. *Constructability Review* – The entire plans, specifications, and Estimate receive a review as described in the Project approach and RFP.

Deliverables: Once all comments concerning the 95% Complete plan review are addressed, copies of the redline comments and responses to comments, plus copies of the 95% package are forwarded to the city.

8. 100% PS&E

- a. *100% Plans* – Comments from the 95% Reviews are addressed and the plans are considered complete and ready for bid.
- b. *100% Specifications* – Specifications are considered complete and ready for bid
- c. *100% Quantities and Cost Estimate* – Cost Estimates and Quantities are considered complete and ready for bid
- d. *In-House Review* – PS&E receive one final review before submitted to the City.

Deliverables: Once all comments concerning the 100% Complete plan review are addressed, copies of the redline comments and responses to comments, plus copies of the 100% package are forwarded to the city.

- 9. Final Approvals and PS&E (Mylars)** – Plans are approved and Mylars and files are submitted to City as stated in the RFP.

Deliverables: Signed Mylar plans and electronic files as described in the RFP.

- 10. 4th Utility Notice – To Relocate Immediately** – This notice is accompanied by signed plans for the utility companies to prepare relocation plans if needed.

Deliverables: Updated files of letters and responses and spreadsheet

11. Right of Way Offers and Negotiations - For two parcels on the south side of Box Springs Road west of Day Street.

- a. Right of Way: Acquisition Services – Fee Owner
- Establish and maintain a complete and current record file for each ownership in a form acceptable to the client.
 - Receive and analyze title information, approved appraisal reports and legal descriptions in sufficient detail to negotiate with property owners and other parties.
 - Prepare all offer letters, summary statements, and lists of compensable items of fixtures and equipment, in accordance with state or federal regulations and approval of client.
 - Present written purchase offers to owners or their representatives in person, when possible. Secure receipt of delivery of offer as practical and present and secure tenant information statements, as applicable.
 - Notify relocation agent of initiation of negotiations within 2 business days and provide appraisal information, occupant contact information, and tenant information as necessary.
 - Follow-up and negotiate with each property owner, as necessary; prepare and submit recommended settlement justifications to client for review and approval; review any independent appraisal secured by property owner and coordinate reimbursement of appraisal fees (up to \$5,000) with client. Ongoing negotiations and settlement discussions will continue for 8 weeks after the initial offer or until we reach settlement or impasse.
 - Prepare and assemble acquisition contracts, deeds and related acquisition documents required for the acquisition of necessary property interests. Legal descriptions to accompany easements or to accompany partial acquisition deeds are not included in this Scope of Work.
 - Maintain a diary report of all contacts made with property owners or representatives and a summary of the status of negotiations indicating attitude of owners, problem areas, and other pertinent information. Copies of all applicable written correspondence will be maintained in files.
 - Prepare an impasse letter for any parcel where, after diligent attempts to settle by negotiation, it appears eminent domain will be needed or prudent to acquire the needed interest.
 - Transmit executed acquisition documents to client. Each transmittal package shall include a fully executed and properly notarized deed(s), fully executed acquisition contract with attachments, and a brief settlement memorandum which summarizes the pertinent data relative to the transaction.
- b. Right of Way: Escrow Coordination or Eminent Domain Coordination Services
- If by Negotiated Settlement: Assist the escrow/title company in the following:
 - Open escrow and coordinate execution of closing instructions providing for title insurance coverage at the settlement amount.
 - Provide escrow officer with fully executed acquisition contract and notarized deed.
 - Review settlement statement for accuracy.
 - Coordinate deposit of acquisition price and estimated closing costs with escrow.
 - After the closing, review the title insurance policy for accuracy.

- Prepare and mail a letter to County Assessor requesting cancellation of taxes if appropriate.
- If Settlement by Eminent Domain: Assist eminent domain counsel with the following:
 - Prepare a letter for the client signature, to eminent domain counsel requesting proceeding to condemnation.
 - Provide eminent domain counsel with available right of way maps and legal descriptions, preliminary title reports and title review documents, and information on how to contact each owner or interest holder.
 - Provide eminent domain counsel with a duplicate copy of the parcel file, together with a copy of the appraisal, offer to purchase, correspondence, acquisition contract, and deed as presented.
 - Convert preliminary title reports to litigation guarantees for eminent domain counsels' use. Title company fees (based of the value of the interest required) are additional.
- c. Right of Way: Title Clearance Services
 - Work in conjunction with escrow officer to facilitate the clearance of title matters as set forth in the settlement memorandum and escrow instructions.
 - Coordinate payment of taxes due and release of liens.
 - Secure full or partial reconveyance instruments from lien holders of record.
 - Coordinate lost instrument bonds as may be necessary.
 - Coordinate and facilitate recordation of corrective deeds to clear vesting issues.
 - Secure subordination agreements from conflicting easement holders.
- 12. **PDT Meetings** - Schedule and conduct monthly Project Development Team Meetings for Phase 2 of the 100% completion of Ironwood Avenue as described in the RFP. AEI-CASC Engineering will provide up to 86 hours of PDT Meeting time including preparing and distribution of agenda and meeting minutes. Time will be billed only as incurred. Additional time will be billed on a time and material basis in accordance with our standard hourly fee rate schedule.

Deliverables: Agenda, Updated Schedules, Meeting minutes, and various supporting documents.
- 13. **Design Engineering Reimbursable Expenses** – AEI-CASC will bill Moreno Valley for reimbursable costs associated with Phase 2 100% Completion of Ironwood Avenue. The cost will be billed only as incurred. An initial budget of \$3,875 is provided. Additional costs will be billed on a time and materials basis in accordance with our standard hourly fee rate schedule and as authorized by the City.

Phase 3: Advertising and Bidding Services and Construction Support

1. **Project Management, Schedules, & Project Controls** – AEI-CASC Engineering will provide up to 60 hours of specific Project Management coordination time in support of the Phase 3. Time is to be billed only as incurred. Additional time will be billed on a time and material basis in accordance with our standard hourly fee rate schedule.

2. Advertising & Bidding Services

The City intends to provide the following bidding and advertising services in-house. However, the City may request in writing that AEI-CASC provide assistance as necessary to complete this project. Time is to be billed only as incurred.

- a. Advertise Bidding Notices – Is conducted as described in the project approach and the RFP.
- b. Bid Holder Coordination– Is conducted as described in the project approach and the RFP.
- c. Conduct Pre-Bid Meeting (if Necessary) – Is conducted as described in the project approach and the RFP.
- d. Bidding Assistance (Clarification/Addenda) – Is conducted as described in the project approach and the RFP.
- e. Bid Analysis & Recommendation– Is conducted as described in the project approach and the RFP.

3. Construction Support

- a. Pre-Construction Meeting – Is conducted as described in the project approach and the RFP.
- b. Construction Assistance (Clarification/CCO's) – Is conducted as described in the project approach and the RFP.

4. Project Close-Out

- a. Prepare "As-Built" Record Drawings – Is conducted as described in the project approach and the RFP.
- b. Submit GASB 34 Documentation – Is conducted as described in the project approach and the RFP.

- 5. Construction Support Reimbursable Expenses** – AEI•CASC will bill Moreno Valley for reimbursable costs associated with Phase 3. The cost will be billed only as incurred. An initial budget of \$700 is provided. Additional costs will be billed on a time and materials basis in accordance with our standard hourly fee rate schedule and as authorized by the City.

**AEI-CASC ENGINEERING
HOURLY FEE RATE SCHEDULE**

January 1, 2009

The following rates shall apply to services provided on a time-and-material basis. Rates reflected are hourly.

General

President/Principal	\$180.00
Clerical/Miscellaneous Office Work	\$65.00

Civil

Engineering Director	\$149.00
Senior Project Manager/ Project Manager	\$141.00
Assistant Project Manager/Senior Project Engineer	\$122.00
Senior Designer/Project Engineer/Calculator	\$113.00
Design Engineer/Designer	\$108.00
CADD Designer	\$99.00
Senior CADD Drafter	\$92.00
CADD Drafter	\$70.00

Water Quality Services

Engineering Director	\$149.00
Senior Project Manager/ Project Manager	\$141.00
Assistant Project Manager/Senior Project Engineer	\$122.00
Project Engineer	\$115.00
Scientist	\$108.00
Senior Field Inspector	\$104.00
Environmental Analyst I	\$89.00
Environmental Analyst II	\$98.00
Field Inspector I	\$89.00
Field Inspector II	\$98.00
Two Person Sampling Crew	\$194.00

Construction Management

Resident Engineer	\$132.00
Assistant Resident Engineer	\$122.00
Senior Field Inspector	\$104.00
Field Inspector 1	\$89.00
Field Inspector 2	\$98.00

Planning

Planning Director	\$143.00
Project Manager	\$130.00
Senior Planner	\$122.00
Planner	\$108.00
Assistant Planner	\$93.00

Survey

Three Person Survey/GPS Crew	\$263.00
Two Person Survey/GPS Crew	\$237.00
One Person Survey/GPS Crew	\$206.00
Senior Project Manager/ Project Manager	\$141.00
Survey Analyst	\$113.00

Other

Litigation Consultant/Expert Witness	\$363.00
Computer Time	\$33.00

REIMBURSABLE EXPENSES

The following expenses will be billed at cost plus 15%:

- **Reproduction Services:** Includes blueprinting, copying, printing and plotting. In-house plots will be billed at \$6.00 per sheet for each client set and for a final in-house review set. The client is welcome to contract directly with an outside reprographic firm for those services not provided in-house.
- **Rental Equipment and Fees:** Any equipment rental and any fees advanced by our firm including plan check and filing fees.
- **Commercial Delivery Services:** Including Express Mail, Federal Express, UPS and independent courier services.
- **In-House Pick-Up and Delivery Services:** These services provided by our firm will be reimbursed at \$44.00 per hour. In addition, mileage will be billed at \$.66 per mile with no markup.
- **Travel Expenses:** Mileage to and from the job site will be billed at a rate of \$.66 per mile with no markup and travel time for survey crews will be billed at \$90.00 per hour, per man, each-way. Airfare will be billed at cost plus 15%.
- **Per Diem:** Per diem for overnight stays will be billed at \$134 per day, per man.
- **Waiver of Subrogation:** If the client requires a *Waiver of Subrogation for Workman's Compensation Insurance*, the client will be required to pay the additional insurance premium for this request. The approximate amount for the waiver is \$250.00.

NOTE: Invoicing will be submitted on a monthly, progressive cycle.

**Ironwood Avenue
Phase 2 and 3
Design Fee Summary**

	(I) - Original - Ironwood Ave.		(II a) - Revised - Ironwood Ave.		(II b) - Revised - Ironwood Ave.		(III) - Alternate 1		(IV) - Alternate 2		(V) - Alternate 3		Total	
	Phase 2, 100% PS&E	Phase 3, Post Design	Phase 2, 100% PS&E	Phase 3, Post Design	Phase 2, 100% PS&E	Phase 3, Post Design	Phase 2, 100% PS&E	Phase 3, Post Design	Phase 2, 100% PS&E	Phase 3, Post Design	Phase 2, 100% PS&E	Phase 3, Post Design		
A	AEI-CASC	\$78,166	\$46,520	\$10,164	\$1,270	\$20,838	\$2,539	\$0	\$0	\$19,087	\$3,759	\$14,988	\$3,759	
B	T. E. S	\$29,357	\$9,422	\$0	\$0	\$0	\$0	\$6,065	\$240	\$19,195	\$915	\$4,770	\$1,930	
C	Boyle Eng	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
D	MBA	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
E	O.P.C.	\$6,396	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$16,600	\$0	
F	LOR	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,279	\$0	\$0	\$0	
G	LIW	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,400	\$0	\$0	\$0	
H	Safe Probe	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Total	\$114,409	\$55,942	\$10,164	\$1,270	\$20,838	\$2,539	\$6,065	\$240	\$42,961	\$4,674	\$36,358	\$5,689	\$301,149

▨ = MBA's additional fee of \$12,660 has been absorbed into IRONWOOD PHASE ONE

▩ = Boyle's services for complete Plan Review has been eliminated and replaced with In-House Independent Plan Reviews prior to major submittals

▤ = Fees were drawn from the appropriate portion of the original Box Springs Road Fees

\$56,577

\$163,569

**AEI-CASC CONSULTING IRONWOOD AVENUE FEES
PHASES 2 AND 3
CITY OF MORENO VALLEY**

TASK DESCRIPTION	AEI-CASC Engineering										Total Hours	Reim Exp	TOTAL LABOR		
	Project Man	Design Man	Sr. Eng	Design Engineer	Designer	CAD Oper	Word Proc	Surv Man	Surv Crew (2)						
Phase 2: 100% Level Completion															
1. Project Management, Schedules & Project Controls		112	45										157	\$250	\$22,137
2. Preliminary Engineering															
a. Day Street Project Site Map					4				5	16			25		\$5,034
b. Day Street & Retaining Wall Geotechnical Report															\$0
c. Athens Storm Drain Analysis			4	4									8		\$1,052
d. Day Street Utility Investigation				2				4	2				6	\$50	\$654
e. Day Street Traffic Signal Preliminary Engineering															\$0
f. Day Street Geometric Layout			5	12	6	12	15						51	\$400	\$5,125
3. 65% Complete Plans, Specifications, and Estimate															\$0
a. General Plans (Cover, Legend, Notes, etc.)			2	4	8	4	5						26	\$50	\$2,580
b. Street Improvement Plans			4	8	22	14	20						68	\$400	\$8,720
c. Traffic Signals, Interconnect, Signage & Striping, and Traffic Control Plans			4		6		6						16	\$150	\$1,632
d. Retaining Wall Plans			8	18	16	24	24						90	\$100	\$9,108
e. Drainage Improvement Plans			9	18		30	36						93	\$50	\$8,955
f. Specifications			12					4					16		\$1,952
g. Quantities and Cost Estimate				2	13	2							17		\$1,845
h. In-House Review			2	42	4		4						52	\$100	\$6,118
4. Utility Notifications			8		4		1.6	4					17.6	\$225	\$1,825
5. Right of Way Legal Descriptions and Plats (Five total)			7	19	10		49	2					87		\$7,945
6. Real Estate Appraisals			4	2	2										\$1,024
7. 95% Plans, Specifications and Estimate															\$0
a. General Plans (Cover, Legend, Notes, etc.)			2	5	10	5	10						32		\$3,167
b. Street Improvement Plans			3	6	15	7	13						42	\$350	\$4,182
c. Traffic Signals, Signage & Striping, and Traffic Control Plans			4	2	6		12						24		\$2,298
d. Retaining Wall Improvement Plans			2	4	5	4	8						26	\$100	\$2,580
e. Drainage Improvement Plans			4	10		18	30						62	\$100	\$5,565
f. Storm Water Pollution Prevention Plan				6		15		4					28	\$90	\$2,774
g. Quantities and Cost Estimate				5	12	5							22		\$2,401
h. Specifications			4	8				4					16		\$1,952
i. In-House Review			2	30	4		4						40	\$200	\$4,654
j. Constructability Review (Supporting David Nelson, P.E.)					4		4						8	\$100	\$712
8. 100% PS&E															\$0
a. 100% Plans			3	5	12	6	16						41	\$400	\$3,644
b. 100% Specifications			4	5				8					20		\$2,170
c. Final Quantities and Cost Estimate				2	11								13		\$1,470
d. In-House Review			2	8	4		4						18	\$100	\$1,970
9. Final Approvals and PS&E (MyIars)			2	3	2	12	5						27	\$400	\$2,805
10. 4th Utility Notice - To Relocate Immediately			2		2			2					6	\$100	\$628
11. Right of Way Offers and Negotiations			2	4			2						8		\$288
12. PDT Progress Meetings			40	40				6					86	\$200	\$11,670
Subtotal Phase 2 Hours		164	203	214	189	152	279.5	36	6	16			1251.5	\$3,875	\$139,858
Phase 3: Advertising and Bidding Services and Construction Support															
1. Project Management, Schedules & Project Controls		30	22					8					60	\$150	\$7,852
2. Advertising & Bidding Services															\$0
a. Advertise Bidding Notices			20		8		16	16					60		\$5,844
b. Bid Holder Coordination			12	10	48			48					118		\$11,218
c. Conduct Pre-Bid Meeting		8	8		4			4					24	\$100	\$2,948
d. Bidding Assistance (Clarification/Addenda)			16	14	28	4	14	7					53		\$8,819
e. Bid Analysis & Recommendation			10	8	16	2		12					48	\$100	\$5,092
3. Construction Support															\$0
a. Pre-Construction Conference		4	4		8			8					24	\$100	\$2,624
b. Construction Assistance (Clarification/CCO's)			8		24		14	4					56		\$4,960
4. Project Close-Out															\$0
a. Prepare "As-Built" Record Drawings			8		10		40						58	\$200	\$5,008
b. Submit GASE 34 Documentation			4	2	12		6	4					26	\$50	\$2,784
Subtotal Phase 3 Hours		42	112	42	150	6	90	111	0	0			493	\$700	\$57,147
TOTAL LABOR HOURS		206	315	256	339	158	369.5	147	6	16			1744.5		

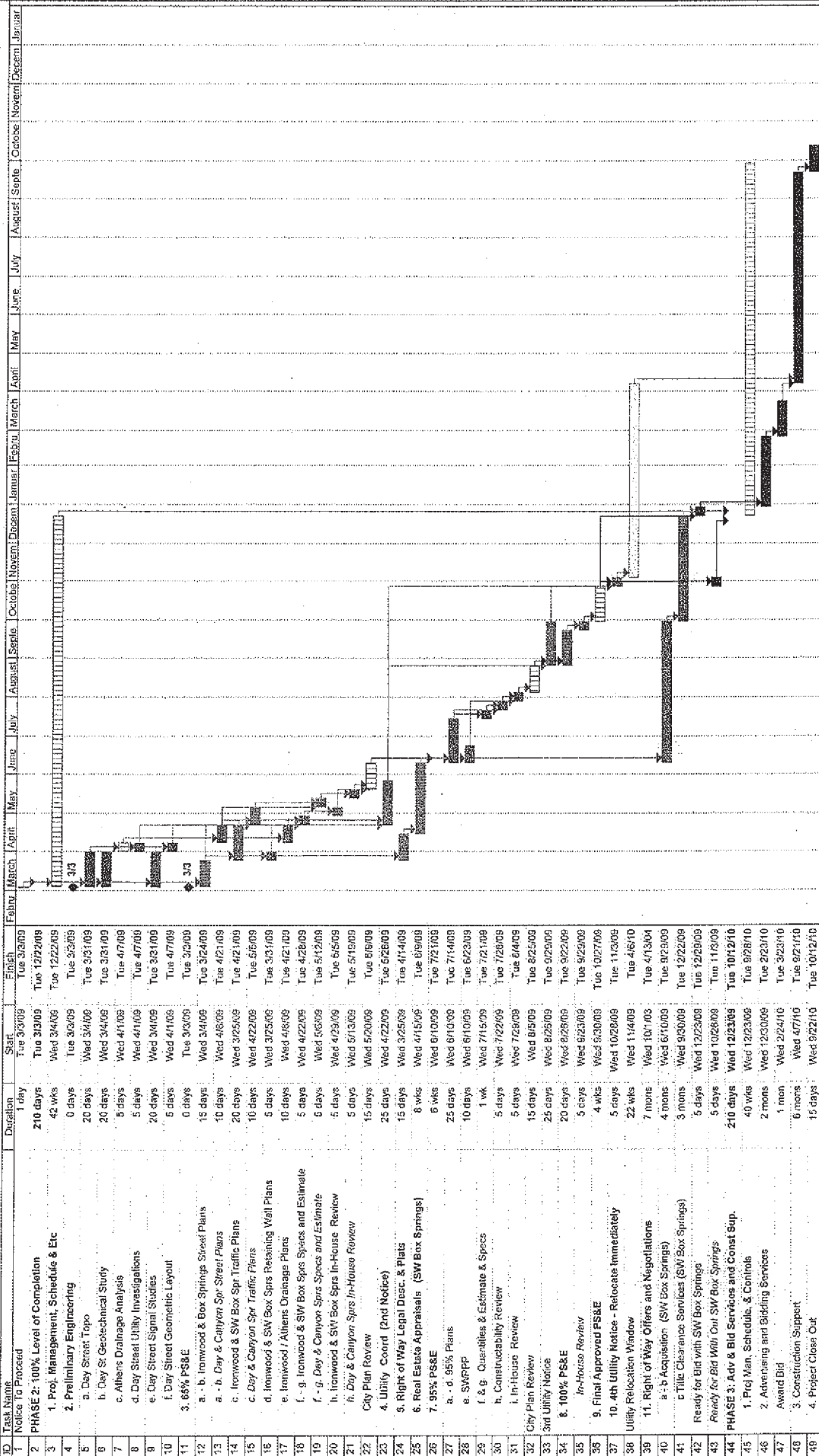
\$143,733

\$57,847

Fee Rates	\$141	\$141	\$122	\$108	\$88	\$70	\$65	\$141	\$237	
TOTAL LABOR	\$28,046	\$44,415	\$31,232	\$36,612	\$15,642	\$25,835	\$6,555	\$846	\$3,792	
									\$4,575	\$201,580

Ironwood Avenue Part One Phases 2 & 3 Project Number 10-41570027

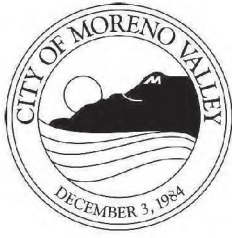
City of Moreno Valley



AEI-CASC ENGINEERING

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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>CAF</i>
CITY MANAGER	<i>EM</i>

Report to City Council

TO: Mayor and City Council

FROM: Steve Elam, City Treasurer

AGENDA DATE: February 24, 2009

TITLE: Approval of Annual Statement of Investment Policy

RECOMMENDED ACTION

Staff recommends that the City Council approve the attached Annual Statement of Investment Policy.

ADVISORY BOARD/COMMISSION/COMMITTEE RECOMMENDATION

The Annual Statement of Investment Policy has been reviewed by the Finance Sub-Committee, which recommends its approval.

BACKGROUND

In response to the Orange County bankruptcy and investment problems and in order to deal with tightening regulations and controls over local investment of public funds, Senate Bills 866 and 564 were signed into law and became effective January 1, 1996, creating California Government Code Sections 53601 and 53646, respectively. California Government Code Section 53601 delineates the types of investments allowed and defines various restrictions governing these investments. California Government Code Section 53646 originally required periodic review of the investment report and investment policy by the governing body of the local agency. However, this section has since been amended to make these periodic reviews optional. The City's Investment Policy, originally adopted in December, 1996, is in full compliance with the requirements of both the above-mentioned Government Code sections in addressing the types of investments allowed; the governing restrictions on these investments; the perfection of receipt through proper arrangements; and the reporting and review requirements.

DISCUSSION

The City's Investment Policy calls for the policy to be reviewed and adopted by the City Council annually. The policy was certified by the Association of Public Treasurers of the United States and Canada (APT US&C) in June 2006 and was last updated in February, 2008.

Over the past year, the economy has been dramatically impacted by the high levels of foreclosures and the resulting decline in real estate values. These factors, in turn, have resulted in a devaluation of mortgage-backed securities, a security type that had come to make up a large part of the investment portfolios of entities throughout the world. As these assets were devalued or collection became increasingly questionable, entities were forced to periodically write down the asset value to reflect the continually declining value. In turn, as entities tried to access short-term lines of credit for either operational needs or to meet capitalization requirements, lenders became unwilling to provide the resources due to the uncertainty of the value of these underlying assets. This decline in confidence resulted in what has been described as a credit freeze as lenders declined to provide credit to borrowers that badly needed the influx of cash. The credit freeze began to cause a liquidity crisis as entities were unable to access cash that had to this point been readily available from a variety of sources. The combination of these events began to cause downgrades in credit ratings of entities and investors became wary of further investing money in the market.

To counter these market factors, the Emergency Economic Stabilization Act of 2008 was passed in early October 2008, which provided the authority to the U.S. Treasury Department to provide assistance to the financial sector through what is now known as the Troubled Asset Relief Program (TARP). In mid-October 2008, another program called the Temporary Liquidity Guarantee Program (TLGP) was developed by the Federal Deposit Insurance Corporation (FDIC) to address the restoration of confidence in debt issued by financial institutions and to provide much-needed liquidity to the marketplace. Both of these programs have had a significant impact on the City's Investment Policy and the investment portfolio as a whole. TARP was designed to provide resources to aid entities with assets tied up in mortgage-backed securities and to provide for the development of programs to aid in the restructuring of troubled mortgages. TARP is a multi-faceted program, with one of its objectives being to provide stability in the mortgage-backed security market by buying these assets from institutions and reducing the stress on their balance sheets. Another goal is to provide some level of relief to homeowners at risk of default through refinancing programs and other means. While the TARP appears to have provided some stability back into the market and the risk of default appears to have greatly diminished, staff believes it is prudent to tighten control over investments in medium-term corporate notes and reduce exposure in this area until market conditions improve. Staff believes it can accomplish this objective by increasing the minimum rating on corporate notes from A/A1 to AAA/Aaa, shortening the maximum maturity from 5 years to 3 years, and reducing the maximum percentage of the portfolio from 30% to 20%.

The TLGP allows qualified financial institutions to issue senior unsecured debt that carries the full faith and credit of the Federal government under the Federal Deposit Insurance Act, making them AAA-rated securities. In the four months that the TLGP has been in place, more than a dozen financial and banking institutions have issued debt and all of the placements have been oversubscribed or demand has exceeded availability. In addition to the credit quality enhancement, the other component that is making these securities attractive is the yield spread. While these securities carry the full faith and credit of the Federal government (just as Treasury Bills and Notes), they provide a yield that is slightly higher than that provided by Government Sponsored Enterprise (GSE) debt issued by the Federal Home Loan Bank (FHLB), Federal National Mortgage Association (FNMA or “Fannie Mae”) and Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”). This program is intended to be a relatively short-term solution and is scheduled to sunset in June, 2012. Staff believes that securities offered under this program provide an opportunity to purchase securities for the City’s investment portfolio that offer the highest level of credit quality, allow for diversification of the portfolio, and provide an enhanced level of yield when compared to U.S. Treasury securities.

To address the economic conditions described above, staff is recommending the following changes to the Investment Policy:

Addition of following sections:

- Section IX(C)(8) – Allowable Investments, Commercial Paper issued under the Temporary Liquidity Guarantee Program
- Section IX(C)(13) – Allowable Investments, Medium-Term Notes issued under the Temporary Liquidity Guarantee Program

Modification of following sections:

- Section IX(C)(12) – Allowable Investments, Medium-Term Notes
 - Quality level increased to AAA/Aaa from A/A1
 - Maximum Portion of Portfolio decreased from 30% to 20%
 - Maturity Limit decreased from 5 years to 3 years

Several other minor changes have been made to the Investment Policy to update staff titles and more accurately reflect the investment review and oversight process. All changes made to the Investment Policy are shown in the attached redline version of the policy to facilitate Council’s review.

The attached Statement of Investment Policy is prepared in compliance with California Government Code Section 53646. All the investments contained within the portfolio are in full compliance with this Investment Policy.

ALTERNATIVES

The following alternatives are available to the City Council:

1. Adopt the Annual Statement of Investment Policy with the revisions proposed by staff. ***Staff recommends this alternative.***
2. Do not adopt the Annual Statement of Investment Policy with the revisions proposed by staff; maintain the current Investment Policy without revision. ***Staff does not recommend this alternative. Some of the proposed revisions are specified to allow investments under the Temporary Liquidity Guarantee Program (TLGP), which will be of benefit to the City's investment portfolio. Other revisions, while not required, reflect staff's intent to further restrict investments in medium-term notes given recent developments in the financial markets. Finally, other revisions are needed to update staff titles and more accurately reflect the investment review and oversight process.***
3. Provide staff with further direction.

FISCAL IMPACT

The proposed changes in the Statement of Investment Policy will have the overall effect of making the investment program more conservative which will impact the yield that can be achieved through the management of the program. These changes will tend to result in lower yielding investments which, in turn, should result in lower investment earnings.

CITY COUNCIL GOALS

Revenue Diversification and Preservation. Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services.

SUMMARY

California Government Code Sections 53601 and 53646 respectively delineate the types of investments allowed, define various restrictions governing these investments, and recommend a periodic review of the investment report and investment policy by the governing body of the local agency. The City's Investment Policy has established a review process whereby the Council reviews and adopts the policy annually. The policy identifies allowable investments, the reporting process related to the investments, safekeeping measures in maintaining assets, and the roles of staff in the management of the investment program.

NOTIFICATION

Publication of the agenda

ATTACHMENTS/EXHIBITS

Attachment 1 - Investment Policy (showing proposed revisions)

Prepared By:
Brooke McKinney
Treasury Operations Division Manager

Department Head Approval:
Steve Elam
City Treasurer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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INVESTMENT POLICY

PURPOSE: The City Council of the City of Moreno Valley (City) and its related authorities and agencies recognizes its responsibility to properly direct the investments of funds under its care. It is the purpose of this policy to provide guidelines for the prudent investment of unexpended funds in a manner which allows for maximum security, while at the same time providing the best investment return to meet the daily cash flow demands of the City, and conform to all applicable statutes pertaining to the investment of public funds. In instances in which the Policy is more restrictive than Federal or State law, the Policy supersedes.

I. Scope

- A.** Investments for the City and its related authorities and agencies will be made on a pooled basis including the City of Moreno Valley, the ~~Moreno Valley~~ **Community** Redevelopment Agency of the **City of Moreno Valley**, the Moreno Valley Community Services District, the Moreno Valley Public Facilities Financing Corporation, the Moreno Valley Public Financing Authority, and the Moreno Valley Industrial Development Authority. These funds are accounted for in the City's Comprehensive Annual Financial Report (CAFR) and include:
1. General Fund
 2. Special Revenue Funds
 3. Debt Service Funds
 4. Capital Project Funds
 5. Internal Service Funds
 6. Agency Funds
 7. Enterprise Funds
- B.** The City Council has the authority to allow investments that do not follow this policy as long as such investments are recommended by the City Manager and City Treasurer, and expressly authorized by the City Council.
- C.** At the time this policy is adopted, the portfolio may hold investments which were made in the past and in accordance with previous policies and existing State law, but do not meet the provisions of this policy. These past investments are grandfathered as permissible investments. The City may choose to hold these investments until their maturity, however, their maturity cannot be extended without the expressed authorization of the City Council.
- D.** Funds excluded from this policy
1. **Bond Proceeds.** The overriding policy for the investment of bond proceeds will be dictated by the bond documents governing such funds as long as the documents are approved by the City Council or related governing board. As a minimum standard for the investment of bond proceeds, the governing bond documents will have permitted investment language which follows guidelines used by one of the two largest bond insurers in the United States. This standard will also include investments permitted in this policy.

In addition the City may also invest bond proceeds in the State Local Agency Investment Fund (LAIF) bond proceeds program or municipally sponsored investment pools rated "Aam" or better with an average weighted maturity of 3 years or less. The investment of debt service reserve funds longer than 5 years is permitted by state law and is permitted, provided that the funds are readily available for bond payments or other bond purposes (refunding, defeasances, etc.). For defeasance escrows, the City may procure U.S. Treasury securities and State and Local Government Securities (SLGS) having a maturity longer than 5 years.

INVESTMENT POLICY

2. **Deferred Compensation Plans.** Investments related to the City's deferred compensation plans are not subject to this policy since third-party administrators manage them and the individual plan participants direct investment and mutual fund selection. Deferred compensation plans must be approved by the City Council.

II. Prudence

- A. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment considering the probable safety of their capital as well as the probable income to be derived.
- B. The standard of prudence to be used by investment officials shall be the "prudent person" and/or "prudent investor" standard and shall be applied in the context of managing an overall portfolio.
- C. Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

III. Objectives

- A. The City's investment philosophy sets the tone for its policies, practices, procedures and objectives that control the investment function. The investment of funds will be guided by the primary objectives of safety, liquidity and a reasonable market rate of return.
 1. **Safety** – Safety of principal is the foremost objective of the investment program. The City will undertake investments in a manner that ensures the preservation of capital in the portfolio taken as a whole. To attain this objective, the City will practice diversification by investing funds with different financial institutions and across various types of securities that offer independent returns.
 2. **Liquidity** – The City will maintain sufficient cash and short-term investment instruments, which together with projected revenues, will provide sufficient liquidity so that the City will be able to meet all operating requirements which might be reasonably anticipated. To the extent possible, the maturity of investments selected will match the City's projected cash requirements, including an amount to cover reasonably estimated contingencies.
 3. **Reasonable market rate of return (Yield)** – The City's investment portfolio will be designed with the objective to attain a benchmark rate of return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio.
- B. The investment function will have the ongoing objectives of: assuring compliance with Federal, State and local laws governing the investment of public funds, maintaining reserves for long-term projects and contingencies, and establishing quality standards and limits related to the type of investments made and with which institutions investments are placed.

INVESTMENT POLICY

IV. Delegation of Authority

- A. The City of Moreno Valley Municipal Code specifies that the City Council will appoint the City Treasurer. By resolution, the City Council has appointed the **Financial & Administrative Services** Director of Finance to serve as the City Treasurer. The Treasurer serves as the chief investment officer for the City and is authorized to invest or deposit the City's funds in accordance with this policy, California Government Code Sections 53600 and 53630 et seq., and all other related Federal and State laws. The City Treasurer also serves as the Treasurer for the **Community** Redevelopment Agency of the City of Moreno Valley, the Moreno Valley Public Financing Authority, the Moreno Valley Public Facilities Financing Corporation, the **Moreno Valley** Community Services District of ~~Moreno Valley~~ and other related City entities. In the absence of the City Treasurer, and unless otherwise delegated, the ~~Revenue Officer~~ **Treasury Operations Division Manager**/Assistant City Treasurer will serve as the Acting Treasurer. The City Treasurer may appoint deputy treasurers to act on behalf of the City. The City Treasurer will provide written authorization in delegating any of his/her authority.
- B. The City Manager will provide periodic oversight to the investment function which includes but is not limited to reviewing monthly investment reports issued by the City Treasurer.
- C. The City Council's primary responsibilities over the investment function include approving the Investment Policy, annually reviewing such policy, reviewing ~~quarterly~~ **monthly** investment reports issued by the Treasurer, authorizing bond documents and other unique financing transactions, and authorizing any deviations from the City's investment policies.
- D. The Finance Sub-Committee of the City Council will provide oversight to the investment function through the periodic review of the investment report at their committee meetings.

V. Investment Procedures

- A. The City Treasurer shall establish a separate written investment procedures manual for the operation of the investment program consistent with this policy. This procedure manual shall include, but is not limited to, the following:
1. Safekeeping
 2. Master repurchase agreements
 3. Wire transfer agreements
 4. Collateral/Depository agreements
 5. Broker/Dealer relationships
- B. Cash handling and cash management are integral components of an effective investment management program. In keeping with the Administrative Policy on Cash Control, the aforementioned procedure manual shall include references to the following:
1. Cash collection practices
 2. Depository practices
 3. Cash flow issues
 4. Cash flow projections
 5. Anti-theft/Anti-fraud practices
 6. Banking agreements
 7. Accounting practices

INVESTMENT POLICY

- C. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the City Treasurer.
- D. Allocation of Pool Interest
 - 1. All interest earnings related to the investment pool will be allocated to the General Fund unless specifically directed by Federal or State statute, City Council directive or contractual agreement.
 - 2. Pool interest earnings will be allocated to the eligible and appropriate funds or programs based on their contribution to the pool. The allocation methodology will be maintained by the City Treasurer.

VI. Ethics and Conflict of Interest

- A. All officials, staff members and consultants, involved in the investment functions will refrain from personal business activity that could conflict with the execution of the investment function or which may impair their ability to make impartial investment decisions. Officials, staff members, and consultants, will disclose to the City Manager any financial interests with a financial institution, provider, dealer or broker that conducts business with the City.
- B. Officials, staff members and consultants will further disclose any personal financial positions that could be related to the City's cash and investment portfolio.
- C. All bond issue participants, including but not limited to, underwriters, bond counsel, financial advisors, brokers and dealers will disclose any fee sharing arrangements or fee splitting to the City Manager prior to the execution of any transactions. The providers must disclose the percentage share and approximate dollar amount share to the City prior to the execution of any transactions.

VII. Investment Controls

- A. The City Manager shall oversee and ensure that the City Treasurer implements and maintains a system of internal investment controls and segregated responsibilities of the investment function in order to prevent the following:
 - 1. Fraud
 - 2. Theft
 - 3. Loss of principal
 - 4. Loss of control over funds
 - 5. Inaccurate reporting
 - 6. Negligence
 - 7. Over-reliance on a single employee for investment decisions
- B. Internal controls should include but are not limited to (for a more specific list of internal controls see the investment management plan) :
 - 1. Segregation of duties (e.g., the purchaser of investments is different than the person recording the transaction)
 - 2. Reconciliation of investment report and cash balances
 - 3. Dual authorization of transactions
 - 4. ~~Annual review of investment policy and investment report by independent third party.~~ *(Deleted because covered under paragraph VII.C.)*

INVESTMENT POLICY

- C. An external auditor will review the investment program annually in order to provide reasonable assurance that policies and procedures are complied with.

VIII. Authorized Financial Dealers and Institutions

- A. The City Treasurer will obtain financial information from qualified institutions to determine if the institution markets in securities appropriate to the City’s needs, can assign qualified sales representatives and can provide written agreement to abide by the conditions set forth in the City of Moreno Valley Investment Policy.
- B. The City Treasurer will maintain a list of financial institutions and broker/dealers authorized to provide investment services to the City who are authorized to provide investment services in the State of California. An eligible designation does not guarantee that the City will do business with the firm or institution.
- C. The following criteria will be used in determining investment providers
 - 1. Broker/Dealers: The purchase by the City of any investment other than those purchased directly from the issuer shall be purchased from a broker/dealer firm designated as a “Primary Government Dealer” by the Federal Reserve Bank of New York or a regional dealer that qualifies under SEC Rule 15C3-1 (uniform net capital rule).
 - 2. Banks: The City shall purchase securities from banks which are:
 - a. Nationally or State chartered banks
 - b. Registered as investment securities dealers
 - c. Ranked in the top 25% of its peer group as independently rated by a nationally recognized ranking service.
 - 3. Investment Bankers, Underwriters and Financial Advisors: The purchase by the City of any investments from these providers in the course of completing a bond transaction must be expressly authorized by the City Council after such a provider discloses their commission, spread or fee in approximate dollar amount. Otherwise, the acquisition of such investments must be procured from the broker/dealers customarily used by the City.
 - 4. The Federal Reserve Bank: Direct purchases of Treasury bills, notes and bonds from the U.S. Federal Reserve Banks branches are allowed and are exempt from quality requirements.
- D. All financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must provide the following information to the City Treasurer:
 - 1. A completed City of Moreno Valley Broker/Dealer Questionnaire.
 - 2. Audited financial statements
 - 3. Proof of National Association of Security Dealers (NASD) certification
 - 4. Trading resolution
 - 5. Proof of state registration
 - 6. Certification of having read and willingness to comply with City’s investment policy.
- E. The City Treasurer will conduct an annual review of the financial condition and registrations of brokers/dealers on the City’s approved list.

INVESTMENT POLICY

- F. A current audited financial statement is required to be on file for each financial institution and broker/dealer in which or with which the City invests.
- G. Certificates of deposit will not be placed with an institution once it has received a cease and desist order from any bank regulatory agency.

IX. Authorized and Suitable Investments (with quality and limitation guidelines)

- A. The California Government Code sections 53600 et seq. govern the allowable investments into which a local government agency can enter. These Government Code sections also stipulate as to the portfolio percentage limits and investment quality standards for some but not all permitted investments. The Government Code sections provide a starting point for establishing the City quality standards, percentage limits and maturity levels. In present form, this policy exceeds the standards set forth by the State. Should the Government Code become more restrictive than this policy, the Government Code restrictions shall prevail.
- B. Whenever a maximum allowable percentage of the portfolio is stipulated for any type of security as detailed below, the limit or maximum allowable is determined by the portfolio size or composition at the close of the date on which the security is purchased.
- C. Allowable investments (for a more detailed description of these investment types and for the state limitations see the Investment Management Plan)

(items presented in italics denote policy restrictions which are more restrictive than those dictated by state law)

- 1. U.S. Treasury bills, notes and bonds
Quality: Equivalent to "AAA"
Portion of Portfolio: not to exceed 70%
Maturity Limit: 5 years
- 2. Government Sponsored Enterprises (GSE's) or U.S. Agencies
Quality: Equivalent to "AAA"
Portion of Portfolio: not to exceed 70%
Issuer Limit: not to exceed 50%
Maturity Limit: 5 years
- 3. California State Local Agency Investment Fund (LAIF)
Quality: Not Applicable
Portion of Portfolio: not to exceed 50%
Maturity Limit: Average maturity of fund must be less than 3 years
- 4. Bonds, notes or other indebtedness of the State of California
Quality: rated "AA" or better
Portion of Portfolio: not to exceed 10%
Maturity Limit: 5 years
- 5. Bonds, notes or other indebtedness of local agencies in California
Quality: rated "AA" or better
Portion of Portfolio (not to exceed): 10%
Issuer Limit: not to exceed 5%
Maturity Limit: 5 years or less

INVESTMENT POLICY

6. Bankers Acceptances
Quality: Only issuers deemed eligible for purchase by the Federal Reserve Bank
Portion of Portfolio: not to exceed 10%
Issuer Limit: not to exceed 10%
Maturity Limit: 180 days
7. Commercial Paper
Quality: "A1" (Standard and Poors) and "P1" (Moody's) *no split rating*
Portion of Portfolio: not to exceed 15%
Issuer Limit: not to exceed 10% in combination with medium-term notes
Maturity Limit: 270 days
8. Commercial Paper issued under the Temporary Liquidity Guarantee Program (TLGP)
Quality: "A1" (Standard and Poors) and "P1" (Moody's) *no split rating*
Portion of Portfolio: not to exceed 15%
Issuer Limit: not to exceed 10% in combination with medium-term notes
Maturity Limit: 270 days
9. Time Deposits and Non-negotiable Certificates of Deposit
Quality: *Deposits in excess of federal insurance programs must be with entities in the Top 25% of peer group as independently rated.*
Portion of Portfolio: not to exceed 20%
Issuer Limit: not to exceed: \$500,000
Collateral: Federally insured or 110% in US Treasuries
Maturity Limit: 2 years
10. Negotiable Certificates of Deposit
Quality: rated "A", "A-1", "P-1" or better
Portion of Portfolio: not to exceed 30%
Issuer Limit: not to exceed 10%
Maturity Limit: 5 years
Additional Requirement: Issued by national or state chartered bank, savings or federal association, state or federal credit unions or state licensed branch of foreign bank.
11. Repurchase Agreements
Quality: Not applicable
Portion of Portfolio: not to exceed 20%
Counterparty Limit: not to exceed 5%
Collateral: 102% US Treasuries marked-to-market weekly
Maximum Term: 3 months
Additional Requirements: A Master Repurchase Agreement must be signed with the bank or broker/dealer who is selling the securities to the City.
12. Medium-term Notes (Corporate Obligations)
Quality: ~~"A" rate or better~~ "AAA/Aaa" rated (with split ratings, the lower rating must meet the standard)
Portion of Portfolio: not to exceed 30% 20%
Issuer Limit: not to exceed 10% in combination with commercial paper and notes issued under the TLGP
Maturity Limit: 5-years 3 years

INVESTMENT POLICY

- 13. Medium-term Notes issued under the Temporary Liquidity Guarantee Program (TLGP)**
Quality: "AAA" rated or better
Portion of Portfolio: not to exceed 20%
Issuer Limit: not to exceed 10% in combination with commercial paper and Medium-term Notes
Maturity Limit: Must mature on or before June 30, 2012
- 14. Mutual Funds and Money Market Accounts**
Quality: "AAA" or highest rating for its class
Portion of Portfolio: not to exceed 15%
Issuer Limit: not to exceed 10%
 Other restrictions: No back load funds and all funds must be composed of instruments permitted by the Government Code.
 Maturity Limit: 3 years average weighted maturity or less
- 15. Other State Government, Local Government or Joint Powers Authority Investment Pools**
Quality: Equivalent to "AAAf/S1"
Portion of Portfolio: not to exceed 20%
Issuer Limit: not to exceed 10%
 Maturity Limit: 3 years average maturity or less
- D. Investment Pools, Mutual Funds, and Money Market Accounts:** A thorough investigation of the pool/fund/account is required prior to investing, and on a continual basis. A questionnaire shall be developed which will answer the following general questions:
1. A description of eligible investment securities, and a written statement of investment policy.
 2. A description of interest calculations and distribution and how gains and losses will be treated.
 3. A description of how the securities are safeguarded (including the settlement process), and how often the securities are priced and the program audited.
 4. A description of who may invest in the program, how often and what is the allowable size of deposits and withdrawals, and any limitations as to number of transactions.
 5. A schedule for receiving statements and portfolio listings.
 6. Are reserves, retained earnings, etc. utilized by the pool/fund?
 7. Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?
- E. Repurchase Agreements** are legal and authorized by policy. In order to invest in repurchase agreements the City must obtain a signed Master Repurchase Agreement from the participating bank or broker/dealer.
- F. Prohibited Investment Transactions and Derivatives:**
1. The Government Code specifically prohibits certain types of investment instruments for municipalities. In addition to those prohibitions, the following investments are not permitted:
 - a. Reverse Repurchase Agreements
 - b. Financial futures or financial option contracts
 - c. Security lending
 2. Additionally the City shall not invest in any security that could result in zero interest accrual if held to maturity.
 3. Due to the complexity of the securities market and ever-changing market conditions, it is difficult to define derivatives and specifically prohibit their acquisition. Therefore, the City

INVESTMENT POLICY

desires to limit the potential risk of derivatives by specifically prohibiting the most common types of derivatives with certain market exposures. These prohibited derivatives include but are not limited to: inverse floaters, interest only securities derived from mortgages, residual securities, structured notes, forward based derivatives, forward contracts, forward rate agreements, futures contracts, interest rate futures contracts, foreign currency futures contracts, option based derivatives, option contracts, interest rate caps, interest rate floors, swap contracts, interest rate swaps, interest rate collars, foreign currency swaps, cross currency exchange agreements, fixed rate currency swaps, basis swaps, equity swaps, fixed rate equity swaps, floating rate equity swaps and commodity swaps.

4. Leveraging
 - a. The City may not purchase investments on a margin or through a margin account.
 - b. The General Portfolio may not be leveraged by more than 30% through the issuance of tax and revenue anticipation notes (TRANS). The proceeds of any TRANS issue are to be invested in accordance with the guidelines in this policy, with investment maturities not to exceed the life of the TRANS.
 - c. The City may not leverage its investments through the use of reverse repurchase agreements.

X. Collateralization

- A. Bank Deposits: Under provisions of the Government Code, California banks and savings and loan associations are required to secure the City's deposits by pledging government securities with a value of 110% of principal and accrued interest. State law also allows financial institutions to secure City deposits by pledging first trust deed mortgage notes having a value of 150% of the City's total deposits.
- B. Certificates of deposit:
 1. The market value of securities that underlay certificates of deposit shall be valued at 110% of the market value of principal and accrued interest.
 2. The City Treasurer, at his/her discretion may waive the collateral requirement for deposits up to the \$100,000 which are covered by the Federal Deposit Insurance Corporation.
- C. Repurchase Agreements
 1. The market value of securities that underlay certificates of deposit shall be valued at 102% of the market value of principal and accrued interest.
 2. The value shall be adjusted no less than weekly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back to 102% no later than the next business day.
- D. A clearly marked evidence of ownership, safekeeping receipt, must be supplied to the City and retained.
- E. The City chooses to limit collateral to US Treasuries.

INVESTMENT POLICY

- F. Collateral will always be held by an independent third-party with whom the entity has a current written custodial agreement.
- G. The right of collateral substitution is granted based on the approval of the City Treasurer and City Manager.

XI. Safekeeping and Custody

- A. Third-party safekeeping is required for all investments. Securities may be maintained by a banking institution or a broker/dealer firm for safekeeping as long as the securities are held in the City's name.
- B. Third-party safekeeping arrangements will be approved by the City Treasurer and will be corroborated by a written custodial agreement.
- C. All investment transactions of the City will be conducted using standard delivery vs. payment (DVP) procedures.
- D. All securities held by the safekeeper on behalf of the City shall have the City of Moreno Valley as the registered owner, and all interest and principal payments and withdrawals shall indicate the City of Moreno Valley as the payee.
- E. All bank deposits will be FDIC insured or deposited with institutions that comply with the State collateral requirements for public funds.
- F. Securities used as collateral for repurchase agreements with a maturity from one to seven days can be held in safekeeping by a third party bank trust department or by the broker/dealer's safekeeping institution, acting as the agent for the City, under the terms of a custody agreement executed by the selling institution and by the City specifying the City's "perfected" ownership of the collateral.

XII. Diversification

- A. Investments contained within the portfolio will be diversified by security type, institution and maturity.
- B. At no time shall the City increase the amount of funds kept with a financial institution or in a single type of investment instrument once its share of the general portfolio reaches 70%.

XIII. Maximum Maturities

- A. The City Treasurer will maintain sufficient liquidity in cash and short-term investments, which together with projected revenue receipts will meet the cash flow requirements of the City for the upcoming six months.
- B. To the extent possible, the City will attempt to match its investments with anticipated cash flow requirements.
- C. The City will not directly invest in securities maturing more than five years away from the settlement date. In any case, where a cash flow is matched with an investment which exceeds the five year limit, the investment must be approved by the City Council.
- D. The average weighted maturity of the general portfolio shall not exceed 3 years. The general portfolio does not include bond proceeds or deferred compensation funds.

INVESTMENT POLICY

- E. To the extent possible, longer-term investment maturities will be spaced so that a portion of such investments mature each year to cover unanticipated emergencies.

XIV. Performance Standards

- A. The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and cash flow needs.
- B. The City employs a passive investment strategy. Given this strategy, the basis used to determine whether market yields are being achieved shall be the State of California’s LAIF return rate.
- C. While the City employs a passive investment strategy, the City Treasurer will make his/her best effort to observe, review and react to changing conditions that affect the portfolio.

XV. Reporting

- A. The City Treasurer will provide a monthly report to the City Manager and City Council which will include the following information by security held at the end of the reporting period:
 - 1. Investment Type
 - 2. Issuer
 - 3. Maturity Date
 - 4. Par Value
 - 5. Market Value
 - 6. Book Value
 - 7. Weighted Average Maturity
 - 8. Source of Market Valuation
 - 9. Monies maintained within the treasury
 - 10. Funds, investments and loans that are under the management of contracted parties
- B. Quarterly, and within 30 60 days of the completion of the quarter, the City Treasurer will submit a report to the City Council in open public meeting with the same investment information provided to the City Manager and City Council on a monthly basis with the addition of the following data:
 - 1. A description of the compliance with the statement of investment policy, or manner in which the portfolio is not in compliance.
 - 2. A statement denoting the ability of the City to meet cash flow requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available.

XVI. Investment Policy Adoption

- A. Annually, the City Treasurer will render to the City Council a Statement of Investment Policy, including any changes or revisions, to be reviewed and approved at a public meeting.

XVII. Record Retention

- A. The following investment or cash management documents will be maintained in accordance with Chapter 2.60 of Title 2 of the City of Moreno Valley Municipal Code:

INVESTMENT POLICY

1. Investment Reports and supporting documentation
2. Third-party statements of assets held
3. Investment permanent files
4. Market pricing documentation

ORDINANCE NO. 784

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF MORENO VALLEY AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

The City Council of the City of Moreno Valley does ordain as follows:

SECTION 1.

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

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

SECTION 2. EFFECT OF ENACTMENT:

2.1 Except as specifically provided herein, nothing contained in this ordinance shall be deemed to modify or supersede any prior enactment of the City Council which addresses the same subject addressed herein.

SECTION 3. NOTICE OF ADOPTION:

3.1 Within fifteen days after the date of adoption hereof, the City Clerk shall certify to the adoption of this ordinance and cause it to be posted in three public places within the city and cause it to be published at least once in the Press-Enterprise, a newspaper of general circulation, published and circulated in the City of Moreno Valley.

SECTION EFFECTIVE DATE:

4.1 This ordinance shall take effect on March 26, 2009.

APPROVED AND ADOPTED this 24th day of February, 2009.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ORDINANCE JURAT

[Clerk's office will prepare]

[NOTE: Any attachments or exhibits to this ordinance should follow this jurat.]

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ORDINANCE NO. 785

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, AMENDING THE OFFICIAL ZONING ATLAS OF SAID CITY, TO INCLUDE A CHANGE OF ZONE (PA07-0088) FROM BP (BUSINESS PARK) TO LI (LIGHT INDUSTRIAL) FOR AN APPROXIMATE 104.9 ACRE PORTION OF THE SITE, INCLUDING A CHANGE OF ZONE FOR A 87 FOOT AREA BETWEEN PARCELS 2 AND 3 FROM BP (BUSINESS PARK) TO CC (COMMUNITY COMMERCIAL) AND CHANGE OF ZONE FOR 126 FEET OF LAND BETWEEN PARCELS 1 AND 4 FROM CC (COMMUNITY COMMERCIAL) TO LI (LIGHT INDUSTRIAL), ALL ENCOMPASSED WITHIN AN APPROXIMATELY 158 ACRE SITE (INCLUDING RELEVANT OFFSITE IMPROVEMENTS AND DRAINAGE) COMMERCIAL LAND USES) ON THE PROPERTY LOCATED SOUTH OF AND ADJACENT TO HIGHWAY 60 BETWEEN REDLANDS BOULEVARD AND THEODORE STREET ALONG FUTURE EUCALYPTUS (FIR AVENUE)

The City Council of the City of Moreno Valley does ordain as follows:

SECTION 1 GENERAL:

1.1 The applicant, Highland Fairview, has filed Application PA07-0088, requesting an amending of the City of Moreno Valley Municipal Code and Official Zoning Atlas as described in this ordinance.

1.2 The Planning Commission conducted a public hearing on January 8, 2009, and a continued meeting on January 15, 2009, with project forwarded to the City Council on said date.

1.3 Pursuant to the provisions of the law, public hearings were held before the City Council on February 3, 2009 and February 10, 2009.

1.4 The matter was fully discussed, and the public and other agencies presented testimony and documentation.

1.5 An Environmental Impact Report is proposed for the project under California Environmental Quality Act (CEQA) guidelines.

SECTION 2 FINDINGS:

2.1 Based upon substantial evidence presented to this City Council on February 3, 2009 and February 10, 2009, including written and oral staff reports, and the record from the public hearing, this City Council hereby specifically finds as follows:

1. Conformance with General Plan Policies – The proposed use is consistent with the General Plan, and its goals, objectives, policies and programs.

FACT: The change of zone is consistent with the General Plan land use designation on the property of Business Park/Light Industrial. Although the General Plan designation of BP would allow the project as currently proposed, the current zoning designation of BP would not allow for the large industrial warehouse structure as proposed under Phase 1 of the plot plan. Therefore, the applicant has requested a change of zone from a business park land use designation (BP) to a light industrial designation (LI) to allow for large industrial warehouse buildings to occur. A change of zone from BP to LI would allow a 1,820,000 square foot building as well as an industrial warehouse operation with some ancillary retail sales of product to occur.

Land uses allowed under the proposed LI zoning category allow for indoor wholesale, storage and distribution buildings uses, but also allow building sizes of 50,000 square feet or greater that facilitate general manufacturing or warehouse uses with frequent truck traffic. In order to provide greater compatibility between current and proposed land uses, the applicant has proposed a buffer zone within approximately 440 feet south of the project's southern property fence line along future Eucalyptus Avenue. Development with such uses as residential homes, schools or hospitals would not occur within this buffer area based on deed restrictions placed on all properties within the zone. All other areas to the east (vacant BP or Business Park land), west (vacant CC or Community Commercial land) and north (Highway 60) would not contain sensitive receptors and so not include a land use buffer.

The project and proposed change of zone as a whole will include conditions and mitigation measures for the lessening of proposed environmental impacts including noise, air quality, traffic/transportation and climate change (however, not all below significant levels) based on the analysis and recommendations contained in the Final Environmental Impact Report (EIR) and corresponding Statement of Overriding Considerations. Said conditions of approval and mitigation measures have been included

to address specific requirements and assist in providing compatibility of land uses, including, but not limited to site improvements and aesthetic enhancements.

2. Conformance with Zoning Regulations – The proposed use complies with all applicable zoning and other regulations and is consistent with the purposes and intent of this title.

FACT:The proposed project, consisting of industrial and commercial land uses requires a change of zone from BP (Business Park) to LI (Light Industrial) on an approximate 104.9 acre portion of a 158 acre site (265.3 acres including offsite improvements and drainage), which is being proposed to allow for larger industrial buildings.

The second portion of the change of zoning designations includes a change of zone between proposed Parcels 2 and 3 (an enlargement of 87 feet in width in the CC land use district and subtractions of 87 feet of width included within the BP or Business Park zone) In addition, a change of zone will occur in Parcels 1 and 4 (a reduction of 126 feet in width of the CC land use district and an increase of 126 feet in width of LI or Light Industrial land use). The change of small land use areas between the four parcels will allow additional commercial development to occur on Parcel 3 and additional industrial development to occur on Parcel 4.

The project including proposed changes of zone, will include conditions, and mitigation measures for the lessening of proposed environmental impacts including aesthetics, agriculture, noise, air quality, climate change (however, not below significant levels) based on the analysis and recommendations contained in the Final Environmental Impact Report (EIR) and corresponding Statement of Overriding Considerations. Said conditions of approval and mitigation measures have been included to address specific requirements and assist in providing compatibility of land uses, including, but not limited to site improvements and aesthetic enhancements.

3. Health, Safety and Welfare – The proposed use will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.

FACT:An Environmental Impact report (EIR) has been prepared for the overall project, including the proposed Change of Zone. Findings and a Statement of Overriding Considerations have been

prepared for said project to deal with impacts related to aesthetics, agriculture, air quality, noise and climate change/greenhouse gas emissions. Said EIR is required to be certified and approved as a part of the proposed project. Said document is accompanied by a Mitigation Monitoring Program, which will ensure the completion of required mitigation measures for the project. The project site is surrounded by Highway 60 to the north, and primarily vacant residential and business park properties to the south, east and west.

Specific mitigation measures have been provided to lessen the impacts (but not all below significant levels) for public health, safety and the welfare of surrounding properties and improvements in the vicinity of the project. This includes, but is not limited to the limitation of project lighting and glare, and enhanced architectural and landscaping treatment to soften views and reduce visual character as well as light and glare to less than significant levels for aesthetics. Air quality mitigation measures include a fugitive dust control plan with application of best management practices to control fugitive dust during construction, emission control equipment with a minimum of Tier II diesel particulate filter emission controls resulting in a minimum reduction of 50 percent of particulate matter, proper maintenance of construction equipment, a traffic control plan to minimize operational truck traffic and dust during construction, as well as low VOC paints, and other best management practices. Noise mitigation measures include the restriction of construction vehicles on Redlands Boulevard, south of future Eucalyptus Avenue, the restriction of nighttime grading within 1,200 feet of residences south of future Eucalyptus Avenue, specific sound barriers in place to limit daytime construction noise, equipment maintenance to include silencers, mufflers and acoustic covers, and the restriction of material stockpiles within 1,200 feet of all residences south of Highway 60. It is also important to note that an approximate 440 foot land use buffer is included as a land use mitigation measure to buffer the proposed project from future sensitive receptors which could be constructed south of the site. Other mitigation measures throughout the EIR reduce the remaining environmental impacts noted in the EIR to less than significant levels.

With mitigation measures imposed for items including noise, air quality, climate/Greenhouse gases, aesthetics and agricultural, the environmental impacts from the proposed project and use will be significantly reduced but still considered as significant and unavoidable, thereby requiring a statement of overriding considerations. Said mitigation measures included with the project

will lessen environmental impacts on any existing or future properties within the general vicinity of the proposed development and project and reduce impacts to public health, safety and welfare.

SECTION 3 - AMENDMENT OF THE OFFICIAL ZONING ATLAS

3.1 The City of Moreno Valley Official Zoning Atlas, as adopted by Ordinance No. 359, on April 14, 1992, of the City of Moreno Valley, and as amended thereafter from time to time by the City Council of the City of Moreno Valley, is further amended by placing in effect the zone or zone classification as shown on the attached map (marked "Exhibit A" and included herein by reference and on file in the office of the City Clerk), PA07-0088.

SECTION 4 EFFECT OF ENACTMENT:

4.1 Except as specifically provided herein, nothing contained in this ordinance shall be deemed to modify or supersede any prior enactment of the City Council which addresses the same subject addressed herein.

SECTION 5 NOTICE OF ADOPTION:

5.1 Within fifteen days after the date of adoption hereof, the City Clerk shall certify to the adoption of this ordinance and cause it to be posted in three public places within the city.

SECTION 6 EFFECTIVE DATE:

6.1 This ordinance shall take effect thirty days after the date of its adoption.

APPROVED AND ADOPTED this 24th day of February, 2009.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ORDINANCE JURAT

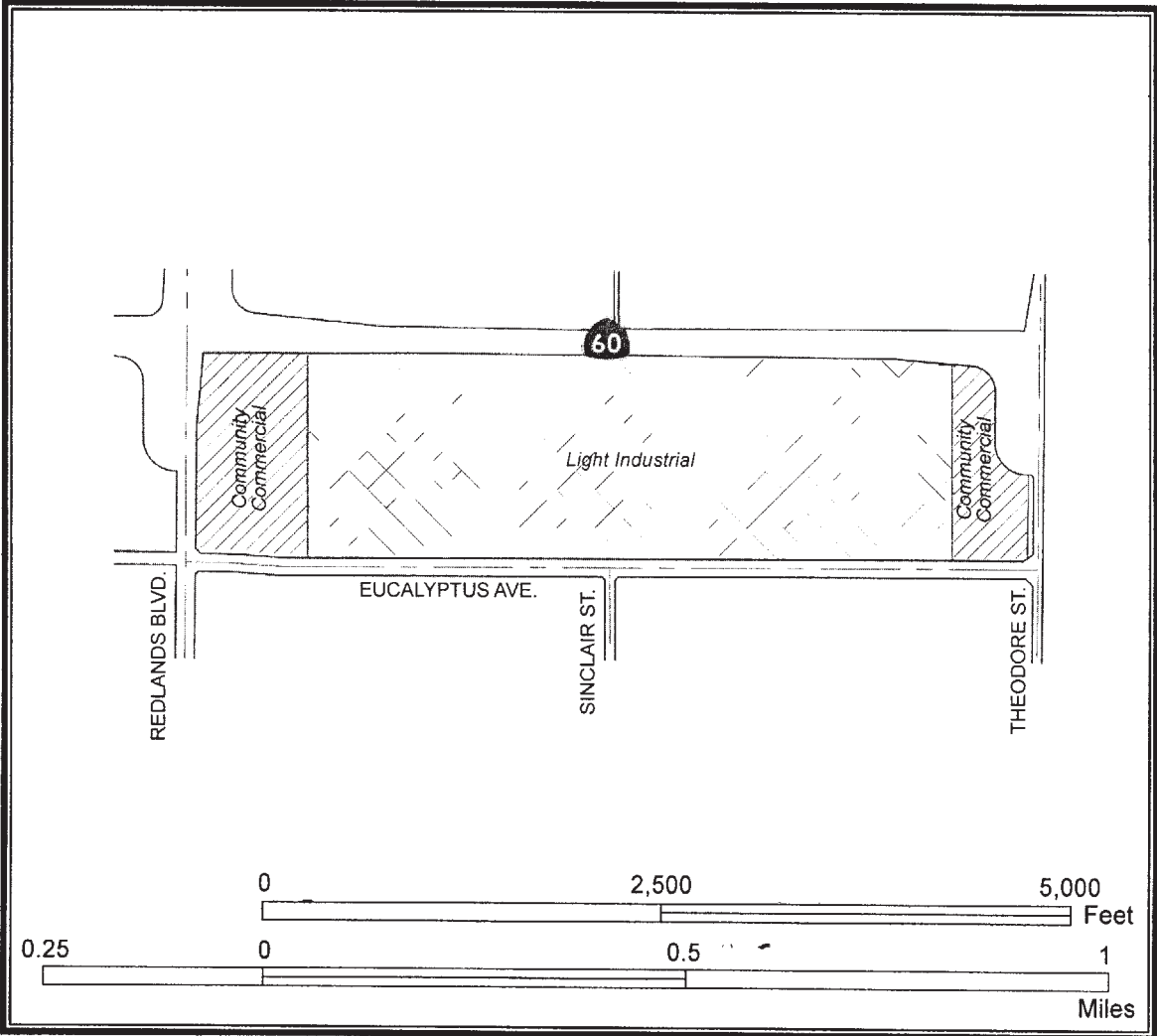
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[NOTE: Any attachments or exhibits to this ordinance should follow this jurat.]



CHANGE OF ZONE

Application No. PA07-0088



LEGEND

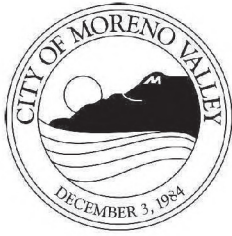


Light Industrial

Community Commercial



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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>RDH</i>
CITY MANAGER	<i>KA</i>

Report to City Council

TO: Mayor and City Council

FROM: Chris A. Vogt, PE., Public Works Director/City Engineer

AGENDA DATE: February 24, 2009

TITLE: PA04-0058 – APPROVAL OF PROPOSED RESOLUTION SUMMARY VACATION OF A DRAINAGE DEDICATION, CONVEYED FOR PUBLIC USE BY A DECLARATION OF DEDICATION RECORDED SEPTEMBER 17, 1980 AS INSTRUMENT NO. 169556 OF OFFICIAL RECORDS OF SAID COUNTY

RECOMMENDED ACTION

Staff recommends that the City Council:

1. Approve and adopt Resolution No. 2009-13, summarily vacating all of the drainage dedication conveyed for public use by a declaration of dedication recorded September 17, 1980 as instrument No. 169556 of official records of said county
2. Instruct the City Clerk to certify said resolution and transmit a copy of the resolution to Land Development for further processing to the County Recorder's office for recordation.

ADVISORY BOARD/COMMISSION RECOMMENDATION

Not applicable

BACKGROUND

The construction of the Perris Isle Apartments improvements caused the drainage from Bridal Trail Road to be re-routed through a new storm drain system, and within a new recorded drainage easement. This made an existing drainage dedication, recorded as instrument No. 169556 on September 17, 1980, obsolete at the end of Bridal Trail Road.

DISCUSSION

Land Development and the City Attorney's staff reviewed the applicant's request for the summary vacation of the drainage dedication at the end of Bridal Trail Road. The new development of Perris Isle Apartments has made the drainage dedication obsolete by re-routing the drainage through new drainage improvements. Vacating the dedication will remove this encumbrance from the property's title.

ALTERNATIVES

1. Adopt the proposed Resolution authorizing a vacation of the drainage dedication at the end of Bridal Trail Road. *This drainage dedication is obsolete due to the new drainage improvements installed as a part of Perris Isle Apartments.*
2. Do not adopt the proposed Resolution authorizing a vacation of a drainage dedication at the end of Bridal Trail Road. *A drainage encumbrance would remain in place for public use, serving no purpose.*

FISCAL IMPACT

There is no fiscal impact to the City.

CITY COUNCIL GOALS

Not applicable

SUMMARY

Applicant has applied for a vacation of a drainage dedication at the end of Bridal Trail Road due to the drainage improvements of Perris Isle Apartments making it obsolete. Staff has reviewed the application and recommends approval.

NOTIFICATION

Notice has been given to the various utility companies. The public has been notified by publication of agenda.

ATTACHMENTS/EXHIBITS

Attachment 1 – Proposed Resolution
 Exhibit “A” – Legal Description
 Exhibit “B” – Plat

 Prepared By:
 Mark Westover R.C.E
 Associate Engineer, Land Development

 Department Head Approval:
 Chris A. Vogt, P.E.
 Public Works Director/City Engineer

 Concurred By:
 Mark W. Sambito P. E.
 Engineering Division Manager, Land Development

 Concurred By:
 Guy Pegan, P.E.
 Senior Engineer, Land Development

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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RESOLUTION NO. 2009-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, ORDERING THE SUMMARY VACATION OF A DRAINAGE DEDICATION AT THE END OF BRIDAL TRAIL ROAD

WHEREAS, the City Council of the City of Moreno Valley, California, was offered a drainage dedication for public use located at the end of Bridal Trail Road; and

WHEREAS, this dedication was never accepted by the City of Moreno Valley and is obsolete due to new drainage improvements from the Perris Isle Apartments; and

WHEREAS, no public money was expended for maintenance of said dedication

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1

That pursuant to the provisions of Chapter 4, Part 3, of Division 9 of the Streets and Highways Code of the State of California, designated the "Public Streets, Highways, and Service Easements Vacation Law," the following described portion of Drainage Dedication is summarily vacated and abandoned:

That said Drainage Dedication is located in the City of Moreno Valley, County of Riverside, State of California described in the attached legal description and illustrated on the plat attached hereto and made a part hereto and marked Exhibits "A" and "B", respectively.

Excepting and reserving from the vacation any easement for existing public utilities and public service facilities, together with the right to maintain, operate, replace, remove or renew such facilities, pursuant to Section 8340 of the Streets and Highway Code.

Attachment 1

1

Resolution No. 2009-13
Date Adopted: February 24, 2009

Section 2

That pursuant to the provisions of Sections 831 of Title 3 and 1112 of Title 4, Part 2, Division 2 of the California Civil Code of the State of California, title to the above-described Drainage Dedication revert to the owner of the underlying fee thereof, free from use as an easement for drainage purposes except as noted in Section 1.

Section 3

That the City Clerk of the City of Moreno Valley, California, shall cause a certified copy of this Resolution to be recorded in the office of the Recorder for the County of Riverside, California.

APPROVED AND ADOPTED this 24th day of February, 2009.

Richard A. Stewart, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

RESOLUTION JURAT

[Clerk's office will prepare]

[NOTE: Any attachments or exhibits to this resolution should follow this jurat.]

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APN: 479-070-049

GRANTEE: PERRIS ISLE LIMITED PARTNERSHIP,
A CALIFORNIA LIMITED PARTNERSHIP

LEGAL DESCRIPTION

IN THE CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING ANY PORTION OF THE FOLLOWING DESCRIBED PARCEL OF DEDICATED LAND LYING WITHIN PARCEL 1 OF LOT MERGER NO. 381/AND CERTIFICATE OF COMPLIANCE RECORDED JULY 27, 2007 AS INSTRUMENT NO. 2007-0488029 OF OFFICIAL RECORDS OF SAID COUNTY, SAID PARCEL 1 BEING LOCATED WITHIN PARCEL MAP NO. 24833 ON FILE IN BOOK 167 OF PARCEL MAPS, PAGES 77 AND 78, RECORDS OF SAID COUNTY:

1. DRAINAGE DEDICATION CONVEYED FOR PUBLIC USE BY DECLARATION OF DEDICATION RECORDED SEPTEMBER 17, 1980 AS INSTRUMENT NO. 169556 OF OFFICIAL RECORDS OF SAID COUNTY.

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

PREPARED BY OR UNDER THE DIRECTION OF:



DERRILL G. WHITTEN JR., P.L.S. 7816
EXPIRES: 12/31/09

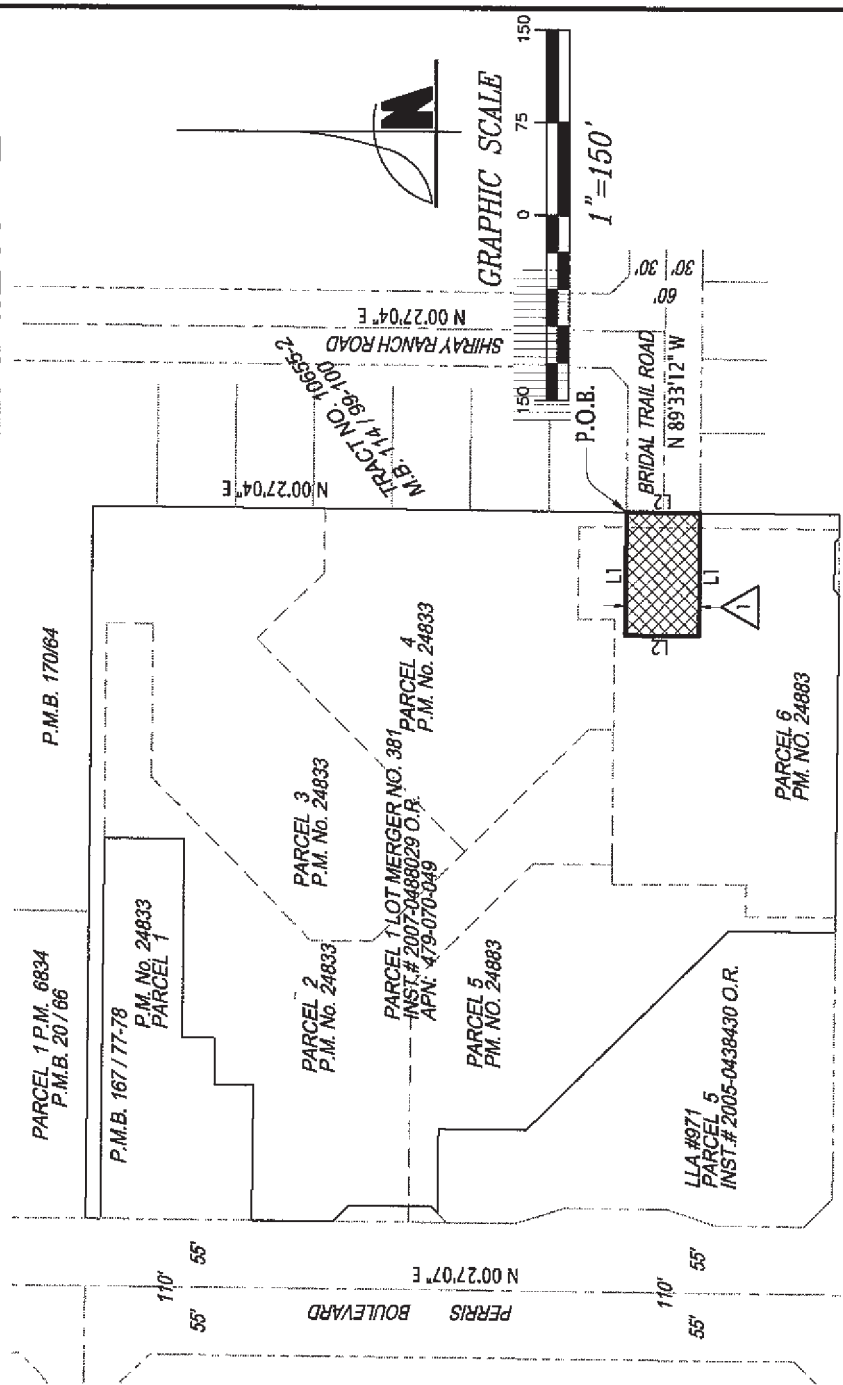
12/23/08
DATE



Exhibit "A"

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SECTION 5, T.3S., R.3W., S.B.M. EXHIBIT "B"



LEGEND

VACATION OF DRAINAGE DEDICATION INTERESTS ACQUIRED BY VIRTUE OF INST. NO. 169556, REC. 9/17/80, O.R.

POINT OF BEGINNING AT THE NW CORNER OF LOT "E" OF TRACT 10655-2 M.B. 114/100

VACATION OF DRAINAGE DEDICATION OF DOCUMENT RECORDED SEPT. 17, 1980 AS INST. # 169556 O.R. 6,000 SQ. FT. MORE OR LESS

LINE	BEARING	LENGTH
L1	N89°33'12"W	100.00
L2	N00°27'04"E	60.00'



Derrill G. Whitten Jr. 12/23/08
 DERRILL G. WHITTEN JR. P.L.S. No. 7816 DATE
 Lic. Exp. 12-31-09
 EXP. 12/31/09

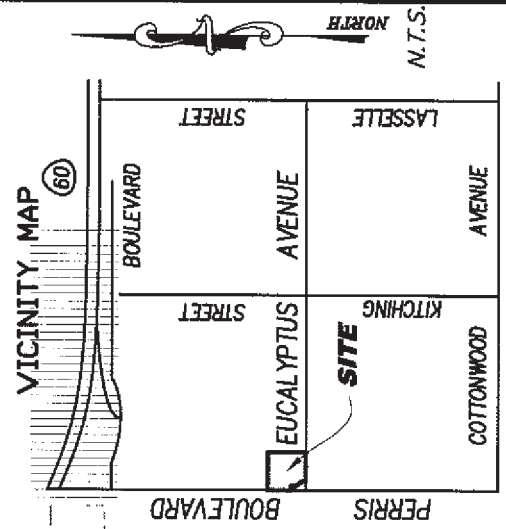


CORNERSTONE ENGINEERING, INC.
 208 Oak St.
 Bakersfield, CA 93304
 TEL: (661) 525-9474

CONSULTING CIVIL ENGINEERING AND LAND SURVEYING
 www.cornerstoneeng.com

OWNER:
 PERRIS ISLE LIMITED PARTNERSHIP,
 A CALIFORNIA LIMITED PARTNERSHIP

DATE: 12/22/08 DRAFTER: TDG COMP. NO.: 240-01-00 EXHIBIT_VACATE_DRAINAGE.DWG JOB NO.: 240-01-00 SHEET 1 OF 1



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Report to City Council

TO: Mayor and City Council

FROM: Jane Halstead, City Clerk

AGENDA DATE: February 24, 2009

TITLE: CITY COUNCIL REPORTS ON REIMBURSABLE ACTIVITIES

RECOMMENDED ACTION

Staff recommends that the City Council receive and file the Reports on Reimbursable Activities for the period of February 4-17, 2009.

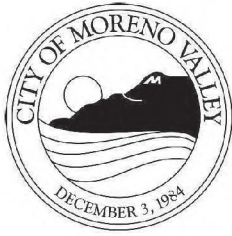
<i>Reports on Reimbursable Activities</i> February 4-17, 2009		
Council Member	Date	Meeting
William H. Batey II		None
Bonnie Flickinger	2/6/09	Moreno Valley Hispanic Chamber of Commerce - Adelante
	2/7/09	Riverside County Office of Education Address
	2/13/09	Moreno Valley Chamber of Commerce Legislation Action Committee
Robin N. Hastings		None
Jesse L. Molina		None
Richard A. Stewart	2/7/09	Boy Scouts of America Council Annual Recognition Dinner

Prepared By: Cindy A. Miller, Executive Assistant to the Mayor/City Council
 Department Head Approval: Jane Halstead, City Clerk

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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APPROVALS	
BUDGET OFFICER	<i>cap</i>
CITY ATTORNEY	<i>RDH</i>
CITY MANAGER	<i>RA</i>

Report to City Council

TO: Mayor and City Council

FROM: John Anderson, Chief of Police

AGENDA DATE: February 24, 2009

TITLE: CALIFORNIA OFFICE OF TRAFFIC SAFETY (OTS) GRANT FUNDING OPPORTUNITY

RECOMMENDED ACTION

Staff recommends that the City Council take the following action:

- 1) Staff recommends that the City Council approve the grant application and authorize acceptance (if granted) of the California Office of Traffic Safety grant in the amount of \$196,615.17, entitled "DUI Enforcement and Awareness Program."

ADVISORY COMMITTEE RECOMMENDATION

The Public Safety Sub-Committee supports this proposal.

BACKGROUND

The Moreno Valley Police Department receives grants from the Office of Traffic Safety (OTS) on a routine basis. Currently, the Police Department has been awarded two mini-grants for FY 08-09. One mini-grant is used to fund DUI/Driver's License checkpoints and the other mini-grant funds programs directed at enforcement of seat belt and child restraint violations. Most grants offered through OTS are for a one year period and they run concurrently with the federal fiscal year.

DISCUSSION

In November 2008, staff received notice of a competitive grant program offered by OTS called the "DUI Enforcement and Awareness Program." This grant can be used to fund

law enforcement operations involving DUI/Driver's License checkpoints, DUI saturation patrols, stakeout operations of known DUI offenders, and driver's license court sting operations.

The Police Department is proposing to apply for this grant and if granted, conduct approximately 10 DUI/Driver License checkpoints, 24 DUI saturation patrols, 2 DUI warrant service operations, 12 known DUI offender stakeout operations, and 4 court sting operations. The amount of \$196,615.17 was requested by the Police Department for FY 09-10. The Police Department believes this amount will provide assistance in enhancing traffic safety within the City of Moreno Valley.

In addition to funding these operations with this grant, staff proposes that \$9,830 be used to provide training for traffic personnel. These funds would be used to enhance skills and knowledge relating to traffic related offenses such as DUI.

ALTERNATIVES

The Council has the following alternatives:

- 1) Approve the application and acceptance (if granted) of the OTS Grant titled "DUI Enforcement and Awareness Program" for \$196,615.17. **Staff recommends this alternative.**
- 2) Not approve the application for the OTS Grant titled "DUI Enforcement and Awareness Program." **Staff does not recommend this alternative.**

FISCAL IMPACT

There is no requirement to match funds associated with this grant. Therefore, there will be no impact to the General Fund.

CITY COUNCIL GOALS

The application of the OTS Grant entitled, "DUI Enforcement and Awareness Program," will meet the City Council Public Safety Goal of providing a safe and secure environment for people and property within the community, and provide a safer environment for the motoring public utilizing the roadways within the City of Moreno Valley.

STAFF RECOMMENDATION

Staff recommends that the City Council approve the grant application and authorize acceptance (if granted) of the California Office of Traffic Safety grant in the amount of \$196,615.17.

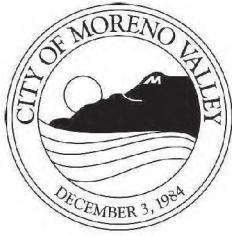
Prepared By
Launa Jimenez, Management Analyst

Department Head Approval
John Anderson, Chief of Police

Concurred By

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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APPROVALS	
BUDGET OFFICER	<i>CAF</i>
CITY ATTORNEY	<i>CAF</i>
CITY MANAGER	<i>PM</i>

Report to City Council

TO: Mayor and City Council

FROM: Chris A. Vogt, P.E., Public Works Director/City Engineer

AGENDA DATE: February 24, 2009

TITLE: ADOPT A MITIGATED NEGATIVE DECLARATION (MND) FOR REALIGNMENT OF RECHE VISTA DRIVE FROM THE INTERSECTION OF PERRIS BOULEVARD AND HEACOCK STREET TO THE NORTH CITY LIMITS
PROJECT NO. 01-12566722

RECOMMENDED ACTION

Staff recommends that the City Council:

1. Adopt a Mitigated Negative Declaration (MND) for the Realignment of Reche Vista Drive from the Intersection of Perris Boulevard and Heacock Street to the North City Limits, Project No. 01-12566722.

BACKGROUND

On June 24, 2008 the City entered into an Agreement for Professional Consultant Services with KOA Corporation to provide planning and engineering services, including an environmental assessment Initial Study in compliance with the California Environmental Quality Act (CEQA) and City requirements.

DISCUSSION

This project includes construction of improvements along a new alignment which is the northerly extension of Perris Boulevard where it currently intersects with Heacock Street. This will replace the existing winding portion of Reche Vista Drive from the Intersection of Perris Boulevard and Heacock Street to the North City Limits. The new work will consist of grading, asphalt paving to provide two twelve-foot wide travel lanes (one each direction), eight-foot wide paved shoulders (each side), a center twelve-foot wide turning lane at intersections, a traffic signal at Heacock Street and Perris Boulevard, storm drain improvements and other appurtenant improvements. The new improvements will join existing improvements at both termini.

The California Environmental Quality Act (CEQA) Section 15070 (Title 14 – California Code of Regulations), states that a Negative Declaration (ND) or a Mitigated Negative Declaration (MND) may be prepared for a project when the Initial Study indicates that no significant effect on the environment will result from project implementation or when mitigation measures as described in the Initial Study are incorporated in the project implementation.

Based on the findings of the Initial Study prepared for the project by the City's Consultant, the City Planning Staff has determined, in compliance with CEQA and the City's Rules to Implement CEQA, that preparation of a Mitigated Negative Declaration is recommended in that mitigation measures included in the Initial Study and ultimately incorporated into the project specifications will reduce all potential environmental impacts to an acceptable level. The Mitigated Negative Declaration and Initial Study/Environmental Checklist Form are attached.

A notice was published on January 31, 2009 in the Press Enterprise describing the Project and advising the public of the preparation of a Mitigated Negative Declaration (MND); notice of time and place where the environmental documents could be inspected; and notice that the City Council would consider approval of a Mitigated Negative Declaration (MND) for the Project (or appropriate modifications or alternatives to the Project) on the date of this meeting. This notice advised that comments could be submitted to the City prior to or at this meeting. No comments were received prior to the meeting.

ALTERNATIVES

1. Adopt a Mitigated Negative Declaration (MND) for the Realignment of Reche Vista Drive from the Intersection of Perris Boulevard and Heacock Street to the North City Limits, Project No. 01-12566722. *This is the recommended alternative.*
2. Do not adopt a Mitigated Negative Declaration (MND) for the Realignment of Reche Vista Drive from the Intersection of Perris Boulevard and Heacock Street to the North City Limits, Project No. 01-12566722. *This alternative is not recommended as it will delay the completion of the realignment of Reche Vista Drive.*

FISCAL IMPACT

The City of Moreno Valley will fund the design of this improvement project from Development Impact Fee (DIF) Arterial Streets program (Account No. 416.78626) and Measure A (Account No. 125.66722). **There is no impact to the General Fund.**

In 2002, the City secured programmed funding through RCTC utilizing federally funded Surface Transportation Program (STP) funds in the amount of \$1,967,000 towards the construction of this project.

ANTICIPATED SCHEDULE:

Complete Construction Plans, Specifications and Estimate	July 2009
Caltrans Funding Obligation Complete.....	August 2009
Start Construction.....	November 2009

CITY COUNCIL GOALS

Upon approval of the recommended action contained in this staff report the following City Council Goals would be furthered:

PUBLIC SAFETY:

Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incidents, and provide protection for citizens who live, work and visit the City of Moreno Valley.

PUBLIC FACILITIES AND CAPITAL PROJECTS:

Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

POSITIVE ENVIRONMENT:

Create a positive environment for the development of Moreno Valley’s future.

SUMMARY

The Initial Study for this project identifies mitigation measures to be incorporated into the project specifications. These mitigation measures will reduce all potential environmental impacts to an acceptable level in compliance with CEQA thus permitting the City to adopt a Mitigated Negative Declaration (MND) for the project.

ATTACHMENTS

- Attachment “A” - Project Location Map
- Attachment “B” - Mitigated Negative Declaration with Initial Study

Prepared By:
 Michael D. Myers, P.E.
 Consultant Project Manager

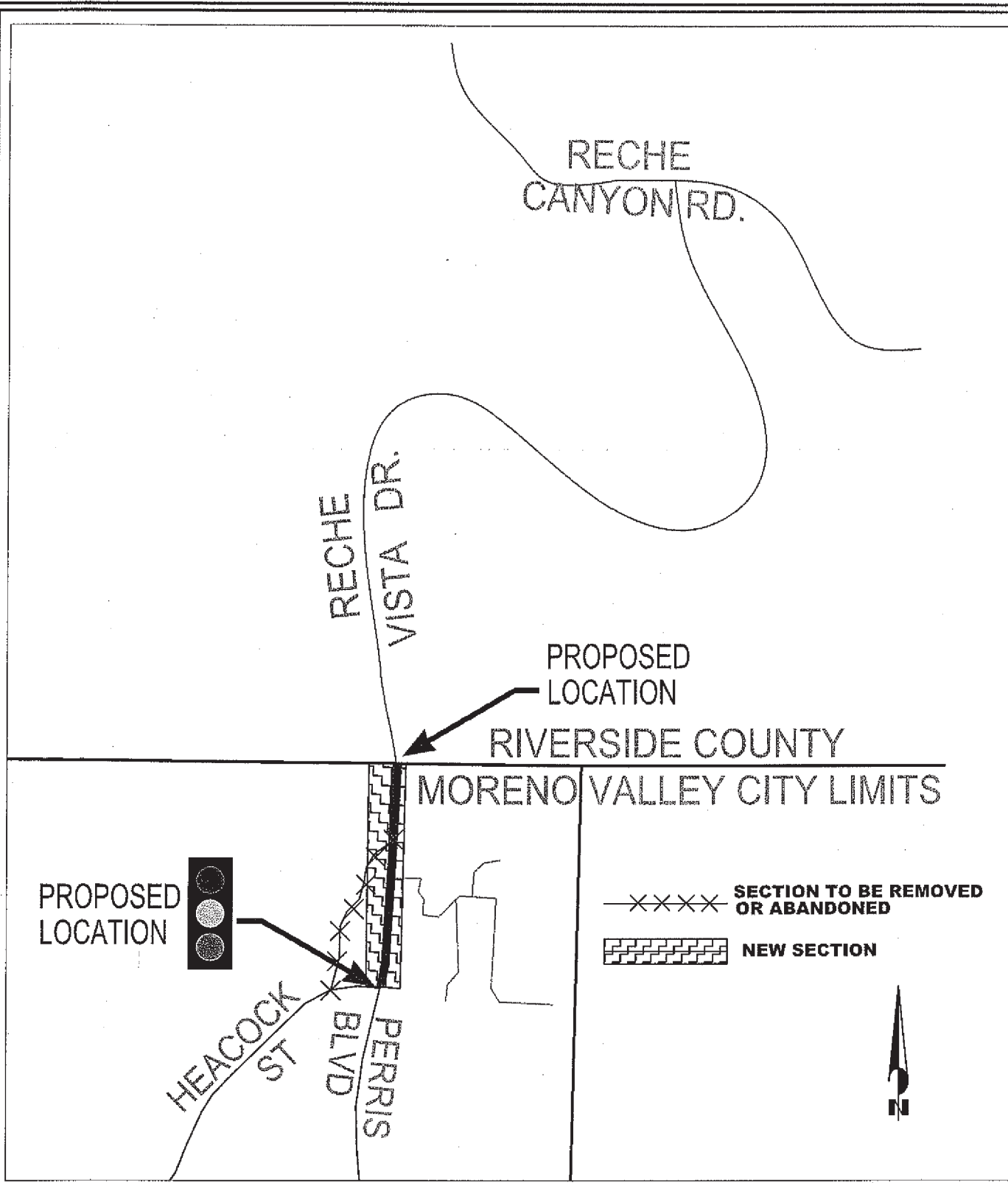
Concurred By:
 John Terell, AICP
 Planning Division Manager/Planning Official

Concurred By:
 Prem Kumar, P.E.
 Deputy Public Works Director/Assistant City Engineer

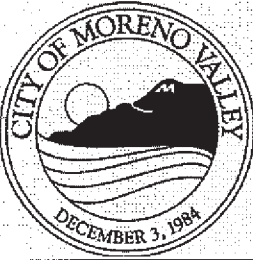
Department Head Approval:
 Chris A. Vogt, P.E.
 Public Works Director/City Engineer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

W:\CapProj\CapProj\PROJECTS\MikeM - 01-12566722 - Reche Vista Dr Realignment from HckPerris to N City Lmts\CC Reports\Staff Report - Mitigated Negative Declaration (CC 02-24-09).doc



LOCATION MAP



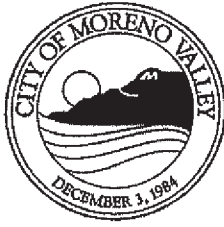
Public Works Department
Capital Projects Division

Scale: None

ATTACHMENT "A"

RECHE VISTA DRIVE REALIGNMENT
 (PERRIS BLVD./HEACOCK ST. TO THE NORTH CITY LIMITS)
 PROJECT NUMBER 01-12566722

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INITIAL STUDY/
ENVIRONMENTAL CHECKLIST FORM
CITY OF MORENO VALLEY

1. Project Title:

Reche Vista Drive Realignment

2. Lead Agency Name and Address:

City of Moreno Valley
14177 Fredrick Street,
P.O. Box 88005
Moreno Valley, CA 92552-0805

3. Contact Person and Phone Number:

Chris Ormsby
(951) 413-3229

4. Project Location:

Reche Vista Drive – From the intersection of Perris Boulevard/Heacock Street to City limit

5. Project Sponsor's Name and Address:

City of Moreno Valley
Public Works Department
Capital Projects Division
14177 Fredrick Street,
Moreno Valley, CA 92552-0805

6. General Plan Designation:

Rural Residential: Max 2.5 du/ac

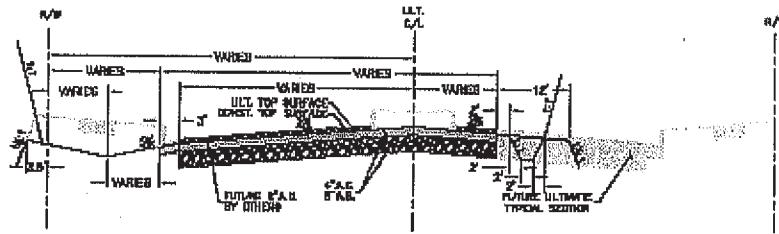
7. Zoning:

Rural Residential: Max 2.5 du/ac

8. Description of the Project:

The City of Moreno Valley proposes to realign a portion of Reche Vista Drive between the Perris Boulevard, Heacock Street and the northerly City limits. New improvements will be constructed over existing right of way extending northerly from the Perris Boulevard/Heacock Street Intersection and will consist of a two-lane roadway with paved shoulders (Figure 1). The existing Perris Boulevard/Heacock Street Intersection will be a signalized Tee-intersection. The need for this project is to provide roadway infrastructure improvements that will reduce traffic congestion, improve safety, and reduce travel times. The project will replace a winding switchback portion of Reche Vista Drive between the Intersection of Reche Vista Drive/Heacock Street and the north City limits (Figure 2). The improved roadway will have a length of approximately 2,000 feet.

Figure 1 - City of Moreno Valley General Plan Cross-Section



CROSS-SECTION
(NOT TO SCALE)

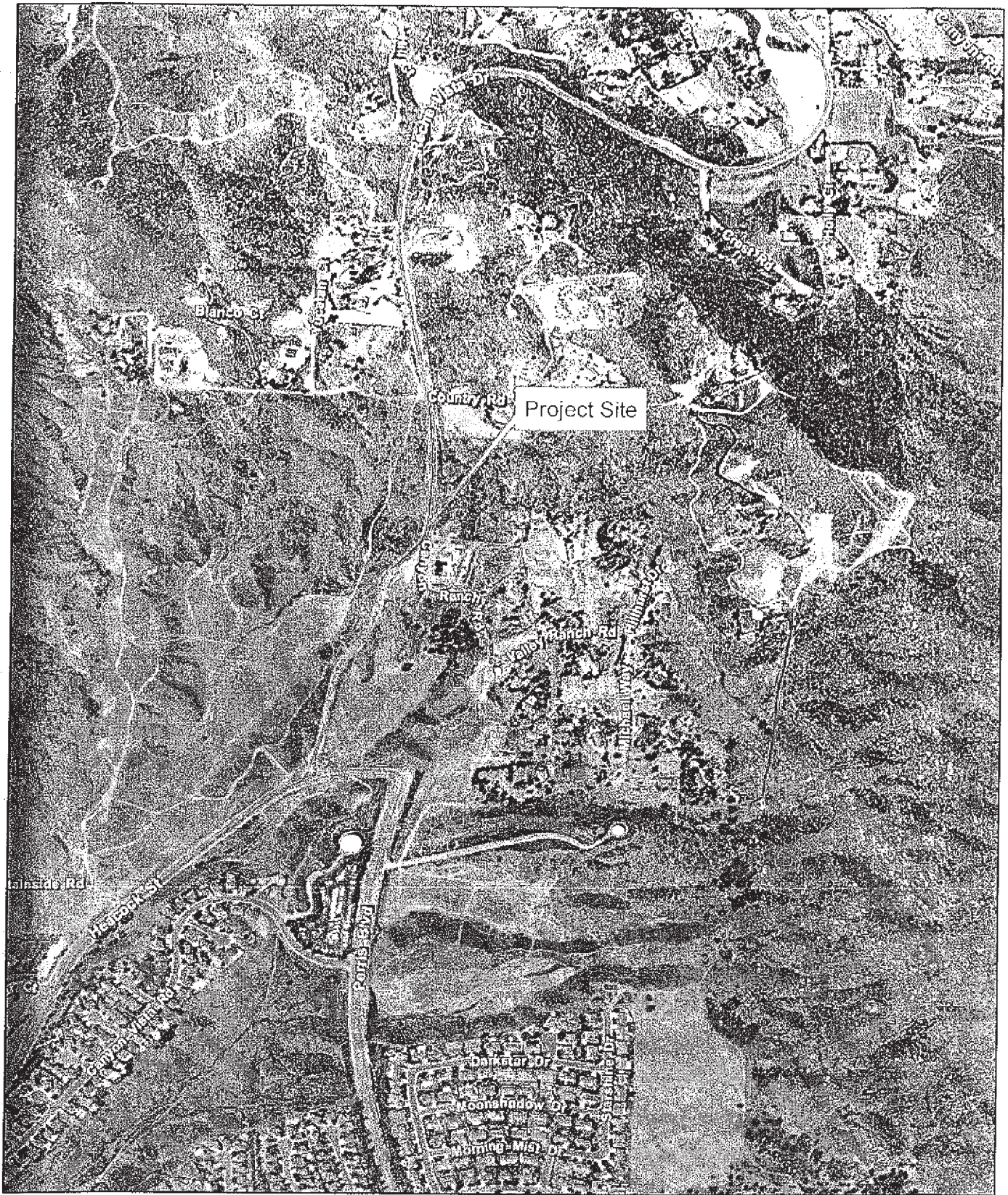
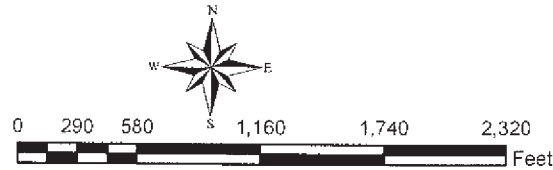
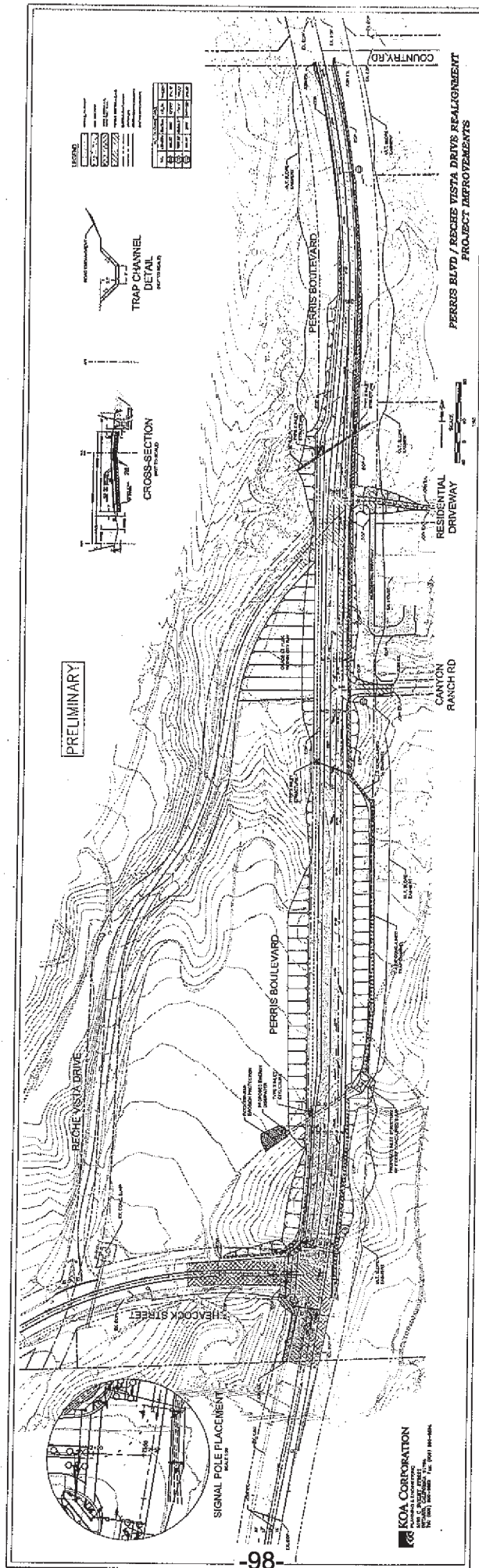


Figure 2
Project Location





Project Components

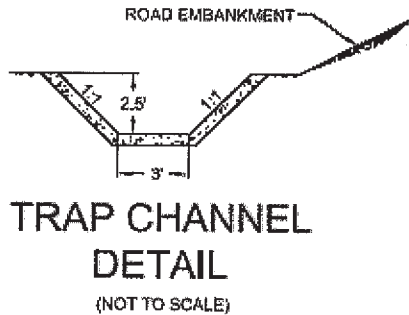
Traffic Signal

A three-way traffic signal light would be installed at the Tee-intersection of Reche Vista Drive/Perris Boulevard/Heacock Street.

Stormwater Drainage

Runoff water would be collected from the road and area to the east into a concrete lined trapezoidal channel and directed south to an eight foot deep concrete lined sump and directed southwest through a 60 inch drainage pipe and discharged through a rip rap energy dissipater on the west side of the proposed realignment. The rip rap energy dissipater would reduce the water flow velocity to minimize the potential for erosion and siltation as water would continue along its existing flow pattern towards an existing concrete sump located at the northeast corner of the existing Reche Vista Drive/Heacock Street intersection.

Figure 3 - Trap Channel Detail



Pavement Restriping

Upon completion of construction, the existing portions of Reche Vista Drive/Perris Boulevard would be restriped and raised pavement markers installed to mark the new lanes and ensure alignment with the new portion of Reche Vista Drive.

Construction

The construction schedule for the Proposed Project would follow the City's standard construction hours and would be prohibited between 8 p.m. and 6 a.m. during the week and 8 p.m. and 7 a.m. weekends and holidays (Policy 6.3.6).

The project would implement traffic control measures per City Code 8.04.030, which incorporates the Manual on Uniform Traffic Control Devices (MUTCD) 2003, Parts 5 and 6, prepared by the Federal Highway Administration and MUTCD 2003 California Supplement, Parts 5 and 6, prepared by the state of California Department of Transportation (Caltrans).

Project Best Management Practices

Street Sweeping - City Landscaping and Maintenance staff shall be employed to implement street sweeping of paved areas monthly, including prior to rainy season (October 1 through April 30).

Drainage Facility Inspection and Maintenance - City maintenance staff shall be employed to implement drainage facility inspection and maintenance of drainage facilities. Drainage facilities must be cleaned in accumulated sediment / debris fills 25% or more of the sediment / debris storage capacity.

9. **Surrounding Land Uses and Setting:** (Briefly describe the project's surroundings)

The Proposed Project site is surrounded by residential development, existing roads, and undeveloped land. The site is generally surrounded by rural residential vegetation which consists of Riversidean sage scrub (2.48-acres) and non-native grasslands (2.79-acres). A grove of ornamental trees lies within the center of the project area (.197-acres). The site has gentle rolling hills in the eastern portion and lies at an approximate elevation between 1,929 to 2,326 feet above mean sea level. Soils identified within the

site include Fallbrook rocky sandy loam, shallow, 15-50% slopes, eroded; Fallbrook sand loam, shallow, 15-35% slopes, eroded; Hanford coarse sand loam, 2-8% slopes; Monserate sandy loam, 8-15% slopes, eroded; and Terrace escarpments.

Both Heacock Street and Reche Vista Drive are existing two-lane roadways, and have sufficient right of way for the realignment of Reche Vista Drive. Reche Vista Drive is a multi-jurisdictional highway that provides access from the City of Moreno Valley through Riverside County to cities in southern San Bernardino County. Future residential development is planned along the west side of the realigned Reche Vista Drive between the Perris Boulevard/Heacock Street Intersection and the northerly City limit.

10. Other public agencies whose approval is required (e.g. permits, financing approval, or participation agreement).

State of California Resources Agency – Environmental Enhancement and Mitigation Program Grant
California Department of Transportation – NEPA Environmental Assessment and technical reports

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below (■) would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

	Aesthetics		Hazards & Hazardous Materials		Public Services
	Agricultural Resources		Hydrology/Water Quality		Recreation
	Air Quality		Land Use/Planning		Transportation/Traffic
	Biological Resources		Mineral Resources		Utilities/Service Systems
	Cultural Resources		Noise		Mandatory Findings of Significance
	Geology/Soils		Population/Housing		

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.	
I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.	■
I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.	
I find that the proposed project MAY have a "potential significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect (1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and (2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.	
I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.	

Chris O'Connell
Signature

1/30/09
Date

Printed Name

For

EVALUATION OF ENVIRONMENTAL IMPACTS

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g. the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g. the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Potentially Significant Unless Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section 17, "Earlier Analysis," may be cross-referenced).
- 5) Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063 (c) (3) (d). In this case, a brief discussion should identify the following:
 - (a) Earlier Analysis Used. Identify and state where they are available for review.
- 6) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
- 7) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 8) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g. general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
- 9) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 10) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
- 11) The analysis of each issue should identify: (a) the significance criteria or threshold used to evaluate each question; and (b) the mitigation measure identified, if any, to reduce the impact to less than significance.

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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1. AESTHETICS. Would the project:

a) Have a substantial adverse effect on a scenic vista?

The major scenic vistas can be seen from the State Route 60, approximately 2.4 miles from the project site, which traverses east through the City of Moreno Valley and passes through the Badlands area. The Proposed Project site is not located in an area containing major scenic resources (City of Moreno Valley, 2006). The City lies on a relatively flat valley floor surrounded by rugged hills and mountains. The topography of the planning area is defined by the Box Springs Mountains and Reche Canyon area to the north, the "Badlands" to the east, and the Mount Russell area to the south. These features provide the City with outstanding scenic vistas. Neither short-term construction activities nor the use of the improved roadway will impact a scenic vista. The project would be consistent with the existing land use and City of Moreno Valley General Plan Environmental Impact Report (EIR) (City of Moreno Valley, 2006). A less than significant impact would occur.

b) Substantially damage scenic resources, including, but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?

As mentioned above, Proposed Project site is not located in an area containing major scenic resources. The Proposed Project site is not located in an officially designated State scenic highway and would not damage any scenic resources, including trees, rock outcroppings, and/or historic buildings (Caltrans, 2007). No impact would occur.

c) Substantially degrade the existing visual character or quality of the site and its surroundings?

The proposed realignment of Reche Vista Drive would not change the existing visual character of the area. The project site is located in the City of Moreno Valley in an already development area. The project would realign the existing Reche Vista Drive between Perris Boulevard/Heacock Street intersection and the northerly City limit. No impact would occur.

d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?

The Proposed Project does not include construction of any lighting. No impact would occur.

2. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project?

a) Convert Prime Farmland, Unique Farmland or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency to non-agricultural use?

The Proposed Project would not convert Prime Farmland, Unique Farmland or Farmland of Statewide Importance, as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program (California Department of Conservation, 2004). No impact would occur.

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?

There are no agricultural uses on the site nor is it located within an agricultural zone or bound by a Williamson Act contract. No impact would occur.

c) Involve other changes in the existing environment, which due to their location or nature, could result in conversion of Farmland, to non-agricultural use?

The Proposed Project does not involve the conversion of land use, nor do the project limits contain any farmland. Lands currently

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

used for agriculture are concentrated in the eastern portion of the City. The Proposed Project does not involve the conversion of land use, nor does the project limits contain any farmland. No impact would occur.

3. **AIR QUALITY:** Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?

The Proposed Project is located in the City of Moreno Valley which is located within the South Coast Air Basin (Basin) (City of Moreno Valley, 2006). According to the City of Moreno Valley General Plan EIR, Air quality within the Basin is administered by the South Coast Air Quality Management District (SCAQMD). The Basin is a 6,600-square mile area bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east. The Basin includes all of Orange County and the non-desert portions of Los Angeles, San Bernardino, and Riverside counties.

Table 1 shows that the project is located in an area that is non-attainment for Ozone (O₃), Particulate Matter (PM₁₀), and Particulate Matter (PM_{2.5}) and maintenance for Nitrogen Dioxide (NO₂) and Carbon Monoxide (CO). Non-attainment means that the area has exceeded the significance thresholds and is not in compliance with the Air Quality Management Plan (AQMP). Maintenance means that the area has fallen below the significance thresholds and must maintain below the thresholds for a period of time before it can be considered in attainment.

Table 1 - Project Area Attainment Status

Criteria Pollutant	Federal Attainment Status
Ozone (O ₃)	Nonattainment
Nitrogen Dioxide (NO ₂)	Maintenance
Carbon Monoxide (CO)	Maintenance
Particulate Matter (PM ₁₀)	Nonattainment
Particulate Matter (PM _{2.5})	Nonattainment

The Proposed Project is located in an area that is in maintenance for CO and non-attainment for PM₁₀ and PM_{2.5}, therefore, a "Hot spot" analysis was conducted (Chambers Group Inc., 2008). As shown in Table 2 below, the project would not exceed the thresholds for CO. The Proposed Project would not conflict with or obstruct the implementation of the SCAQMD air quality plan. No impact would occur.

b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation.

The Reche Vista Drive Realignment Project was included in the regional emissions analysis conducted by the Southern California Association of Governments (SCAG), which is the Regional Transportation Planning Agency (RTPA) for the conforming Moreno Valley/Riverside County portion of the Regional Transportation Plan (RTIP). The project—Realign Reche Vista Drive (Perris Blvd. to 200 'N/O City Limits - Approx. 2,000' RTIP/FTIP ID: RIV011210) and install signal (Perris/Heacock/Reche Vista Dr. RTIP/FTIP ID: RIV011210) are in the SCAG RTIP dated October 4, 2004. The project's design concept and scope have not changed significantly from what was analyzed in the RTIP (RTIP/FTIP ID: RIV011210). This analysis found that the plan and, therefore, the individual projects contained in the plan, are conforming projects, and will have air quality impacts consistent with those identified in the state implementation plans (SIPs) for achieving the National Ambient Air Quality Standards (NAAQS). FHWA determined the RTP to conform to the SIP on October 4, 2004.

The Reche Vista Drive Realignment project is also included in the regional transportation plan (RTP) RIV011210 dated October 4, 2004. The project's open to the public year is consistent with (within the same regional emission analysis period as) the construction completion date identified in the federal TIP and/or RTP. The federal TIP gives priority to eligible Transportation Control Measures (TCMs) identified in the SIP and provides sufficient funds to provide for their implementation. FHWA determined the TIP to conform to the SIP on October 4, 2004.

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact

The Proposed Project is not considered a Point of Air Quality Concern (POAQC) because it does not meet the definition of a POAQC as defined in EPA's Transportation Conformity Guidance (Final Rule), dated March 10, 2006. The following briefly describes why the project does not fit the five types of Projects considered POAQC in the EPA Transportation Conformity Guidance:

- 1) The project is not a new or expanded highway and will not increase diesel vehicles (defined as greater than 125,000 Annual Average Daily Traffic (AADT) and 8% or more of such AADT is diesel truck traffic) along the proposed alignment;
- 2) The project will not increase the number of diesel vehicles, or change the Level of Service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;
- 3) The Project is not a new bus and rail terminal or transfer point and does not result in a significant number of diesel vehicles congregating at a single location;
- 4) The Project is not an expanded bus and rail terminals or transfer point; and
- 5) While the Project is in an area, which is identified as non attainment for PM_{2.5} or PM₁₀ in the implementation plans, the project does not result in an increase in traffic volumes or increase the number of diesel vehicles using the roadway, and therefore, will not increase the sources of particulate matter in the affected area.

The California Project-Level Carbon Monoxide Protocol¹ (CO Protocol) was used to analyze CO impacts for the Reche Vista Drive Realignment project. The Hot Spot analysis covered the most congested intersections affected by the project in 2030. The ambient air quality effects of traffic emissions were evaluated using the modeling procedures described in the Air Quality Conformity Report (Chambers Group Inc., 2008). The assumptions used in the hot-spot analysis are consistent with those used in the regional emissions analysis.

The Hot Spot analysis results are shown in ~~Error! Reference source not found.~~ below. The modeling results shown indicate that total CO concentrations would not cause or contribute to any new localized violations of the federal 1-hour or 8-hour CO ambient standards. A background concentration of 4 parts per million (ppm) was added to the modeled 1-hour values to account for sources of CO not included in the modeling. A background concentration of 2.4 ppm was added to the modeled 8-hour values. All background concentration data were taken from the monitoring data provided by the Air Resources Board (California Air Resources Board, 2007) for Reche Vista Drive and Heacock Street.

Table 2 - Hot Spot Analysis Results

Receptor	Existing Concentration (2008) 1-Hr	Existing Concentration (2008) 8-Hr	Future No Project (2030) 1-Hr	Future No Project (2030) 8-Hr	Future With Project (2030) 1-Hr	Future With Project (2030) 8-Hr
Intersection at Reche Vista Drive and Heacock Street	5.1	3.2	5.1	3.2	4.6	2.8
CO Threshold	20.0	9.0	20.0	9.0	20.0	9.0
Impact?	No	No	No	No	No	No

The Proposed Project would involve grading and excavation during construction. The project would not involve any operational emissions after construction is completed that have not already been analyzed in the RTIP and RTP. A less than significant impact would occur with the incorporation of Mitigation Measures AQ-1 through AQ-5.

- AQ-1:** Grading activities shall comply with South Coast Air Quality Management District Rule 403 regarding the control of fugitive dust (Policy 6.7.5).
- AQ-2:** Construction contractor shall ensure that all disturbed areas are watered at least three times per day.
- AQ-3:** Construction contractor shall ensure that speeds are reduced to 15 mph or less on unpaved/disturbed areas.
- AQ-4:** Construction contractor shall ensure that all disturbed areas have ground cover replaced as soon as possible after completion of construction.
- AQ-5:** Construction contractor shall ensure that all disturbed areas that are left inactive for more than 5 business days shall have a soil stabilizer applied to it to prevent wind erosion.

¹ CAL3QHCR can also be used, with EMFAC emission factors, per EPA's modeling guidance in place of the CO Protocol.

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors)?		■		
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The construction of the Proposed Project would not create a cumulatively considerable net increase in criteria pollutants as the construction is temporary in nature and there are no long-term operational aspects of this project. As shown in

Table 1 above, the project is in an area in non-attainment for Ozone, PM₁₀, and PM_{2.5}. The project was found to be in conformance with the RTIP and RTP air quality analysis and would not result in the creation of a CO hot spot. Since the project would involve grading of undeveloped land, fugitive dust could be generated during construction. A less than significant impact would occur with the incorporation of Mitigation Measures AQ-1 through AQ-5.

d) Expose sensitive receptors to substantial pollutant concentrations?		■		
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The closest sensitive receptors to the project site is the community of rural residential lots, with single-family residential dwelling units on the east side of Reche Vista Drive near the north end of the proposed alignment. A single residential dwelling directly east of Reche Vista Drive (9700 Canyon Ranch Road) was chosen to represent this community of rural residential lots because that location would be nearest the proposed road improvements. The residence is located at the northern end of the existing Reche Vista Drive at Canyon Ranch Road and is approximately 10 feet higher in elevation than the road. The Proposed Project would not create a CO hot spot, nor would it generate emissions that would exceed the SCAQMD daily thresholds for criteria pollutants. The project has a potential to generate fugitive dust during construction within the vicinity of these receptors. A less than significant impact would occur with the incorporation of Mitigation Measures AQ-1 through AQ-5.

e) Create objectionable odors affecting a substantial number of people?		■		
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Construction of the Proposed Project would involve the use of heavy equipment creating exhaust from on-site earth movement and from equipment bringing concrete and other building materials to the site. With regards to nuisance odors, any air quality impacts will be confined to the immediate vicinity of the equipment itself. By the time such emissions reach any sensitive receptor sites away from the project site, they will be diluted to well below any level of air quality concern. An occasional "whiff" of diesel exhaust from trucks accessing the site from public roadways may result. Such brief exhaust odors may be adverse, but are not a significant air quality impact. There is a potential of using Heater Remix equipment to place hot or cold pavement recycling to treat existing pavement. Additionally, some odor would be produced from the application of asphalt, paints, and coatings. Again, any exposure of the general public to these common odors would be of short duration and while potentially adverse, are below significance thresholds. A less than significant impact would occur.

4. BIOLOGICAL RESOURCES. Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U. S. Fish and Wildlife Service?		■		
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Chambers Group, Inc. conducted a biological resource survey for the project site on July 22, 2008 to characterize the distribution and relative abundance of wildlife, wildlife resources, and wildlife habitats within the project site (Chambers Group, Inc. 2008).

A total of 12 sensitive wildlife species were identified as having a potential to occur on the project site. The project site supports suitable habitat and historical occurrences exist within the vicinity of the project site for the four of the 12 species of California species of special concern (CSC); Belding's orange-throated whiptail was observed during the field surveys, coastal western whiptail, cooper's hawk and burrowing owl. Since habitat for burrowing owl is present on the project site, a focused burrow survey would be required during the breeding season in order to comply with Western Riverside County's Multiple Species Habitat Conservation Plan (MSHCP) requirements. A 30-day pre-construction burrowing owl survey would also be required by Riverside County and a nesting bird survey is recommended if construction is scheduled during the nesting bird season (March 1 - September 1). Northern red-diamond rattlesnake, ferruginous hawk, California horned lark, loggerhead shrike, coastal California gnatcatcher, northwestern San Diego pocket mouse, southern grasshopper mouse and American badger have the potential to forage within the project site and/or

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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area of indirect effect (AIE) but nesting potential is very low. A portion 1.29-hectare (3.20-acres) of the project site is located within California gnatcatcher (CAGN) Critical Habitat. Additionally, a small portion (approximately 200 feet north of the intersection of Country Road and Reche Vista Drive) of the project site is located within MSHCP Criteria Cell #374 and suitable Riversidean coastal sage scrub habitat is located in this area. This habitat type is preferred foraging and nesting habitat for the federally listed California gnatcatcher (*Polioptila californica californica*). The breeding season of the gnatcatcher extends from mid-February through August, with the peak of nesting activity occurring from mid-March through mid-May. Under the MSHCP guidelines protocol focused surveys are required if the project site lies within a MSHCP Criteria Cell and/or on sites with suitable habitat (sage scrub) within the MSHCP Plan Area if vegetation removal will occur during the species breeding season.

Within the project site, there is one ecologically important habitat of concern, also called a sensitive natural community, which functions as habitat for native plants and animals. Riversidean coastal sage scrub (RSS) is not designated "sensitive" natural community by the Wildlife and Habitat Data Analysis Branch of the California Department of Fish and Game (CDFG). However, RSS is the obligatory habitat for the federally listed coastal California gnatcatcher (*Polioptila californica californica*). The coastal sage scrub is found on the drier, warmer slopes and valley floor of the Reche Canyon/Badlands Area. RSS is present within the project site, north west and east of the upper north half of the realignment. Approximately 1.00 hectares (2.48 acres) of RSS will be impacted by this project. California buckwheat is the dominant shrub with California sagebrush and brittlebush as subdominants.

One sensitive plant species, Plummer's mariposa lily, which is federal-listed as endangered species, was identified as having a low potential to occur on the project site. The Plummer's mariposa lily has low potential to occur in the project area since the plant is thought to be scarce in the region and because of lack of habitat due to the lack of extensive earthen channels. The nearest recorded occurrences are in the Box Springs Mountain Area, west of the project site. The Conservation Objective for this species is: "In order for this species to become a Covered Species Adequately Conserved, the following conservation must be demonstrated: Within the MSHCP Conservation Area, confirm six localities (locality in this sense is not smaller than one quarter section) of at least 500 individuals each (unless a smaller population has been demonstrated to be self-sustaining)." The project site is not located within the MSHCP Conservation Area and this species has a low potential to occur and a lack of habitat, it can be considered absent from the project site and no surveys are required.

A less than significant impact would occur with the incorporation of mitigation measures BR-1 and BR-2.

BR-1: A focused burrow survey shall be required during the breeding season in order to comply with Western Riverside County's Multiple Species Habitat Conservation Plan (MSHCP) requirements. Construction activities (e.g. grading) must begin within 30 days from the date of the last survey or an updated survey shall be required to be submitted to the EPD. Once grading and associated construction activities have begun no further surveys are required.

BR-2: If construction activities do not begin within 30 days from the date of the last focused borrow survey; a pre-construction burrowing owl survey shall be performed within 30 days prior to the commencement of ground disturbing activities.

b) Have a substantially adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or U. S. Wildlife Service?				■
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Chambers Group, Inc. conducted a jurisdictional determination and wetland delineation for the Proposed Project on July 22, 2008 (Chamber Group, Inc. 2008). There were no wetlands found within the Proposed Project improvement alignment. Soil pits and onsite surveys concluded the absence of wetland vegetation and soil types, however, waters of the U.S. were found in the project area.












Two drainages were identified adjacent to the proposed road alignment (Figure 4). The total California Department of Fish and Game (CDFG) jurisdictional area amounts to 0.085 acres (476 linear feet) in Drainage 1 and 26 feet (0.001 acre) in Drainage 2. The project would not result in any impacts to these drainages since all improvements to the road would be done within the existing extent of the road. Onsite drainages flow only during significant rain events or human-related causes. Most of the drainage features were characterized as non-jurisdictional swales that exhibited no bank-to-bank formations. However, small sections of two drainage features within the project area did exhibit bank-to-bank formations. The vast majority of the drainages were vegetated with ruderal vegetation at the time of the survey, and some areas contained vegetation consistent with Riversidean coastal sage scrub, chamise chaparral, exotic landscaping, and bare ground. Dominant shrub species included California sagebrush (*Artemisia californica*), flat-topped buckwheat (*Eriogonum fasciculatum*), chamise (*Adenostoma fasciculatum*), and brittlebush (*Encelia farinosa*). Dominant grasses and forbs included ripgut brome (*Bromus diandrus*), wild oats (*Avena* sp.), tocalote (*Centaurea melitensis*), popcorn flower

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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(*Cryptantha intermedia*), and short-pod mustard (*Hirschfeldia incana*). No impact would occur.

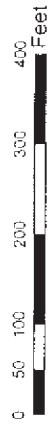
Reche Vista Drive Realignment Jurisdictional Delineation

Legend

-  Project Boundary
-  Bank to Bank Width
-  O-HWM
-  Off-Site Drainage
-  Swale
-  Surface Runoff
-  Drainage Connectivity
-  Flow Direction
-  Soil Pit Location
-  Culvert
-  Photo Location



Chambers Group Inc.



Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				■
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Chambers Group, Inc. conducted a jurisdictional determination and wetland delineation for the Proposed Project on July 22, 2008 (Chamber Group, Inc. 2008). There were no wetlands found within the Proposed Project improvement alignment. Soil pits and onsite surveys concluded the absence of wetland vegetation and soil types, however, waters of the U.S. were found in the project area.

Two drainages were identified adjacent to the proposed road alignment (Figure 4). Onsite drainages flow only during significant rain events or human-related causes. Most of the drainage features were characterized as non-jurisdictional swales that exhibited no Ordinary High Water Mark (OHWM) or bank-to-bank formations. However, small sections of two drainage features within the project area did exhibit OHWM and bank-to-bank formations. The vast majority of the drainages were vegetated with ruderal vegetation at the time of the survey, and some areas contained vegetation consistent with Riversidian coastal sage scrub, chamise chaparral, exotic landscaping, and bare ground. Dominant shrub species included California sagebrush (*Artemisia californica*), flat-topped buckwheat (*Eriogonum fasciculatum*), chamise (*Adenostoma fasciculatum*), and brittlebush (*Encelia farinosa*). Dominant grasses and forbs included ripgut brome (*Bromus diandrus*), wild oats (*Avena* sp.), tocalote (*Centaurea melitensis*), popcorn flower (*Cryptantha intermedia*), and short-pod mustard (*Hirschfeldia incana*).

The total United States Army Corps of Engineers (USACE) jurisdictional area, as defined by the OHWMs, amounts to 0.013 acre (476 linear feet). Of this total, 0.012 acre (450 linear feet) occurs as a non- relatively permanent wetland (RPW) within Drainage 1, and 0.001 acre (26 linear feet) occurs as a non-RPW within Drainage 2. The significant nexus analysis of connectivity between the project site drainages to traditional navigable waters (TNWs) resulted in a determination of USACE jurisdiction for this project (Chambers Group Inc., 2008).

The total RWQCB jurisdictional area, as defined by the OHWMs, amounts to 0.013 acre (476 linear feet) for the project site. Of this total, 0.012 acre (450 linear feet) occurs as a non-RPW within Drainage 1, and 0.001 acre (26 linear feet) occurs as a non-RPW within Drainage 2 (Chambers Group Inc., 2008).

The project would not result in any impacts to these drainages since all improvements to the road would be done within the existing extent of the road. The project would also include an improved concrete drainage pipe or a concrete box culvert that would be used as a wildlife crossing that would replace an existing pipe within the existing right of way. No impact would occur.

d) Interfere substantially with the movement of any resident or migratory fish or wildlife species or with established native resident migratory wildlife corridors, or impede the use of native wildlife nursery sites?		■		
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The Proposed Project site is in Riverside County and is subject to the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). The project site is not within a criteria cell but is bounded on the east and west by criteria cells 373, 374, and 462. The project would also include an improved concrete drainage pipe or a concrete box culvert that would be used as a wildlife crossing that would replace an existing pipe within the existing right of way. The concrete pipe or box culvert would allow species to cross under the road without having to cross traffic. The southern portion of the project that would construct the realigned portion of the road in a currently undeveloped area would not substantially interfere with the movement any species. The Proposed Project would realign an existing road and would not create a new feature that would disrupt wildlife movement. Also, there are residences located to the east of the proposed alignment as well as a proposed residential development adjacent to the west side of the proposed alignment. The proposed residential development would construct homes directly adjacent to the Proposed Project and includes a wildlife corridor that would allow for wildlife movement north and south and east to west through the development.

The project site is also within the burrowing owl survey area. The southern portion of the project site is currently an undeveloped open field. There is potential for burrowing owl to occur there or use the field for hunting. A less than significant impact would occur with the incorporation of Mitigation Measure BR-1 and BR-2.

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?		■		
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Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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The Proposed Project would not conflict with any local policies or ordinances protecting biological resources. The Proposed Project would be consistent with the MSHCP with the implementation of mitigation measures BR-1 and BR-2. A less than significant impact would occur with the incorporation of Mitigation Measure BR-1 and BR-2.

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, other approved local, regional, or state habitat conservation plan?

■

The Proposed Project would not conflict with any local policies or ordinances protecting biological resources. The Proposed Project would be consistent with the MSHCP with the implementation of mitigation measures BR-1 and BR-2. A less than significant impact would occur with the incorporation of Mitigation Measure BR-1 and BR-2.

5. CULTURAL RESOURCES. Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5?

■

An archaeological survey was performed to identify archaeological resources in the Area of Potential Effects (APE) for the Realignment of Reche Vista Drive from the intersection of Perris Boulevard/Heacock Street to 200 Feet north of the City limits. All open ground within the APE was surveyed. No previously unknown cultural resources were found during the field survey. The project would not result in a change in the significance of a historical resource. No impact would occur.

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?

■

The Proposed Project site is located in the northern portion of the City and is within the Pigeon Pass Valley Complex (City of Moreno Valley, 2006). According to the City of Moreno Valley General Plan EIR, the Pigeon Pass Valley Complex is located on both sides of the Pigeon Pass Valley and is comprised of at least 24 milling stations, which one features a cupule (cup shaped holes) boulder.

An archaeological survey was performed to identify archaeological resources in the Area of Potential Effects (APE) for the Realignment of Reche Vista Drive from the intersection of Perris Boulevard/Heacock Street to 200 Feet north of the City limits. All open ground within the APE was surveyed. No previously unknown cultural resources were found during the field survey. A less than significant impact would occur with the incorporation of Mitigation Measure CR-1.

CR-1: If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

■

The Moreno Valley area contains sedimentary rock-units with potential to contain significant nonrenewable paleontological (fossil) resources. These sedimentary units are referred to as the Mt. Eden Formation and the San Timoteo Formation. The project site is located in an area considered to have a "Low Potential" for paleontological resources to occur as shown on Figure 5.10-3 in the General Plan EIR (City of Moreno Valley, 2006). The project involves realigning an existing road. The project area is surrounded by developed and undeveloped areas. There is potential for previously undiscovered paleontological resources or site to occur. However, since the area surrounding the project site is developed and undeveloped, the potential for paleontological resources to be found is extremely low. The incorporation of the following mitigation measure would reduce the potential for impacts to occur to unknown paleontological resources during ground disturbance activities, which includes grading and construction. A less significant impact would occur with incorporation of Mitigation Measure CR-2.

CR-2: If paleontological materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified paleontologist can assess the nature and significance of the find.

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Disturb any human remains, including those interred outside of formal cemeteries?		■		
<p>The Proposed Project would realign Reche Vista Drive in an already developed area and some vacant land. The potential for human remains to occur on the project site is very low. A less than significant impact would occur with the incorporation of Mitigation Measure CR-3.</p>				
<p>CR-3: If human remains of any kind are found, all activities will cease immediately and a qualified archaeologist and the County Coroner will be notified. If the coroner determines the remains to be of Native American origin, he or she will notify the Native American Heritage Commission (NAHC). The NAHC will then identify the most likely descendants to be consulted regarding treatment and/or repatriation of the remains.</p>				
<p>6. GEOLOGY AND SOILS. Would the project.</p>				
<p>a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury or death involving:</p>				
(i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.			■	
<p>The Proposed Project site is not located within the Alquist-Priolo Earthquake Fault Zone. There are no known active faults underlying the project site or projecting toward the site. The nearest know active fault is the San Jacinto segment of the San Jacinto fault zone located approximately 1.86 miles of the project site. The project would widen an existing road in an area that is surrounded by development. The probability of surface rupture due to faulting beneath the project site is considered low. Significant ground shaking will occur on-site as a result of the earthquake on the Elsinore, the San Jacinto, or the Banning Fault Zones (Diaz • Yourman & Associates, 2008). A less than significant impact would occur.</p>				
(ii) Strong seismic ground shaking?				■
<p>Southern California is a seismically active region that is prone to earthquake. There is a potential for the project site to experience strong seismic ground shaking in the future from local and regional faults; however, the project would not subject people to strong seismic ground shaking. No impact would occur.</p>				
(iii) Seismic-related ground failure, including liquefaction?			■	
<p>Loose sandy soils typically considered to be potentially liquefiable were encountered in Borings B-3 and B-4 at depths well above the current groundwater level during the subsurface investigation. Groundwater was not encountered during the subsurface investigation. Therefore, a detailed liquefaction analysis was not warranted for the Proposed Project. Seismically induced settlements of dry sands should not impact the proposed construction and should be minimized as a result of the proposed loading of the embankment fills. (Diaz-Yourman & Associates, 2008). The City of Moreno Valley has seen no evidence of liquefaction events occurring in the community nor has any geotechnical report recently submitted to the City identified liquefaction hazards. The Riverside County General Plan has identified a range of liquefaction susceptibility in the City of Moreno Valley from very low with deep groundwater in the northern and eastern portions of the community to very high with shallow groundwater generally west of Perris Boulevard. All building in the region are required to resist seismic goundshaking in accordance with the Uniform Building Code (UBC). However, the UBC does not provide 100 percent protection against seismic damage (City of Moreno Valley, 2006). A less than significant impact would occur.</p>				
(iv) Landslides?				■
<p>The Proposed Project would realign Reche Vista Drive. The City of Moreno Valley planning area is situated along a valley floor (City of Moreno Valley, 2006). The potential for landslide to occur is very low. There is some potential for landslides in the Badlands approximately 10 miles further east from the project site because the slopes are steep and the underlying geologic material is poorly consolidated. No impact would occur</p>				
(b) Result in substantial soil erosion or the loss of topsoil?		■		

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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The project would require a large amount of grading in order to construct the realigned portion of Reche Vista Drive. The grading would include the cut of the hill located north of the Perris Boulevard/Heacock Street intersection and filling of the field between the hill and existing Reche Vista Drive. Grading activities have the potential to expose the ground to soil erosion and loss of topsoil. A less than significant impact would occur with the incorporation of Mitigation Measure GEO-1.

GEO-1: During construction, the contractor should stockpile topsoil materials for later use in landscaped areas.

(c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				■
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The Proposed Project would realign Reche Vista Drive. The project is not located on a geologic unit or soil that is unstable (Diaz-Yourman & Associates, 2008). No impact would occur.

(d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?		■		
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The Proposed Project would realign Reche Vista Drive. The geologic map of the site, Figure 2 in the Geotechnical Investigation, November 2008, shows the current site topography in the area of the proposed roadway realignment. Due to the highly weathered nature of the underlying plutonic rocks in the area, planned cuts should be monitored for the possibility of localized adverse conditions. The regional foliations mapped in the area dip obliquely out of slope (to the southwest); thus no wide-scale adverse conditions are expected in the area of the proposed roadway realignment. Deep weathering profiles in the bedrock may accelerate raveling and/or erosion of cut slopes locally. On-site monitoring of bedrock conditions during grading is also recommended (Diaz-Yourman & Associates, 2008). A less than significant impact would occur with the incorporation of mitigation measure GEO-1 through GEO-4.

The following mitigation measures have been included to reduce the impacts to a less than significant level.

GEO-2: Prior to start and during construction, the following shall be performed:

- All utilities should be located in the field and either re-routed, removed, abandoned, or protected.
- The conditions of adjacent improvements such as structures, slabs, pavements, and slopes should be documented.
- Areas to be graded should be stripped of vegetation and debris, and the material should be removed from the site.
- Approximately 6 inches of stripping is recommended in landscaped/natural areas.
- AC and PCC pavement should be separated for recycling.

GEO-3: The areas shall be excavated to the planned sub-grade elevation or as shown on Figure 3 and Figure 4 in the Geotechnical Investigation, November 2008 (Diaz-Yourman & Associates, 2008, which ever is greater. In areas where fill is required to achieve sub-grade elevations, the stripped area shall be:

- Scarified to a depth of 8 inches.
- Moisture-conditioned to above-optimum moisture content.
- Compacted to at least 90 percent relative compaction.

GEO-4: Fill should be compacted by:

- Placing in loose layers less than 8 inches thick.
 - Cobbles should be spaced apart and not allowed to nest. Added caution should be exercised when compacting around larger cobbles to avoid gaps in the fill materials.
 - Cobbles greater than 8 inches in diameter should not be placed within zones that will be trenched for utilities or foundations.
- Moisture-conditioning to above-optimum moisture content.
- Compacting to a minimum 90 percent relative compaction.

Post-construction settlement of the embankment can be reduced if the minimum relative compaction is increased to 95 percent. The basement soil (soils 1 foot below the pavement section [AC and base]) and aggregate base should be compacted to at least 95 percent relative compaction.

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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GEO-5: During grading activities, on-site monitoring of joint/fracture and foliation attitudes shall be performed by a qualified engineering geologist for the Proposed Project. If any joint/fracture and foliation attitudes are observed, such features shall be characterized and evaluated by the geologist and if determined necessary, remediation measures or other measures as appropriate shall be implemented to address such features in accordance with applicable City and State requirements.

(e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?

■

The Proposed Project does not involve the construction or installation of septic tanks or other wastewater disposal systems. No impact would occur.

7. HAZARDS AND HAZARDOUS MATERIALS. Would the project?

a) Create a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials?

■

The Proposed Project would realign Reche Vista Drive and would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials. No impact would occur.

b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials into the environment?

■

The Proposed Project would realign Reche Vista Drive and would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous material into the environment. Hazardous or flammable substances that may be used during the construction phase of the project would include vehicle fuels and oils for the operation of heavy equipment. Diesel and/or other construction equipment and vehicle fuels would be used; however, the transport, storage, and usage of hazardous materials such as fuels are regulated by the State and would be in compliance with all State regulations during construction. No impact would occur.

c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

■

The Proposed Project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school. No impact would occur.

d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result would it create a significant hazard to the public or the environment?

■

The Proposed Project site is not included on a list of hazardous waste sites compiled pursuant to Government Code Section 65962.5. No impact would occur.

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

■

The Proposed Project site is located within an airport land use plan. March Air Reserve Base is located approximately 5.4 miles southwest of the Proposed Project site. No impact would occur.

f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?

■

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The Proposed Project is not located within the vicinity of a private airstrip and would not result in a safety hazard for people residing or working in the project area. No impact would occur.

g) Impair implementation of, or physically interfere with an adopted emergency response plan or emergency evacuation plan?				■
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The City of Moreno Valley uses the Standardized Emergency Management System (SEMS) when responding to emergencies. The Proposed Project would not affect the adopted emergency response plan or emergency evacuation plan. No impact would occur.

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				■
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The Proposed Project would not expose people or structures to a significant risk of loss, injury or death involving wildlands fires. The Proposed Project involves realigning an existing road in a developed area. No impact would occur.

8. HYDROLOGY AND WATER QUALITY. Would the project:

a) Violate any water quality standards or waste discharge requirements?				■
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The Proposed Project would not release any toxins into the groundwater. A Water Quality Management Plan (WQMP) has been established to maintain water quality in the area (City of Moreno Valley General Plan 2006). No impact would occur.

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				■
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The Proposed Project would realign Reche Vista Drive. The project would not extract groundwater. No impact would occur.

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner, which would result in substantial erosion or siltation on- or off-site?			■	
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The Proposed Project would realign Reche Vista Drive. The project would not alter the course of a stream or river. The project would alter the drainage pattern of the project site by constructing the realigned portion of Reche Vista Drive in the undeveloped area north of the Perris Boulevard/Heacock Street intersection. Runoff water would be collected from the road and area to the east into a concrete lined trapezoidal channel and directed south to an eight foot deep concrete lined sump and directed southwest through a 60 inch drainage pipe and discharged through a rip rap energy dissipater on the west side of the proposed realignment. The rip rap energy dissipater would reduce the water flow velocity to minimize the potential for erosion and siltation as water would continue along its existing flow pattern towards an existing concrete sump located at the northeast corner of the existing Reche Vista Drive/Heacock Street intersection. A less than significant impact would occur.

d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or surface runoff in a manner, which would result in flooding on- or off site?			■	
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The Proposed Project would realign Reche Vista Drive. The project would not alter the course of a stream or river. The project would alter the drainage pattern of the project site by constructing the realigned portion of Reche Vista Drive in the undeveloped area north of the Perris Boulevard/Heacock Street intersection. Runoff water would be collected from the road and area to the east into a concrete lined trapezoidal channel and directed south to an eight foot deep concrete lined inlet structure and directed southwest through a 60 inch drainage pipe and discharged through a rip rap energy dissipater on the west side of the proposed realignment. The

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rip rap energy dissipater would reduce the water flow velocity to minimize the potential for flooding as water would continue along its existing flow pattern towards an existing concrete sump located at the northeast corner of the existing Reche Vista Drive/Heacock Street intersection. A less than significant impact would occur.

e) Create or contribute runoff which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?		■		
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The Proposed Project would not contribute additional runoff that would exceed the capacity of the stormwater drainage facilities in the area. The project included drainage features that would direct runoff through drainage features that have been designed to adequately handle the flow from a storm event along the current drainage path present at the site. The runoff water would be collected through street gutters and a trapezoidal channel and directed to the southwest to an existing concrete sump.

Stormwater runoff from the project area could further degrade downstream water quality. Some of the pollutants of concern include, but are not limited to, sediment, oil, petroleum products, debris and litter, human and animal waste, fertilizers, pesticides, antifreeze, tire and brake particles, detergents, and toxic substances.

The pollutants found in urban storm runoff originate from diverse sources. Sediments originate from soil erosion. Automobile use is responsible for the deposition of contaminants such as asbestos from brake linings, tire particles, antifreeze, oil and grease that accumulate on streets and parking surfaces. Fertilizer, organic matter, and deposits of air pollutants are sources of nitrogen and phosphorous in runoff.

A less than significant impact would occur with the implementation of Mitigation Measures HW-1 through HW-3.

HW-1: The City shall implement National Pollutant Discharge Elimination System Best Management Practices relating to construction of roadways to control runoff contamination from affecting the water resource (Policy 5.4.2).

HW-2: All components of the City's storm drain system shall conform to Riverside County Flood Control and Water Conservation District master drainage plans and the requirements of the Federal Emergency Management Agency (Policy 6.2.5).

HW-3: The City shall comply with the provisions of its permit(s) issued by the Regional Water Quality Control Board for the protection of water quality pursuant to the National Pollutant Discharge Elimination System (Policy 7.2.2).

f) Otherwise substantially degrade water quality?				■
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The Proposed Project would not result in any other actions that would degrade water quality. No impact would occur.

g) Place housing within a 100-year floodplain, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				■
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The Proposed Project does not involve the construction of housing; thus, would not place housing within a 100-year flood hazard areas as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map. No impact would occur.

h) Place within a 100-year flood hazard area structures, which would impede or redirect flood flows?				■
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The Proposed Project would not place structures that would impede or redirect flood flows within a 100-year flood hazard area. No impact would occur.

i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				■
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The Proposed Project would not expose people or structures to a significant risk of loss, injury or death as a result of the failure of a levee or dam. The Proposed Project would realign Reche Vista Drive in an area surrounded by development and open space. The

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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Proposed Project would not create risk of flooding. No impact would occur.

j) Inundation by seiche, tsunami, or mudflow?

Inundation by seiche, tsunami or mudflow would not be a considerable hazard in the Proposed Project area (City of Moreno Valley General Plan 2006). No impact would occur.

9. LAND USE AND PLANNING. Would the project:

a) Physically divide an established community?

The Proposed Project would realign Reche Vista Drive. The realigning will not divide an established community. No impact would occur.

b) Conflict with an applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

The Proposed Project would comply with the City's General Plan, California Department of Fish and Game Code, the Clean Water Act, and the Riverside County MSHCP. No impact would occur.

c) Conflict with any applicable habitat conservation plan or natural community conservation plan?

The Proposed Project is located in Western Riverside County and is subject to the MSHCP as well as City of Moreno Valley codes and ordinances. The project would comply with the MSCHP and City codes and ordinances as noted above. No impact would occur.

10. MINERAL RESOURCES. Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

The Proposed Project would not result in the loss of availability of known mineral resources. No resource extraction would occur on the project site. No impact would occur.

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

The Proposed Project site is located in an area that is developed and has not been identified in a general plan, specific plan, or any other land use plan as a locally important mineral resource recovery site. No impact would occur.

11. NOISE. Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

The General Plan EIR Noise Section for the City of Moreno Valley states that "The noise generated by construction is addressed by existing city regulations. It is unlawful to create noise that annoys reasonable people of normal sensitivity. There are also restrictions on hours of activity. Grading may take place between 7 a.m. and 8 p.m. during the week and 7 a.m. and 8 p.m. on weekends and holidays..." "Although construction activities will result in a noise impact ..., this impact will be short-term and will cease upon completion of construction. The temporary nature of the impact in conjunction with existing city regulations on hours of operation will lessen the potential of a significant impact due to construction noise. However, noise sensitive land use located adjacent to construction sites may be significantly impacted by future construction in the

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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planning area as a result of groundborne noise levels and vibration, noise levels that exceed existing standards, and excessive temporary or periodic increases in the ambient noise level. Mitigation Measures N1 and N2 will reduce these impacts to a level less than significant." Construction equipment operating at a distance of 50 feet generates high levels of intermittent noise ranging from 70 dBA to 105 dBA. These levels exceed the 60 dBA standard for residential properties, according to the Moreno Valley Municipal Code (11.80.030). The Municipal Code further states that "Construction and Demolition. No person shall operate or cause the operation of any tools or equipment used in construction, drilling, repair, alteration or demolition work between the hours of eight p.m. and seven a.m. the following day such that the sound there from creates a noise disturbance, except for emergency work by public service utilities or for other work approved by the city manager or designee. This section shall not apply to the use of power tools as provided in subsection (D)(9) of this section." Section 8.14.040E of the Municipal Code states that "Hours of Construction. Any construction within the city shall only be as follows: Monday through Friday (except for holidays which occur on weekdays), six a.m. to eight p.m.; weekends and holidays (as observed by the city and described in Chapter 2.55 of this code), seven a.m. to eight p.m., unless written approval is obtained from the city building official or city engineer. (Ord. 759 § 5.5, 2007; Ord. 484 § 3.2 (part), 1995)". A less than significant impact would occur with the incorporation of Mitigation Measures N-1 and N-2 as implemented in the City of Moreno Valley General Plan Final Environmental Impact Report.

- N-1:** Construction activities shall be operated in a manner that limits noise impacts on surrounding uses (Policy 6.5.2). In order to limit noise impacts on surrounding property, the construction contractor will ensure the following:
- Where feasible, noise-generating equipment will be shielded from nearby noise-sensitive receptors by noise-attenuating buffers such as structures or haul truck trailers;
 - Water tanks and equipment storage, and warm-up areas will be located as far from noise-sensitive receptors as possible;
 - All construction equipment powered by gasoline or diesel engines will be required to have sound-control devices at least as effective as those originally provided by the manufacturer; no equipment will be permitted to have an unmuffled exhaust.
 - Mobile noise-generating equipment and machinery will be shut off when not in use;
 - Construction vehicles accessing the site will be required to use the shortest possible route to and from local freeways, provided the routes do not expose additional receptors to noise; and
 - Prior to construction of the Proposed Project, signs would be posted announcing the construction schedule. The project applicant and the construction contractor will designate a noise disturbance coordinator who will be responsible for responding to complaints regarding construction noise. A contact number for the noise disturbance coordinator will be conspicuously posted on construction site fences.
- N-2:** Building construction shall be prohibited between 8 p.m. and 6.am. during the week and 8 p.m. and 7 a.m. weekends and holidays (Policy 6.3.6).

b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?			■	
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Perceptible groundborne vibrations are typically associated with blasting operations and potentially the use of pile drivers, neither of which will be used during construction of the Proposed Project. As such, no excessive groundborne vibration would be created by the Proposed Project. A less than significant impact would occur.

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?			■	
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Project generated long-term operational noise impacts are associated with traffic noise. Traffic noise levels were predicted using the Federal Highway Administration (FHWA) Traffic Noise Model Version 2.5 Look-Up Tables Program (TNM 2.5). Traffic noise was evaluated under existing conditions, design year no-project conditions, and design year conditions with the project alternative. Note that since the re-alignment project does not add traffic in and of itself, the design year no-project and design year with project conditions are identical with respect to traffic mix and traffic volumes. The loudest hour is generally characterized by free-flowing traffic at the highway design speed (i.e., Level of Service [LOS] C or better). The realignment of Reche Vista Drive would improve the LOS at the impacted intersections to a LOS C or better during peak hours. This analysis assumed a maximum traffic capacity of 2,542 vehicles per hour. Traffic noise levels for existing, design-year without, and design-year with project are 55 dBA Leq (55.6 Community Noise Equivalent Level (CNEL)), 58 dBA Leq (58.6 CNEL), and 64 dBA Leq (64.6 CNEL), respectively (below the 67 dBA Leq Noise Abatement Consideration (NAC) and 65 CNEL City threshold) (Chambers Group, 2008). The traffic noise levels for existing, design-year without, and design-year with project are summarized in the Table 3 below. A less than significant impact

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would occur.

Table 3 -Traffic Noise Levels

Single Family Residence located immediately east of Reche Vista Drive	Existing Noise Level (dBA)	Predicted Noise Level Design-year Without Project (dBA)	Predicted Noise Level Design-year With Project (dBA)	Noise Impact Requiring Abatement Consideration
9700 Canyon Ranch Road	55	58	64	No

d) A substantially temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?				■
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The most proximate residential area that is subject to potential construction noise impacts is a community of rural residential lots, with single-family residential dwelling units on the east side of Reche Vista Drive near the north terminus of the proposed alignment. A single residential dwelling directly east of Reche Vista Drive (9700 Canyon Ranch Road) was chosen to represent this community of rural residential lots because that location will be nearest the proposed road improvements. The residence is located at the northern end of the existing Reche Vista Drive at its intersection with Canyon Ranch Road and is approximately 10 feet higher in elevation than the road right of way. An earthen wall created by an immediate rise in elevation separates the residence from the existing alignment of Reche Vista Drive.

Although the construction noise levels exceed the 65 dBA standard for residential properties; according to the Moreno Valley Municipal Code (9.10.030), all temporary construction activities are exempt from the noise standards as long as construction activities are limited to the daytime hours as described above and construction equipment is properly maintained with working mufflers. A less than significant impact would occur with the incorporation of Mitigation Measures N-1 and N-2.

e) For a project located within an airport land use plan, or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				
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The Proposed Project site is located within an airport land use plan. The March Air Reserve Base is located approximately 5.4 miles southwest of the project site. The Proposed Project would result in a temporary safety hazard for people working in the project area during construction. A less than significant impact would occur.

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?				■
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The Proposed Project is not located within the vicinity of a private airstrip and would not expose people residing or working in the project area to excessive noise levels. No impact would occur.

12. POPULATIONS AND HOUSING. Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				■

The Proposed Project would realign Reche Vista Drive. The project would not induce population growth since it does not provide any housing or expand the infrastructure necessary for housing. No impact would occur.

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b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				■
The Proposed Project would not displace substantial numbers of existing housing units, necessitating the construction of replacement housing elsewhere. No impact would occur.				
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				■
The Proposed Project would not displace substantial number of people, necessitating the construction of replacement housing elsewhere. No impact would occur.				
13. PUBLIC SERVICES. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered government facilities, need for new or physically altered government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
a) Fire protection?				■
The Proposed Project would realign Reche Vista Drive. The project would not require any additional fire protection services. Fire protection services would be required only for emergency response. Completion of the project would create a through street that may provide beneficial impact of the public services. No impact would occur.				
b) Police protection?				■
The Proposed Project would realign Reche Vista Drive. The project would not require any additional police protection services. Police protection services would be required only for emergency response. Completion of the project would create a through street that may provide beneficial impact of the public services. No impact would occur.				
c) Schools?				■
The Proposed Project would realign Reche Vista Drive and would not result in an increased demand for schools. No impact would occur.				
d) Parks?				■
The Proposed Project would realign Reche Vista Drive. The Proposed Project would not result in an increased demand for parks. No impact would occur.				
e) Other public facilities?				■
The Proposed Project would realign Reche Vista Drive. The Proposed Project would not result in an increased demand for other public facilities. No impact would occur.				
14. RECREATION.				
a) Would the project increase the use of existing neighborhood or regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				■
The Proposed Project would realign Reche Vista Drive and would not increase the use of any parks. No impact would occur.				
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?				■

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The Proposed Project would realign Reche Vista Drive and would not require the expansion of existing recreational facilities. No impact would occur.

15. TRANSPORTATION/TRAFFIC. Would the project:

a) Cause an increase in the traffic, which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?			■	
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The study area for the traffic analysis, November 2003, included the existing Reche Vista Drive, the proposed alignment of Reche Vista Drive, the Perris Boulevard/Heacock Street intersection, the Reche Vista Drive/Country Road intersection, and Reche Vista Drive north of the City limits.

Table 4 - Existing Intersection Levels of Service

Intersection	Delay / Level of Service	
	A.M. Peak	P.M. Peak
Heacock Street at Reche Vista Drive	14.4 / C	122.0 / F

The traffic analysis studied the effects the project would have with No Build and Build of the project in the Year 2030. The Year 2030 Level of Service (LOS) for the No Build and Build of project roadway is presented in Table 5.

Table 5 - Year 2030 No Build and Build of Level of Service

Intersection	Year 2030 No Build		Year 2030 Build	
	A.M. Peak	P.M. Peak	A.M. Peak	P.M. Peak
Heacock Street at Reche Vista Drive	102.5 / F	167.8 / F	27.8 / C	29.4 / C

The Proposed Project would relieve the traffic flow of Reche Vista Drive by realigning and creating a direct connection between Perris Boulevard and Reche Vista Drive. The existing Heacock Street/Reche Vista Drive Intersection is unsignalized and currently functions under all-way stop control. The Build Alternative would provide operational improvements by constructing a traffic signal at the intersection Heacock Street and Reche Vista Drive and realign the existing winding switchback section of Reche Vista Drive. The new signal and realignment of this road will assist commuters traveling to and from City of Moreno Valley and surrounding areas by providing an alternative to using the congested State Route 60 and Intersection 215 freeway corridors. The Build Alternative will significantly improve traffic delays and help reduce air emissions and enhance the air quality by reducing VHT and VMT.

As part of the traffic analysis, a safety analysis was conducted within the project area. The safety analysis concluded that the Build Alternative would reduce the potential for head-on collisions along the project portion of Reche Vista Drive and reduce the frequency of conflicting movements at the Reche Vista Drive/Perris Boulevard/Heacock Street intersection.

As shown in Table 5 above, with year 2030 No-Build, the increase in traffic would reduce the LOS to F. It is expected that the number of accidents and driver frustration would increase as traffic and congestion increase. The proposed realignment of Reche Vista Drive would improve the LOS at the impacted intersections to a LOS C or better during peak hours. A less than significant impact would occur.

b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?			■	
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The Proposed Project would realign Reche Vista Drive. According to City of Moreno Valley General Plan, the existing Circulation Element recognizes that an LOS of C is acceptable. The increase in traffic in the year 2030 will degrade the levels of service at the Heacock Street at Reche Vista Drive to poor levels of service defined by the City of Moreno Valley. However, the study area intersections are projected to operate at acceptable levels of service during the peak hours with the improvements. A less than significant impact would occur.

c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				■
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The Proposed Project would not result in a change in air traffic patterns or an increase in traffic levels or location resulting in substantial safety risks. No impact would occur.

d) Substantially increase hazards to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?				■
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The Proposed Project would realign Reche Vista Drive and would not substantially increase hazards to a design feature or incompatible uses. No impact would occur.

e) Result in inadequate emergency access?				■
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The Proposed Project would realign Reche Vista Drive and would not result in inadequate emergency access. The Proposed Project would relieve the traffic flow of Reche Vista Drive by realigning and creating a direct connection between Perris Boulevard and Reche Vista Drive. No impact would occur.

f) Result in inadequate parking capacity?				■
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Parking for construction workers would be provided within a construction staging area for the project site. No additional off-site parking would be required for the project. No impact would occur.

g) Conflict with adopted policies or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?				■
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The Proposed Project would realign Reche Vista Drive and would not conflict with alternative transportation. No impact would occur.

16. UTILITIES AND SERVICE SYSTEMS. Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				■
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The Proposed Project would not generate wastewater. No impact would occur.

b) Require or result in construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				■
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The Proposed Project would not require the construction of new water or wastewater treatment facilities or expansion of existing facilities. The project would widen an existing road and would not generate any wastewater resulting in a need to construct new or expand existing treatment facilities. No impact would occur.

c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				■
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The Proposed Project would include the construction of drainage features that would handle stormwater runoff. Runoff water would be collected from the road and area to the east into a concrete lined trapezoidal channel and directed south to an eight foot deep concrete lined inlet structure and directed southwest through a 36 inch RCP and discharged through a rip rap energy dissipater on the west side of the proposed realignment. The rip rap energy dissipater would reduce the water flow velocity to minimize the potential for flooding as water would continue along its existing flow pattern towards an existing concrete sump located at the northeast corner of the existing Reche Vista Drive/Heacock Street intersection. No impact would occur.

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				■
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The Proposed Project would realign Reche Vista Drive and would not require a long-term water supply. The project would use water during construction; however, this would be acquired by the construction contractor, would be minimal, and would cease upon completion of construction. No impact would occur.

e) Result in a determination by the wastewater treatment provider, which serves or may serve the project determined that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				■
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The Proposed Project would not result in the construction of any structures that would generate wastewater. The project would not impact a wastewater treatment provider's capacity. No impact would occur.

f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				■
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The Proposed Project would only generate solid waste during its construction phase. All solid waste generated during construction would be disposed of properly according to standard construction practices by the construction contractor. No impact would occur.

g) Comply with federal, state, and local statues and regulations related to solid waste?				■
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The Proposed Project would comply with all federal, state, and local regulations regarding solid waste. The City of Moreno Valley City Council adopted a "Source Reduction and Recycling Element" in 1992 to reduce solid waste (City of Moreno Valley General Plan 2006). No impact would occur.

17. MANDATORY FINDINGS OF SIGNIFICANCE.

a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of an endangered, rare or threatened plant or animal, or eliminate important examples of the major periods of California history or prehistory?		■		
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The Proposed Project would realign Reche Vista Drive between the Perris Boulevard/Heacock Street Intersection and the northerly City limits in the City of Moreno Valley. The improved roadway will have a length of approximately 2,000 feet. A total of 12 sensitive wildlife species were identified as having a potential to occur on the project site. The project site supports suitable habitat and historical occurrences exist within the vicinity of the project site for the four of the 12 species of California species of special concern (CSC); Belding's orange-throated whiptail was observed during the field surveys, coastal western whiptail, cooper's hawk and burrowing owl. One sensitive plant species, Plummer's mariposa lily, which is federal-listed as endangered species, was identified as having a low potential to occur on the project site. The Plummer's mariposa lily has low potential to occur in the project area since the plant is thought to be scarce in the region and because of lack of habitat due to the lack of extensive earthen channels. The nearest recorded occurrences are in the Box Springs Mountain Area, west of the project site. The Conservation Objective for this species is: "In order for this species to become a Covered Species Adequately Conserved, the following conservation must be demonstrated: Within the MSHCP Conservation Area, confirm six localities (locality in this sense is not smaller than one quarter

Issues and Supporting Information	Potentially Significant Impact	Less than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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section) of at least 500 individuals each (unless a smaller population has been demonstrated to be self-sustaining).” The project site is not located within the MSHCP Conservation Area and this species has a low potential to occur and a lack of habitat, it can be considered absent from the project site and no surveys are required.

The Proposed Project site is located in the northern portion of the City and is within the Pigeon Pass Valley Complex (City of Moreno Valley, 2006). According to the City of Moreno Valley General Plan EIR, the Pigeon Pass Valley Complex is located on both sides of the Pigeon Pass Valley and is comprised of at least 24 milling stations, which one features a cupule (cup shaped holes) boulder. A less than significant impact would occur with the incorporation of mitigation measures included in this document.

b) Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of the past projects, the effects of other current projects, and the effects of probable future projects)?				■
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The Proposed Project would not have impacts that could potentially be cumulatively considerable. The Proposed Project would realign Reche Vista Drive between the Perris Boulevard/Heacock Street Intersection and the northerly City limits in the City of Moreno Valley. The Proposed Project would relieve the traffic flow of Reche Vista Drive by realigning and creating a direct connection between Perris Boulevard and Reche Vista Drive. The Proposed Project site is located in an already developed area. No impact would occur.

c) Does the project have environmental effects, which will cause substantial adverse effects on human beings, either directly or indirectly?		■		
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The Proposed Project would not result in a significant impact that would cause substantial adverse effects on human beings, either directly or indirectly. The project has the potential to result in significant impacts to air quality and noise that would affect people traveling along Reche Vista Drive. A less than significant impact would occur with incorporation of mitigation measures included in this document.

LIST OF PREPARERS

James Smithwick, Principal Environmental Planner, Chambers Group, Inc.

Andrew Minor, Project Manager, Chambers Group, Inc.

Jeannie Yu, Assistant Environmental Planner, Chambers Group, Inc.

Chris Ormsby, City of Moreno Valley

REFERENCES

California Department of Transportation

2005 Project Study Report and Preliminary Environmental Study, February 2005

Chambers Group Inc.

2008 Air Quality Conformity Analysis Report, December 2008
2008 Natural Environment Study, September 2008
2008 Jurisdictional Determination and Wetland Delineation, September 2008
2008 Archaeological Survey Report, September 2008
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2008 Historic Resources Evaluation Report, September 2008
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City of Moreno Valley

1995 Municipal Code. <http://qcode.us/codes/morenovalley>.
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Diaz-Yourman & Associates

2008 Geotechnical Investigation, Reche Vista Drive Realignment, Moreno Valley, CA, November 2008

KOA Corporation

2008 Project Study Report, October 2008

Riverside County Transportation and Land Management Agency

2008 Riverside County Congestion Management Program.
<http://www.rctc.org/downloads/congestionmanagementprogram.pdf>
2008 Transportation and Land Management Agency Land Management System (TLMA).
<http://www.tlma.co.riverside.ca.us/lms/mitfee.html>

Regional Water Quality Control Board

Urban Runoff and Water Pollution.

http://www.waterboards.ca.gov/santaana/water_issues/programs/nps/docs/urbanrunoff.pdf

**MINUTES
CITY COUNCIL OF THE CITY OF MORENO VALLEY**

**SPECIAL MEETING – 6:00 P.M.
FEBRUARY 3, 2009**

CALL TO ORDER - A Special Meeting of the City Council of the City of Moreno Valley was called to order at 6:06 p.m. by Mayor Stewart in the Council Chamber located at 14177 Frederick Street.

PLEDGE OF ALLEGIANCE - The Pledge of Allegiance was led by Council Member Hastings

INVOCATION - City Attorney Robert Herrick

ROLL CALL

Council:

Richard A. Stewart	Mayor
William H. Batey II	Council Member
Bonnie Flickinger	Mayor Pro Tem
Robin N. Hastings	Council Member
Jesse L. Molina	Council Member

Staff:

Jane Halstead	City Clerk
Julienne Clay	Administrative Assistant
Robert Herrick	City Attorney
Robert Gutierrez	City Manager
Betsy Adams	Assistant City Manager
Rick Hartmann	Deputy City Manager
Kyle Kollar	Community Development Director
Mike McCarty	Parks & Community Services Director
John Terell	Planning Official
Mark Gross	Senior Planner
George Hanson	Electric Utility Division Manager
Mark Sambito	Land Development Division Manager
Eric Lewis	City Traffic Engineer
Margery Lazarus	Senior Engineer
Chris Vogt	Public Works Director/City Engineer

E. PUBLIC HEARING

E1. A PHASED TENTATIVE PARCEL MAP (PA07-0090 AND P08-057) TO SUBDIVIDE A 158 GROSS ACRE SITE (265.3 ACRES INCLUDING OFFSITE IMPROVEMENTS AND DRAINAGE) INTO FOUR BUILDABLE PARCELS AND TWO PARCELS DEDICATED FOR FUTURE FREEWAY IMPROVEMENT PURPOSES (THIRTEEN PARCELS TOTAL INCLUDING PUBLIC ACCESS AND DEDICATION), AND FIRST PHASE PLOT PLAN (PA07-0091) FOR AN APPROXIMATELY 1,820,000 SQUARE FOOT WAREHOUSE INDUSTRIAL BUILDING ON APPROXIMATELY 83 ACRES (TOTAL OF 2,620,000 SQUARE FEET OF BUILDING FOR THE ALL PHASES OF DEVELOPMENT). THE PROJECT SITE CURRENTLY LIES WITHIN THE BP (BUSINESS PARK) AND CC (COMMUNITY COMMERCIAL) LAND USE DISTRICTS AND INCLUDES A REQUEST A CHANGE OF ZONE (PA07-0088) TO LI (LIGHT INDUSTRIAL) FOR ALL PROPOSED INDUSTRIAL USES AND A GENERAL PLAN AMENDMENT (PA07-0089) TO ELIMINATE A PLANNED MULTI-USE TRAIL OVER HIGHWAY 60, TO ADJUST AND EXTEND A PLANNED MULTI-USE TRAIL FROM THE SOUTH TO THE NORTH SIDE OF FUTURE EUCALYPTUS AVENUE FROM QUINCY STREET TO THEODORE STREET, TO RE-DESIGNATE FUTURE EUCALYPTUS AVENUE FROM REDLANDS BOULEVARD TO THEODORE STREET FROM AN ARTERIAL TO A DIVIDED ARTERIAL TO ALLOW THE ADDITION OF MEDIANS, AND TO ADJUST PARCEL LINES AND LAND USE FOR TWO PARCELS LOCATED IN THE CC LAND USE DISTRICT (NARROW WIDTH 126 FEET ON THE EASTERN PORTION OF THE SITE AND WIDEN 87 FEET ON THE WESTERN PORTION OF THE SITE). THE PROPOSED PROJECT IS LOCATED ADJACENT TO AND SOUTH OF HIGHWAY 60 ALONG FUTURE EUCALYPTUS AVENUE (FIR AVENUE) BETWEEN REDLANDS BOULEVARD AND THEODORE STREET. AN APPEAL HAS BEEN FILED BY THE PROJECT APPLICANT, HIGHLAND FAIRVIEW PROPERTIES, TO PROTECT THEIR RIGHTS (Report of: Community Development Department)

Applicant Iddo Benzeevi of Highland Fairview Properties made the presentation.

Mayor Stewart opened the public testimony portion of the public hearing. Public testimony was received from Stephen Crews (opposed), Lisa Spencer (opposed), Sam Martinez (supported), John Granillo (supported), Barbara Wint (supported), Sandra Downing (supported), Alex Hernandez (supported), Victoria Baca (supported), Robert Doherty (supported), Francisco Cuevas (supported)

**RECESS
RECONVENED**

Public testimony continued:

George Hague (opposed), Karen Jakpor, MD (opposed), Jose Dionisio Chavez (supported), Stuart Swan (supported), Garry Murrell (supported), Ruthee Goldkorn (opposed), Melody Lardner (opposed), Ray Carbajal (opposed), Ann McKibben (opposed), Oscar Valdepena (supported), Dennis Leon (opposed), Marcia Narog (opposed), Michele Carrasco (opposed), Robert Then (opposed), Charles R. White (opposed), Keri A. Then (opposed), Elena Santa Cruz (supported), Lorena Santa Cruz (supported), Daryl Terrell (supported), Suzanne Hanna (opposed), Steve Clute (supported), Michelle Terese Gerard (opposed), Anthony Metcalf (opposed), Jamil Dada (supported), Harold Trubo (supported), Ziyileht Murillo (supported), Librada Murillo (supported), Vincent Ortiz (opposed), Larry Froehlich (supported), Michael Greco (supported), Jim Jernigan (supported), Allan Leigh (supported), Duncan Bush (opposed), Francisco Sanchez (supported), Deanna Reeder (opposed), Deborah Clark-Crews (opposed), Tom Albertazzie (supported), Jo Ann Stephan (supported), Brenda Jackson (opposed), Susan Gilchrist (opposed), Margie Breitreuz (opposed), Jan Beyers (opposed), Vicki Watson (opposed), Debra Coggins-Ortiz (opposed), Alex Ortiz (opposed), Marcia Amino (opposed), Priscilla Banks (supported), Rachel Lopez (opposed), Anthony Despart (opposed), John Esquivel (opposed), Suzanne Potter (supported), Louise Palomarez (supported), Jim Koch (opposed), Adolf Kruger (opposed), Joe Zmudosky (supported), Ruth Magana (supported), William Arsenault (opposed), Nutcharin Dickson (opposed), and Cathy Godfrey (opposed).

The following motions were made during the public testimony portion of the public hearing:

Council Member Batey made a motion, seconded by Council Member Molina to continue the meeting at least until midnight. Approved by a 4-0-1 vote, Flickinger abstained.

Substitute motion: **Mayor Pro Tem Flickinger made a motion to continue the meeting to allow public testimony of four speakers already called, seconded by Council Member Molina. Motion failed 2-3, Batey, Hastings and Stewart opposed.**

Council Member Batey made a motion to continue the meeting until 1 p.m., seconded by Council Member Hastings. Approved by a 4-1 vote, Flickinger opposed.

Recommendation: The Planning Commission recommends that the City Council conduct a public hearing to:

1. **DENY** PA07-0088 (Change of Zone) and a policy decision to change the zoning map on a 104.9 acre portion of a 158 acre project site from Business Park (BP), requiring a maximum of 50,000 square foot industrial/business park buildings, to Light Industrial (LI), allowing for industrial warehouse buildings greater than 50,000 square feet, thus denying the applicant's appeal and the project request as a whole. (If the Planning Commission's recommendation to deny the policy decision and change of zone is upheld, a resolution would be provided under separate cover at the meeting.)

If the applicant's appeal is upheld and a policy decision to change the zone from BP (Business Park) to LI (Light Industrial) can be justified by the City Council, the following alternative recommendation may be considered:

1. **APPROVE** Resolution No. 2009-08 to **CERTIFY** an Environmental Impact Report (P07-157), including approval of Statement of Overriding Considerations and a required Mitigation Monitoring Program for a Change of Zone (PA07-0088), General Plan Amendment (PA07-0089), Tentative Parcel Map (PA08-0090 and P08-057) and a Plot Plan (PA07-0091), pursuant to the California Environmental Quality Act (CEQA) Guidelines;

Resolution No. 2009-08

A Resolution of the City Council of the City of Moreno Valley, California, Certifying the Final Environmental Impact Report (P07-157), Adoption of the Findings and Statement of Overriding Considerations, and Approval of the Mitigation Monitoring Program for the Highland Fairview Corporate Park Project, Generally Located Adjacent to and South Of Highway 60 Along Future Eucalyptus Avenue (Fir Avenue) Between Redlands Boulevard and Theodore Street

2. **INTRODUCE** Ordinance No. 785 for a Change of Zone (PA07-0088), to change the zone on approximately 104.9 acres of a 158 acre site from BP (Business Park) to LI (Light Industrial) to allow for industrial warehouse buildings greater than 50,000 square feet, subject to the findings included in the resolution; and

Ordinance No. 785

4

MINUTES
FEBRUARY 3, 2009

An Ordinance of the City Council of the City of Moreno Valley, California, Amending the Official Zoning Atlas of Said City, to Include a Change of Zone (PA07-0088) From BP (Business Park) To LI (Light Industrial) for an Approximate 104.9 Acre Portion of the Site, Including a Change of Zone for a 87 Foot Area Between Parcels 2 and 3 from BP (Business Park) to CC (Community Commercial) and Change of Zone for 126 Feet of Land Between Parcels 1 and 4 from CC (Community Commercial) To LI (Light Industrial), All Encompassed Within an Approximately 158 Acre Site (Including Relevant Offsite Improvements and Drainage) Commercial Land Uses on the Property Located South of and Adjacent to Highway 60 Between Redlands Boulevard and Theodore Street Along Future Eucalyptus (Fir Avenue)

3. **APPROVE** Resolution Nos. 2009-09, 2009-10, and 2009-11 for a General Plan Amendment (PA07-0089) to modify the Master Plan of Trails and Circulation Map of the General Plan, a plot plan (PA07-0090) and Tentative Parcel Map No. 35629 including phasing (PA07-0091 and P08-057) for the subdivision of a 158 acre site into four buildable parcels and additional parcels for public access and dedication purposes and a 2,620,000 square foot industrial/commercial development, including a 1,800,000 square foot industrial warehouse building (Phase 1), two parcels for future freeway improvements and numerous lettered lots for maintenance and easement purposes, subject to all mitigation measures within the EIR, as well as findings included in the resolutions, and conditions of approval, attached as Exhibit A to two of the resolutions.

Resolution No. 2009-09

A Resolution of the City Council of the City of Moreno Valley, California, Approving a General Plan Amendment (PA07-0089) for the Elimination of a Portion of a General Plan Designated Multi-Use Trail, the Adjustment of a Planned Multi-Use Trail on Future Eucalyptus Avenue (Fir), the Upgrading from an Arterial to a Divided Arterial for Future Eucalyptus Avenue (Fir) and a Change in Land Use for a 87 Foot Area Between Parcel of Land Use for of 126 Feet of Land Between Parcels 1 and 4 From C (Commercial) to BP (Business Park), and a Plot Plan for an Approximately 1,820,000 Square Foot Warehouse Industrial Building (Total of 2,620,000 Square Feet for All Phases of Development Consisting of Industrial and Commercial Land Uses) on the Property Located South of and Adjacent to Highway 60 Between Redlands Boulevard and Theodore Street Along Future Eucalyptus (Fir Avenue)

Resolution No. 2009-10

A Resolution of the City Council of the City of Moreno Valley, California Recommending Approval of PA07-0090 (Tentative Parcel Map No. 35629) for Four Separate Buildable Parcels and Two Primary Parcels Dedicated for Freeway and Improvement Purposes (Thirteen Parcels Overall to Include Lettered Lots for Public Access and Dedication Purposes) and a Phased Subdivision of Land (P08-057) Consisting of a Proposed Industrial and Commercial Development (2,620,000 Square Feet) to Include Two Parcels for Industrial Warehouse Uses, Two Parcels for Commercial/Retail Uses and Two Parcels that will be Dedicated for Future Freeway Improvements on a 158 Acre Site (With Additional Off-Site Improvements and Drainage) Located Adjacent to and South of Highway 60 Along Future Eucalyptus Avenue (Fir Avenue) Between Redlands Boulevard and Theodore Street

Resolution No. 2009-11

A Resolution of the City Council of the City of Moreno Valley, California Approving PA07-0091 (Plot Plan) for an Approximate 1,820,000 Square Foot Industrial Warehouse Building with Ancillary Commercial/Retail and Office Uses on an Approximately 83 Acre Parcel Generally Located Adjacent to and South of Highway 60 Along Future Eucalyptus Avenue (Fir Avenue) Between Redlands Boulevard and Theodore Street

Mayor Pro Tem Flickinger announced that RTA public hearing regarding changes in bus service including eliminating Route 17 will be held on February 12, 2009 at the Moreno Valley Council Chamber and a public meeting with the RTA staff regarding proposed change of cost of riding a bus will be held on February 5.

Mayor Pro Tem Flickinger made a motion to continue the public hearing to February 10, 2009 at 6:30 p.m. and to continue the public testimony for the remaining four (4) speakers (who were not called to speak), seconded by Council Member Hastings. Approved by a 5-0 vote.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 1:45 a.m. by unanimous informal consent.

Submitted by:

Jane Halstead, City Clerk, CMC

Approved by:

Richard A. Stewart, Mayor

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**MINUTES
JOINT MEETING OF THE
CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY
BOARD OF LIBRARY TRUSTEES**

**REGULAR MEETING – 6:30 P.M.
FEBRUARY 10, 2009**

CALL TO ORDER - The Joint Meeting of the City Council of the City of Moreno Valley, Moreno Valley Community Services District, the Community Redevelopment Agency of the City of Moreno Valley and the Board of Library Trustees was called to order at 6:34 p.m. by Mayor Stewart in the Council Chamber located at 14177 Frederick Street.

PLEDGE OF ALLEGIANCE - The Pledge of Allegiance was led by Council Member Molina

INVOCATION - Lacy K. Sykes, Jr., Cross Word Christian Church

ROLL CALL

Council:

Richard A. Stewart	Mayor
William H. Batey II	Council Member
Bonnie Flickinger	Mayor Pro Tem
Robin N. Hastings	Council Member
Jesse L. Molina	Council Member

Staff:

Jane Halstead	City Clerk
Ewa Lopez	Deputy City Clerk
Mike McCarty	Parks & Community Services Director
Robert Herrick	City Attorney
Robert Gutierrez	City Manager
Betsy Adams	Assistant City Manager
Rick Hartmann	Deputy City Manager
Barry Foster	Economic Development Director
Kyle Kollar	Community Development Director
John Terell	Planning Official
Mark Gross	Senior Planner

Michael Hendrix
Andy Minor
George Hanson
Mark Sambito
Eric Lewis
Prem Kumar
Chris Vogt

City Consultant
City Consultant
Electric Utility Division Manager
Engineering Division Manager
City Traffic Engineer
Assistant City Engineer
Public Works Director/City Engineer

Mayor Pro Tem Flickinger made a motion, seconded by Council Member Batey to move the Public Hearing item forward (at 6:30 p.m.). Approved by a 5-0 vote.

AGENDA ORDER

E PUBLIC HEARINGS

- E .1 A PHASED TENTATIVE PARCEL MAP (PA07-0090 AND P08-057) TO SUBDIVIDE A 158 GROSS ACRE SITE (265.3 ACRES INCLUDING OFFSITE IMPROVEMENTS AND DRAINAGE) INTO FOUR BUILDABLE PARCELS AND TWO PARCELS DEDICATED FOR FUTURE FREEWAY IMPROVEMENT PURPOSES (THIRTEEN PARCELS TOTAL INCLUDING PUBLIC ACCESS AND DEDICATION), AND FIRST PHASE PLOT PLAN (PA07-0091) FOR AN APPROXIMATELY 1,820,000 SQUARE FOOT WAREHOUSE INDUSTRIAL BUILDING ON APPROXIMATELY 83 ACRES (TOTAL OF 2,620,000 SQUARE FEET OF BUILDING FOR THE ALL PHASES OF DEVELOPMENT). THE PROJECT SITE CURRENTLY LIES WITHIN THE BP (BUSINESS PARK) AND CC (COMMUNITY COMMERCIAL) LAND USE DISTRICTS AND INCLUDES A REQUEST A CHANGE OF ZONE (PA07-0088) TO LI (LIGHT INDUSTRIAL) FOR ALL PROPOSED INDUSTRIAL USES AND A GENERAL PLAN AMENDMENT (PA07-0089) TO ELIMINATE A PLANNED MULTI-USE TRAIL OVER HIGHWAY 60, TO ADJUST AND EXTEND A PLANNED MULTI-USE TRAIL FROM THE SOUTH TO THE NORTH SIDE OF FUTURE EUCALYPTUS AVENUE FROM QUINCY STREET TO THEODORE STREET, TO RE-DESIGNATE FUTURE EUCALYPTUS AVENUE FROM REDLANDS BOULEVARD TO THEODORE STREET FROM AN ARTERIAL TO A DIVIDED ARTERIAL TO ALLOW THE ADDITION OF MEDIANS, AND TO ADJUST PARCEL LINES AND LAND USE FOR TWO PARCELS LOCATED IN THE CC LAND USE DISTRICT (NARROW WIDTH 126 FEET ON THE EASTERN PORTION OF THE SITE AND WIDEN 87 FEET ON THE WESTERN PORTION OF THE SITE). THE PROPOSED PROJECT IS LOCATED ADJACENT TO AND SOUTH OF HIGHWAY 60 ALONG FUTURE EUCALYPTUS AVENUE (FIR AVENUE) BETWEEN REDLANDS BOULEVARD AND THEODORE STREET. AN APPEAL HAS BEEN FILED BY THE PROJECT APPLICANT, HIGHLAND FAIRVIEW PROPERTIES, TO PROTECT THEIR RIGHTS (**ITEM CONTINUED FROM FEBRUARY 3, 2009 SPECIAL MEETING, PUBLIC COMMENTS WILL BE OPEN ONLY FOR THOSE WHO PREVIOUSLY SUBMITTED SPEAKER SLIPS AT THE FEBRUARY 3, 2009 SPECIAL MEETING AND WERE NOT CALLED TO SPEAK BY THE CITY COUNCIL**) (Report of: Community Development Department)

Mayor Pro Tem Flickinger made a motion, seconded by Council Member Batey to allow only the remaining four (4) speakers, who were not called to speak during the February 3, 2009 public hearing meeting, to continue. Approved by a 5-0 vote.

Mayor Stewart continued the public testimony portion of the public hearing. Public testimony was received from Jerry Schatz (opposed), Joe Celentano (opposed), Joseph Hopper (supported), and Tom Thornsley (opposed).

Mayor Stewart closed public testimony portion of the public hearing.

Rebuttal given by applicant Iddo Benzeevi of Highland Fairview Properties.

Recommendation:

1. The Planning Commission recommends that the City Council conduct a public hearing to: DENY PA07-0088 (Change of Zone) and a policy decision to change the zoning map on a 104.9 acre portion of a 158 acre project site from Business Park (BP), requiring a maximum of 50,000 square foot industrial/business park buildings, to Light Industrial (LI), allowing for industrial warehouse buildings greater than 50,000 square feet, thus denying the applicant's appeal and the project request as a whole. (If the Planning Commission's recommendation to deny the policy decision and change of zone is upheld, a resolution would be provided under separate cover at the meeting.)

If the applicant's appeal is upheld and a policy decision to change the zone from BP (Business Park) to LI (Light Industrial) can be justified by the City Council, the following alternative recommendation may be considered:

1. APPROVE Resolution No. 2009-08 to CERTIFY an Environmental Impact Report (P07-157), including approval of Statement of Overriding Considerations and a required Mitigation Monitoring Program for a Change of Zone (PA07-0088), General Plan Amendment (PA07-0089), Tentative Parcel Map (PA08-0090 and P08-057) and a Plot Plan (PA07-0091), pursuant to the California Environmental Quality Act (CEQA) Guidelines.

Resolution No. 2009-08

A Resolution of the City Council of the City of Moreno Valley, California, Certifying the Final Environmental Impact Report (P07-157), Adoption of the Findings and Statement of Overriding Considerations, and Approval of the Mitigation Monitoring Program for the Highland Fairview Corporate Park Project, Generally Located Adjacent to and South Of Highway 60 Along Future Eucalyptus Avenue (Fir Avenue) Between Redlands Boulevard and Theodore Street

Mayor Pro Tem Flickinger made a motion, seconded by Council Member Batey to approve Resolution No. 2009-08. Approved by a 5-0 vote.

2. INTRODUCE Ordinance No. 785 for a Change of Zone (PA07-0088), to change the zone on approximately 104.9 acres of a 158 acre site from BP (Business Park) to LI (Light Industrial) to allow for industrial warehouse buildings greater than 50,000 square feet, subject to the findings included in the attached resolution.

Ordinance No. 785

An Ordinance of the City Council of the City of Moreno Valley, California, Amending the Official Zoning Atlas of Said City, to Include a Change of Zone (PA07-0088) From BP (Business Park) To LI (Light Industrial) for an Approximate 104.9 Acre Portion of the Site, Including a Change of Zone for a 87 Foot Area Between Parcels 2 and 3 from BP (Business Park) TO CC (Community Commercial) and Change of Zone for 126 Feet of Land Between Parcels 1 and 4 from CC (Community Commercial) To LI (Light Industrial), All Encompassed Within an Approximately 158 Acre Site (Including Relevant Offsite Improvements and Drainage) Commercial Land Uses) on the Property Located South of and Adjacent to Highway 60 Between Redlands Boulevard and Theodore Street Along Future Eucalyptus (Fir Avenue)

Approved by a 5-0 vote. m/Flickinger, s/Batey.

3. APPROVE Resolution Nos. 2009-09, 2009-10, and 2009-11 for a General Plan Amendment (PA07-0089) to modify the Master Plan of Trails and Circulation Map of the General Plan, a plot plan (PA07-0090) and Tentative Parcel Map No. 35629 including phasing (PA07-0091 and P08-057) for the subdivision of a 158 acre site into four buildable parcels and additional parcels for public access and dedication purposes and a 2,620,000 square foot industrial/commercial development, including a 1,800,000 square foot industrial warehouse building (Phase 1), two parcels for future freeway improvements and numerous lettered lots for maintenance and easement purposes, subject to all mitigation measures within the EIR, as well as findings included in the attached resolutions, and conditions of approval, attached as Exhibit A to two of the resolutions.

Resolution No. 2009-09

A Resolution of the City Council of the City of Moreno Valley, California, Approving A General Plan Amendment (PA07-0089) for the Elimination of a Portion of a General Plan Designated Multi-Use Trail, the Adjustment of a Planned Multi-Use Trail on Future Eucalyptus Avenue (Fir), the Upgrading from an Arterial to a Divided Arterial for Future Eucalyptus Avenue (Fir) and a Change in Land Use for a 87 Foot Area Between Parcel of Land Use for of 126 Feet of Land Between Parcels 1 and 4 From C (Commercial) To BP (Business Park), and a Plot Plan for an Approximately 1,820,000 Square Foot Warehouse Industrial Building (Total of 2,620,000 Square Feet for All Phases of Development Consisting of Industrial and Commercial Land Uses) on the Property Located South of and Adjacent to Highway 60 Between Redlands Boulevard and Theodore Street Along Future Eucalyptus (Fir Avenue)

Resolution No. 2009-10

A Resolution of the City Council of the City of Moreno Valley, California Recommending Approval of PA07-0090 (Tentative Parcel Map No. 35629) for Four Separate Buildable Parcels and Two Primary Parcels Dedicated for Freeway and Improvement Purposes (Thirteen Parcels Overall to Include Lettered Lots for Public Access and Dedication Purposes) and a Phased Subdivision of Land (P08-057) Consisting of a Proposed Industrial and Commercial Development (2,620,000 Square Feet) to Include Two Parcels for Industrial Warehouse Uses, Two Parcels for Commercial/Retail Uses and Two Parcels that will be Dedicated for Future Freeway Improvements on a 158 Acre Site (With Additional Off-Site Improvements and Drainage) Located Adjacent to and South of Highway 60 Along Future Eucalyptus Avenue (Fir Avenue) Between Redlands Boulevard and Theodore Street

Resolution No. 2009-11

A Resolution of the City Council of the City of Moreno Valley, California Approving PA07-0091 (Plot Plan) for an Approximate 1,820,000 Square Foot Industrial Warehouse Building with Ancillary Commercial/Retail and Office Uses on an Approximately 83 Acre Parcel Generally Located Adjacent to and South of Highway 60 Along Future Eucalyptus Avenue (Fir Avenue) Between Redlands Boulevard and Theodore Street

Approved Resolutions No. 2009-09, 2009-10 and 2009-11 by a 5-0 vote. m/Flickinger, s/Batey.

**RECESS
RECONVENED**

AGENDA ORDER

PUBLIC COMMENTS ON ANY SUBJECT NOT ON THE AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL ARE AS FOLLOWS:

Mike Rios

- 1) Time to work together and move forward
- 1) Threats against him and his family

George Hague

- 1) Open space mitigation for Sunnymead Ranch project

- 2) Public testimony at the Planning Commission meetings
- 3) Expand the notification for projects to reach a certain number of people
- 4) Need to improve landscaping at Electric Substation on Moreno Beach
- 5) Process for putting together Environmental Impact Reports (EIR)

Oscar Valdepena (representing Moreno Valley Chamber of Commerce)

- 1) Shop in Moreno Valley campaign

AGENDA ORDER

JOINT CONSENT CALENDARS (SECTIONS A-D) OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, MORENO VALLEY COMMUNITY SERVICES DISTRICT, COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AND THE BOARD OF LIBRARY TRUSTEES

Mayor Stewart opened the agenda items for the Consent Calendars for public comments; there being none, public comments were closed.

A. CONSENT CALENDAR - CITY COUNCIL

- A .1 ORDINANCES - FIRST READING BY TITLE ONLY
Waived reading of all Ordinance Introductions and read by title only.

- A .2 NOTICE OF COMPLETION AND ACCEPTANCE OF THE GRAHAM STREET IMPROVEMENTS FROM IRONWOOD AVENUE TO HEMLOCK AVENUE PROJECT NO. 06-28068425 (Report of: Public Works Department)

Recommendation:

1. Accept the work as complete for the Graham Street Improvements from Ironwood Avenue to Hemlock Avenue constructed by Trinity Construction, P.O. Box 246, Blue Jay, CA 92317;

2. Direct the City Clerk to record the Notice of Completion within ten (10) calendar days at the office of the County Recorder of Riverside County, as required by Section 3093 of the California Civil Code;

3. Authorize the Financial & Administrative Services Director to release the retention to Trinity Construction thirty-five (35) calendar days after the date of recordation of the Notice of Completion, if no claims are filed against the project; and

4. Accept the improvements into the City's maintained system.

A .3 MINUTES - REGULAR MEETING OF JANUARY 27, 2009 (Report of: City Clerk's Department)

Recommendation:

Approve as submitted.

A .4 CITY COUNCIL REPORTS ON REIMBURSABLE ACTIVITIES (Report of: City Clerk's Department)

Recommendation:

Staff recommends that the City Council receive and file the Reports on Reimbursable Activities for the period of January 21 – February 3, 2009.

A .5 AUTHORIZATION TO AWARD CONSTRUCTION CONTRACT FOR AQUEDUCT BIKEWAY IMPROVEMENTS FROM INDIAN STREET TO FAY AVENUE PROJECT NO. 05-12567524 (Report of: Public Works Department)

Recommendation:

1. Reject Mega Way Enterprises's low bid as non responsive;
2. Award the construction contract for Aqueduct Bikeway Improvements from Indian Street to Fay Avenue to Rialto Construction Inc. dba L.R. Johnson Construction Inc. (L.R. Johnson Construction), 340 N. Riverside Avenue, Rialto, CA 92376, the lowest responsible bidder and waive any and all minor irregularities in the bidder's proposal documents;
3. Authorize the City Manager to execute the Agreement with L.R. Johnson Construction;
4. Authorize the issuance of a Purchase Order to L. R. Johnson Construction in the amount of \$348,346.18 (\$290,288.48 for the Base Bid plus 20% contingency) for Aqueduct Bikeway Improvements from Indian Street to Fay Avenue (Account No. 125.67524); and

5. Authorize the Public Works Director/City Engineer to execute any subsequent related minor change orders to the contract with L.R. Johnson Construction up to, but not exceeding, the contingency amount of \$58,057.70, subject to the approval of the City Attorney.

A .6 **SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES WITH VALI COOPER AND ASSOCIATES, INC. (Report of: Public Works Department)**

Recommendation:

1. Approve the "Second Amendment to Agreement for Professional Consultant Services" with Vali Cooper and Associates, Inc. (Vali Cooper), 3900 Market Street, Suite 250, Riverside, CA 92501 to provide Professional Consultant Services, extend the agreement from August 31, 2009 to December 31, 2009, and increase the agreement amount by a "not to exceed" fee of \$150,000.00;
2. Authorize the City Manager to execute said "Second Amendment to Agreement for Professional Consultant Services" with Vali Cooper; and
3. Authorize an increase in the Purchase Order to Vali Cooper in the amount of \$150,000.00 when "Second Amendment to Agreement for Professional Consultant Services" has been signed by all parties.

A .7 **PA07-0139 – COMMERCIAL BUILDINGS - ACCEPT AGREEMENT AND CASH DEPOSIT FOR PUBLIC IMPROVEMENTS, EAST SIDE OF PERRIS BOULEVARD, SOUTH OF ALESSANDRO BOULEVARD, DEVELOPER - PERRIS ALESSANDRO LLC, LOS ANGELES, CA 90025 (Report of: Public Works Department)**

Recommendation:

1. Accept the Agreement for Public Improvements and Cash Security for PA07-0139;
2. Authorize the Mayor to execute the agreement;

3. Direct the City Clerk to forward the signed agreement to the County Recorder's office for recordation; and
4. Authorize the City Engineer to execute any amendments to the agreement if the required public improvements are not completed within said timeframe.

A .8 FIRST AMENDMENT TO THE AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT BETWEEN ONE MORENO VALLEY 240, LP AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY FOR THE OAKWOOD APARTMENTS. (Report of the Economic Development Department)

Recommendation:

That the City Council adopt Resolution No. 2009-03 and the Board of Directors of the Community Redevelopment Agency adopt Resolution No. RDA 2009-01 approving the First Amendment to the Amended and Restated Affordable Housing Agreement between One Moreno Valley 240, LP and the Community Redevelopment Agency of the City of Moreno Valley for the Oakwood Apartments.

Resolution No. 2009-03

A Resolution of the City Council of the City of Moreno Valley Consenting to the Approval by the Community Redevelopment Agency of the City of Moreno Valley of a First Amendment to Amended and Restated Affordable Housing Agreement by and Between the Agency and One Moreno Valley 240, L.P., A California Limited Partnership

A .9 DAY STREET SEWER IMPROVEMENTS – REQUEST TO EXTEND THE TIME FOR A FULL ROAD CLOSURE OF DAY STREET BETWEEN ALESSANDRO BOULEVARD AND BAY AVENUE FOR THE CONSTRUCTION OF SEWER IMPROVEMENTS FROM FEBRUARY 24, 2009 – MARCH 16, 2009, CONTRACTOR: BONADIMAN-MCCAIN, INC., SAN BERNARDINO, CA 92408 (Report of: Public Works Development)

Recommendation:

1. Authorize an extension of time for a full road closure of Day Street between Alessandro Boulevard to Bay Avenue for the construction of sewer improvements from February 24, 2009 – March 16, 2009; and
2. Authorize the City Engineer to allow for an additional 30 day extension to the proposed road closure window if the project is delayed due to unforeseen construction issues.

A .10 FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES WITH SA ASSOCIATES, INC. (Report of: Public Works Department)

Recommendation:

1. Approve the “First Amendment to Agreement for Professional Consultant Services” with SA Associates, Inc. (SA), 1130 W. Huntington Drive, Unit 12, Arcadia, CA 91007 to provide Professional Consultant Services, extend the agreement from August 31, 2009 to December 31, 2009, and increase the agreement amount by the “not to exceed” fee of \$350,000.00;
2. Authorize the City Manager to execute said “First Amendment to Agreement for Professional Consultant Services” with SA; and
3. Authorize a Change Order to increase the Purchase Order to SA in the amount of \$350,000.00 when “First Amendment to Agreement for Professional Consultant Services” has been signed by all parties.

A .11 AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES WITH JAGDISH SHAH (Report of: Public Works Department)

Recommendation:

1. Approve the “Agreement for Professional Consultant Services” with Jagdish Shah, R.A., M.S. (Civil), 22900 Estoril Drive, Unit 5, Diamond Bar, CA 91765-4490 to provide Professional Consultant Services, for the “not to exceed” fee of \$265,000;

2. Authorize the City Manager to execute said "Agreement for Professional Consultant Services" with Jagdish Shah; and
3. Authorize a Purchase Order to Jagdish Shah in the amount of \$265,000 when the "Agreement for Professional Consultant Services" has been signed by all parties.

B. CONSENT CALENDAR - COMMUNITY SERVICES DISTRICT

B .1 ORDINANCES - FIRST READING BY TITLE ONLY
Waived reading of all Ordinance Introductions and read by title only.

B .2 MINUTES - REGULAR MEETING OF JANUARY 27, 2009 (Report of: City Clerk's Department)

Recommendation:
Approve as submitted.

B .3 NAMING OF PARK ON FILAREE AVENUE BETWEEN SHEILA STREET AND PERRIS BOULEVARD (Report of: Parks and Community Services)

Recommendation:
Adopt the name as recommended and submitted at the neighborhood meeting for the new park located along the south side of Filaree Avenue between Sheila Street and Perris Boulevard as "Patriot Park."

C. CONSENT CALENDAR - COMMUNITY REDEVELOPMENT AGENCY

C .1 ORDINANCES - FIRST READING BY TITLE ONLY
Waived reading of all Ordinance Introductions and read by title only.

C .2 MINUTES - REGULAR MEETING OF JANUARY 27, 2009 (Report of: City Clerk's Department)

Recommendation:
Approve as submitted.

- C .3 FIRST AMENDMENT TO THE AMENDED AND RESTATED AFFORDABLE HOUSING AGREEMENT BETWEEN ONE MORENO VALLEY 240, LP AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY FOR THE OAKWOOD APARTMENTS (Report of: Economic Development Department)

Recommendation:

That the City Council Adopt Resolution No. 2009-03 and the Board of Directors of the Community Redevelopment Agency adopt Resolution No. RDA 2009-01 approving the First Amendment to the Amended and Restated Affordable Housing Agreement between One Moreno Valley 240, LP and the Community Redevelopment Agency of the City of Moreno Valley for the Oakwood Apartments.

Resolution No. RDA 2009-01

A Resolution of the Community Redevelopment Agency of the City of Moreno Valley Approving a First Amendment to Amended and Restated Affordable Housing Agreement by and Between the Agency and One Moreno Valley 240, L.P., A California Limited Partnership

D. CONSENT CALENDAR - BOARD OF LIBRARY TRUSTEES

- D .1 ORDINANCES - FIRST READING BY TITLE ONLY
Waived reading of all Ordinance Introductions and read by title only.
- D .2 MINUTES - REGULAR MEETING OF JANUARY 27, 2009 (Report of: City Clerk's Department)

Recommendation:

Approve as submitted.

Joint Consent Calendar Items A1- D2 approved by a 5-0 vote. m/Hastings, s/Flickinger.

F. ITEMS REMOVED FROM CONSENT CALENDARS FOR DISCUSSION OR SEPARATE ACTION - None

G. REPORTS

**G .1 CITY COUNCIL REPORTS ON REGIONAL ACTIVITIES
(Informational Oral Presentation - not for Council action)**

a. Report by Mayor Stewart on March Joint Powers Commission (MJPA)

Mayor Stewart reported on March museum trying to get a space shuttle and on the upgrades that need to be done; the March Joint Powers Authority may ask for a resolution of support.

b. Report by Council Member Hastings on Western Riverside Council of Governments (WRCOG)

Council Member Hastings reported the following:

1) It seems that Southern California is not going to get any more water from the Delta any time soon

2) According to the County Assessor's report, Moreno Valley has the highest projected decrease in property value for 2009. Encouraged residents to apply for reassessment of their property value. More information can be obtained at www.riversideasr.com or by calling 486.7152. The deadline to submit a request is March 15

3) Was asked to serve on WRCOG Administration and Finance Committee

G .2 CITY MANAGER'S REPORT (Informational Oral Presentation - not for Council action)

City Manager announced the following:

- 1) The City is hosting a joint mixer with the MV Chamber of Commerce, MV Black Chamber of Commerce and MV Hispanic Chamber of Commerce on February 12 at the Moreno Valley Conference and Recreation Center
- 2) The Rancho Belago Wind Symphony will perform on February 26 at 7:00 p.m. at the Conference and Recreation Center. Admission is complimentary for the community

H. LEGISLATIVE ACTIONS

ORDINANCES - 1ST READING AND INTRODUCTION – NONE

ORDINANCES - 2ND READING AND ADOPTION – NONE

ORDINANCES - URGENCY ORDINANCES – NONE

RESOLUTIONS – NONE

CLOSING COMMENTS AND/OR REPORTS OF THE CITY COUNCIL, COMMUNITY SERVICES DISTRICT, OR COMMUNITY REDEVELOPMENT AGENCY

Council Member Batey

- 1) Hampton Inn is scheduled to open early March; and Sports Authority in April
- 2) Time to put the differences behind and move forward
- 3) Asked the City Manager to report back how the state-mandated furlough will impact firefighters (staffing)

Mayor Pro Tem Flickinger

- 1) The Moreno Valley Arts group still has its gallery at the Moreno Valley mall and is scheduling a poetry reading on February 27 between 6-8 p.m.

Council Member Hastings

- 1) Together with Mayor Pro Tem Flickinger, attended the Riverside County Office of Education State of Education address; it was a great inaugural event
- 2) The Riverside County Board of Supervisors will join other counties in Sacramento on February 11 and will let the State know that counties are not going to provide (pay for) social services programs, including indigent public health care, food stamps, DPSS, immigration, when the State stops funding them; also the Supervisor Ashley will bring the issue of state-mandated furloughs impacting firefighters staffing and forcing counties and cities to cover the overtime cost

Council Member Molina

- 1) Reported on freeways improvements: widening of the Freeway 91 from downtown Riverside to Corona, proposed highway from Cajalco Expressway to Perris, and from Ramona Expressway to Beaumont; is working on widening the Freeway 60
- 2) Breaking grounds for Metrolink station in Perris

Mayor Stewart

- 1) The Silver Beaver award event for the California Inland Empire Council of Boy Scouts of America (that covers San Bernardino and Riverside counties) was held on February 7 at the Moreno Valley Conference and Recreation Center; it went extremely well

CLOSED SESSION - cancelled

ANNOUNCEMENT FROM SPECIAL CLOSED SESSION HELD ON FEBRUARY 10 AT 6:00 P.M.

The City Attorney Robert Herrick announced that the following item needed to be added to the Special Closed Session agenda held at 6:00 p.m. due to the facts and circumstances that arose after the posting of the agenda, pursuant to Government Code:

- 1) SECTION 54956.9(a) – CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
 - a) Case: City of Irvine vs. Southern California Association of Governments
Court: Court of Appeal
Case No.: G040513

Reportable action: The City Attorney reported that the Council voted to send a letter to the court withdrawing its participation in the amicus brief and stating its concerns about the lack of judicial review in the process for the Regional Housing Needs Assessment program.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 9:45 p.m. by unanimous informal consent.

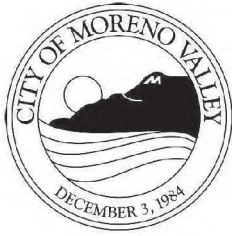
Submitted by:

Jane Halstead, City Clerk, CMC
Secretary, Moreno Valley Community Services District
Secretary, Community Redevelopment Agency of the City of Moreno Valley
Secretary, Board of Library Trustees

Approved by:

Richard A. Stewart, Mayor
President, Moreno Valley Community Services District
Chairperson, Community Redevelopment Agency of the City of Moreno Valley
Chairperson, Board of Library Trustees

enl



APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>CAF</i>
CITY MANAGER	<i>CA</i>

Report to City Council

TO: Mayor and City Council

FROM: Chris A. Vogt, P.E., Public Works Director/City Engineer

AGENDA DATE: February 24, 2009

TITLE: AUTHORIZATION TO AWARD THE CONSTRUCTION CONTRACT FOR LASSELLE STREET WIDENING FROM JOHN F. KENNEDY DRIVE TO ALESSANDRO BOULEVARD
PROJECT NO. 06-50182725

RECOMMENDED ACTION

Staff recommends that the City Council:

1. Waive minor irregularities of the lowest Bidder's Proposal and award the construction contract for Lasselle Street Widening from John F. Kennedy Drive to Alessandro Boulevard to Wheeler Paving, Inc., 8432 63rd Avenue, Riverside, CA 92509, determined as the lowest responsive and responsible bidder.
2. Authorize the City Manager to execute a construction contract with Wheeler Paving, Inc., in the form attached hereto.
3. Authorize the issuance of Purchase Orders for Wheeler Paving, Inc., in the amount of \$3,491,773.80 (Base Bid \$2,743,351.50 plus Additive Bid Item "A" \$8,410.00, Additive Bid Item "C" \$152,500.00 and Additive Bid Item "D" \$5,550.00, plus 20% contingency of \$581,962.30) when the contract has been signed by all parties (\$391,773.80 from Account No. 501.82725 and \$3,100,000.00 from 415.72927).
4. Authorize the Public Works Director/City Engineer to execute any subsequent change orders to the construction contract with Wheeler Paving, Inc., up to but not exceeding the Purchase Orders combined contingency amount of \$581,962.30, subject to the approval of the City Attorney.

BACKGROUND

The Lasselle Street Widening (John F. Kennedy Drive to Alessandro Boulevard) will improve this roadway to its General Plan width of four (4) travel lanes with turning lanes

at intersections and curb and gutter for the approximately one-mile length of the project. The work will include roadway and rock excavation, AC pavement and base for the widened easterly half-width of the street, curb and gutter, traffic signal modifications at the John F. Kennedy Drive, Cactus Avenue and Alessandro Boulevard intersections with Lasselle Street, new traffic striping, and construction of a storm drain in Lasselle Street northerly from Cactus Avenue.

On February 26, 2008, the City Council adopted a Mitigated Negative Declaration and on July 8, 2008 adopted a Subsequent Mitigated Negative Declaration as the environmental determination for this project. Design and right-of-way acquisitions have been completed.

On November 29, 2007 the City and Western Riverside Council of Governments (WRCOG) entered into an agreement for the reimbursement of Transportation Uniform Mitigation Fee (TUMF) monies for the construction of this project. This agreement was amended on January 27, 2009.

DISCUSSION

Formal bidding procedures were followed in conformance with the Public Contract Code. The City Clerk opened bids at 2:00 p.m. on January 13, 2009. Twelve (12) bids were received. The bid documents stipulated that the lowest bid is determined based on the cumulative total of the “Base Bid” plus all five “Additive Bid” items.

Bidder

1. Wheeler Paving, Inc.	\$3,105,178.50
2. All American Asphalt	\$3,230,000.00
3. H & H General Contractors	\$3,294,238.00
4. Sequel Contractors Inc.....	\$3,362,711.00
5. Hillcrest Contracting	\$3,420,259.00
6. Griffith Company	\$3,422,326.77
7. Vance Corporation	\$3,572,810.00
8. Sukut Construction, Inc.	\$3,597,327.00
9. Riverside Construction Co.....	\$3,692,492.00
10. Excel Paving Company	\$3,694,703.50
11. Beador Construction Co.....	\$3,715,620.00
12. Los Angeles Engineering Inc.....	\$3,978,670.00

Engineer’s Estimate \$4,301,530.00

All bids received were reviewed for completeness, accuracy and conformance with bidding instructions. Wheeler Paving, Inc. submitted the lowest bid, however its Bidder’s Bond submitted with the proposal did not include a notary acknowledgement of the firm’s President’s signature as specifically required by the Signing Instructions contained on the Bidder’s Bond form. The lack of a notary certificate could, in accordance with policy, be considered cause to find the bid non responsive and result in

the bid being rejected. The City Attorney, after review of the facts, has advised that this irregularity does not cause the bid bond or the proposal to be unenforceable and can be considered a minor irregularity at the discretion of the City Council. In addition, waiving such an irregularity would not provide the bidder with any significant competitive advantage. A minor irregularity in a Bidder's Proposal, not affecting the validity of the Bidder's Bond, may be waived by the City Council in awarding the construction contract to the lowest responsible and otherwise responsive bidder.

The Notice Inviting Bid (NIB) and the proposal form included a schedule of "Base Bid" items together with a schedule of five (5) "Additive Bid" items. The Additive Bid items are described as follows:

- Additive Bid Item "A" (PCC sidewalk on westerly side of Lasselle Street between Copper Cove Lane and Alessandro Boulevard),
- Additive Bid Item "B" (12 inch reclaimed water line),
- Additive Bid Item "C" (traffic signal interconnect on westerly side of Lasselle Street between John F. Kennedy Drive and Alessandro Boulevard), and
- Additive Bid Item "D" (PCC barrier curb and stamped concrete around the new traffic signal pole at the southeasterly corner of Lasselle Street and Cactus Avenue).
- Additive Bid Item "E" (utility conduit sleeves)

Staff is recommending award of a construction contract to include the "Base Bid" plus "Additive Bid" items "A", "C" and "D". "Additive Bid" items "B" and "E" were included in the bid solicitation in accordance with the terms of a cost reimbursement agreement with the adjacent property owner. Staff is not recommending the award of "Additive Bid" items "B" and "E" because the owner made a business decision to not proceed with the work at this time.

Wheeler Paving, Inc. possesses a valid California Contractors license in good standing and provided a bid bond as its required bid security. No material issues were identified through a review of the references submitted by Wheeler Paving, Inc. with its bid. Staff finds Wheeler Paving, Inc. to be the lowest responsive and responsible bidder.

The award of construction contract, as recommended by staff, is in the total amount of \$2,909,811.50 (Base Bid \$2,743,351.50 plus Additive Bid Item "A" \$8,410.00, Additive Bid Item "C" \$152,500.00 and Additive Bid Item "D" \$5,550.00). A Purchase Order in the amount of \$3,491,773.80 inclusive of a 20% contingency will be issued for this contract.

ALTERNATIVES

1. Waive minor irregularities of the lowest Bidder's Proposal and award the construction contract for Lasselle Street Widening from John F. Kennedy Drive to Alessandro Boulevard to Wheeler Paving, Inc., 8432 63rd Avenue, Riverside, CA 92509, determined as the lowest responsive and responsible bidder, authorize the City Manager to execute a construction contract with Wheeler Paving, Inc., in the

form attached hereto, authorize the issuance of Purchase Orders for Wheeler Paving, Inc., in the amount of \$3,491,773.80 (Base Bid \$2,743,351.50 plus Additive Bid Item "A" \$8,410.00, Additive Bid Item "C" \$152,500.00 and Additive Bid Item "D" \$5,550.00, plus 20% contingency of \$581,962.30) when the contract has been signed by all parties (\$391,773.80 from Account No. 501.82725 and \$3,100,000.00 from 415.72927), and authorize the Public Works Director/City Engineer to execute any subsequent change orders to the construction contract with Wheeler Paving, Inc., up to but not exceeding the Purchase Orders combined contingency amount of \$581,962.30, subject to the approval of the City Attorney. *This alternative will allow much needed improvements.*

2. Do not waive minor irregularities of the lowest Bidder's Proposal and award the construction contract for Lasselle Street Widening from John F. Kennedy Drive to Alessandro Boulevard to Wheeler Paving, Inc., 8432 63rd Avenue, Riverside, CA 92509, determined as the lowest responsive and responsible bidder, do not authorize the City Manager to execute a construction contract with Wheeler Paving, Inc., in the form attached hereto, do not authorize the issuance of Purchase Orders for Wheeler Paving, Inc., in the amount of \$3,491,773.80 (Base Bid \$2,743,351.50 plus Additive Bid Item "A" \$8,410.00, Additive Bid Item "C" \$152,500.00 and Additive Bid Item "D" \$5,550.00, plus 20% contingency of \$581,962.30) when the contract has been signed by all parties (\$391,773.80 from Account No. 501.82725 and \$3,100,000.00 from 415.72927), and do not authorize the Public Works Director/City Engineer to execute any subsequent change orders to the construction contract with Wheeler Paving, Inc., up to but not exceeding the Purchase Orders combined contingency amount of \$581,962.30, subject to the approval of the City Attorney. *This alternative will delay the completion of needed improvements.*

FISCAL IMPACT

The project is included in Fiscal Year 2008-2009 Capital Improvement Project Budget. The construction contract will be funded by \$391,774 of 2005 Lease Revenue Bonds (Fund 501) and \$3,100,000 of Transportation Uniform Mitigation Fee Program (Fund 415). **There is no impact to the General Fund.**

BUDGETED FUNDS FY 08/09:

Account No 501.82725.....	\$2,044,208
Account No. 415.72927.....	<u>\$3,319,923</u>
Total FY 08/09 Budget	\$5,364,131

DESIGN AND RIGHT-OF-WAY RELATED COSTS FY 08/09:

Design related costs.....	\$187,000
Right-of-Way related costs	<u>\$479,000</u>
Total FY 08/09 Design & Right-of-Way Related Costs	\$666,000

CONSTRUCTION RELATED COSTS:

Contractor Construction Cost	\$3,491,774
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Consultant Construction Survey Services	\$122,000
Consultant Construction Geotechnical Services	\$150,000
Consultant Construction Design Support Services.....	\$50,000
City Inspection, Project Management and Administration Costs	\$325,000
Miscellaneous Costs	<u>\$50,000</u>
Total Estimated Construction Phase Related Costs.....	\$4,188,774
 Remaining Balance	 \$509,357

ANTICIPATED PROJECT SCHEDULE:

Notice to Proceed..... March 2009
Anticipated Completion of ConstructionJanuary 2010

CITY COUNCIL GOALS

PUBLIC SAFETY:

Provide a safe and secure environment for people and property in the community, control the number and severity of fire and hazardous material incident, and provide protection for citizens who live, work and visit the City of Moreno Valley.

PUBLIC FACILITIES AND CAPITAL PROJECTS:

Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

POSITIVE ENVIRONMENT:

Create a positive environment for the development of Moreno Valley’s future.

SUMMARY

The City Council is requested to waive bid proposal minor irregularities and award a contract to Wheeler Paving, Inc., for construction of the Lasselle Street Widening project and authorize the issuance of two purchase orders totaling \$3,491,773.80 to Wheeler Paving, Inc.

ATTACHMENTS

- Attachment “A” – Location Map
- Attachment “B” – Construction Contract with Wheeler Paving, Inc.

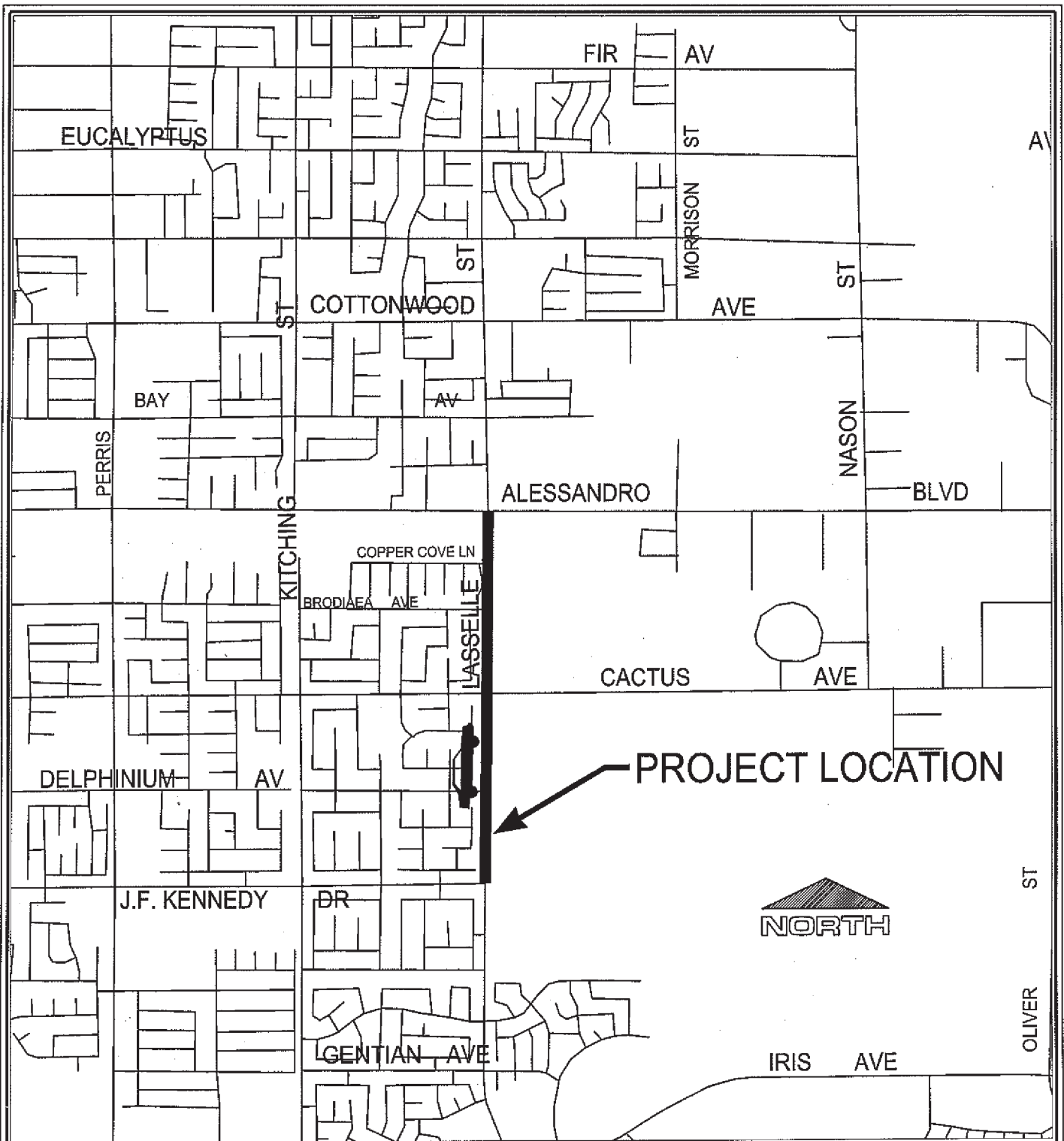
Prepared By:
Michael D. Myers, P.E.
Consultant Project Manager

Department Head Approval:
Chris A. Vogt, P.E.
Public Works Director/City Engineer

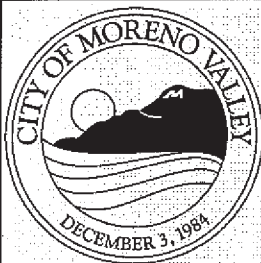
Concurred By:
Prem Kumar, P.E.
Deputy Public Works Director/Assistant City Engineer

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

W:\CapProj\CapProj\PROJECTS\MikeM - 06-50182725 - Lasselie Street Widening\CC Reports\Staff Report - Award Construction Contract (CC 02-24-09) - Wheeler.doc



LOCATION MAP



Public Works Department
Capital Projects Division

Scale: None

ATTACHMENT "A"

LASSELLE STREET WIDENING
FROM JFK DRIVE TO ALESSANDRO BOULEVARD
PROJECT NUMBER 06-50182725

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AGREEMENT

PROJECT NO. 06-50182725

Lasselle Street Widening
John F. Kennedy Drive to Alessandro Boulevard

THIS Contract Agreement, made and entered into as of the date signed by the City Manager, by and between the City of Moreno Valley, a municipal corporation, County of Riverside, State of California, hereinafter called the "City" and **Wheeler Paving, Inc.** hereinafter called the "Contractor."

That the City and the Contractor for the consideration hereinafter named, agree as follows:

1. The written Agreement includes all of the following: a) any and all Contract Change Orders issued after the execution of the Agreement, b) the Bidder's Proposal which includes the Bidder's Bond and Non-Collusion Affidavit, c) **Addenda No. 1 inclusive** issued prior to the opening of the Bids, d) the bound Contract Documents, e) the Special Provisions which include the General Provisions and Technical Provisions, f) the project Plans, g) the Standard Plans, h) the Standard Specifications, i) Reference Specifications, j) any and all federal/Caltrans certifications, all of which are essential parts of this Agreement. In the event of any conflict in the provisions thereof, the terms of said Contract documents as set forth above shall control, each over the other, in the order provided. The above items are incorporated in this Agreement as though set forth in full

2. The Contractor shall furnish all materials, tools, equipment and labor, except as otherwise provided in the Plans or Special Provisions, and will perform all the work which is necessary to complete in a good, workmanlike and substantial manner the above said project in accordance with the Contract documents for this project, the Contract documents which are hereby specifically referred to and by such reference made a part hereof.

3. The City will pay the Contractor and the Contractor agrees to receive and accept the prices set forth in the Bid Schedule as full compensation for the work required under the bid items awarded by the City, to wit, the Base Bid Item(s) and Additive Bid Item(s) in the sum total amount of **\$2,909,811.50**, subject to additions or reductions of the quantities of the various bid items at the unit prices bid, for furnishing all materials and for doing all the work contemplated and embraced under this Contract Agreement; for all loss or damages arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work, until the work is accepted by the City Council and as to the work of the recycled waterline improvements is also accepted by the Eastern Municipal Water District (EMWD); for all expenses incurred by or in consequence of the suspension or discontinuance of work; and for well and faithfully completing the work, the whole thereof, in the manner and in accordance with the Contract documents therefore and the requirements of the Engineer under them.

4. The Contractor hereby agrees to order materials pursuant to this Contract within 7 calendar days after the date of authorization specified in the "Notice to Proceed with Order of Materials." The Contractor hereby agrees to commence work pursuant to this Contract within 14 calendar days after the date of authorization specified in the "Notice to Proceed with Construction." The Contractor agrees to diligently prosecute the contracted work, including corrective items of work, day to day thereafter, to completion within **Two hundred ten (210) working days** after said date in the "Notice to Proceed with Construction," except as adjusted by subsequent Contract Change Order(s).

5. The City and Contractor hereby agree that in case all ordering of materials and construction called for under the Contract is not completed within the time hereinabove specified, including City

ATTACHMENT "B"

**AGREEMENT
PROJECT NO. 06-50182725**

caused delays or extensions, damages will be sustained by the City and that, it is and will be impracticable or extremely difficult to ascertain and determine the actual amount of damages the City will sustain in the event of, and by reason of, such delay.

It is, therefore, agreed that such damages shall be presumed to be in the amount of \$2,000.00 per calendar day, and that the Contractor will pay to the City, or City may retain from amounts otherwise payable to Contractor, said amount for each calendar day by which the Contractor fails to complete the work, including corrective items of work, under this Contract Agreement within the time hereinabove specified and as adjusted by Contract Change Order(s). The Contractor will not be assessed liquidated damages for delay(s) occasioned by the failure of the City or of the owner of a utility to provide for the removal or relocation of utility facilities.

6. The Contractor shall name as additional insured, the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), the Moreno Valley Community Services District (CSD), Eastern Municipal Water District (EMWD), and Western Riverside Council of Governments (WRCOG), and shall furnish the City and Eastern Municipal Water District (EMWD) with a certificate of insurance evidencing liability insurance policy or policies which shall provide coverage for owned and non-owned automobiles; manufacturers and Contractor's liability; broad form property damage in any case where the Contractor has any property belonging to the City in his care, custody or control; owners and Contractor's protective liability; blanket contractual liability; products and completed operations coverage; coverage for collapse, explosion, and where any excavation, digging or trenching is done with power equipment; and shall bear an endorsement containing the following Provisions:

Solely as respect to work done by or on behalf of the named insured for the City of Moreno Valley, it is agreed that the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), the Moreno Valley Community Services District (CSD), Eastern Municipal Water District (EMWD), and Western Riverside Council of Governments (WRCOG), its officers, employees and agents, are added as additional insured under this policy and the coverage provided hereunder shall be primary insurance and not contributing with any other insurance available to the City of Moreno Valley, California, the Community Redevelopment Agency of the City of Moreno Valley, the Moreno Valley Community Services District, Eastern Municipal Water District (EMWD) and Western Riverside Council of Governments (WRCOG), its officers, employees and agents; under any third party liability policy.

It is further agreed that the other insurance provision(s) of the policy are amended to conform therewith.

The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. Insurance companies providing insurance here under shall be rated (A minus: VII - Admitted) or better in Best's Insurance Rating Guide, shall be listed as an approved insurance carrier on the California Department of Insurance List of Eligible Surplus Line Insurers (LESLI), and shall be legally licensed and qualified to conduct insurance business in the State of California.

Each policy of insurance which names the Eastern Municipal Water District (EMWD) as "additional insured" shall name and list Eastern Municipal Water District (EMWD) by utilizing Eastern Municipal Water District (EMWD) form CG2010 (11/85) or CG2010 (10/01) together with form CG2037 (10/01) to include completed operations beyond the completion date. Endorsements are required with the

**AGREEMENT
PROJECT NO. 06-50182725**

certificate.

The terms of the insurance policy or policies issued to provide the below insurance coverage(s) shall not be amended or canceled by the carrier without thirty (30) days prior written notice by certified or registered mail of amendments or cancellation to the City and Eastern Municipal Water District (EMWD), except that cancellation for non-payment of premium shall require (10) days prior written notice by certified or registered mail. In the event the said insurance is canceled, the Contractor shall, prior to the cancellation date, submit to the City Clerk and Eastern Municipal Water District (EMWD) new evidence of insurance in the amounts established.

All liability insurance policies shall bear an endorsement or shall have an attached rider which provides that the City of Moreno Valley and Eastern Municipal Water District (EMWD) will be notified by certified or registered mail at least 30 days prior to the effective date of cancellation, non-renewal, or material alteration of such policy.

All liability insurance shall cover comprehensive general liability for both bodily injury (including death) and property damage, including but not limited to aggregate products, aggregate operations, aggregate protective and aggregate contractual with the following minimum limits:

	Each Person	Each Occurrence	Aggregate
Bodily Injury	\$500,000.00	\$1,000,000.00	\$2,000,000.00
Property Damage	---	\$1,000,000.00	\$2,000,000.00

A combined single limit for Bodily Injury Liability and Property Damage Liability of \$2,000,000.00 for each occurrence will be considered equivalent to the above minimum limits for Comprehensive General Liability.

Property Damage Insurance shall cover full replacement value for damages to any property caused directly or indirectly by or from acts or activities of the Contractor or its sub-contractors or any person acting for the Contractor or under its control or direction.

The Contractor shall procure and maintain, at its sole expense, and throughout the term of this Contract Agreement and any extension thereof, Public Liability and Property Damage Insurance coverage for owned and non-owned automotive equipment operated. Such coverage limits shall not be less than \$1,000,000 combined single limit.

Any deductibles or self-insured retention must be declared to and approved by the City and Eastern Municipal Water District (EMWD). At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or the contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration, and defense expenses.

The Contractor shall also furnish the City with a certificate evidencing Worker's Compensation Insurance with limits as established by the State of California.

The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be

**AGREEMENT
PROJECT NO. 06-50182725**

subject to all of the requirements stated herein.

7. The Contractor hereby agrees to provide and maintain in effect two (2) good and sufficient Surety Bonds for one hundred percent (100%) each of the contract price. The bonds shall be a "Faithful Performance Bond" which shall guarantee the faithful performance of all work and a "Labor and Materials Payment Bond" which shall secure the payment of the claims of labor, mechanics, or materialmen for all work under the Contract pursuant to Section 3247 of the Civil Code.

8. The Contractor, the Contractor's heirs, executors, administrators, successors, or assigns guarantee that all work performed under this Contract fully meets the requirements thereof as to quality of workmanship and materials furnished. If any defects in materials or workmanship become evident within a period of one year from the date of the acceptance of the work by the City Council, the Contractor shall, at his or her own expense, make any repair(s) or replacement(s) necessary to restore the work to full compliance with the Plans and Specifications.

9. The Contractor and any agents or subcontractors of the Contractor shall pay the prevailing rates of per diem wages established by the California Department of Industrial Relations. The Contractor and any agents or subcontractors of the Contractor shall also adhere to the California Labor Code, Division 2, Part 7, "Public Works and Public Agencies," and the California Administrative Code, Title 8, Group 3, "Payment of Prevailing Wages upon Public Works," all of which are made a part of the Contract documents.

10. The Contractor agrees that he or she and its subcontractors shall maintain and keep books, payrolls, invoices of materials, records on a current basis, and recording all transactions pertaining to this Agreement in a form in accordance with generally acceptable accounting principles. Said books and records shall be made available to the City of Moreno Valley, County, the State of California, the Federal Government and to any authorized representative thereof for purposes of audit and inspection at all reasonable times and places. All such books, payrolls, invoices of materials, and records shall be retained for such periods of time as required by law, provided, however, notwithstanding any shorter period of retention, all books, records, and supporting detail shall be retained for a period of at least three years after expiration of the term of this Agreement.

11. Pursuant to California Public Contract Code Section 22300, the Contractor will be permitted the substitution of securities for any monies withheld by the City of Moreno Valley to ensure performance under Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the City of Moreno Valley, or with a state or federally chartered bank as the escrow agent, who shall pay such monies to the Contractor. Securities eligible for substitution under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, and standby letters of credit. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any dividends or interest thereon. The Contractor shall give the City written notice within thirty (30) days after the Contract is awarded that it desires to substitute securities for money that would ordinarily be withheld. If the substituted securities are deposited into an escrow, the escrow shall be governed by a written escrow Contract Agreement in a form which is substantially similar to the Contract Agreement set forth in Section 22300, of the Public Contract Code.

12. The Contractor agrees to indemnify, defend, and save the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley (RDA), the Moreno Valley Community Services District (CSD), Eastern Municipal Water District (EMWD), and Western Riverside Council of

**AGREEMENT
PROJECT NO. 06-50182725**

Governments (WRCOG), its officers, agents, and employees harmless from any and all liability, claims, damages or injuries to any person, including injury to the Contractor's employees and all claims which arise from or are connected with the negligent performance of or failure to perform the work or other obligations of this Contract Agreement, or are caused or claimed to be caused by the negligent acts of the Contractor its officers, agents, employees, sub-contractors or suppliers, and all expenses of investigating and defending against the same; provided, however, that this indemnification and hold harmless shall not include any claims arising from the sole negligence or willful misconduct of the City, RDA, CSD, EMWD and WRCOG, its officers, agents, or employees.

The obligation to indemnify, defend and hold harmless set forth herein shall include, without limitation, any and all attorney's fees incurred by the party to be indemnified, defended, or held harmless, whether in a judicial or administrative action or in arbitration, and whether the issue is between the parties or involves one or more third parties.

13. The parties do for themselves, their heirs, executors, administrators, successors and assigns agree to the full performance of all of the provisions herein contained. The Contractor may not, either voluntarily or by action of law, assign any obligation assumed by the Contractor hereunder without prior written consent of the City.

14. Should either party bring any legal or equitable action for the purpose of protecting or enforcing its rights under this Contract Agreement, the prevailing party in such action shall recover in addition to all other relief, its reasonable attorney's fees and court costs to be fixed by the court.

In addition to the foregoing award of attorney's fees, the prevailing party shall be entitled to its attorneys' fees incurred in any post judgment proceedings to enforce any judgments in connection with this Contract Agreement. The Provision is separate and several and shall survive the merge of this Provision into any judgment.

15. By my signature hereunder, as Contractor, I certify that I am aware of the Provisions of Section 3700, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the Provisions of that code, and I will comply with such Provisions before commencing the performance of the work of this Contract.

16. The effective date of this Contract Agreement shall be the date of the Award of Contract by the City of Moreno Valley.

17. Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a Contractor may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, Sacramento, CA 95826. Mailing address: P.O. Box 26000, Sacramento, CA 95826.

(SIGNATURE PAGE FOLLOWS)

**AGREEMENT
PROJECT NO. 06-50182725**

CITY OF MORENO VALLEY,
Municipal Corporation

Wheeler Paving, Inc.,
California Corporation

BY: _____
City Manager

License No./
Classification: _____

Expiration Date: _____

DATE: _____

Federal I.D. No.: _____

INTERNAL USE ONLY

ATTEST:

City Clerk
(only needed if Mayor signs)

APPROVED AS TO LEGAL FORM:

City Attorney

Date

RECOMMENDED FOR APPROVAL:

Department Head
(if contract exceeds \$15,000)

Date

PRINT NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____
Date

PRINT NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____
Date

SIGNING INSTRUCTION TO THE CONTRACTOR:

All signatures on the Contract Agreement on behalf of the Contractor must be acknowledged before a notary public.

General Partners must sign on behalf of the partnership.

In the event that the contracting firm is a corporation, two (2) corporate officer's having authority from the corporation MUST sign (two (2) signatures total). If the corporation has a corporate resolution stating that one person is authorized to sign on behalf of all officers, attach corporate resolution immediately following the notary certificates. Corporate Seal may be affixed hereto.

BOND NO. _____

PREMIUM \$ _____

**FAITHFUL PERFORMANCE BOND
(100% of Total Contract Amount)**

PROJECT NO. 06-50182725

**LASSELLE STREET WIDENING
John F. Kennedy Drive to Alessandro Boulevard**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS:

THAT WHEREAS, the City Council of the City of Moreno Valley, State of California, known as "City," has awarded to Wheeler Paving, Inc., as Principal hereinafter designated as "Contractor" and have entered into a Contract Agreement whereby the Contractor agrees to construct or install and complete certain designated public improvements, which said Contract Agreement, effective on the date signed by the City Manager, and identified as **Project No. 06-50182725**, is hereby referred to and made a part hereof; and

WHEREAS, said Contractor under the terms of said Contract Agreement is required to furnish a bond guaranteeing the faithful performance of said Contract Agreement;

NOW THEREFORE, we the undersigned Contractor and _____, as Surety, are held and firmly bound unto the City of Moreno Valley, County of Riverside in the penal sum of _____ dollars, (\$ _____), lawful money of the United States, to be paid to the said City or its certain attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bound Contractor, his or her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in said Contract Agreement and any alterations thereof made as therein provided, on his or her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Moreno Valley, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect. In the event suit is brought upon this bond by the City and judgement is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorney fee to be fixed by the court.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Agreement or to the work to be performed thereunder, or the Provisions accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Agreement or to the work or the Provisions.

(SIGNATURE PAGE FOLLOWS)

**FAITHFUL PERFORMANCE BOND
PROJECT NO. 06-50182725**

BOND NO. _____

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this _____ day
of _____ 20_____.

BIDDER

SURETY

Contractor Name: _____

Name: _____

Address: _____

Address: _____

Telephone No.: _____

Telephone No.: _____

Print Name: _____

Print Name: _____

Attorney-in-Fact

Signature: _____

Signature: _____

Approved as to Form this
_____ day of _____ 20_____

City Attorney
City of Moreno Valley

NOTE: This bond must be executed by both parties. Corporate seal may be affixed hereto. All signatures must be acknowledged before a notary public (attach acknowledgments). The attorney-in-fact for the corporate surety must be registered, as such, in at least one county in the State of California. (Attach one original Power of Attorney sheet for each bond).

BOND NO. _____

PREMIUM \$ _____

**LABOR AND MATERIALS PAYMENT BOND
(100% of Total Contract Amount)**

PROJECT NO. 06-50182725

**LASSELLE STREET WIDENING
John F. Kennedy Drive to Alessandro Boulevard**

KNOW ALL MEN AND WOMEN BY THESE PRESENTS

THAT WHEREAS, the City Council of the City of Moreno Valley, State of California, known as "City", has awarded to Wheeler Paving, Inc., as Principal hereinafter designated as "Contractor" and have entered into a Contract Agreement whereby the Contractor agrees to construct or install and complete certain designated public improvements, which said Contract Agreement, effective on the date signed by the City Manager, and identified as **Project No. 06-50182725**, is hereby referred to and made a part hereof; and

WHEREAS, said Contractor under the terms of said Agreement is required to furnish a bond to secure the payment of claims of laborers, mechanics, materialmen, and other persons, as provided by law;

NOW, THEREFORE, we the undersigned Contractor and _____, as Surety are held and firmly bound unto the City of Moreno Valley, County of Riverside, in the penal sum of _____ dollars, (\$ _____), lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Contractor, his or her or its heirs, executors, administrator, successors or assigns, or subcontractors, shall fail to pay any of the persons described in the State of California Civil Code, Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Contractor and his or her subcontractors, pursuant to Section 13020, of the Unemployment Insurance Code, with respect to such work and labor, that the Surety or Sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In the event suit is brought upon this bond by the City or other person entitled to bring such an action and judgement is recovered, the Surety shall pay all costs incurred by the City in such suit, including a reasonable attorney fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons described in the State of California Civil Code Section 3181, to give a right of action to such persons or their assigns in any suit brought upon this bond.

(SIGNATURE PAGE FOLLOWS)

**LABOR AND MATERIALS PAYMENT BOND
PROJECT NO. 06-50182725**

BOND NO. _____

IN WITNESS WHEREOF, we have hereunto set our hands, and seals on this _____ day
of _____ 20_____.

BIDDER

SURETY

Contractor Name: _____

Name: _____

Address: _____

Address: _____

Telephone No.: _____

Telephone No.: _____

Print Name: _____

Print Name: _____

Attorney-in-Fact

Signature: _____

Signature: _____

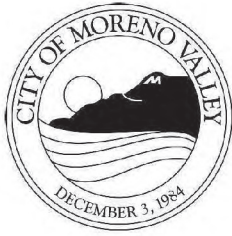
Approved as to Form this

_____ day of _____ 20_____

City Attorney
City of Moreno Valley

NOTE:

This bond must be executed by both parties. Corporate seal may be affixed hereto. All signatures must be acknowledged before a notary public (attach acknowledgments). The attorney-in-fact for the corporate surety must be registered, as such, in at least one county in the State of California. (Attach one original Power of Attorney sheet for each bond).



APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>CAF</i>
CITY MANAGER	<i>MA</i>

Report to City Council

TO: Mayor and City Council

FROM: Betsy M. Adams, Assistant City Manager

AGENDA DATE: February 24, 2009

TITLE: Resolution in Support of March Joint Powers Authority's Request to Obtain a Retired Space Shuttle Orbiter to be Displayed at the March Field Air Museum

RECOMMENDED ACTION

Staff recommends that the City Council adopt the proposed Resolution No. 2009-17 in support of the March Joint Powers Authority's request to obtain a retired Space Shuttle Orbiter to be displayed at the March Field Air Museum.

BACKGROUND

On February 4, 2009, the March Joint Powers Authority (JPA) adopted a resolution approving the completion of a Request for Information for the National Aeronautics and Space Administration (NASA). The purpose of the Request for Information is to establish the eligibility of the JPA to obtain a retired Space Shuttle Orbiter for display at the March Field Air Museum. At the February 17, 2009 Study Session, the City Council directed staff to include a resolution in support of this effort on the agenda for consideration at the February 24 City Council meeting.

DISCUSSION

NASA's Space Shuttle Program is scheduled to conclude in 2010. On December 17, 2008, NASA released a Request for Information to space and science museums and educational centers to provide them with the opportunity to be selected to receive one of the retired shuttles when the program has concluded. The focus of March Field Air Museum on educating the public about air and space technologies, the Museum's expressed interest in constructing a hangar capable of displaying a Space Shuttle Orbiter, the region's significance in the aerospace industry, and the existence of a

runway to accommodate the transportation of the retired shuttle are all positive factors in the JPA's request to obtain one of the retired Shuttles.

The City of Perris adopted a similar resolution in support of this request on February 10. As a member entity of the JPA, staff recommends that the City Council adopt the proposed resolution in support of the effort to obtain one of the retired Space Shuttles for the March Field Air Museum.

FISCAL IMPACT

None.

CITY COUNCIL GOALS

Advocacy. Develop cooperative intergovernmental relationships and be a forceful advocate of City policies, objectives, and goals to appropriate external governments, agencies, and corporations.

Positive Environment. Create a positive environment for the development of Moreno Valley's future.

ATTACHMENT

Attachment 1: Resolution 2009-17

Prepared By: Michelle Dawson

Department Head Approval: Betsy M. Adams

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

RESOLUTION NO. 2009-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, SUPPORTING THE REQUEST OF THE MARCH JOINT POWERS AUTHORITY APPROVING COMPLETION OF THE REQUEST FOR INFORMATION TO OBTAIN A RETIRED SPACE SHUTTLE ORBITER TO BE HOUSED AND DISPLAYED AS PART OF THE MARCH AIR FIELD MUSEUM

WHEREAS, the March Joint Powers Authority (JPA) is governed by a Joint Powers Commission (Commission) composed of the member entities of the City of Moreno Valley, the County of Riverside, the City of Riverside, and the City of Perris; and

WHEREAS, the JPA has the responsibility for planning the use, reuse, and joint use of portions of the former March Air Force Base which now includes the March Field Air Museum, a private, non-profit institution displaying over 70 historic aircraft and over 2,000 artifacts and is in the vicinity of the joint use airport at March Air Reserve Base with a 13,000 foot runway; and

WHEREAS, on December 17, 2008 the National Aeronautics and Space Administration (NASA) sent out a Request for Information concerning public display of flown Space Shuttle Orbiters and Space Shuttle Main Engines after conclusion of the Space Shuttle Program in September 2010 which will be used to determine interest that may lead to the selection of specific organizations to receive a retired flown Space Shuttle Orbiter or Space Shuttle Main Engine for public display by May 31, 2012; and

WHEREAS, the March Field Air Museum is eligible to receive a Space Shuttle Orbiter because it is a United States Museum dedicated to educating the public about past, present, and future air and space technologies and representatives of the March Air Field Museum have expressed an interest in studying the feasibility of displaying a flown Space Shuttle Orbiter and constructing a hangar capable of displaying the flown Space Shuttle Orbiter in a climate-controlled indoor environment which would be consistent with the March Field Air Museum's goals of celebrating and preserving aviation history and inspiring current and future generations; and

WHEREAS, the Commission, in partnership with the March Field Air Museum, wishes to consider a variety of funding options to transport and display the retired flown Space Shuttle Orbiter, and

WHEREAS, the Commission has endeavored in good faith to set forth the basis for its decision to pursue completion of the Request for Information (RFI) and all of the findings and conclusions made by the Commission pursuant to the Resolution are based upon oral and written evidence before it and the administrative record as a whole and the Commission has reviewed the RFI and all other relevant information contained in the record regarding the acquisition and display of a Space Shuttle Orbiter; and

WHEREAS, all other legal prerequisites to the adoption of the Resolution have occurred;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Review of the RFI. The Commission has reviewed and considered the information contained in the RFI and other documents in connection with the acquisition of a flown Space Shuttle Orbiter. The Commission has found that the March Field Air Museum either meets, or will meet, the standards required by the RFI, making it eligible to receive a Space Shuttle Orbiter in the future. The Commission further found that the March Field Air Museum's receipt of a Space Shuttle Orbiter would help inspire current and future generations while promoting the Museum's mission of celebrating and preserving aviation history.

Section 2. Working with the March Field Air Museum. The Commission found that, due to the estimated cost of transporting, housing, and displaying the Space Shuttle Orbiter, and the estimated cost of gathering the necessary information required by the RFI, it is necessary to work in conjunction with the March Field Air Museum during all steps of attempting to procure a Space Shuttle Orbiter. The Commission found that it will work with the Museum to jointly undertake the process of completing the RFI.

Section 3. Approval of RFI Completion. The City of Moreno Valley, in conjunction with the March Field Air Museum, hereby approves completion of the RFI in an attempt to procure a Space Shuttle Orbiter.

APPROVED AND ADOPTED this 24th day of February, 2009.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

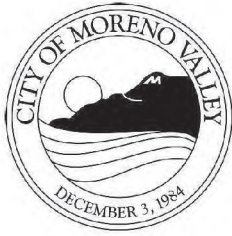
City Attorney

RESOLUTION JURAT

[Clerk's office will prepare]

[NOTE: Any attachments or exhibits to this resolution should follow this jurat.]

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APPROVALS	
BUDGET OFFICER	<i>CAF</i>
CITY ATTORNEY	<i>RCH</i>
CITY MANAGER	<i>RM</i>

Report to City Council

TO: Mayor and City Council

FROM: Rick C. Hartmann, Deputy City Manager

AGENDA DATE: February 24, 2009

TITLE: Consideration of Resolution Amending Resolution 2003-67, Supporting a Joint Land Use Study to Assure Compatible Land Uses Near March Reserve Base and Appoint a Representative to the March Operations Assurance Task Force.

RECOMMENDED ACTION

Staff recommends the City Council approve and adopt Resolution 2009-15, amending Resolution No. 2003-67 in support of a joint land use study to assure compatible land uses near March Air Reserve Base to protect the future aviation operations of the United States military.

ADVISORY BOARD/COMMISSION RECOMMENDATION

NA

BACKGROUND

In August 2003, the City Council adopted Resolution No. 2003-67 committing staff support/technical assistance to the multi-jurisdictional March Operations Assurance Task Force, a committee assembled to study and assure compatible land uses near March Air Reserve Base. The Resolution also appointed a representative from the City Council to be on the committee as well as designating City Staff to the committee for technical support. With the recent changes in the City Council, it would be appropriate at this time to make new appointments to serve on the committee.

DISCUSSION

The City of Moreno Valley, along with the Cities of Perris and Riverside and the County of Riverside make up the March Joint Powers Authority or MJPA. Each agency appoints two of its elected officials and one alternate to sit on the Joint Powers Commission with the primary task of formulating and implementing plans for the use and reuse of MJPA property. From time to time, the need arises to have a committee of the Commission to work on specific issues that may impact MJPA operations. One of the pressing issues before the MJPA deals with compatibility of land uses on and off MJPA property and the need to develop a Joint Land Use Study (JLUS). There is a demonstrated need for the Cities of Moreno Valley, Riverside, Perris and the County of Riverside to continue working cooperatively to protect the public health, safety, and welfare through participation in a JLUS, and implement appropriate measures to

assure compatible development between jurisdictions and the property of the MJPA. By appointing a representative of the City Council to the Task Force, the City will be in a better position to protect its interests in land use regulations imposed by the military on those properties adjacent to the Base.

ALTERNATIVES

If the amended Resolution is not approved, the City will not have representation on the multi-jurisdictional March Operations Assurance Task Force and the City's input on the development and creation of the JLUS will not be considered.

FISCAL IMPACT

Resolution 2003-67 committed to provide in-kind technical and professional staff support and/or financial support for the preparation of the JLUS in an amount not to exceed \$5,000. The amended resolution continues to offer the in-kind staff support as well as the commitment up to \$5,000 for financial support. According to the staff of the MJPA, no request for funds has been made of the City. However, if such a request is made, funds would be made available in the City Manager's Contingency fund.

CITY COUNCIL GOALS

Advocacy

Develop cooperative intergovernmental relationships and be a forceful advocate of City policies, objectives, and goals to appropriate external governments, agencies and corporations.

Positive Environment

Create a positive environment for the development of Moreno Valley's future.

NOTIFICATION

A copy of the Report to the City Council and proposed amended resolution has been forwarded to the MJAP for its information.

ATTACHMENTS/EXHIBITS

Resolution No. 2009-15

Prepared By: Rick C. Hartmann
Deputy City Manager

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

RESOLUTION NO. 2009-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, AMENDING RESOLUTION NO. 2003-67 IN SUPPORT OF A JOINT LAND USE STUDY TO ASSURE COMPATIBLE LAND USES NEAR MARCH AIR RESERVE BASE TO PROTECT THE FUTURE AVIATION OPERATIONS OF THE UNITED STATES MILITARY.

WHEREAS, the economic benefit from the continuing operation of March Air Reserve Base is a vital component of the regional economy estimated to be approximately \$500 million annually, and thus protection of its operational capacity is vital to the local and regional economy; and

WHEREAS, on August 26, 2003, the City Council of the City of Moreno Valley adopted Resolution No. 2003-67, committing to staff, support and provide technical assistance to the multi-jurisdictional March Operations Assurance Task Force, a committee assembled to study and assure compatible land uses near March Air Reserve Base; and

WHEREAS, there is a demonstrated need for the Cities of Moreno Valley, Riverside, Perris and the County of Riverside to continue working cooperatively to protect the public health, safety, and welfare through participation in a Joint Land Use Study (JLUS), and implementation of appropriate measures to assure compatible development.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE that the City shall pledge support and participation in the process of creating a JLUS; and

BE IT FURTHER RESOLVED that Resolution No. 2003-67 adopted by the City Council of the City of Moreno Valley on August 26, 2003, specifically created the inter-jurisdictional March Operations Assurance Task Force to assure compatible land uses near March Air Reserve Base, and

BE IT FURTHER RESOLVED that the City Council appoints Councilmember William Batey as the primary representative and Mayor Richard Stewart as the alternate to serve on the Task Force, and that the March Operations Assurance Task Force is the appropriate policy committee to provide direction, monitoring, and oversight for the creation of the JLUS; and

BE IT FURTHER RESOLVED that the City Council designates Community Development Director Kyle Kollar or his designee to serve on the Task Force for technical and professional support to the MJPA for the development, creation and implementation of the JLUS; and

Resolution No. 2009-15

1 Date Adopted: _____

BE IT FURTHER RESOLVED that the City Council of the City of Moreno Valley recognizes that the March Joint Powers Authority, as a joint powers authority with a governing board comprised of elected members from the City Councils of Riverside, Moreno Valley, and Perris and from the Board of Supervisors of the County of Riverside is the appropriate sponsor for the JLUS; and

BE IT FURTHER RESOLVED that the City Council of the City of Moreno Valley commits to provide in-kind technical support and/or financial support for the preparation of the JLUS. The commitment of financial support shall not exceed a total of \$5,000; and

BE IT FURTHER RESOLVED that the City Council of the City of Moreno Valley commits to a good faith effort to implement appropriate recommendations identified through the JLUS to assure that only compatible development will occur in Accident Potential Zones and areas impacted by high aviation noise.

APPROVED AND ADOPTED this _____ day of _____, 2009.

Mayor

ATTEST:

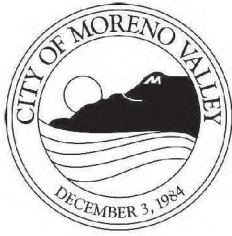
City Clerk

APPROVED AS TO FORM:

City Attorney

Resolution No. 2009-15

2 Date Adopted: _____



APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	<i>CAF</i>
CITY MANAGER	<i>CAF</i>

Report to City Council

TO: Mayor and City Council, acting in their capacity as President and Members of the Board of Directors of the Moreno Valley Community Services District

FROM: Michael McCarty, Parks and Community Services Director

AGENDA DATE: February 24, 2009

TITLE: Acceptance of one time Grant Monies from the California Department of Education, Child Development Services, for Instructional Materials and Adoption of the Resolution to Certify the Approval of the Governing Board

RECOMMENDED ACTION

Staff recommends that the Mayor and City Council, acting in their capacity as President and Board of Directors of the Moreno Valley Community Services District:

1. Authorize the acceptance of one time grant money in of \$2,648 for (FY) 2008/2009 from the California Department of Education, Child Development Division, for the purpose of purchasing instructional materials and supplies for the child development program.
2. Adopt Resolution No. CSD 2009-01 to certify the approval of the governing board to enter into this transaction with the California Department of Education for the purpose of purchasing instructional materials and supplies for the child development program and to authorize the designated personnel, as shown on the resolution, to sign contract documents for FY 2008/2009.

ADVISORY BOARD/COMMISSION RECOMMENDATION

N/A

BACKGROUND

The State of California appropriated a total of \$6.6 million to be utilized statewide as a continuous funding source for services to school age children, in the range of

kindergarten to fourteen (14) years of age. However, currently the Budget Act of 2003 eliminated child care services to 13-year old children. Of the \$6.6 million allocated statewide, Riverside County was appropriated \$950,000 based on service level needs. In an effort to provide an increased level of services for Moreno Valley youth through diverse funding, staff submitted a competitive grant application to the California Department of Education, Child Development Division, requesting funding for an after school child care program. The City of Moreno Valley Parks and Community Services Department was one of ten (10) agencies in Riverside County who competed for this funding. The Parks and Community Services Department was awarded funding.

On November 26, 1996, the City Council authorized the acceptance of a grant in the amount of \$427,683 for the calendar years 1997 and 1998 for the purpose of providing an after-school child care program for children ages 5 to 14. Since that time, the City has applied for and received grant funding for this program every fiscal year. The City Council authorized the acceptance of a grant in the amount of \$755,308 for fiscal year 2008/09. Although the City must apply for the grant funding each year, when the funding was made available to agencies for youth programs in 1987, those agencies that have received this type of grant funding have continued to receive funding for their youth programs.

DISCUSSION

The focus of the grant submitted by the City of Moreno Valley Parks and Community Services Department was based on the high demands assessed by the department within its own programs. This included the need for after school care during the school year as well as full day care on school vacation days. The program utilizes five elementary schools, Creekside, Sunnymead, Rainbow Ridge, Armada, and Red Maple. The program accommodates 130 children between the ages of kindergarten up to thirteen (13) years of age and has been in effect since January 1997.

This program is state licensed and operates under the following conditions: the healthy social and emotional development of every child is addressed by providing activities, schedules, materials and equipment to ensure that children are both challenged and successful. Programming for the students includes a nutritious snack served daily, arts and crafts, indoor and outdoor games, story time, homework time, and social time. The program also includes field trips with bus transportation and parent conferences. The program works closely with parents and school site staff to incorporate applicable school rules into the program and provide emotional support for children.

The program operates utilizing the same "Modified Traditional" schedule the school districts use. The hours are 2:00 p.m. to 6:00 p.m. on school days, 11:00 a.m. if morning kindergartners attend, and 7:00 a.m. to 6:00 p.m. on school vacation days.

Accepting the one time grant funding will enable the City to purchase additional instructional materials and supplies for the program. As part of the City's policy, the City Council must formally accept this funding from the California Department of Education, Child Development Services and adopt the corresponding Resolution.

ALTERNATIVES

1. Authorize the acceptance of grant monies in the amount of \$2,648 for FY 2008/2009 from the California Department of Education, Child Development Division, for the purpose of purchasing instructional materials and supplies for the child development program.
2. Adopt Resolution No. CSD 2009-01 to certify the approval of the governing board to enter into this transaction with the California Department of Education for the purpose of purchasing instructional materials and supplies for the child development program and to authorize the designated personnel, as shown on the resolution, to sign contract documents for FY 2008/2009.
3. Not accept the grant nor adopt the resolution and not purchase additional instructional materials and supplies for the program.

FISCAL IMPACT

The proposed instructional materials and supplies grant funds expenditures 100 percent on a cost reimbursement basis.

CITY COUNCIL GOALS

Revenue Diversification and Preservation. Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.

NOTIFICATION

Posting of the Agenda.

ATTACHMENTS/EXHIBITS

Exhibit 'A' - Resolution

Prepared By: Patty Grube

Department Head Approval: Michael McCarty

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

RESOLUTION NO. CSD 2009-01

A RESOLUTION OF THE MORENO VALLEY COMMUNITY SERVICES DISTRICT OF THE CITY OF MORENO VALLEY, CALIFORNIA, CERTIFYING THE APPROVAL OF THE GOVERNING BOARD TO ENTER INTO A TRANSACTION WITH THE CALIFORNIA DEPARTMENT OF EDUCATION FOR THE PURPOSE OF PROVIDING CHILD CARE AND DEVELOPMENT SERVICES AND TO AUTHORIZE DESIGNATED PERSONNEL TO SIGN CONTRACT DOCUMENTS FOR FY 2008/09.

WHEREAS, the Moreno Valley Community Services District Board of Directors desires to provide school age child care services to the citizens of Moreno Valley during FY 2008/09;

WHEREAS, the Moreno Valley Community Services District Board of Directors further desires to enter into this transaction with the California Department of Education for the purpose of providing child care and development services;

WHEREAS, the Moreno Valley Community Services District Board of Directors authorize the persons listed to sign the transaction for the Governing Board;

Michael McCarty, Director of Parks and Community Services _____

Steve Elam, Financial and Administrative Services Director _____

Betsy Adams, Assistant City Manager _____

NOW, THEREFORE, THE MORENO VALLEY COMMUNITY SERVICES DISTRICT OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

1. Accept the grant monies from the California Department of Education, Child Development Division, in the amount of \$2,648 to purchase instructional materials and supplies for the Child Development Program.
2. Adopt a resolution to certify the approval of the governing board to enter into local agreement number CIMS-8411, Project Number 33-2186-00-8 with the California Department of Education for the purpose of purchasing instructional materials and supplies for the Child Development Program.
3. Authorize designated personnel to sign contract documents on behalf of the Governing Board for FY 2008/09.

APPROVED AND ADOPTED this _____ day of _____, 2009.

Mayor of the City of Moreno Valley,
Acting in the capacity of President of the
Moreno Valley Community Services District

ATTEST:

City Clerk, acting in the capacity of
Secretary of the Moreno Valley
Community Services District

APPROVED AS TO FORM:

City Attorney, acting in the capacity
of General Counsel of the Moreno
Valley Community Services District

RESOLUTION JURAT

[Clerk's office will prepare]

[NOTE: Any attachments or exhibits to this resolution should follow this jurat.]

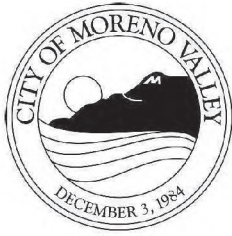
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**MINUTES - REGULAR MEETING OF FEBRUARY
10, 2009 (Report of: City Clerk's Department)**

Recommendation: Approve as submitted.

SEE AGENDA ITEM A.12

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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>RDH</i>
CITY MANAGER	<i>RM</i>

Report to City Council

TO: Redevelopment Agency Chairperson and Members of the Board of Directors

FROM: Chris A. Vogt, P.E., Public Works Director/City Engineer

AGENDA DATE: February 24, 2009

TITLE: AUTHORIZE THE GRANT OF ROADWAY EASEMENTS FOR THE PARTIAL ACQUISITION OF ASSESSOR PARCEL NUMBERS 291-191-001, 002, 003, 005, AND 006 FOR DAY STREET ROADWAY IMPROVEMENTS FROM ALESSANDRO BOULEVARD TO COTTONWOOD AVENUE
PROJECT NO. 02-89266920

RECOMMENDED ACTION

Staff recommends that the Redevelopment Agency Chairperson and Members of the Board of Directors:

1. Authorize the grant of roadway easements for the partial acquisition of the Community Redevelopment Agency (RDA) parcels known as Assessor Parcel Numbers (APN) 291-191-001, 002, 003, 005, and 006.
2. Authorize the Executive Director to execute the roadway easements for the partial acquisition of the RDA parcels known as APN 291-191-001, 002, 003, 005, and 006.

BACKGROUND

The subject property is comprised of five (5) separate parcels owned by the RDA and located along the east side of Day Street from Alessandro Boulevard to Sherman Avenue. The parcels, currently zoned multi-family residential and community commercial, contain approximately 1.95 acres. The City is acquiring roadway easements along the easterly side of Day Street, consisting of 10,164 square feet, to construct and improve Day Street from Alessandro Boulevard to Cottonwood Avenue.

DISCUSSION

Staff reviewed appraisals of the fair market value for the adjoining easements over privately held property and determined the value of the roadway easements over the RDA property to be \$101,640. The City, consequently, proposes to compensate the RDA at the fair market value of \$101,640 for the roadway easements. The easements will be purchased through a journal entry charging an expenditure of \$101,640 to the Day Street project, account number 897.91724.7200, and crediting revenue of \$101,640 to Alessandro and Day Street Land Acquisition, account number 894.8940.4568.

The partial acquisition of this property is needed for the Day Street Improvement Project, which involves the rehabilitation of Day Street from Alessandro Boulevard to Cottonwood Avenue, including street widening, signing, striping, waterline, and other related road improvements.

ALTERNATIVES

1. Authorize the grant of roadway easements for the partial acquisition of the Community Redevelopment Agency (RDA) parcels known as Assessor Parcel Numbers (APN) 291-191-001, 002, 003, 005, and 006, and authorize the Executive Director to execute the roadway easements for the partial acquisition of the RDA parcels known as APN 291-191-001, 002, 003, 005, and 006. *This will allow the timely construction of the project.*

2. Do not authorize the grant of roadway easements for the partial acquisition of the Community Redevelopment Agency (RDA) parcels known as Assessor Parcel Numbers (APN) 291-191-001, 002, 003, 005, and 006, and do not authorize the Executive Director to execute the roadway easements for the partial acquisition of the RDA parcels known as APN 291-191-001, 002, 003, 005, and 006. *This will delay the timely construction of the project.*

FISCAL IMPACT

The Day Street Improvement Project is funded by RDA TABS Proceeds. Acquisition of the roadway easements obligates the City to compensate the RDA Housing Fund in the amount of \$101,640 for the value of the roadway easements. This action has no impact on the General Fund.

AVAILABLE BUDGETED FUNDS:

Fund 897 (2007 RDA Tax Allocation Bonds).....	\$3,000,000
Total Available Funds	\$3,000,000

ESTIMATED DESIGN, RIGHT-OF-WAY, & CONSTRUCTION COSTS:

Balance of First Amendment to Agreement.....	\$18,202
Second Amendment to Agreement	\$14,316
Third Amendment to Agreement	\$24,600

Right-of-Way and Utilities (including \$101,640 transfer)	\$309,000
Construction*.....	\$2,304,000
Construction Surveying, Geotechnical, and Inspection Services Costs*	\$183,000
Project / Construction Management Administration**	\$146,000
Total Estimated Cost.....	\$2,999,118

*Estimates include approximately 10% contingency

**Public Works and consultant staff will provide Project / Construction Management Administration

ANTICIPATED PROJECT SCHEDULE:

Complete Design, Right-of-Way, and Utility Relocation Phase	May 2009
Construction Start Date	August 2009
Construction End Date	January 2010

CITY COUNCIL GOALS

Upon approval of this staff report the following City Council Goals would be furthered:

PUBLIC FACILITIES AND CAPITAL PROJECTS:

Ensure that needed public facilities, roadway improvements, and other infrastructure improvements are constructed and maintained.

COMMUNITY IMAGE, NEIGHBORHOOD PRIDE AND CLEANLINESS:

Promote a sense of community pride and foster an excellent image about our City by developing and executing programs which will result in quality development, enhanced neighborhood preservation efforts (including home rehabilitation) and neighborhood restoration.

POSITIVE ENVIRONMENT:

Create a positive environment for the development of Moreno Valley’s future.

ATTACHMENTS

Attachment “A” – Location Map

Attachment “B” – Easement Deeds

Prepared By:
Lorenz R. Gonzales, P.E.
Senior Engineer

Department Head Approval:
Barry Foster
Economic Development Director

Concurred By:
Prem Kumar, P.E.
Deputy Public Works Director/Assistant City Engineer

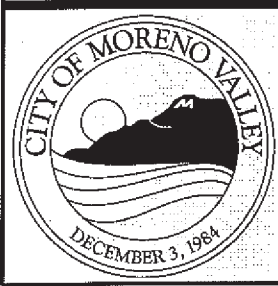
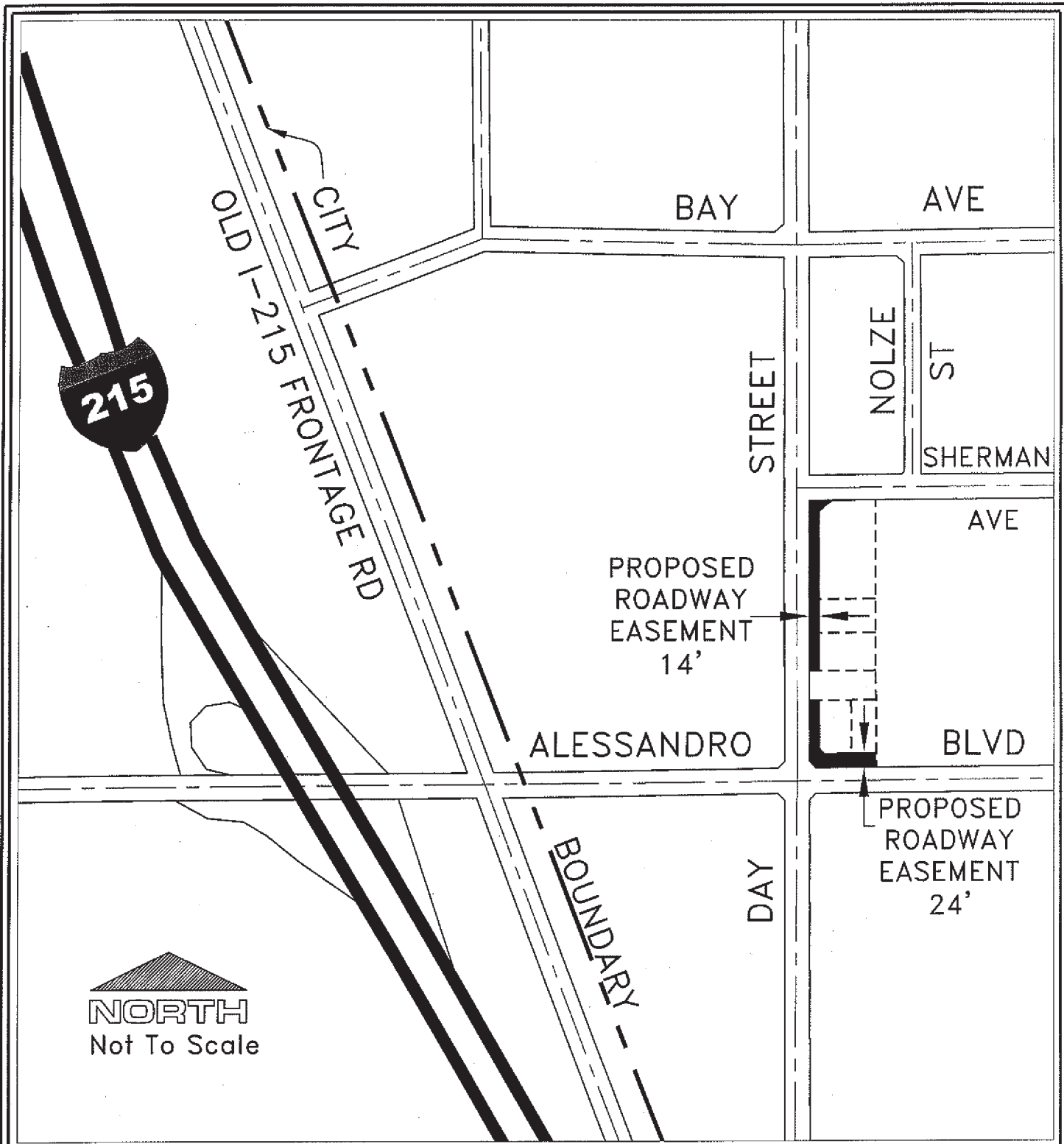
Department Head Approval:
Chris A. Vogt, P.E.
Public Works Director/City Engineer

Concurred By:
Michele Patterson
Acting Redevelopment Division Manager

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

W:\CapProj\CapProj\PROJECTS\Larry - 02-89266920 Day St\CC Reports\02-892.66920 Day St. RDA ROW Easement Staff Rpt 022409.doc

Date: 12 Jan 09 - 11:39 am
 File: W:\CapProj\Proj\PROJECTS\City - 02-89266920 Day St\Design Phases\AutoCAD & PDFs\Location Map\Location Map_2_24_09.dwg
 User: deepdas



LOCATION MAP

Public Works Department
 Capital Projects Division

Scale: None

ATTACHMENT "A"

DAY STREET IMPROVEMENTS
 ALESSANDRO BOULEVARD TO COTTONWOOD AVENUE
 PROJECT NUMBER 02-89266920

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Recording requested by and when recorded, mail to:
City Clerk
City of Moreno Valley
P.O. Box 88005
Moreno Valley, CA 92552-0805

Exempt from Recording Fee
Govt. Code Sec. 6103
City of Moreno Valley

A.P.N. 291-191-001, 002, & 003

(Space above this line for Recorder's use)
DOCUMENTARY TRANSFER TAX IS NONE.
*Public Agency exempt.
Revenue and Taxation Code Section 11922*

EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, THE REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY, CALIFORNIA, GRANTOR, hereby grants and conveys to the CITY OF MORENO VALLEY, a municipal corporation, a perpetual easement and right of way for public highway purposes, including public utility and public service facilities over, under, upon, across, and within the real property in the City of Moreno Valley, County of Riverside, State of California, described on the attached Exhibit "A", and as illustrated on the plat hereto and marked Exhibit "B". IN WITNESS WHEREOF, this instrument has been executed this ____ day of _____, 2009.

STATE OF CALIFORNIA
County of _____
On _____ before me,
_____ the Undersigned.
A Notary Public in and for said State, personally appeared

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

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

WITNESS my hand and official seal.

Signature _____

Attachment "B"

GRANTOR:

COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF
MORENO VALLEY, CALIFORNIA

By: _____

EXHIBIT "A"
LEGAL DESCRIPTION
CITY OF MORENO VALLEY
RIGHT-OF-WAY EASEMENT

THAT PORTION OF LOT 33, AS SHOWN ON THE MAP OF EDGEMONT TRACT NO. 3, FILED IN BOOK 15 OF MAPS, PAGE 50, RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 33;

THENCE SOUTH 00°00'30" WEST ALONG THE WEST LINE OF SAID LOT 33, A DISTANCE OF 30.01 FEET TO THE SOUTH LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED JULY 27, 1948, IN BOOK 998, PAGE 164, OFFICIAL RECORDS, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 00°00'30" WEST ALONG SAID WEST LINE, A DISTANCE OF 406.88 FEET TO THE SOUTH LINE OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED BY GRANT DEED RECORDED APRIL 01, 2008, AS DOCUMENT NO. 2008-0161208, OFFICIAL RECORDS OF SAID COUNTY;

THENCE NORTH 88°43'20" EAST ALONG SAID SOUTH LINE A DISTANCE OF 14.00 FEET TO A POINT ON A LINE PARALLEL WITH AND 14.00 FEET EASTERLY OF SAID WEST LINE;

THENCE NORTH 00°00'30" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 380.40 FEET;

THENCE NORTH 42°07'35" EAST A DISTANCE OF 36.43 FEET TO A POINT ON SAID SOUTH LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED TO THE COUNTY OF RIVERSIDE;

THENCE SOUTH 88°43'20" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 38.44 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 6,020 SQUARE FEET MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION.



[Handwritten Signature] 1-13-09
RICHARD S. FURLONG, P.L.S. 8422 DATE
MY LICENSE EXPIRES ON 12/31/10

EXHIBIT "B"


SHEET 1 OF 2

RIGHT-OF-WAY EASEMENT
INDEX SHEET



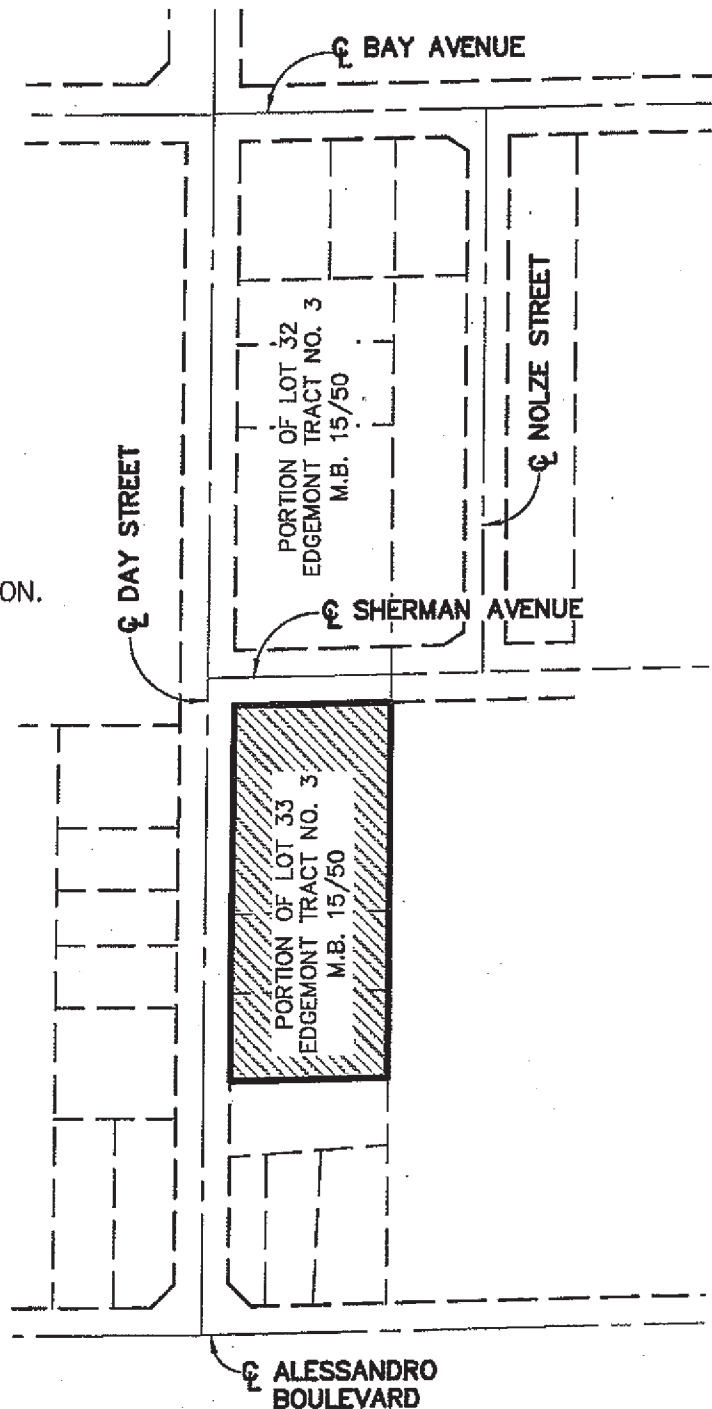
SCALE: 1"=200'

LEGEND:

 = A.P.N. 291-191-001
A.P.N. 291-191-002
A.P.N. 291-191-003
CITY OF MORENO VALLEY

NOTE:

SEE SHEET 2 FOR EASEMENT LOCATION.




RICHARD S. FURLONG, P.L.S. 8422
My License Expires on 12/31/10

1-13-09
Dated

AEI CASC
ENGINEERING

937 SOUTH VIA LATA
SUITE 500
COLTON, CA 92324

PH. (909) 783-0101 FAX (909) 783-0108

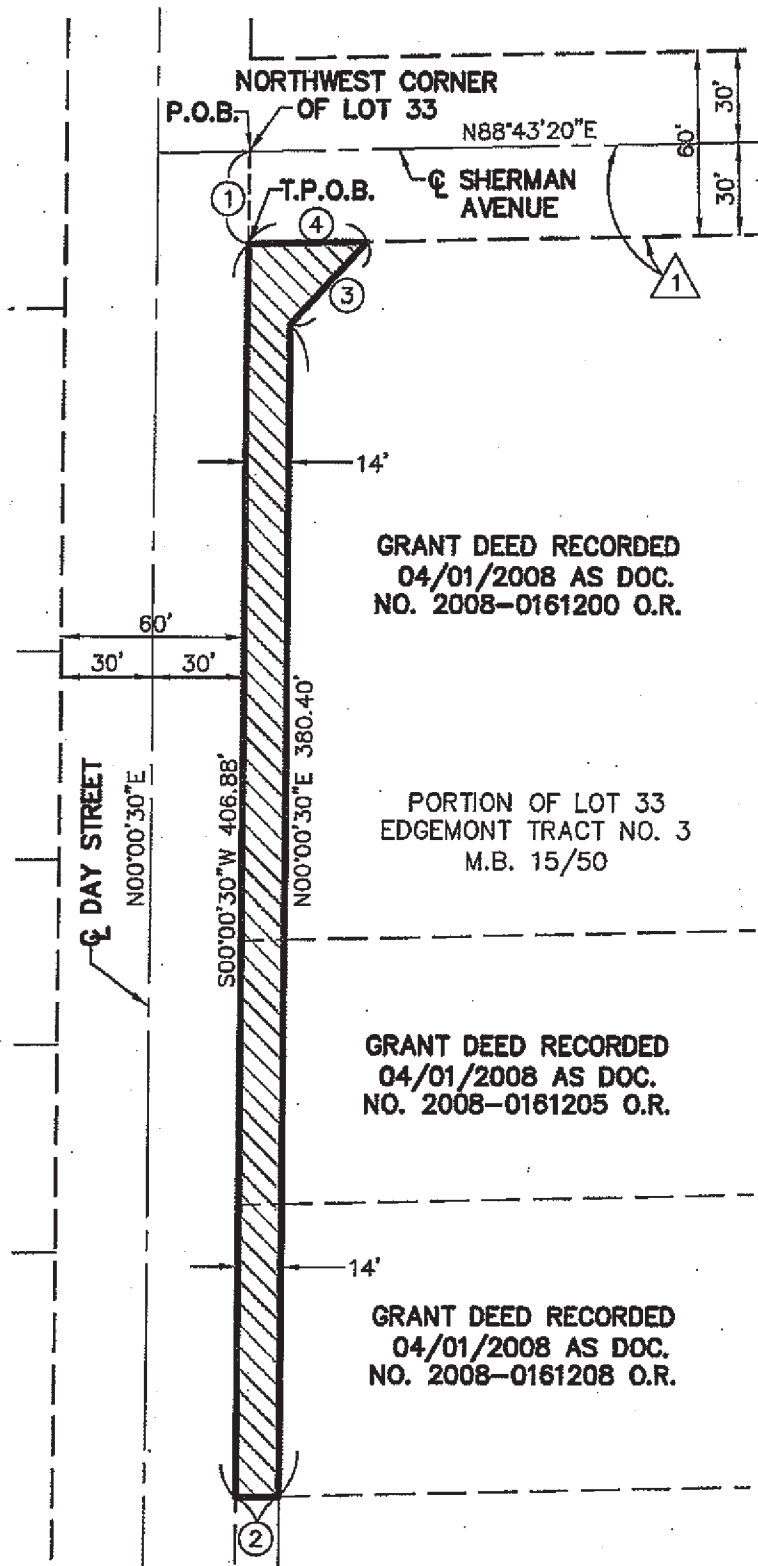
EXHIBIT "B"

RIGHT-OF-WAY EASEMENT

SHEET 2 OF 2



SCALE: 1"=60'



GRANT DEED RECORDED
04/01/2008 AS DOC.
NO. 2008-0161200 O.R.

PORTION OF LOT 33
EDGEMONT TRACT NO. 3
M.B. 15/50

GRANT DEED RECORDED
04/01/2008 AS DOC.
NO. 2008-0161205 O.R.

GRANT DEED RECORDED
04/01/2008 AS DOC.
NO. 2008-0161208 O.R.

LEGEND:

P.O.B. -- POINT OF BEGINNING

T.P.O.B. -- TRUE POINT OF BEGINNING

△ 1 - DEDICATED IN FAVOR OF THE
COUNTY OF RIVERSIDE BY DEED
RECORDED JULY 27, 1948, IN
BOOK 998, PAGE 164, O.R.

LINE DATA TABLE		
LINE NO.	BEARING	DISTANCE
1	S00°00'30"W	30.01'
2	N88°43'20"E	14.00'
3	N42°07'35"E	36.43'
4	S88°43'20"W	38.44'

AEI CASC
ENGINEERING

937 SOUTH VIA LATA
SUITE 500
COLTON, CA 92324

PH. (909) 783-0101 FAX (909) 783-0108

A.P.N. 291-191-001
A.P.N. 291-191-002
A.P.N. 291-191-003

Recording requested by and when recorded, mail to:
City Clerk
City of Moreno Valley
P.O. Box 88005
Moreno Valley, CA 92552-0805

Exempt from Recording Fee
Govt. Code Sec. 6103
City of Moreno Valley

A.P.N. 291-191-005 & 006

(Space above this line for Recorder's use)
DOCUMENTARY TRANSFER TAX IS NONE.
Public Agency exempt.
Revenue and Taxation Code Section 11922

EASEMENT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, THE REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY, CALIFORNIA, GRANTOR, hereby grants and conveys to the CITY OF MORENO VALLEY, a municipal corporation, a perpetual easement and right of way for public highway purposes, including public utility and public service facilities over, under, upon, across, and within the real property in the City of Moreno Valley, County of Riverside, State of California, described on the attached Exhibit "A", and as illustrated on the plat hereto and marked Exhibit "B". IN WITNESS WHEREOF, this instrument has been executed this ____ day of _____, 2009.

STATE OF CALIFORNIA
County of _____
On _____ before me,
_____ the Undersigned.
A Notary Public in and for said State, personally appeared

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

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

WITNESS my hand and official seal.

Signature _____

GRANTOR:

COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF
MORENO VALLEY, CALIFORNIA

By: _____

EXHIBIT "A"
LEGAL DESCRIPTION
CITY OF MORENO VALLEY
RIGHT-OF-WAY EASEMENT

THAT PORTION OF LOT 33, AS SHOWN ON THE MAP OF EDGEMONT TRACT NO. 3, FILED IN BOOK 15 OF MAPS, PAGE 50, RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 33;

THENCE NORTH 00°00'30" EAST ALONG THE WEST LINE OF SAID LOT 33, A DISTANCE OF 25.57 FEET TO THE MOST NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO THE COUNTY OF RIVERSIDE AS DESCRIBED BY GRANT DEED RECORDED JULY 6, 1972 AS INSTRUMENT NO. 88982, OFFICIAL RECORDS, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00°00'30" EAST ALONG SAID WEST LINE, A DISTANCE OF 136.73 FEET TO THE NORTH LINE OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED BY GRANT DEED RECORDED JUNE 18, 2003 AS INSTRUMENT NO. 2003-444428, OFFICIAL RECORDS;

THENCE NORTH 85°40'59" EAST ALONG SAID NORTH LINE A DISTANCE OF 14.04 FEET TO A POINT ON A LINE PARALLEL WITH AND 14.00 FEET EASTERLY OF SAID WEST LINE;

THENCE SOUTH 00°00'30" WEST ALONG SAID PARALLEL LINE A DISTANCE OF 115.40 FEET;

THENCE SOUTH 47°56'23" EAST A DISTANCE OF 34.42 FEET TO A POINT ON A LINE PARALLEL WITH AND 24 FEET NORTHERLY OF THE SOUTH LINE OF SAID LOT 33;

THENCE NORTH 88°43'00" EAST ALONG SAID PARALLEL LINE A DISTANCE OF 53.74 FEET TO THE EAST LINE OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED BY GRANT DEED RECORDED APRIL 1, 2008 AS INSTRUMENT NO. 2008-0161199, OFFICIAL RECORDS;

THENCE SOUTH 02°24'54" WEST ALONG SAID EAST LINE A DISTANCE OF 24.05 FEET TO THE SOUTH LINE OF SAID LOT 33;

THENCE SOUTH 88°43'00" WEST ALONG SAID SOUTH LINE A DISTANCE OF 66.73 FEET TO THE MOST EASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO THE COUNTY OF RIVERSIDE AS DESCRIBED BY GRANT DEED RECORDED JULY 6, 1972 AS INSTRUMENT NO. 88982, OFFICIAL RECORDS;

THENCE NORTH 45°38'15" WEST ALONG THE NORTHEASTERLY LINE OF SAID PARCEL OF LAND A DISTANCE OF 35.75 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 4,144 SQUARE FEET MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION.

 1-13-09
RICHARD S. FURLONG, P.L.S. #8422 DATE
MY LICENSE EXPIRES ON 12/31/10



EXHIBIT "B"


SHEET 1 OF 2

RIGHT-OF-WAY EASEMENT
INDEX SHEET



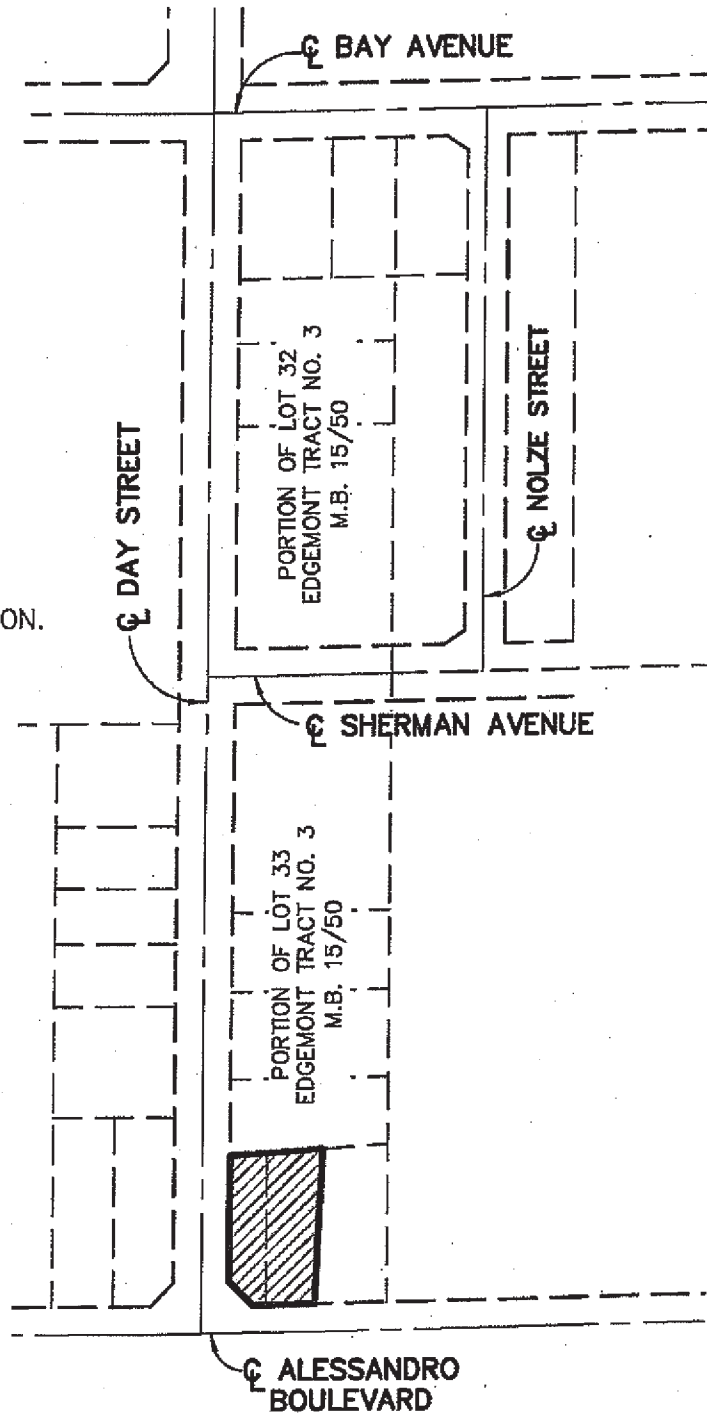
SCALE: 1"=200'


LEGEND:

 = A.P.N. 291-191-005
A.P.N. 291-191-006
CITY OF MORENO VALLEY

NOTE:

SEE SHEET 2 FOR EASEMENT LOCATION.




RICHARD S. FURLONG, P.L.S. 8422 Dated 1-13-09
My License Expires on 12/31/10

AEI CASC
ENGINEERING

937 SOUTH VIA LATA
SUITE 500
COLTON, CA 92324

PH. (909) 783-0101 FAX (909) 783-0108

EXHIBIT "B"

RIGHT-OF-WAY EASEMENT



SCALE: 1"=40'

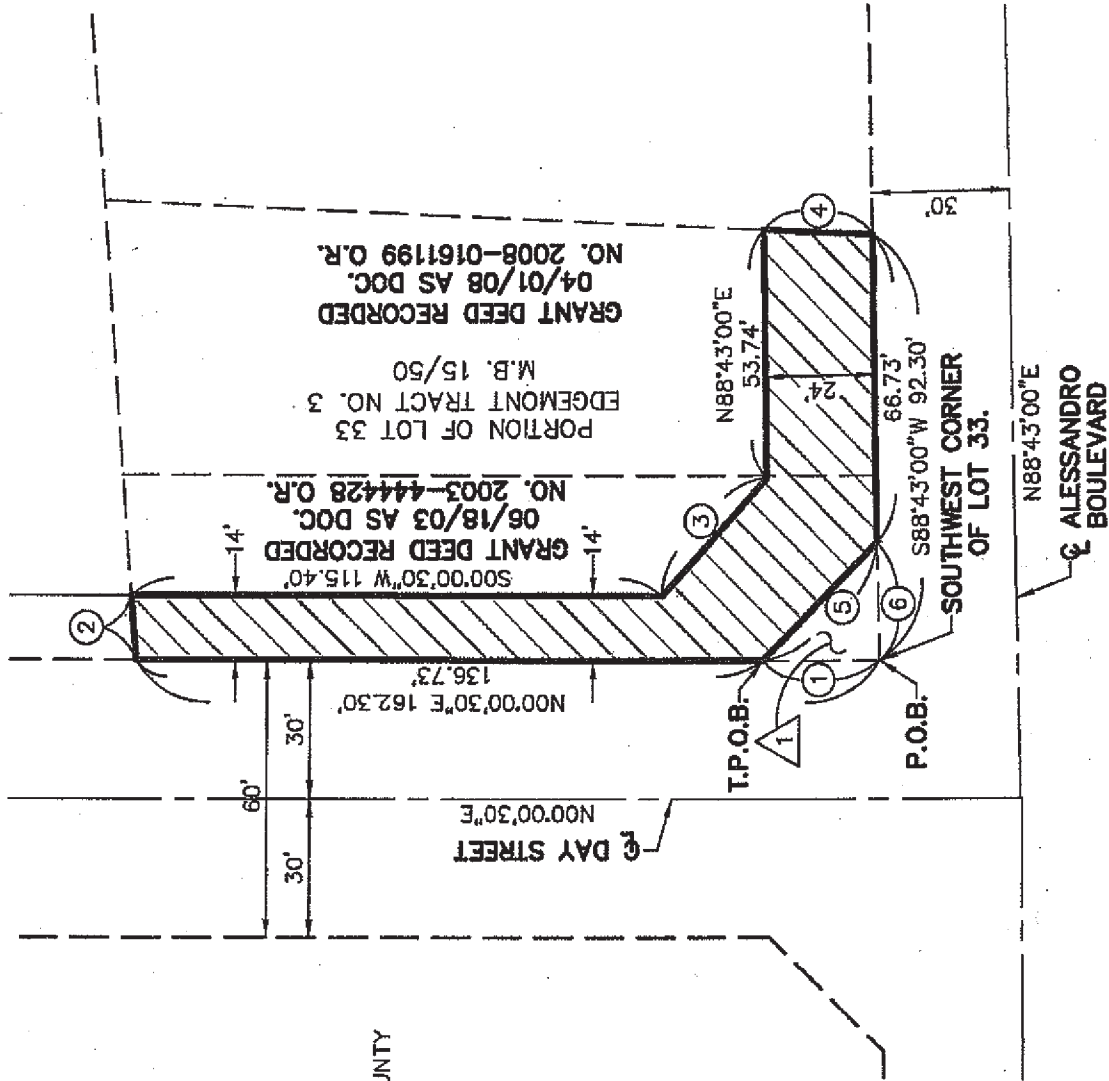
LEGEND:

P.O.B. - POINT OF BEGINNING

T.P.O.B. - TRUE POINT OF BEGINNING

△ - DEDICATED IN FAVOR OF THE COUNTY OF RIVERSIDE BY GRANT DEED RECORDED JULY 06, 1972 AS INST. NO. 88982, O.R.

LINE DATA TABLE	
LINE	BEARING DISTANCE
1	N00°00'30"E 25.57'
2	N85°40'59"E 14.04'
3	S47°56'23"E 34.42'
4	S02°24'54"W 24.05'
5	N45°38'15"W 35.76'
6	S88°43'00"W 25.57'



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ENGINEERING

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COLTON, CA 92324

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A.P.N. 291-191-005
A.P.N. 291-191-006

**MINUTES - REGULAR MEETING OF FEBRUARY
10, 2009 (Report of: City Clerk's Department)**

Recommendation: Approve as submitted.

SEE AGENDA ITEM A.12

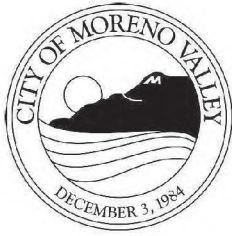
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**MINUTES - REGULAR MEETING OF FEBRUARY
10, 2009 (Report of: City Clerk's Department)**

Recommendation: Approve as submitted.

SEE AGENDA ITEM A.12

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APPROVALS	
BUDGET OFFICER	<i>caf</i>
CITY ATTORNEY	<i>RDA</i>
CITY MANAGER	<i>RM</i>

Report to City Council

TO: Mayor and City Council; Redevelopment Agency Chairperson and Board of Directors

FROM: Barry Foster, Economic Development Director

AGENDA DATE: February 24, 2009 (Continued from November 25, 2008)

TITLE: AFFORDABLE HOUSING AGREEMENT WITH HABITAT FOR HUMANITY RIVERSIDE AND PUBLIC HEARING TO CONSIDER THE TRANSFER OF TITLE OF TWO LOTS

RECOMMENDED ACTION

Staff recommends that the City Council and the Board of Directors of the Community Redevelopment Agency;

1. Conduct a joint public hearing pursuant to the California Community Redevelopment Law (California Health and Safety Code, Section 33000 *et seq.*) at which it will hear and consider information concerning the transfer of title of Assessor's Parcels 292-202-044 and 045 and the Affordable Housing Agreement by and between the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley and Habitat for Humanity Riverside.
2. Adopt Resolution 2009-14, approving an Affordable Housing Agreement with the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley, and Habitat for Humanity Riverside, Inc. for the conveyance and development of land, making certain findings, and approving the use of funds.
3. Adopt Resolution RDA 2009-02, approving an Affordable Housing Agreement with the City of Moreno Valley, the Community Redevelopment Agency of the City of Moreno Valley and Habitat for Humanity Riverside, Inc. for the conveyance and development of land, making certain findings, and approving the use of funds.

BACKGROUND

Habitat for Humanity is an international non-profit housing organization, which assists low and very low-income families to attain homeownership and better living conditions. The Habitat approach is community-based and relies on local residents and businesses for materials and labor to build modest homes. Families are selected to acquire the homes based on income and need - those with the greatest need are given priority. Habitat provides counseling to the families relative to the benefits and responsibilities of homeownership starting with their selection and continuing after move-in. Families must also invest a minimum of five hundred hours of labor in the development of their home.

Several years ago after acquiring four lots in the Graham Street neighborhood (see Attachment A), the City of Moreno Valley (City) and the Community Redevelopment Agency of the City of Moreno Valley (Agency) provided financial assistance to Moreno Valley Youthbuild for construction of two homes on two of the lots. Those homes were sold to two low income families who became homeowners as a result of the City/Agency assistance. Staff proposes that the Agency sell the remaining two lots on Graham Street to Habitat for Humanity Riverside (HHR) to build two more single-family homes.

DISCUSSION

Staff proposes that the Agency sell the remaining two lots on Graham Street to Habitat for Humanity Riverside (HHR) to build two more single-family homes. In addition to the lots, the City will also provide \$85,000 in financial assistance toward the cost of developing the two affordable homes. When the completed homes are transferred, the City will also provide \$15,000 (\$7500 to each family) in down payment assistance. The amount of the financial assistance is shown in the table below:

Agency and City Financial Assistance	House I	House II
Lot Value	\$50,000	\$50,000
HOME Financing	\$42,500	\$42,500
Down payment Assistance	\$7,500	\$7,500
Total Assistance	\$100,000	\$100,000

It is HHR's practice to select eligible low income families for the homes prior to completion since the families contribute their labor toward their home's construction. Eligible families are selected based upon income and family size. As an example, a family of five could earn no more than \$57,550 annually to qualify. This amount reflects 80% of the Area Median Income for the Riverside-San Bernardino-Ontario Metropolitan Statistical Area. The financing provided by the City will be in the form of loans secured by the property. This financing will be assigned to the low-income homebuyers when they purchase the property. The terms of the loans provide for no repayment unless the

homes are re-sold to purchasers whose income exceeds the established income limits. Each City loan assigned to a qualified low income purchaser will allow the loan to be forgiven over the 45-year covenant period if the purchaser remains in the property.

In return for the Agency/City assistance, affordability covenants will be recorded against the property to insure that the affordability of the property is maintained should the owner decide to sell. These two affordable housing units count toward the Regional Housing Needs Assessment goal.

ALTERNATIVES

1. Conduct a joint public hearing and adopt Resolutions 2009-14 and RDA 2009-02, approving an Affordable Housing Agreement for the conveyance and development of land. *Staff recommends this alternative.*
2. Decline to conduct a joint public hearing and reject Resolution 2009-14 and RDA 2009-02, approving an Affordable Housing Agreement for the conveyance and development of land. *Staff does not recommend this alternative. The construction of these homes can not occur without the City/Agency assistance.*

FISCAL IMPACT

RDA Housing Set-aside funds were used to acquire the two lots that will be transferred to HHR as a part of the Affordable Housing Agreement. Additionally, HOME funds of \$107,985 were allocated in FY 2008/2009 to the project as follows:

176.76128	\$107,985
-----------	-----------

The financial assistance to this project has no impact on the City's General Fund.

CITY COUNCIL GOALS

Community Image, Neighborhood Pride, and Cleanliness

Promote a sense of community pride and foster an excellent image about our City by developing single-family homes affordable to low income families.

SUMMARY

Habitat for Humanity, Riverside Inc. will develop two single-family homes to be sold to qualified low income families. The City and the Agency will assist this project by providing two lots and funding a portion of the cost to construct the homes. The completed homes will be sold to qualified low income purchasers.

NOTIFICATION

Notice of the joint public hearing concerning the transfer of title of Assessor's Parcels 292-202-044 and 045 and the Affordable Housing Agreement was published in a newspaper of general circulation in the City on November 10, 2008.

ATTACHMENTS/EXHIBITS

- Attachment A - Map
- Attachment B – Resolution No. 2009-14
- Attachment C – Resolution No. RDA 2009-02
- Attachment D – Affordable Housing Agreement

Prepared By
John Strickler
Housing Program Coordinator

Department Head Approval
Barry Foster
Economic Development Director

Concurred By
Michele Patterson
Acting Redevelopment Manager

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

Graham Street Lots

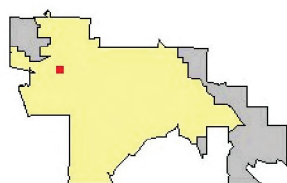
Exhibit A

Legend

-  Selected Features
-  Parcels
-  Roads
-  March Installation Area
-  Waterbodies
-  City Boundaries
-  Callimesa
-  Moreno Valley
-  Perris
-  Riverside

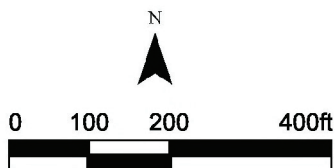


Powered By GeoSmart.net



City of Moreno Valley
14177 Frederick St
Moreno Valley, CA 92553

DISCLAIMER: The information shown on this map was compiled from the Riverside County GIS and the City of Moreno Valley GIS. The land base and facility information on this map is for display purposes only and should not be relied upon without independent verification as to its accuracy. Riverside County and City of Moreno Valley will not be held responsible for any claims, losses, or damages resulting from the use of this map.



Printed: 10/30/2008 2:43:45 PM

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RESOLUTION NO. 2009-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, APPROVING AN AFFORDABLE HOUSING AGREEMENT WITH THE REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY AND HABITAT FOR HUMANITY RIVERSIDE, INC. FOR THE CONVEYANCE AND DEVELOPMENT OF LAND, MAKING CERTAIN FINDINGS, AND APPROVING THE USE OF FUNDS

WHEREAS, the Redevelopment Agency of the City of Moreno Valley (the "Agency") and the City of Moreno Valley (the "City") propose to enter into an Affordable Housing Agreement (the "Agreement") with Habitat for Humanity Riverside, Inc. (the "Developer"), which establishes terms and conditions for the Agency to convey to the Developer certain real property referred to in the Agreement and hereinafter as "the Site;" and

WHEREAS, Sections 33334.2 and 33334.3 of the Health and Safety Code require the Agency to use 20 percent of taxes allocated to the Agency pursuant to Section 33670 for the purpose of increasing, improving, and preserving the community's supply of low and moderate income housing ("Affordable Housing Fund") and the Agency has used its Affordable Housing Fund to acquire the Site and now desires to convey the Site to the Developer for the construction of two single-family dwellings; and

WHEREAS, the Agreement provides for the City to loan to Developer monies from the City's allocation of federal HOME Investment Partnership (HOME) Program funds to assist in financing the construction of the dwellings; and

WHEREAS, the Agreement provides for the completed dwellings to be sold to qualifying low-income persons and households and for the City to provide additional assistance in the form of a loan of American Dream Down Payment Initiative (ADDI) funds to the buyer to achieve affordable housing cost; and

WHEREAS, pursuant to the California Community Redevelopment Law (California Health and Safety Code, Section 33000 et seq.) the Agency and the City Council held a joint public hearing on the Agreement, having duly published notice of such public hearing; and

WHEREAS, the City Council has duly considered all terms and conditions of the proposed transaction, and believes that it is in the best interests of the Moreno Valley Redevelopment Project area and the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law and requirements;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

1. The City Council hereby approves the use of HOME Program Funds to implement the Affordable Housing Agreement.
2. The City Council hereby approves the use of ADDI Funds to implement the Affordable Housing Agreement.
3. The City Council hereby finds and determines that the use of the Agency's Affordable Housing Fund to acquire the Site and convey the Site to the Developer pursuant to the Affordable Housing Agreement will be of benefit to the Moreno Valley Redevelopment Project area;
4. The proposed Agreement is hereby approved in substantially the form presented at this meeting, with such minor changes as may be approved by the City Manager and the Executive Director of the Agency with approval as to form by the City Attorney and the Agency Legal Counsel.
5. The City Council hereby authorizes the City Manager (or his/her designee) to execute the Agreement on behalf of the City and authorizes the City Clerk to deliver a copy of this Resolution to the Executive Director and members of the Agency. A copy of the Agreement when executed by the City shall be placed on file in the office of the City Clerk as Document No. _____.

The City Manager (or his/her designee) is hereby authorized, on behalf of the City, to sign all documents necessary and appropriate to carry out and implement the Agreement, and to administer the City's obligations, responsibilities and duties to be performed thereunder.

APPROVED AND ADOPTED this _____ day of _____, 2009.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

RESOLUTION JURAT

[Clerk's office will prepare]

[NOTE: Any attachments or exhibits to this resolution should follow this jurat.]

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RESOLUTION NO. RDA 2009-02

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY, CALIFORNIA, APPROVING AN AFFORDABLE HOUSING AGREEMENT WITH THE CITY OF MORENO VALLEY AND HABITAT FOR HUMANITY RIVERSIDE, INC. FOR THE CONVEYANCE AND DEVELOPMENT OF LAND, MAKING CERTAIN FINDINGS, AND APPROVING THE USE OF FUNDS

WHEREAS, the Redevelopment Agency of the City of Moreno Valley (the "Agency") is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Moreno Valley Redevelopment Project; and

WHEREAS, the Redevelopment Agency of the City of Moreno Valley (the "Agency") and the City of Moreno Valley (the "City") propose to enter into an Affordable Housing Agreement (the "Agreement") with Habitat for Humanity Riverside, Inc. (the "Developer"), which establishes terms and conditions for the Agency to convey to the Developer certain real property referred to in the Agreement and hereinafter as "the Site;" and

WHEREAS, Sections 33334.2 and 33334.3 of the Health and Safety Code require the Agency to use 20 percent of taxes allocated to the Agency pursuant to Section 33670 for the purpose of increasing, improving, and preserving the community's supply of low and moderate income housing ("Affordable Housing Fund") and the Agency has used its Affordable Housing Fund to acquire the Site and now desires to convey the Site to the Developer for the construction of two single-family dwellings; and

WHEREAS, the Agreement provides for the City to loan to Developer monies from the City's allocation of federal HOME Investment Partnership (HOME) Program funds to assist in financing the construction of the dwellings; and

WHEREAS, the Agreement provides for the completed dwellings to be sold to qualifying low-income persons and households and for the City to provide additional assistance in the form of a loan of American Dream Down Payment Initiative (ADDI) funds to the buyer to achieve affordable housing cost; and

WHEREAS, pursuant to the California Community Redevelopment Law (California Health and Safety Code, Section 33000 et seq.) the Agency and the City Council held a joint public hearing on the Agreement, having duly published notice of such public hearing; and

WHEREAS, the Agency has duly considered all terms and conditions of the proposed transaction, and believes that it is in the best interests of the Moreno Valley Redevelopment Project area and the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law and requirements;

NOW, THEREFORE, THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

1. The Redevelopment Agency hereby authorizes the conveyance of the Site from the Agency to the Developer in accordance with the Agreement.
2. The Redevelopment Agency hereby finds and determines that the use of the Agency's Affordable Housing Funds to acquire the Site and convey the Site to the Developer pursuant to the Affordable Housing Agreement will be of benefit to the Moreno Valley Redevelopment Project.
3. The proposed Agreement is hereby approved in substantially the form presented at this meeting, with such minor changes as may be approved by the Executive Director of the Agency and the City Manager with approval as to form by the Agency Legal Counsel and the City Attorney.
4. The Redevelopment Agency hereby authorizes the Executive Director of the Agency (or his/her designee) to execute the Agreement on behalf of the Agency. A copy of the Agreement when executed by the Agency shall be placed on file in the office of the Agency Clerk as Document No. _____.

The Executive Director of the Agency (or his/her designee) is hereby authorized, on behalf of the Agency, to sign all documents (including but not limited to grant deeds) necessary and appropriate to carry out and implement the Agreement, and to administer the Agency's obligations, responsibilities and duties to be performed thereunder.

APPROVED AND ADOPTED this _____ day of _____, 2009.

Mayor of the City of Moreno Valley,
Acting in the capacity of Chairperson of the
Community Redevelopment Agency of the
City of Moreno Valley

2

Resolution No. RDA 2009-02
Date Adopted: February 24, 2009

Attachment C

ATTEST:

City Clerk, acting in the capacity of
Secretary of the Community
Redevelopment Agency of the
City of Moreno Valley

APPROVED AS TO FORM:

City Attorney, acting in the capacity
of General Counsel of the Community
Redevelopment Agency of the
City of Moreno Valley

RESOLUTION JURAT

[Clerk's office will prepare]

[NOTE: Any attachments or exhibits to this resolution should follow this jurat.]

AFFORDABLE HOUSING AGREEMENT

By and Among

THE COMMUNITY REDEVELOPMENT AGENCY OF
THE CITY OF MORENO VALLEY, CALIFORNIA,

“Agency”,

THE CITY OF MORENO VALLEY, CALIFORNIA,

“City”,

And

HABITAT FOR HUMANITY RIVERSIDE,

“Developer”.

12118 and 12126 Graham Street, Moreno Valley, Ca. 92553

February 2009

Attachment D

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ATTACHMENT NO. 2	Legal Description of the Site
ATTACHMENT NO. 3	Schedule of Performance
ATTACHMENT NO. 4	Project Budget
ATTACHMENT NO. 5	Grant Deed
ATTACHMENT NO. 6	Agency Note
ATTACHMENT NO. 7	Agency Deed of Trust
ATTACHMENT NO. 8	Agreement Containing Covenants Affecting Real Property
ATTACHMENT NO. 9	HOME Note
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ATTACHMENT NO. 11	HOME Regulatory Agreement
ATTACHMENT NO. 12	Memorandum of Agency Option

AFFORDABLE HOUSING AGREEMENT

[12118 and 12126 Graham Street, Moreno Valley, Ca. 92553]

THIS AGREEMENT is entered into on _____, 2009, by and among the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MORENO VALLEY, CALIFORNIA, a public body, corporate and politic (the "Agency"), THE CITY OF MORENO VALLEY, CALIFORNIA, a municipal corporation (the "City"), and HABITAT FOR HUMANITY RIVERSIDE, a California not for profit public benefit corporation (the "Developer"). The Agency, the City and the Developer agree as follows:

RECITALS

1. Sections 33334.2 and 33334.3 of the Health and Safety Code require the Community Redevelopment Agency of the City of Moreno Valley to use 20 percent of taxes allocated to the Agency pursuant to Section 33670 for the purpose of increasing, improving, and preserving the community's supply of low- and moderate-income housing ("Affordable Housing Fund").
2. The Agency used its Affordable Housing Fund to acquire certain real property hereinafter defined as the "Site". In furtherance of the public purposes set forth in the Community Redevelopment Law of the State of California, Section 33000, *et seq.* of the California Health and Safety Code and to increase the supply of affordable housing for low-income persons and families, the Agency desires to convey the Site to the Developer and the Developer desires to acquire the Site from the Agency in accordance with and subject to the terms and conditions set forth in this Agreement.
3. The Developer desires to construct on the Site two single-family homes according to plans approved by the Agency (the "Dwellings") and sell the Dwellings to qualified Low-Income persons and families who have been selected and approved by the Agency ("Approved Purchasers"). As used in this Agreement, the term "Low Income" shall mean household income that does not exceed 80% of the area median income for Riverside County, adjusted for household size, as determined annually by the United States Department of Housing and Urban Development and published by the California Department of Housing and Community Development.
4. The Agency desires to provide a loan of Affordable Housing Funds to Developer in the amount of \$100,000 to pay Developer's cost of acquiring the Site from the Agency, subject to the terms and conditions of this Agreement (the "Agency Loan").

5. The City desires to use a portion of its local allocation of funds from the HOME Investment Partnerships Program (“HOME Program”) of the Department of Housing and Urban Development (“HUD”) to provide construction financing for the Project in the amount of \$85,000 (\$42,500 per Dwelling) according to the terms and conditions set forth in this Agreement (the “HOME Loan”).

6. The City also desires to provide down payment assistance to the Approved Purchasers of the Dwellings in the amount of \$15,000 (\$7,500 per Dwelling) (the “ADDI Loan”), utilizing funds from the American Dream Downpayment Initiative program established within the HOME Program.

The Governing Board of the Agency and the City Council of the City of Moreno Valley have determined pursuant to Health & Safety Code section 33334.2(g) that the expenditure of the Agency’s Affordable Housing Funds under this Agreement will be of benefit to the Moreno Valley Redevelopment Project Area.

ARTICLE 1. SUBJECT OF AGREEMENT

Section 101 Purpose of the Agreement

This Agreement effectuates the Redevelopment Plan for the Moreno Valley Redevelopment Project (the “Redevelopment Plan”) and expands the community’s supply of affordable housing by providing for the improvement of the Site with the Dwellings for sale to Approved Purchasers at Affordable Housing Cost. The acquisition, conveyance to the Developer, development and sale of the Site for such uses pursuant to this Agreement and the fulfillment generally of this Agreement, are in the vital and best interests of the City of Moreno Valley and the health, safety and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

The parties agree that the development of the Site at the earliest practicable date will result in the elimination of blight, and the generation of revenues, benefits and an enhancement of the quality of the life of the present and future residents of the City which otherwise might not occur to the same degree, or at all, or which might occur only at a substantially later date in the absence of the implementation of the Redevelopment Plan by the Agency.

The purpose of this Agreement is to set forth the terms and conditions pursuant to which (1) the Agency will convey the Site to the Developer, (2) the Agency will provide the Agency Loan to pay the cost of acquiring the Site, (3) the City will provide the Developer with the HOME Loan to assist in paying the cost of constructing the Dwellings, (4) the City will provide downpayment assistance to Approved Purchasers in the form of the ADDI Loans, and (5) the Developer will sell the Dwellings to Approved Purchasers at Affordable Housing Cost.

Section 102 The Site

The “Site” is that certain real property located at 12118 and 12126 Graham Street, Moreno Valley, Ca. 92553, designated as the “Subject Property” and illustrated as such on the “Site Map” (which is attached hereto and incorporated herein as Attachment No. 1) and more particularly described in “Legal Description of the Site” (which is attached hereto and incorporated herein as Attachment No. 2). The Site consists of unimproved vacant land and comprises two legal lots (the “Lots”).

Section 103 Parties to the Agreement

§ 103.1 The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Part 1 of Division 24 of the California Health and Safety Code (Section 33000, *et seq.*). The principal office of the Agency is located at 14177 Frederick Street, Moreno Valley, California 92552-0805 or such other location of which notice is given pursuant to this Agreement. “Agency” as used in this Agreement includes the Community Redevelopment Agency of the City of Moreno Valley and any assignee of or successor to its rights, powers and responsibilities

§ 103.2 The City

The City is a general law municipality of the State of California. The principal office of the City is located at 14177 Frederick Street, Moreno Valley, California 92552-0805 or such other location of which notice is given pursuant to this Agreement. “City” as used in this Agreement includes the City of Moreno Valley and any assignee of or successor to its rights, powers and responsibilities.

§ 103.3 The Developer

The Developer is Habitat for Humanity Riverside, Inc., a California nonprofit public benefit corporation. The Developer agrees that, until the Agency’s full reconveyance of the Agency Deeds of Trust securing the Agency Loan to the Developer, it shall make full and continuing disclosure to the Agency of the legal entities constituting the Developer and their respective roles, economic interests, financial commitments, and responsibilities in the planning and development of the Project. The principal office of the Developer is located at 2121 Atlanta Avenue, Suite B-3, Riverside, CA 92507 or such other location of which notice is given pursuant to this Agreement. “Developer” as used in this Agreement includes Habitat for Humanity Riverside, Inc., and any permitted assignee of or successor to its rights, powers and responsibilities, as provided herein. This Agreement is entered into with the express

understanding that Developer is a 501(c)(3) nonprofit corporation, organized and existing under the laws of the State of California.

Section 104 Prohibition Against Change in Ownership, Management and Control of Developer

The Developer recognizes that its qualifications and identity are of particular concern to the Agency, and that it is because of those qualifications and identity that the Agency has entered into this Agreement with the Developer.

The Developer represents and agrees that its acquisition of the Site and its other undertakings pursuant to this Agreement are and will be used for the purpose of redevelopment of the Site and not for speculation in land holding. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

The Developer further recognizes that, in view of

- (a) the importance of the redevelopment of the Site to the general welfare of the community;
- (b) the public aids that have been made available by law and by the Agency for the purpose of making such redevelopment possible; and
- (c) the fact that a change in ownership or control of the Developer or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the property then owned by the Developer,

the qualifications and identity of the Developer, and its principals, are of particular concern to the City and the Agency. The Developer further recognizes that it is because of such qualifications and identity that the City and the Agency are entering into this Agreement with the Developer.

Section 105 Conditions for Transfer

For the reasons cited in Section 104 above, the Developer represents and agrees that, prior to the full reconveyance to the Developer of the Agency Deed of Trust securing the Agency Loan and the HOME Deed of Trust securing the HOME Loan, it shall not assign this Agreement nor sell the Site or any portion thereof, nor lease nor make any total or partial conveyance or transfer in any mode or form of all or any part of the Site or the improvements thereon, or any interest therein, nor shall there be any change in the identity of the Developer or

change in the ownership of the Developer or in the relative proportions thereof, or with respect to the identity of the parties in control of the Developer or the degree thereof, by any method or means (other than such changes occasioned by the death or incapacity of any individual), (collectively, "Transfer"), without the prior written approval of the Agency, which approval shall not be unreasonably withheld or delayed if the proposed Transferee (as defined herein below) is determined by the Agency to have qualifications equal to or better than the original Developer's qualifications as of the Date of Agreement in all material respects, including but not limited to (a) financial strength, (b) experience in the successful completion of projects substantially similar to this Project, (c) character and reputation, and (d) the ability to perform all of the agreements, undertakings, and covenants of this Agreement, the Grant Deed, the Agreement Containing Covenants Affecting Real Property, the HOME Regulatory Agreement, the Deeds of Trust, and all other agreements entered into by the Developer which relate to the Project. The Developer shall promptly notify the Agency of any and all changes whatsoever in the identity of the parties in ownership or control of the Developer or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information. Any entity formation agreements and documents (or changes therein) related to a Transfer, as well as the agreements and documents effectuating any Transfer, shall be subject to the approval of the Agency's Executive Director in connection with its approval of the Transfer.

Approval by the Agency of any Transfer shall be conditioned upon such assignee, conveyee or transferee (collectively "Transferee") agreeing, in writing, to assume the rights and obligations thereby transferred and to keep and perform all covenants, conditions and provisions of this Agreement, the Grant Deed, the Deeds of Trust, the HOME Regulatory Agreement, and the Agreement Containing Covenants Affecting Real Property that are applicable to the rights acquired.

With respect to the sale of an improved Lot to an Approved Purchaser as provided in this Agreement, the Developer shall not be required to submit the documentation otherwise required for a Transfer, nor the assignment and assumption agreement otherwise required.

Any purported Transfer shall be null and void unless it complies with the terms of this Section 105.

§ 105.1 Permitted Transfers

Notwithstanding any other provision of this Agreement to the contrary, Agency approval of a Transfer shall not be required in connection with any of the following ("Permitted Transfers"):

(a) any Transfer to an entity or entities in which the Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the Transferee. The Developer agrees that at least thirty (30) days prior to such

Transfer it shall give written notice to the Agency of such Transfer and satisfactory evidence that the Transferee has assumed in writing through an assignment and assumption agreement all of the obligations of this Agreement and the covenants of the Grant Deed, the HOME Regulatory Agreement, and the Agreement Containing Covenants Affecting Real Property. Such assignment shall not, however, release the assigning Developer from any obligations to the Agency hereunder.

(b) the conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate the development of the Project.

Section 106 No Encumbrances Except to Finance Development

Notwithstanding the limitations on Transfer otherwise set forth in this Agreement, mortgages, deeds of trust, sale and lease-back financing, or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used only for financing the acquisition of the Site and the construction of improvements on the Site, and any other expenditures necessary and appropriate to develop the Site in accordance with this Agreement. The Developer shall notify the Agency in advance of any mortgage, deed of trust, or sale and lease-back financing, if the Developer proposes to enter into the same. The Agency shall have the right to approve or disapprove any such mortgage or deed of trust, but the Agency shall not unreasonably withhold or delay its approval if the Developer submits evidence satisfactory to the Agency demonstrating (a) that the mortgage, deed of trust or other security instrument is consistent with the provisions of this Agreement; and (b) the mortgage, deed of trust or other security instrument expressly acknowledges that the rights of any holder or person acquiring title through or following foreclosure are subordinate and subject to the provisions of the Grant Deed, the HOME Regulatory Agreement, and the Agreement Containing Covenants Affecting Real Property. The Developer shall not enter into any mortgage or deed of trust without having first obtained the Agency's written approval. The words "mortgage" and "deed of trust" as used herein include all other modes of financing real estate acquisition, construction, and land development.

§ 106.1 Unapproved Encumbrances

The Developer shall not place or allow to be placed on the Site or any part thereof or the improvements thereon, any mortgage, deed of trust, encumbrance or lien other than as expressly authorized by this Section 106. The Developer shall remove or cause to be removed any levy or attachment made on the Site or any part thereof, or assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder.

§ 106.2 Holder Not Obligated to Construct; Holder's Right to Cure

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement (the "Mortgagee") shall in no way be obligated by the provisions of this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. Each such holder shall (insofar as the rights of the Agency and the City are concerned) have the right at its option to cure or remedy or commence to cure or remedy any Developer default consistent with the terms and conditions of this Agreement. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements without first having expressly assumed the Developer's obligations to the Agency and the City by written agreement satisfactory to the Agency. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Agency that it has the financial responsibility and, itself or through contract with qualified parties, the qualifications necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon request made to the Agency, to a Release of Construction Covenants from the Agency with respect to such improvements.

§ 106.3 Holder's Failure to Complete Improvements

If the holder of a mortgage, deed of trust, or other security interest undertakes the construction or completion of the improvements on any portion of the Site and thereafter fails to achieve Completion of those improvements within the time specified in the Schedule of Performance, the Agency shall have all rights and remedies against that holder as may be available at law or in equity to cure, correct or remedy any default, to obtain specific performance, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such rights and remedies are cumulative, and except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same default or any other default by the holder.

§ 106.4 Agency Notice of Default; Agency's Right to Cure

The documents executed in connection with any mortgage or deed of trust encumbering any portion of the Site shall provide that the Agency shall have the right to receive notices of default by the Developer thereunder and a reasonable opportunity to cure any such default.

ARTICLE 2. CONVEYANCE OF THE SITE

Section 201 Agency's Conveyance of the Site to the Developer

§ 201.1 Agreement to Sell and Purchase

In accordance with, subject to, and conditioned on all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell the Site to the Developer and the Developer agrees to purchase the Site from the Agency.

§ 201.2 Developer Purchase Price.

The Developer's purchase price for the Site shall be an amount equal to the sum of (i) ONE HUNDRED THOUSAND DOLLARS (\$100,000) plus (ii) the total amount of the escrow fees, charges and costs chargeable to the Agency pursuant to §202.1 (the "Developer Purchase Price"). The Developer shall pay the Developer Purchase Price to the Agency at the time and in the manner and form set forth herein.

§ 201.3 Condition of the Site.

The Developer acknowledges and agrees that the Agency makes no representations and warranties, express or implied, as to the Site, except to warrant that two legal lots exist. It is understood and agreed that with respect to the physical condition of the Site, such property is being sold and conveyed hereunder and, upon tender of conveyance, Developer agrees to accept the Site "as is," "where is" and "with all faults" and subject to any condition which may exist, without any representation or warranty by the Agency except as expressly set forth in this Agreement. Other than the representations and warranties set forth in this Agreement, Developer hereby expressly acknowledges and agrees that Developer is relying solely upon its inspections, examination, and evaluation of the Site in purchasing the Site on an "as is," "where is" and "with all faults" basis.

The Agency hereby represents and warrants to Developer that it has no actual knowledge of, and has not received any notice or communication from any governmental agency having jurisdiction over the Site, notifying the Agency of the presence of a hazardous substance beyond non-reportable background levels in, on, or under the Site or any portion thereof. "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code. "Actual knowledge" as used herein shall not impose a duty of investigation and shall be limited to the actual knowledge of the Agency, its principals, employees and agents who have participated in the preparation of this Agreement or the conveyance of the Site to the Developer, and information contained in the files of the Agency as of the effective date of this Agreement.

Section 202 Escrow.

Articles 1 and 2 of this Agreement shall also constitute joint escrow instructions to First American Title Company, which is hereby appointed and designated “Escrow Agent.” Escrow Agent shall be the party responsible for closing this escrow pursuant to the terms and conditions set forth in this Agreement. Escrow shall be opened by delivery to Escrow Agent of this fully executed Agreement. The Agency and the Developer agree to execute such additional escrow instructions as Escrow Agent shall reasonably request; provided that in the event of conflict, this Agreement shall in all events control.

§ 202.1 Escrow and Title Expenses.

The Agency shall fund the escrow fees and the title insurance premium for the Agency’s and the City’s lender’s insurance policies.

§ 202.2 Deposits Into Escrow.

Each of the parties hereto shall make or cause to be made the following deposits into escrow by delivering the following items to Escrow Agent.

a. The Agency shall deposit (1) a recordable Grant Deed in the form of Attachment 5 executed and acknowledged by the Agency for the Agency’s conveyance of the Site to the Developer, (2) a Notice of Affordability Restrictions on Transfer of Property executed and acknowledged by the Agency, and (3) any other information, documents or instruments that Escrow Agent reasonably requests in order to complete the closing of this escrow, including written acknowledgement that all the Conditions Precedent to Closing have been satisfied.

b. The Developer shall submit the following to the Agency for deposit into escrow:

(i) the original of a Promissory Note substantially in the form attached hereto as Attachment 6, executed by the Developer and evidencing Developer’s obligation to pay to the Agency the Developer Purchase Price (“Agency Note”) (a photocopy of which will be deposited into escrow),

(ii) the Deed of Trust attached hereto as Attachment 7, executed in recordable form by the Developer and securing Developer’s payment obligations under the Agency Promissory Note, to be recorded against the Site (“Agency Deed of Trust”),

(iii) the Agreement Containing Covenants Affecting Real Property attached hereto as Attachment 8 (“Agreement Containing Covenants”), executed in recordable form by the Developer, to be recorded against the Site,

(iv) the Memorandum of Agency Option attached hereto as Attachment 12, executed by the Developer,

(v) the original of a Promissory Note substantially in the form attached hereto as Attachment 9, executed by the Developer and evidencing Developer's obligation to pay to the City the HOME Loan ("HOME Note") (a photocopy of which will be deposited into escrow),

(ii) the Deed of Trust attached hereto as Attachment 10, executed in recordable form by the Developer and securing Developer's payment obligations under the HOME Note, to be recorded against the Site ("HOME Deed of Trust"),

(iii) the Regulatory Agreement Containing HOME Program Requirements attached hereto as Attachment 11 ("HOME Regulatory Agreement"), executed in recordable form by the Developer, to be recorded against the Site,

(v) an original or certified copy of a resolution adopted by Developer's board of directors authorizing the acquisition of the Site for development and designating the officers who are authorized to sign documents on Developer's behalf (the "Developer Resolution")

(vi) a recently dated certificate from the Secretary of State's Office showing that Developer is a corporation in good standing (the "Developer Certificate"), and

(vii) any other information, documents or instruments which Escrow Agent reasonably requests in order to complete the closing of this transaction, including written acknowledgement that all the Conditions Precedent to Closing have been satisfied.

§ 202.3 Closing Date.

If escrow is not in condition to close by February 1, 2009 or such later date as mutually agreed to by the parties, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, demand the return of its money, papers, or documents from the Escrow Agent. No demand for return shall be recognized until 10 days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the 10-day period, the Escrow Agent is authorized to hold all money, papers and documents until instructed by mutual agreement of the parties or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. The Escrow Agent shall not be obligated to return any such money, papers or documents except upon written instructions signed by the City, the Agency and the Developer or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

§ 202.4 Conditions Precedent to Closing.

1. The Agency's obligation to convey the Site to Developer shall be conditioned upon satisfaction of the following conditions precedent.

a. The deposits into escrow required by paragraph 202.2 b. herein have been fully performed.

b. First American Title Insurance Company is prepared to issue to the Agency an ALTA Lender's Policy for the Site, with any title endorsements requested by the Agency, in the amount requested by the Agency, insuring the Agency Deed of Trust as first priority lien on the Site, subject only to those exceptions the Agency approves in writing.

c. First American Title Insurance Company is prepared to issue to the City an ALTA Lender's Policy for the Site, with any title endorsements requested by the City, in the amount requested by the City, insuring the HOME Deed of Trust as second priority lien on the Site, subject only to those exceptions the City approves in writing.

d. Developer shall have obtained all necessary permits and approvals from governmental agencies having jurisdiction over the Site, for construction of the Dwellings on the Site.

e. Developer shall have entered into an agreement with a California licensed contractor that has been approved by the Agency for construction of the Dwellings on the Site in accordance with this Agreement.

f. Developer shall have delivered to the Agency evidence satisfactory to the Agency that Developer has obtained the insurance required by §304 of this Agreement.

g. Developer shall have delivered to the Agency evidence satisfactory to the Agency that Developer has funds on hand in an amount that, when added to the HOME Loan, is sufficient to construct the Dwellings as required by this Agreement and the Project Budget.

h. Developer shall have delivered to the Agency a signed statement that it has inspected the physical condition of the Site, including the condition of the soil on which the Dwellings are to be erected, to Developer's satisfaction and accepts the Site in its "as is" condition.

i. The Agency shall have determined that Developer is in full compliance with the terms and conditions of this Agreement and all documents and instruments referred to herein or executed by Developer in furtherance of this Agreement.

2. The Developer's obligation to accept conveyance of the Site shall be conditioned upon First American Title Insurance Company being prepared to issue to the Developer an ALTA Owner's Policy for the Site, with any title endorsements requested by the Developer and approved by the Agency, in the amount requested by the Developer and approved by the Agency, subject only to those exceptions the Developer approves in writing.

§ 202.5 Closing of Escrow.

When all Conditions Precedent to Closing have been satisfied, the Escrow Agent is authorized to:

a. Pay, and charge the Agency for any fees, charges and costs payable pursuant to these escrow instructions, with the exception of the premium for the City's lender's title policy, which shall be charged to the City. Before such payments are made, the Escrow Agent shall notify the Agency and the City of the fees, charges and costs necessary to close escrow.

b. Record any instruments delivered through this escrow if necessary or proper to vest title in the Site in the Developer in accordance with the terms and provisions of these escrow instructions. Any documents signed by the Agency or the City are entitled to free recording pursuant to California Government Code §27383. If any of such documents do not contain a legend to that effect, please insert the legend in the upper left corner of such documents.

c. With respect to any documents that have not been dated (whether or not such documents are to be recorded), fill in the date of the Grant Deed.

d. With respect to any other blanks in the documents, fill in the appropriate information (for example, recording information or dates of other documents). If you have any questions regarding how to fill in any blanks, contact the Agency immediately.

e. After first obtaining the Agency's consent to do so, record, in the following order, the following documents in the Office of the County Recorder, Riverside County:

- (i) The Grant Deed conveying the Site from the Agency to the Developer;
- (ii) The Agreement Containing Covenants;
- (iii) The HOME Regulatory Agreement;
- (iv) The Agency Deed of Trust;
- (v) The HOME Deed of Trust;
- (vi) The Memorandum of Agency Option.

f. Promptly after recordation,

(i) deliver to the Agency a conformed copy of the Grant Deed from the Agency to the Developer, the Agency Deed of Trust, and the Agreement Containing Covenants, showing the title company's certification that the same have been recorded and setting forth the date of recording and instrument number, and a copy of these escrow instructions signed by you in the space provided below to indicate your acceptance on behalf of the Escrow Company; and

(ii) deliver to the City a conformed copy of the HOME Deed of Trust and the Regulatory Agreement, showing the title company's certification that the same have been recorded and setting forth the date of recording and instrument number, and a copy of these escrow instructions signed by you in the space provided below to indicate your acceptance on behalf of the Escrow Company.

g. As soon as reasonably possible, but not later than two weeks after the date of recording, one original and two copies of the Agency's lender's title policy shall be delivered to the Agency, one original and two copies of the City's lender's title policy shall be delivered to the City and one original and two copies of the owner's title policy shall be delivered to the Developer.

ARTICLE 3. DEVELOPMENT OF THE SITE

Section 301 Obligation to Develop.

Developer shall, upon its acquisition of the Site, and in conformance with the Schedule of Performance, furnish all labor and materials necessary to construct upon each Lot a Dwelling that conforms to the terms and conditions of this Agreement and the Floor Plans (and landscaping plans, if any) approved by the Agency. Developer shall not commence construction upon a particular Lot unless and until it has received notice from the City that the City is prepared to fund the construction of the Dwelling upon that Lot. Any costs or expenses incurred by the Developer before receiving such notice shall be at Developer's sole risk.

Section 302 Changes to Approved Plans.

Any revisions to the approved Floor Plans shall be subject to the approval of the Agency, which approval shall not be unreasonably withheld. If any revisions or corrections of approved plans shall be required by a governmental official, agency, department or bureau having jurisdiction over the development of the Lots, Developer and the Agency shall cooperate in efforts to resolve the matter.

Section 303 Entitlements.

Developer shall, in cooperation with the Agency, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required for any Dwelling by the City of Moreno Valley, the County of Riverside, and by any other governmental agency with jurisdiction over the Project. The execution of this Agreement does not constitute the City's granting of or a commitment by the City or the Agency to obtain any required land use permit, entitlement or approval. The Agency shall reasonably cooperate with Developer's efforts to obtain such permits, entitlements, or approvals.

Section 304 Schedule of Performance.

Developer shall perform its obligations under this Agreement within the time periods set forth in the Schedule of Performance attached as Attachment 3 and incorporated by this reference. The Schedule of Performance may be modified by mutual agreement of the Agency, the City and Developer.

Section 305 Agency's Right of Access.

Representatives of the Agency shall have the reasonable right of access to each Lot and Dwelling without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Dwellings as provided in this Agreement. Such representatives of the Agency shall be those who are so identified by the Agency Executive Director. The Agency hereby agrees to indemnify and hold Developer harmless for any injury or damages to the extent such injury or damages arise out of any activity of such representatives performed and conducted pursuant to this paragraph.

Section 306 No Reliance.

Neither the Agency nor the City undertakes nor assumes nor will have any responsibility or duty to Developer or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the development or construction of the Dwellings, whether with respect to the quality, adequacy or suitability or the plans, any labor, service, equipment or material furnished to the project, any person furnishing the same or otherwise. Developer and all third parties shall rely upon its or their own judgment with respect to such matter, and any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by the Agency or the City in connection with such matter is for the public purpose of carrying out redevelopment, including the provision of affordable housing for Low Income persons and families, in accordance with this Agreement, and neither Developer (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon.

Section 307 Compliance With Laws.

Developer shall construct the Dwellings in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* Notwithstanding the foregoing, Developer shall have the right in good faith to contest or challenge any asserted non-compliance. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices.

Section 308 Prevailing Wage.

Developer shall carry out the development and construction of the Project on the Site, including, without limitation, any and all public works (as defined by applicable law), if any, in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any applicable requirement to pay state prevailing wages). Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby agrees that Developer shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer shall indemnify, protect, defend and hold harmless the Agency and the City and their respective representatives, volunteers, officers, elected officials, contractors, employees and agents (“Indemnitees”) with counsel reasonably acceptable to Agency and City, from and against any and all loss, liability, damage, claim, cost, expense, and/or “increased costs” (including labor costs, penalties, reasonable attorneys fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development and construction of the Project, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (3) failure by Developer to provide any required disclosure representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (4)

failure by Developer to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Civil Code, Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Developer hereby expressly acknowledges and agrees that neither City nor Agency has ever previously affirmatively represented to the Developer or its contractor(s) for the Project in writing or otherwise, that the work to be covered by the bid or contract is not a “public work,” as defined in Section 1720 of the Labor Code. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law) of the Project, including, without limitation, any public work (as defined by applicable law), if any, Developer shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. “Increased costs” as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Agreement.

Section 309 Insurance Requirements.

Developer shall maintain and keep in full force and effect, and shall require its contractor to keep and maintain in full force and effect, the following insurance coverage naming the Agency and the City as additional insureds as their interests appear and issued by companies admitted to do business in California.

a. Commercial General Liability Insurance. A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence, and Five Million Dollars (\$5,000,000) in the aggregate, providing coverage for, among other things, bodily injury, property damage and personal injury coverage. The commercial general liability insurance policy shall be broad form and provide for and protect the Agency and the City against incurring any legal cost in defending claims for alleged loss.

b. Workers’ Compensation and Employer’s Liability Insurance. Workers’ compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Developer in the conduct of its operations on the Site (including the “all states” and volunteer’s endorsements, if applicable), together with employer’s liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000).

c. Property Insurance. A Builder’s Risk policy of insurance or equivalent covering the Dwelling during the course of construction in an amount equal to the full replacement cost thereof. The term “full replacement cost” shall mean the actual replacement cost (without deduction for depreciation) of the covered improvements immediately before such casualty or

other loss, including the cost of construction of the improvements, architectural and engineering fees, and inspection and supervision. Developer shall make available to the Agency upon request, for its review and approval, all documents, data and resources used in determining the full replacement cost.

Insurance required to be maintained pursuant to this Agreement shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least "A" as set forth in the most current issue of "Best's Key Rating Guide."

Developer shall deliver to the Agency certificates of insurance with original endorsements for all coverages required by this Section 309. The certificates and endorsements of each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on forms reasonably acceptable to the Agency. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the Agency (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' written notice has been given to each additional insured).

All policies of insurance required hereunder (other than worker's compensation insurance) shall name "The Community Redevelopment Agency of the City of Moreno Valley, California" and "The City of Moreno Valley, California" as additional insureds. The commercial general liability policy shall provide for severability of interest.

Developer shall promptly notify the Agency of the occurrence of any accidents or incidents in connection with the construction of the Dwelling that could give rise to a claim under any of the insurance policies required under this Section 309. Developer shall notify its insurer of the occurrence of any accidents or incidents in connection with the construction of the Dwelling within the time periods required under each insurance contract and shall provide a copy of that notice to the Agency.

The insurance described in this Section 309 may be carried under a policy or policies covering other liabilities and locations of Developer and/or may be satisfied in whole or in part under any plan of self insurance permitted hereunder from time to time.

Section 310 Construction Cost.

The total construction cost for each Dwelling to be completed by Developer and financially assisted by the City is set forth in the Project Budget attached as Attachment 4. Developer shall be solely responsible for the payment of any costs incurred in excess of the costs set forth in the Project Budget.

Section 311 City Funding of Construction Costs.

The City desires to fund a portion of the construction costs for the Dwellings, with such construction funding to be converted to loans to the Approved Purchasers upon Developer's conveyance of the completed Dwellings, as provided herein. The City's funding of construction costs will take the form of remittances to Developer in a series of disbursements as provided below. The total amount of any and all disbursements by the City shall be included in Developer's payment obligations to the City set forth in the HOME Note.

Section 312 Applications for Disbursement.

Applications for disbursement shall be on a form supplied by the City and shall describe in detail all work performed by the Developer. The Developer shall furnish in support of each application for disbursement, all receipted bills, and/or a complete statement of all monies properly due for materials or otherwise hereunder. Monies received from the City for the construction of the Dwellings shall be first used exclusively for payment of contractors, suppliers and vendors providing labor, materials or equipment for the Project. The City, at its option, may make any of the disbursements to the Developer provided herein by means of check made jointly payable to the Developer and its contractors and materialmen. Any payment of fees imposed on the Project by the City of Moreno Valley in its regulatory capacity shall be made via an interdepartmental transfer of funds.

Section 313 Withholding

The City shall have the right to withhold out of any disbursements, final or otherwise, whether due hereunder or on any other account between the City and the Developer, any sums as the City may deem necessary to protect itself against loss and/or assure payment of the claims of third persons, and the City shall have the option to apply such sums to secure protection and/or satisfy such claims. The Developer agrees to remove and release all stop notices, mechanics liens, and claims of contractors, suppliers or persons, of any contracting tier, furnishing labor, materials, equipment or other work in connection with the Project. The Developer's acceptance of final disbursement shall be a waiver of all claims for additional compensation, except as to claims identified by the Developer in writing at the time of application for final disbursement.

Section 314 Conditions of Disbursement

In addition to any other requirements of this Agreement, Developer's right to each disbursement shall not arise unless and until the following conditions precedent have been satisfied: (1) the City's approval and acceptance of Developer's application for disbursement, subject to the City's inspection of the work; (2) Developer has furnished evidence, satisfactory to the City, that all labor, material, equipment and other costs of the work incurred by the Developer covered by previous disbursements have been paid in full, including (as applicable)

payment to all labor unions and union trust funds; (3) Developer has furnished Conditional Waivers and Releases of Lien, Stop Notice and Bond Rights, signed by contractors and by subcontractors, suppliers and vendors, of every contracting tier, for all work for which disbursement is being requested in the current application for disbursement; (4) Developer has furnished Unconditional Waivers and Releases of Lien, Stop Notice and Bond Rights, signed by contractors and by subcontractors, suppliers and vendors, of every contracting tier, for all work for which disbursement has previously been made to Developer under its applications previously submitted; (5) if bonds are required from contractors, Developer has furnished to the City such Payment and Performance Bonds; (6) Developer has furnished to the City proof of required insurance coverage in accordance with §309 of this Agreement; (7) Developer has furnished to the City applicable business license, sales tax numbers as well as proof of valid contractor's licenses for the State in which the Project is located; and (8) Developer has furnished such other documentation required by the City to be submitted under the terms of this Agreement. The City may, as a condition precedent to its obligation to make any disbursement under this Agreement, require Developer to deliver current as-built drawings of the work made within ten (10) days prior to the date of Developer's application for disbursement.

Section 315 Safety Precautions.

Developer shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to all employees or volunteers on the work and all other persons who may be affected thereby. Developer shall take all reasonable precautions for the safety of the work, the Site and any equipment, materials, and supplies stored thereon, and shall provide all reasonable protection, including, without limitation, protection to prevent damage by the elements, theft and vandalism or otherwise.

Section 316 Indemnification.

To the fullest extent allowed by law, Developer agrees to and shall defend, indemnify, assume all responsibility for, and hold Indemnitees (as that term is defined in Section 308 above), harmless from all claims, demands, damages, defense costs (including reasonable attorney's fees) or liability of any kind or nature relating to Developer's actions in the implementation of this Agreement and for any damages to property or injuries to persons, including accidental death (including attorney fees and costs), which may be caused by any acts or omissions of Developer under this Agreement, whether such activities or performance thereof be by Developer or by anyone directly or indirectly employed or contracted with by Developer, including volunteers, and whether such damage shall accrue or be discovered before or after termination of this Agreement.

Section 317 Environmental Covenants and Indemnification.

Developer shall immediately advise the Agency in writing of any of the following: (a) any pending or threatened environmental claim against Developer or the Site, (b) any condition or occurrence on the Site that (i) results in material noncompliance by Developer with any applicable environmental law, (ii) could reasonably be anticipated to cause the Site to be subject to any restrictions on the ownership, occupancy, use or transferability of the Site under any environmental law, or (iii) could reasonably be anticipated to form the basis of an environmental claim against the Site or Developer. Developer's obligations under this Section 317 shall apply to the Site or any portion thereof.

Developer shall take all necessary precautions to prevent the release of any hazardous substance located in, on or under the Site. Such precautions shall include compliance with all governmental requirements with respect to hazardous substances; provided, however, Developer shall have the right in good faith to contest or challenge any asserted non-compliance. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of hazardous substances.

As of the effective date of this Agreement, Developer agrees to and shall indemnify, defend and hold Indemnitees (as that term is defined in Section 308 above), harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorney fees and costs), resulting from, arising out of, or based upon (i) Developer's release, use, generation, discharge, storage or disposal of any hazardous substance on, under, in or about the Site, or the transportation of any such hazardous substance to or from the Site, or (ii) Developer's violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release discharge, storage, disposal or transportation of hazardous substances on, under, in or about, to or from, the Site, except arising from the intentional act or gross negligence of Indemnitees. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to natural resources or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. For the purpose of determining the scope of Developer's indemnification obligation under this paragraph, "Developer" as used in clauses (i) and (ii) above, shall include, without limitation, Developer's officers, employees, agents, representatives, contractors, licensees, volunteers, and invitees.

Section 318 Assignment of Contracts and Plans.

Developer hereby assigns to the Agency any and all contracts and plans for all Dwellings to be constructed pursuant to this Agreement. If the Agency terminates this Agreement for any reason, the Agency shall have the right to immediately take possession of those contracts and plans and to use them without any reimbursement obligation to Developer. Developer shall include provisions consenting to this assignment in all contracts entered into pursuant to this Agreement.

Section 319 Removal of Liens and Encumbrances.

Developer shall not allow any liens or encumbrances to be placed on the Site or any portion thereof, except as expressly provided by this Agreement or otherwise approved in writing by the Agency, and shall promptly take all necessary actions to remove any such liens or encumbrances.

Section 320 Non-Discrimination

The Developer, for itself and its successors and assigns, and transferees agrees that in the construction of the improvements on the Site provided for in this Agreement:

(1) It will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, national origin or ancestry (“nondiscrimination factors”). The Developer will take appropriate actions to ensure that applicants are employed, and that employees are treated without regard to the nondiscrimination factors during employment including, but not limited to, activities of: upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, the applicable nondiscrimination clause set forth herein;

(2) It will, ensure that its solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors; and

(3) It will cause the foregoing provisions to be inserted in all contracts for the construction of the improvements entered into after the effective date of this Agreement; provided, however, that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

ARTICLE 4. SALE OF THE DWELLINGS TO APPROVED PURCHASERS

Section 401 Developer's Obligation to Sell.

Following the Developer's recordation of a notice of completion pursuant to Civil Code Section 3117 for an improved Lot (which must occur promptly upon the Agency's approval of the completed Dwelling on that Lot), Developer shall, as soon as practicable, sell such improved Lot to an Approved Purchaser pursuant to the terms of this Agreement and using escrow instructions approved by the Agency. To the extent required by California Health & Safety Code § 33411.3, Developer shall provide priority in the selection of Approved Purchasers to persons and families who have been displaced as a result of the Agency's redevelopment activities in the City of Moreno Valley. Developer shall cooperate with the Agency prior to the sale of any improved Lots to effectuate this provision. The Approved Purchaser must take title to the Lot subject to the Agreement Containing Covenants and the HOME Regulatory Agreement recorded against the Site. Developer may rent a Dwelling to a proposed purchaser prior to the satisfaction of the purchaser's "sweat equity" obligation to Habitat and for a reasonable amount of time prior to the consummation of the sale to the proposed purchaser, but only if (1) such proposed purchaser has been approved by the Agency Executive Director, (2) the proposed lease has been approved by the Agency Executive Director, (3) the temporary rental period pending the sale of the Dwelling has been approved by the Agency Executive Director and (4) the rent charged to the proposed purchaser for the Dwelling does not exceed Affordable Rent. As used in this paragraph, the term "Affordable Rent" means monthly rent (including a reasonable utility allowance) which does not exceed the lesser of: (a) the rent limitation set forth at 24 Code of Federal Regulations ("CFR") § 92.252(a) as such now exists and as may hereafter be amended, and (b) one-twelfth of the product of 30 percent times 60 percent of the area median income for Riverside County as published annually by California's Housing and Community Development Department pursuant to Health and Safety Code section 50093, adjusted for household size appropriate to the unit. As used in this paragraph, "household size appropriate to the unit" shall equal the number of bedrooms in the unit plus one. Developer agrees that any rent paid by the Approved Purchaser to Developer shall be applied by the Developer as a credit towards any amounts which shall be due from the Purchaser under the First Mortgage Loan.

Section 402 Home Warranty.

Developer shall provide to the Approved Purchaser a one-year new home warranty for each Dwelling sold, in a form approved by the Agency.

Section 403 Sale Price.

The Parties acknowledge that the current and projected housing market conditions in Riverside County could impose a substantial burden on Developer by depressing the fair market value of the improved Lots below Developer's costs of acquiring the Site and constructing the

Dwellings. Therefore, the Parties agree that Developer shall sell each improved Lot for a price (the "Purchaser's Purchase Price") equal to the greater of: (a) the fair market value of the improved Lot, which must be approved by the Agency and supported with evidence reasonably satisfactory to the Agency, including but not limited to a listing of comparable sales dated no earlier than six months before the projected sale of the Lot to the Approved Purchaser, and (b) a purchase price of \$150,000, and (c) the sum of (i) the cost to the Agency of acquiring and conveying the Lot to Developer (which shall be deemed to be an amount equal to one-half of the Developer's Purchase Price for the Site) plus (ii) the amount of the City's total disbursements of HOME Program funds for the construction of the Dwelling on that Lot. plus (iii) the amount of the City's ADDI Loan to the Approved Purchaser. Notwithstanding the foregoing, the monthly housing cost resulting from the Approved Purchaser's first mortgage loan from Developer shall not exceed the limits set forth in Paragraph (4) of Section 405 below.

Section 404 Closing Costs.

That portion of the escrow costs and fees (including the cost of a CLTA Owner's Policy of Title Insurance) that is not eligible for payment with the proceeds of the City's ADDI Loan to the Approved Purchaser will be paid by Developer or the Approved Purchaser using his or her personal funds.

Section 405 Purchaser's Financing.

It is anticipated that the Approved Purchaser's payment of the Purchaser's Purchase Price to Developer will be in the following form.

(1) The Agency will make a second position loan to the Approved Purchaser in an amount equal to one-half of the Developer's Purchase Price for the Site (the "Purchaser's Agency Loan").

(2) The City will make a third position loan to the Approved Purchaser in an amount equal to the amount of the City's total disbursement of HOME Funds for the construction of the Dwelling on that Lot (the "Purchaser's City Loan").

(3) The City will make a fourth position ADDI Loan to the Approved Purchaser in the amount of Seven Thousand Five Hundred Dollars (\$7,500).

(4) The Approved Purchaser will obtain a first mortgage loan from Developer in an amount equal to the Purchaser's Purchase Price less the sum of the Purchaser's Agency Loan, the Purchaser's City Loan and the ADDI Loan. The Purchaser's required payments on the first mortgage loan from Developer may not exceed the lesser of: (a) a purchase price that qualifies as affordable housing: homeownership, as set forth at 24 Code of Federal Regulations ("CFR") § 92.254(2) as such now exists and as may hereafter be amended, and (b) an amount that will

establish the Approved Purchaser's total Housing Cost within the limits of Affordable Housing Cost and on terms approved by the Agency. As used herein, the term "Affordable Housing Cost" shall mean an amount that does not exceed 30% times 70% of the area median income for Riverside County as published annually by California's Housing and Community Development Department pursuant to Health and Safety Code section 50093, adjusted for household size appropriate to the unit. As used in this paragraph, "household size appropriate to the unit" shall equal the number of bedrooms in the unit plus one. "Housing Cost" shall have the meaning set forth in Title 25 California Code of Regulations Section 6920.

Section 406 Developer's Repayment of Developer's Promissory Notes.

If Developer constructs the Dwellings as provided in this Agreement, and sells the improved Lots to Approved Purchasers on the terms and in the manner provided herein, the Agency Note and the HOME Note shall be deemed repaid as follows.

a. Upon the sale of an improved Lot to an Approved Purchaser, Developer shall cause the Approved Purchaser to execute a promissory note to the Agency in the amount of the Purchaser's Agency Loan and shall also cause the Approved Purchaser to execute a subordinate deed of trust in which the Agency is the beneficiary, each in a form provided by the Agency. The parties acknowledge that the Agency may require Approved Purchasers to execute additional instruments and agreements relating to the Agency's use of Affordable Housing Funds, and agree to cooperate in good faith to effectuate this provision in a timely manner. Developer shall also require the Approved Purchaser to execute a Notice of Restrictions and Option to Purchase in a form provided by the Agency.

b. Upon the sale of an improved Lot to an Approved Purchaser, Developer shall cause the Approved Purchaser to execute a promissory note to the City in the amount of the Purchaser's City Loan and shall also cause the Approved Purchaser to execute a subordinate deed of trust in which the City is the beneficiary, each in a form provided by the City. The parties acknowledge that the City may require Approved Purchasers to execute additional instruments and agreements relating to the City's use of HOME Funds, and agree to cooperate in good faith to effectuate this provision in a timely manner.

c. The sale of each improved Lot and the delivery to the Agency of the Purchaser's Agency Loan documents shall be deemed to be repayment of the Developer's Promissory Note to the Agency, but only to the extent of the original principal amount of the Purchaser's Agency Loan.

d. The sale of each improved Lot and the delivery to the City of the Purchaser's City Loan documents shall be deemed to be repayment of the Developer's Promissory Note to the City, but only to the extent of the original principal amount of the Purchaser's City Loan.

e. Concurrently with the sale of an improved Lot to an Approved Purchaser and delivery to the City of the duly executed Purchaser's Agency Loan documents and Purchaser's City Loan documents, the following shall occur: (i) Agency shall execute and deliver into escrow for recording a Request for Partial Reconveyance of the Agency Deed of Trust, releasing the lien of the Agency Deed of Trust from the Lot (so that upon the sale of the final Lot, the Agency Loan shall be deemed repaid in full, the Agency Deed of Trust shall be reconveyed in full and the Agency shall cancel and return to Developer the Agency Note) and a Notice of Release of Agency Option for that Lot; (ii) the City shall execute and deliver into escrow for recording a Request for Partial Reconveyance of the HOME Deed of Trust, releasing the lien of the HOME Deed of Trust from the Lot (so that upon the sale of the final Lot, the HOME Loan shall be deemed repaid in full, the HOME Deed of Trust shall be reconveyed in full and the City shall cancel and return to Developer the HOME Note); (iii) Developer shall cause the recordation of the Approved Purchaser's first mortgage; (iv) at the same time Developer shall cause the recordation of the Approved Purchaser's subordinate deed of trust to the Agency, the Notice of Restrictions and Option to Purchase, and the Approved Purchaser's subordinate deed of trust to the City; (v) the title company shall issue to the Agency an ALTA Lender's policy of title insurance, including such endorsements as the Agency may require, in the amount of the Purchaser's Agency Loan, insuring that the Approved Purchaser's subordinate deed of trust to the Agency constitutes a valid second priority lien covering the improved Lot and all right, title, interest and estate of the Approved Purchaser therein, subordinate to the Developer's first mortgage, and subject only to those exceptions that the Agency approves in writing; and (v) the title company shall issue to the City an ALTA Lender's policy of title insurance, including such endorsements as the City may require, in the amount of the Purchaser's City Loan, insuring that the Approved Purchaser's subordinate deed of trust to the City constitutes a valid third priority lien covering the improved Lot and all right, title, interest and estate of the Approved Purchaser therein, subordinate to the Developer's first mortgage and the Agency's second mortgage, and subject only to those exceptions that the City approves in writing.

Section 407 Developer's Repayment Obligations On Developer's Default.

Any portion of the Agency Note or the HOME Note that has not been deemed repaid pursuant to Section 406 above shall be immediately due and payable in the event Developer (i) fails to construct or complete the construction of the Dwellings on the Lots as provided in this Agreement and fails to cure such default within the time provided herein or (ii) fails to sell the improved Lots to Approved Purchasers in accordance with this Agreement and fails to cure such default within the time provided herein.

ARTICLE 5. CONTINUING OBLIGATIONS

Section 501 Obligation to Refrain From Discrimination

§ 501.1 No Discrimination or Segregation

The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Developer itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Project. The foregoing covenants shall run with the land.

§ 501.2 Form of Nondiscrimination and Nonsegregation Clauses

Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof or interest therein, there shall be no discrimination against or segregation of any person, or group of persons, on account of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”
2. In leases: “The lessee herein covenants by and for himself or herself, his or her

heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

3. In contracts: There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

ARTICLE 6. DEFAULTS, REMEDIES, AND TERMINATION

Section 601 Default

§ 601.1 Event of Default

Each of the following shall constitute an Event of Default under this Agreement:

1. Failure or delay by a Party to perform any term or provision of this Agreement within the time provided herein, as such times may be extended pursuant to this Agreement.
2. Breach of any material covenant, warranty or agreement contained in this Agreement.

The Party who fails to perform or delays performance of any term or provision of this Agreement shall immediately commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with all due diligence.

§ 601.2 Notice of Default

If an Event of Default under this Agreement occurs, the injured Party shall give written notice (a "Default Notice") of the Event of Default to the Party in default, specifying the nature of the default. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it operate as a waiver of any rights or remedies of the injured Party; but the injured Party shall have no right to exercise any remedy hereunder prior to delivering the Default Notice as provided herein. Delays by either Party in asserting any of its rights and remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

§ 601.3 Cure Period

With respect to defaults or events for which a specific cure period is provided elsewhere in this Agreement, the specific cure period in that Section shall be applicable in lieu of the cure periods provided in this Section and in no event shall the cure periods set forth in this Section be in addition to any other cure period set forth in this Agreement.

The injured Party shall have no right to exercise a right or remedy hereunder unless the subject Event of Default continues uncured for a period of thirty (30) days after delivery of the Default Notice with respect thereto, or, where the default is of a nature which cannot reasonably be cured within such thirty (30) day period, the defaulting Party fails to commence such cure with all due diligence or fails to proceed diligently to complete the same; provided, however, that (a) in no event shall the injured Party be prevented from exercising its rights or remedies for more than one hundred and twenty (120) days following delivery of the Default Notice; and (b) a remedy necessary to prevent further damage may be obtained at any time following delivery of the Default Notice. An Event of Default for failure to pay a sum of money is a default that can be cured within thirty (30) days. If the default is not cured within the time periods specified above, the non-defaulting Party may, at its option, pursue such other rights and remedies as it may have.

Section 602 Rights and Remedies

Upon the occurrence of an Event of Default and the expiration of the applicable cure period provided herein or by law, the injured Party shall have all rights and remedies against the defaulting Party as may be available at law or in equity to cure, correct or remedy any default, to obtain specific performance, to recover damages for any default, or to obtain any other remedy

consistent with the purpose of this Agreement. Such rights and remedies are cumulative, and except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the exercise of one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies for the same default or any other default by the defaulting Party.

§ 602.1 Institution of Legal Actions

In addition to any other rights or remedies (and except as otherwise provided in this Agreement), either Party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Riverside, State of California, in any other appropriate court of that county, or in the United States District Court for the Central District of California.

§ 602.2 Acceptance of Service of Process

In the event that the Developer commences any legal action against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director, or in such other manner as may be provided by law.

In the event that the Developer commences any legal action against the City, service of process on the City shall be made by personal service upon the City Manager, or in such other manner as may be provided by law.

In the event that the Agency commences any legal action against the Developer, service of process on the Developer shall be made by personal service upon the Developer (or upon a member of the Developer) and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

ARTICLE 7. AGENCY'S OPTION TO RE-PURCHASE

In consideration of the Agency's covenants and agreements hereunder, the Developer hereby grants to the Agency an exclusive and irrevocable option to re-purchase the Site, or any portion thereof, in accordance with and subject to the terms of this Article 7 ("Agency Option"). The Developer hereby agrees to the recordation against the Site in the land records of the County of Riverside of a memorandum of the Agency Option in the form of the "Memorandum of Agency Option" attached as Attachment No. 12, incorporated by reference. The provisions of this Article 7 shall survive the termination of this Agreement.

Section 701 Term of Option

The Agency may exercise the Agency Option for the Site or any portion thereof at any time prior to midnight of the last day of a twenty four- (24-) month period that commences upon the earliest date that the Agency may exercise its rights or remedies pursuant to Article 6 of this Agreement (“Option Period”).

Section 702 Option Price

If the Agency timely elects to exercise this option, then the Developer agrees to sell to the Agency and the Agency agrees to purchase from the Developer that portion of the Site that has not been conveyed to Approved Purchasers under this Agreement. The Agency’s purchase price shall be equal to the then-current balance of the Agency Note and the HOME Note and shall be paid by the cancellation of those Notes and the reconveyance of the Agency Deed of Trust and the HOME Deed of Trust upon the close of escrow. The City agrees that, if the Agency exercises the Agency Option, the City will deliver the HOME Note into escrow for cancellation and will reconvey the HOME Deed of Trust to Developer.

Section 703 Form of Title and Title Insurance

Title to that portion of the Site purchased by the Agency under this option shall be conveyed by grant deed. Title shall be free and clear of all encumbrances and possessory interests except those previously waived in writing by the Agency. The Developer authorizes the Agency to apply for a preliminary commitment for title insurance on the Developer’s behalf immediately upon exercise of the Agency Option. If the Agency Option is exercised, the Agency shall be entitled to possession from the time of the closing of the sale. The portion of the Site purchased by the Agency under this option shall be delivered from the Developer to the Agency in an “as is” physical condition, with no warranty, express or implied by the Developer as to the presence of Hazardous Materials, or the condition of the soil, its geology or the presence of known or unknown faults, except to the extent of the Developer’s representations made pursuant to Section 317 of this Agreement; provided that, the Developer shall, at the Agency’s request, remove those improvements that the Developer caused to be constructed upon that portion of the Site being conveyed to the Agency and restore such portion of the Site to a level condition.

Section 704 Exercise of Option

The Agency shall exercise its Agency Option by giving written notice of exercise of the option on or before the date that is thirty (30) days prior to the expiration of the Option Period. This notice may be personally delivered to the Developer or mailed to the Developer by certified mail, return receipt requested, or it may be recorded in the land records of the County of Riverside with a copy mailed to the Developer. The Developer agrees to execute (and consents to the recordation of) all documents and agrees to perform all acts necessary to accomplish the conveyance of fee title to the Agency under the Agency Option. The Agency shall be responsible for payment of all escrow costs and fees and the cost of title insurance required by the Agency.

ARTICLE 8. GENERAL PROVISIONS

Section 801 Non-Merger

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with the Grant Deed, the HOME Regulatory Agreement or the Agreement Containing Covenants Affecting Real Property.

Section 802 Notices, Demands And Communications Between The Parties

Formal notices, demands and communications between the Parties shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, or by courier not affiliated with the sender at the cost of the sending Party with written evidence of receipt, to the principal offices of the Agency and the Developer as designated in this Agreement. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate, as provided in this Section.

Section 803 Conflict of Interest

To the extent prohibited by law, no member, official or employee of the Agency or the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

Section 804 Non-liability of Officials and Employees

§ 804.1 Non-liability of Agency and City Officials and Employees

No member, official or employee of the Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or the City or for any amount which may become due to the Developer or its successor or on any obligations under the terms of this Agreement. The Developer hereby waives and releases any claim it may have against any member, official or employee of the Agency or the City with respect to any default or breach by the Agency or the City or for any amount which may become due to the Developer or its successors, or on any obligations, under the terms of this Agreement. The Developer makes such release with full knowledge of Civil Code Section 1542 and hereby waives any and all rights thereunder to the extent of this release. Section 1542 of the Civil Code provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

§ 804.2 Non-liability of Developer’s Officials and Employees

No member, official or employee of the Developer shall be personally liable to the Agency or the City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the Agency or the City or their respective successor or on any obligations under the terms of this Agreement. The Agency and the City hereby waive and release any claim it may have against any member, official or employee of the Developer with respect to any default or breach by the Developer or for any amount that may become due to the Agency or the City or its successors, or on any obligations, under the terms of this Agreement. The Agency and the City make such release with full knowledge of Civil Code Section 1542 and hereby waive any and all rights thereunder to the extent of this release. Section 1542 of the Civil Code provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

The release provided in this Section 804.2 shall not apply in the event of fraud, waste or intentional damage by the Developer or any member, official, or employee of the Developer. Neither does this release apply in the event that Developer uses the Agency Funds or the HOME Funds for a purpose other than those authorized by this Agreement.

Section 805 Enforced Delay in Performance; Force Majeure

For the purposes of any of the provisions of this Agreement, neither the Agency nor the City nor the Developer, nor any successors in interest, shall be considered in breach of, or default in, its obligations under this Agreement (excepting therefrom obligations to pay money) as a result of the enforced delay in the performance of such obligations due to causes beyond its reasonable control and without its fault or negligence, including failure of governmental agencies to act or to issue necessary permits or licenses, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other Party (including but not limited to delays in performing such other Party's obligations pursuant to this Agreement), fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, freight embargoes, inability to obtain materials or supplies or unusually severe weather or delays of contractors or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Agency or the City or the Developer, as the case may be, shall be extended for the period of the enforced delay. Provided that the Party seeking the benefit of the provisions of this Section shall promptly notify the other Party in writing of such enforced delay and of the causes thereof, the extension of time for performance shall run from ten (10) days prior to the date on which such notice is given, but in no event earlier than the date of commencement of the cause. Financial inability shall not extend the time for performance, or excuse non-performance or untimely performance, of any obligation under this Agreement.

Section 806 Inspection of Books and Records

The Agency and the City have the right upon three (3) business days' notice (excluding weekends and holidays) at all reasonable times to inspect the books and records of the Developer pertaining to the Site and the performance of this Agreement. The books and records referred to in this paragraph shall be maintained or made available in a single location in Moreno Valley, California, or such other location as is mutually agreed to by the Agency, the City and the Developer.

Section 807 Approvals

Except as expressly provided otherwise in this Agreement, approvals required of the Agency, the City or the Developer shall not be unreasonably withheld or delayed. Except as otherwise expressly provided in this Agreement, approvals required of the Agency or the City shall be deemed granted by the written approval of the Agency's Executive Director or designee (with respect to the Agency) and the City Manager or designee (with respect to the City), as applicable. Notwithstanding the foregoing, the Executive Director or designee may, in his or her sole discretion, refer to the governing body of the Agency any item requiring Agency approval and the City Manager or designee may, in his or her sole discretion, refer to the City Council any item requiring City approval; otherwise, "Agency approval" shall mean and refer to approval by

the Executive Director or designee and “City approval” shall mean and refer to approval by the City Manager or designee. If this Agreement requires the Developer to submit plans, drawings or other documents or information to the Agency for approval, which shall be deemed approved if not acted on by the Agency within the specified time, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless disapproved by the Agency within the stated time. If the Developer fails to include such a letter with its submission, said plans, drawings or other documents shall not be deemed approved based on the Agency’s failure to act within the specified time.

Section 808 Agency’s and City’s Authorized Representatives

Unless otherwise specified or the context requires otherwise, all references to the Agency in this Agreement and its attachments shall mean the Executive Director of the Agency or any officer or employee of the Agency to whom the Executive Director or the Board of the Agency delegates authority to perform, carry out and/or enforce this Agreement. Unless otherwise specified or the context requires otherwise, all references to the City in this Agreement and its attachments shall mean the City Manager or any officer or employee of the City to whom the City Manager or the City Council delegates authority to perform, carry out and/or enforce this Agreement.

Section 809 Developer’s Representations and Warranties

The Developer hereby represents the following to the Agency and the City for the purpose of inducing the Agency and the City to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the effective date of this Agreement:

1. The Developer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Developer is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.
2. All requisite action has been taken by the Developer and all requisite consents for Developer have been obtained in connection with entering into this Agreement and the instruments and documents referenced herein to which the Developer is a party, and the consummation of the transaction contemplated hereby, and the same do not violate any laws, statutes, ordinances, rules and governmental regulations to which Developer is subject.
3. This Agreement is duly executed by the Developer, and all agreements, instruments and documents to be executed by the Developer pursuant to this

Agreement shall, at such time as they are required to be executed hereunder, be duly executed by the Developer, and each such agreement is, or shall be at such time as it is required to be executed hereunder, valid and legally binding upon the Developer and enforceable in accordance with its terms and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Developer is a party.

4. There is no existing, pending or threatened litigation that, in the reasonable opinion of the Developer, would prevent the Developer from performing its duties and obligations hereunder.
5. The Developer is not the subject of a bankruptcy proceeding.

Section 810 Relationship of the Parties

Nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or any other relationship between the parties hereto, other than as expressly specified in the provisions contained herein, or cause the Agency or the City to be responsible in any way for the debts or obligations of the Developer or any other party.

Section 811 Binding Upon Successors And Assigns

This Agreement shall be binding upon and inure to the benefit of the permitted successors in interest, transferees and assigns of each of the Parties. Any reference in this Agreement to a Party shall be deemed to apply to the permitted successor in interest, transferee or assign of that Party who has acquired an interest in compliance with the terms of this Agreement or through action of law.

Section 812 Interpretation Of Agreement; Terminology; Application Of Law

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters addressed in this Agreement. In addition, each Party has been given the opportunity to consult with experienced and knowledgeable legal counsel. Accordingly, any rule of law (including Civil Code section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the purpose and intent of the parties to this Agreement. This Agreement shall be construed and enforced in accordance with the internal laws of California and not the law regarding conflict of laws, except to the extent that Federal law preempts State law

When the context so requires when used in this Agreement, the masculine gender shall be deemed to include the feminine and neuter gender and the neuter gender shall be deemed to include the masculine and feminine gender. When the context to requires when used in this Agreement, the singular shall be deemed to include the plural. The paragraph and section headings have been used for convenience only, and shall not be used in the interpretation hereof.

Section 813 Waivers

The waiver by the Agency, the City or the Developer of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach. All waivers must be in writing and signed by the appropriate representatives of the Agency, the City or the Developer.

Section 814 Time of the Essence

Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

Section 815 Attorneys' Fees and Costs

If any action or proceeding is brought by any Party against any other Party under this Agreement, whether for interpretation, enforcement or otherwise, the prevailing Party shall be entitled to recover all costs and expenses, including the fees of its attorney and any expert witnesses in such action or proceeding. This provision shall also apply to any post-judgment action by either Party, including without limitation efforts to enforce a judgment.

Section 816 Severability

Any provision of this Agreement that shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

Section 817 Non-Exclusivity

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Section 818 Entire Understanding Of The Parties

This Agreement, including any document or instrument incorporated herein by reference, contains a complete and final expression of the agreement between the Agency, the City and the Developer, and there are no promises, representations, agreements, warranties, or inducements

either express or implied other than as are set forth in this Agreement. Any and all previous discussions or agreements between the Agency, the City and the Developer with respect to the Project, whether oral or written, are superseded by this Agreement.

Section 819 Amendments To This Agreement

No amendment, change, or addition to, or waiver of termination of, this Agreement or any part hereof shall be valid unless in writing and signed by the Agency, the City and the Developer.

Section 820 No Third Party Beneficiaries

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of the Agency, the City and the Developer, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

Section 821 Authority to Sign

The individual executing this Agreement on behalf of the Developer hereby represents that he or she has full authority to do so and to bind the Developer to perform pursuant to the terms and conditions of this Agreement.

Section 822 Incorporation by Reference

Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

Section 823 Execution In Counterparts

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute one Agreement binding on the Agency, the City and the Developer.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

DEVELOPER:
HABITAT FOR HUMANITY RIVERSIDE, INC.,
a California not for profit public benefit corporation

Date: _____

By: _____
Karin Roberts, Executive Director

AGENCY:
COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF MORENO VALLEY

Date: _____

By: _____

APPROVED AS TO FORM:

By: _____
Agency General Counsel

APPROVED AS TO FORM:
KANE, BALLMER & BERKMAN

By: _____
Agency Special Counsel

Attest:

By: _____
Agency Secretary

[Signatures Continue on Following Page]

CITY:
THE CITY OF MORENO VALLEY

Date: _____

By: _____

APPROVED AS TO FORM:

By: _____
City Attorney

Attest:

By: _____

ATTACHMENT NO. 2
LEGAL DESCRIPTION OF THE SITE

12118 GRAHAM STREET:

That certain real property in the City of Moreno Valley, County of Riverside, State of California, described as follows:

PARCEL 1 OF PARCEL MAP NUMBER 33567, RECORDED IN BOOK 215 OF PARCEL MAPS, PAGES 46-47, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA

A.P.N.: 292-202-044

12126 GRAHAM STREET:

That certain real property in the City of Moreno Valley, County of Riverside, State of California, described as follows:

PARCEL 2 OF PARCEL MAP NUMBER 33567, RECORDED IN BOOK 215 OF PARCEL MAPS, PAGES 46-47, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

A.P.N.: 292-202-045

**ATTACHMENT NO. 3
SCHEDULE OF PERFORMANCE**

- | | |
|---|--------------------------------|
| 1. Accept conveyance of the Site from the Agency. | Not later than May 1, 2009 |
| 2. Complete construction of the first Dwelling. | On or before July 1, 2011 |
| 3. Convey title to first Dwelling to Approved Purchaser. | On or before September 1, 2011 |
| 4. Complete construction of the second Dwelling. | On or before July 1, 2012 |
| 5. Convey title to second Dwelling to Approved Purchaser. | On or before September 1, 2012 |

ATTACHMENT NO. 4
PROJECT BUDGET

COST OF THE SITE:

Developer's Purchase Price (\$50,000 per Lot)	\$ 100,000
Closing costs and escrow fees	2,500

CONSTRUCTION BUDGET [PER DWELLING]:

Materials	\$ 176,580
Contractor's Fee	20,908
Fees and Permits	<u>32,500</u>
 TOTAL CONSTRUCTION COST	 \$ 229,988

ATTACHMENT NO. 5
GRANT DEED

[IMMEDIATELY FOLLOWS THIS PAGE]

ATTACHMENT NO. 6
AGENCY PROMISSORY NOTE

[IMMEDIATELY FOLLOWS THIS PAGE]

ATTACHMENT NO. 7
AGENCY DEED OF TRUST

[IMMEDIATELY FOLLOWS THIS PAGE]

ATTACHMENT NO. 8
AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY

[IMMEDIATELY FOLLOWS THIS PAGE]

ATTACHMENT NO. 9
HOME NOTE

[IMMEDIATELY FOLLOWS THIS PAGE]

ATTACHMENT NO. 10
HOME DEED OF TRUST

[IMMEDIATELY FOLLOWS THIS PAGE]

ATTACHMENT NO. 11
HOME REGULATORY AGREEMENT

[IMMEDIATELY FOLLOWS THIS PAGE]

ATTACHMENT NO. 12
MEMORANDUM OF AGENCY OPTION

[IMMEDIATELY FOLLOWS THIS PAGE]

MEMORANDUM

To: Mayor and City Council
From: Steve Elam, Financial & Administrative Services Director
Date: February 24, 2009
Subject: Agenda Item G.1 / Mid-Year Budget Review

Subsequent to the distribution of the City Council agenda packet for February 24, 2009, an error was discovered on page 4 of Agenda Item G.1, Mid-Year Budget Review (page 282 in the agenda packet). A replacement page is attached. The revised information does not have any effect on the actions recommended in the staff report.

I apologize for this inconvenience.

Attachment

c: Robert G. Gutierrez, City Manager
Betsy Adams, Assistant City Manager
Rick Hartmann, Deputy City Manager
Jane Halstead, City Clerk
Cynthia Fortune, Budget Officer

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The Capital Purchases and Transfers & Other categories are over the prorated year-to-date budget due to the uneven spending pattern of these categories, but well below the adjusted budget for the full fiscal year. As reflected in these numbers, departments are continuing to do an excellent job of cost control and maintaining expenditures within their scaled-back budgets.

Other Major Funds

Following are mid-year operational results from other major funds, as list below:

- CSD Zone A (Parks & Community Services)
- CSD Zone L (Library)
- Gas Tax
- Electric Utility

Community Services District (CSD) Zone A – Parks & Community Services

Operating Category	Year-to-Date			Adjusted Budget	YTD Actual as % of Adjust. Budget	Adopted Budget
	Budget	Actual	Pos (Neg) Variance			
Revenues	\$1,633,382	\$1,770,526	\$ 137,144	\$9,134,251	19%	\$9,283,794
Expenditures	5,067,628	4,675,164	392,464	10,135,251	46%	9,717,481
Surplus (Deficit)	(\$3,434,246)	(\$2,904,638)	\$529,608	(\$1,001,000)	290%	(\$433,687)

Note: Expenditures are expected to be greater than revenues at this point in the fiscal year. Property taxes are received in January, which will reduce the negative variance. Adjusted Budget and year-to-date actuals include transfer of \$400,000 to the General Fund and reduced General Fund subsidy of \$16,000.

Community Services District (CSD) Zone L – Library

Operating Category	Year-to-Date			Adjusted Budget	YTD Actual as % of Adjust. Budget	Adopted Budget
	Budget	Actual	Pos (Neg) Variance			
Revenues	\$957,378	\$925,353	(\$32,025)	\$2,275,761	41%	\$2,535,849
Expenditures	1,141,750	1,090,049	51,701	2,283,500	48%	2,459,816
Surplus (Deficit)	(\$184,372)	(\$164,696)	\$19,676	(\$7,739)	2128%	\$76,033

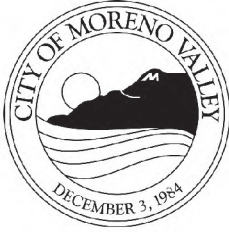
Note: Expenditures are expected to be greater than revenues at this point in the fiscal year. Property taxes are received in January, which will reduce the negative variance. Adjusted Budget and year-to-date actuals include reduced General Fund subsidy of \$29,400.

Gas Tax

Operating Category	Year-to-Date			Adjusted Budget	YTD Actual as % of Adjust. Budget	Adopted Budget
	Budget	Actual	Pos (Neg) Variance			
Revenues	\$2,346,129	\$1,897,718	(\$448,411)	\$4,692,258	40%	\$4,944,227
Expenditures	2,520,434	2,662,078	(\$141,644)	5,040,866	53%	4,738,412
Surplus (Deficit)	(\$174,305)	(\$764,360)	(\$590,055)	(\$348,608)	219%	\$205,815

Note: The variance between revenues and expenditures is due to the timing of Gas Tax revenues. Typically, two months of revenues are accrued at year-end. Adjusted Budget and year-to-date actuals include reduced General Fund subsidy of \$115,700.

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APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	
CITY MANAGER	

Report to City Council

TO: Mayor and City Council

FROM: Steve Elam, Financial & Administrative Services Director

AGENDA DATE: February 24, 2009

TITLE: Mid-Year Budget Review

RECOMMENDED ACTION

Staff recommends that the City Council:

1. Receive and file this report;
2. Approve recommended mid-year budget appropriation adjustments; and
3. Authorize the City Manager to make mid-year budget reductions to maintain current year expenditures within projected revenue levels and to prepare for next fiscal year's significant budgetary challenges.

BACKGROUND

For the past two fiscal years, the City Council has been updated on the City's financial status through a Mid-Year Budget Review occurring in February and reflecting operational results for the first half of the fiscal year, July through December. Due to the significant deterioration in the economy and its impact on City revenues, a First Quarter Budget Review was also provided to Council in November, 2008. The Mid-Year Budget Review will focus on the City's General Fund, which is of greatest concern with respect to the economic recession, but will also present six-month operational results from other key funds such as Community Services (CSD) Zone A (Parks & Community Services), CSD Zone L (Library), Gas Tax, and the Electric Utility.

Previous Actions Mitigating Impact of Recession

Before presenting the six-month operating results, it is noteworthy to consider three previous actions that have greatly mitigated the impact of the recession on the City's

Fiscal Year (FY) 2008-09 budget: (1) establishment of a Development Services Reserve; (2) aggressive cost-cutting measures implemented at the first signs of the economic recession; and (3) proactive use of deficit reduction planning.

Development Services Reserve

At the end of FY 2003-04, the City Council made a policy decision to establish a Development Services Reserve for the purpose of buffering the General Fund from an economic downturn affecting the flow of development services revenues. This reserve was created primarily from budget savings and initially funded at \$2.5 million. In subsequent years it was increased until it had a balance of \$5.3 million at 2007-08 fiscal year-end. A portion of this reserve (\$3 million) was utilized to help balance the FY 2008-09 budget; the balance of \$2.3 million is available to help balance the FY 2009-10 budget.

Aggressive Cost-Cutting Measures Implemented at First Signs of Recession

In November 2007, financial information reported to the City Manager indicated that revenues were starting to decline in response to a slowdown in local development and overall downturn in the economy. In response to this information, the City Manager immediately implemented a “soft” hiring freeze (requiring City Manager approval to fill any vacant position) and directed departments to identify and implement a wide range of cost-saving measures. Although the City’s General Fund operating revenues fell more than \$8 million below budget by year-end, expenditure reductions of \$11.2 million were achieved; thus generating a year-end savings of \$3.2 million. This savings has been utilized to help balance the FY 2008-09 budget.

Deficit Reduction Planning

Beginning this fiscal year, staff has utilized a deficit reduction planning model to proactively identify and prioritize a wide range of potential budget reduction measures. This model has allowed potential reductions to be identified before they need to be implemented, such that immediate action can be taken to reduce expenditures in response to declining revenues. Prioritization of these deficit reduction options has been based on their service level impacts, both internal and external, which has maintained a sharp focus on public service even during these challenging economic times.

Recap of First Quarter Budget Review

On November 18, 2008, a First Quarter Budget Review was presented to the City Council. This report indicated that a General Fund revenue shortfall of at least \$5 million was likely for the fiscal year due to the continuing deterioration of the economy. To offset this expected revenue shortfall, solutions were identified including use of additional carry-forward savings achieved from FY 2007-08 and implementation of the second phase of the Deficit Reduction Plan. These combined actions generated \$3.1 million in savings. However, Council was advised that any remaining gap between revenues and expenditures would need to be achieved through additional cost reductions. Further use of reserves during FY 2008-09 was not recommended as it would weaken the City’s strong financial position and significantly impact the City’s ability to balance the FY 2009-10 budget.

DISCUSSION

Mid-Year General Fund Revenue Results

The following table summarizes General Fund operating revenues received through December 31, 2008.

FY 2008-09 General Fund Operating Revenues as of 12/31/08

Revenue Source	Revenue Budget	YTD Historical % Rec'd	Expected Based on Historical %	YTD Actual	Positive (Negative) Variance	% Variance
Property Tax in Lieu of VLF	\$17,400,000	0.0	\$ 0	\$ 0	\$ 0	--
Utility User's Tax	16,500,000	39.0	6,435,000	5,976,130	(458,870)	-7.1
Property Tax	14,300,000	31.5	4,504,500	4,379,732	(124,768)	-2.8
Sales Tax	13,000,000	22.9	2,977,000	2,343,589	(633,411)	-21.3
Development Services	8,043,500	54.4	4,373,300	3,397,502	(975,798)	-22.3
Investment Income	5,381,400	56.8	3,053,900	3,140,250	86,350	2.8
Other ⁽¹⁾	5,191,500	40.0	2,100,000	2,285,112	185,112	8.8
Franchise Fees	4,800,000	24.0	1,152,000	1,084,557	(67,443)	-5.9
Parking Control Fees	1,300,000	41.0	533,500	516,391	(17,109)	-3.2
Fines & Forfeitures	1,000,000	49.0	490,100	490,197	97	0.0
Gross Receipts Tax	1,000,000	3.4	34,200	33,607	(593)	-1.7
Vehicle License Fees	950,000	57.0	541,500	230,867	(310,633)	-57.4
Total	\$88,866,400	29.5	\$26,195,000	\$23,877,934	(\$2,317,066)	-8.8

⁽¹⁾ Excludes one-time transfers from other funds that are not part of ongoing operations.

As reflected in the above table, due to the timing of receipts only 29.5% of revenues are historically received through the first half of the fiscal year. Therefore, a revenue shortfall of \$2.3 million at this juncture, as reflected in the above table, is significant cause for concern with respect to year-end revenues. Year-end projections are discussed in more detail later in this report.

Mid-Year General Fund Expenditure Results

The following table presents the mid-year General Fund expenditure results:

Expenditure Category	Year-to-Date (YTD)			2008-09 Adjusted Budget	YTD Actual As % of Adjusted Budget	2008-09 Adopted Budget
	Budget	Actual	Positive (Negative) Variance			
Salaries & Benefits	\$11,368,966	\$10,426,240	\$ 942,726	\$22,737,925	46%	\$23,397,579
Services	27,984,831	23,770,697	4,214,134	55,969,654	42%	55,839,099
Materials & Supplies	587,066	363,736	223,330	1,174,125	31%	1,141,676
Capital Purchases	225,386	329,322	(103,936)	450,770	73%	190,045
Transfers & Other	9,110,176	9,234,052	(123,876)	14,475,116	64%	15,223,418
Total	\$49,276,425	\$44,124,047	\$5,152,378	\$94,807,590	47%	\$95,791,817

As shown in the above table, General Fund expenditures of \$44.1 million are well below the prorated year-to-date budget of \$49.3 million due to position vacancies and other cost-saving measures that have been implemented. Significant savings are reflected in the Salaries & Benefits, Services, and Materials & Supplies expenditure categories.

The Capital Purchases and Transfers & Other categories are over the prorated year-to-date budget due to the uneven spending pattern of these categories, but well below the adjusted budget for the full fiscal year. As reflected in these numbers, departments are continuing to do an excellent job of cost control and maintaining expenditures within their scaled-back budgets.

Other Major Funds

Following are mid-year operational results from other major funds, as list below:

- CSD Zone A (Parks & Community Services)
- CSD Zone L (Library)
- Gas Tax
- Electric Utility

Community Services District (CSD) Zone A – Parks & Community Services

Operating Category	Year-to-Date			Adjusted Budget	YTD Actual as % of Adjust. Budget	Adopted Budget
	Budget	Actual	Pos (Neg) Variance			
Revenues	\$1,633,382	\$1,770,526	\$ 137,144	\$9,134,251	19%	\$9,283,794
Expenditures	5,067,628	4,625,164	392,464	10,135,252	46%	9,717,481
Surplus (Deficit)	(\$3,434,246)	(\$2,904,638)	\$529,608	(\$1,001,000)	290%	(\$433,687)

Note: Expenditures are expected to be greater than revenues at this point in the fiscal year. Property taxes are received in January, which will reduce the negative variance. Adjusted Budget and year-to-date actuals include transfer of \$400,000 to the General Fund and reduced General Fund subsidy of \$16,000.

Community Services District (CSD) Zone L – Library

Operating Category	Year-to-Date			Adjusted Budget	YTD Actual as % of Adjust. Budget	Adopted Budget
	Budget	Actual	Pos (Neg) Variance			
Revenues	\$957,378	\$925,353	(\$32,025)	\$2,275,761	41%	\$2,535,849
Expenditures	1,141,750	1,090,049	51,701	2,283,500	48%	2,459,816
Surplus (Deficit)	(\$184,372)	(\$164,696)	\$19,676	(\$7,739)	2128%	\$76,033

Note: Expenditures are expected to be greater than revenues at this point in the fiscal year. Property taxes are received in January, which will reduce the negative variance. Adjusted Budget and year-to-date actuals include reduced General Fund subsidy of \$29,400.

Gas Tax

Operating Category	Year-to-Date			Adjusted Budget	YTD Actual as % of Adjust. Budget	Adopted Budget
	Budget	Actual	Pos (Neg) Variance			
Revenues	\$2,346,129	\$1,897,718	(\$448,411)	\$4,692,258	40%	\$4,944,227
Expenditures	2,520,434	2,662,078	(\$141,644)	5,040,866	53%	4,738,412
Surplus (Deficit)	(\$174,305)	(\$764,360)	(\$590,055)	(\$348,608)	219%	(\$433,687)

Note: The variance between revenues and expenditures is due to the timing of Gas Tax revenues. Typically, two months of revenues are accrued at year-end. Adjusted Budget and year-to-date actuals include reduced General Fund subsidy of \$115,700.

Electric Utility

Operating Category	Year-to-Date			Adjusted Budget	YTD Actual as % of Adjust. Budget	Adopted Budget
	Budget	Actual	Pos (Neg) Variance			
Revenues	\$7,078,079	\$6,453,030	(\$625,049)	\$14,156,157	46%	\$14,156,157
Expenditures	6,693,322	5,700,226	993,096	13,355,439	43%	14,819,954
Surplus (Deficit)	\$384,757	\$752,804	\$368,047	\$800,718	94%	(\$663,797)

Note: The negative year-to-date revenue variance will be offset by expected new load from new customers such as Stater Bros., Post Office, and Ross Distribution. Adjusted Budget and year-to-date actuals include transfer of \$300,000 to the General Fund for administrative support.

Proposed Mid-Year Budget Appropriation Adjustments

The Mid-Year Budget Review is traditionally the time in which additional budget appropriation adjustments are considered due to unforeseen circumstances that have occurred since adoption of the budget. There are five items recommended for Council's approval this fiscal year. If approved, they will increase the General Fund expenditure budget by \$235,000, as itemized below:

Department/Division	Description	Total Amount	General Fund Amount
City Attorney	Additional outside legal services	\$100,000	\$100,000
Non-Departmental	Consulting services related to Utility Users Tax Ordinance revision and administration	67,500	67,500
FASD/Purchasing & Facilities	Corporate Yard asbestos remediation	30,000	15,000
FASD/Purchasing & Facilities	Fire Station 65 mold remediation	60,000	30,000
Public Works/Transportation Engr.	Matching funds for TRANSIMS grant	22,500	22,500
	Total	\$280,000	\$235,000

General Fund Revenue Projections

As previously indicated, due to the timing of receipts, the City has historically received 29.5% of its General Fund revenues through the end of December. Because revenues have been declining dramatically the past two fiscal years as a result of the economic recession, it is critical to develop projections of the expected revenue levels at fiscal year-end (June 30, 2009), so that expenditure reductions can be made to offset the anticipated revenue loss and avoid deficit spending.

During stable economic times, various analytical tools and financial modeling are used to develop revenue projections. However, during uncertain economic times such as we are now experiencing, projections based on historical trends are of little value. Therefore, in developing the revenue projections that follow, staff relied primarily on current economic data, short-term results since the recession began, and outside expertise for some of the major revenues such as Sales Tax, Property Tax, and Utility User's Tax.

Since virtually all economists agree that next fiscal year will be even more challenging than this year, a preliminary forecast of next fiscal year's revenues has also been

developed. Although it is preliminary and subject to significant revision before adoption of next fiscal year's budget, it is useful to help guide the City's planning efforts.

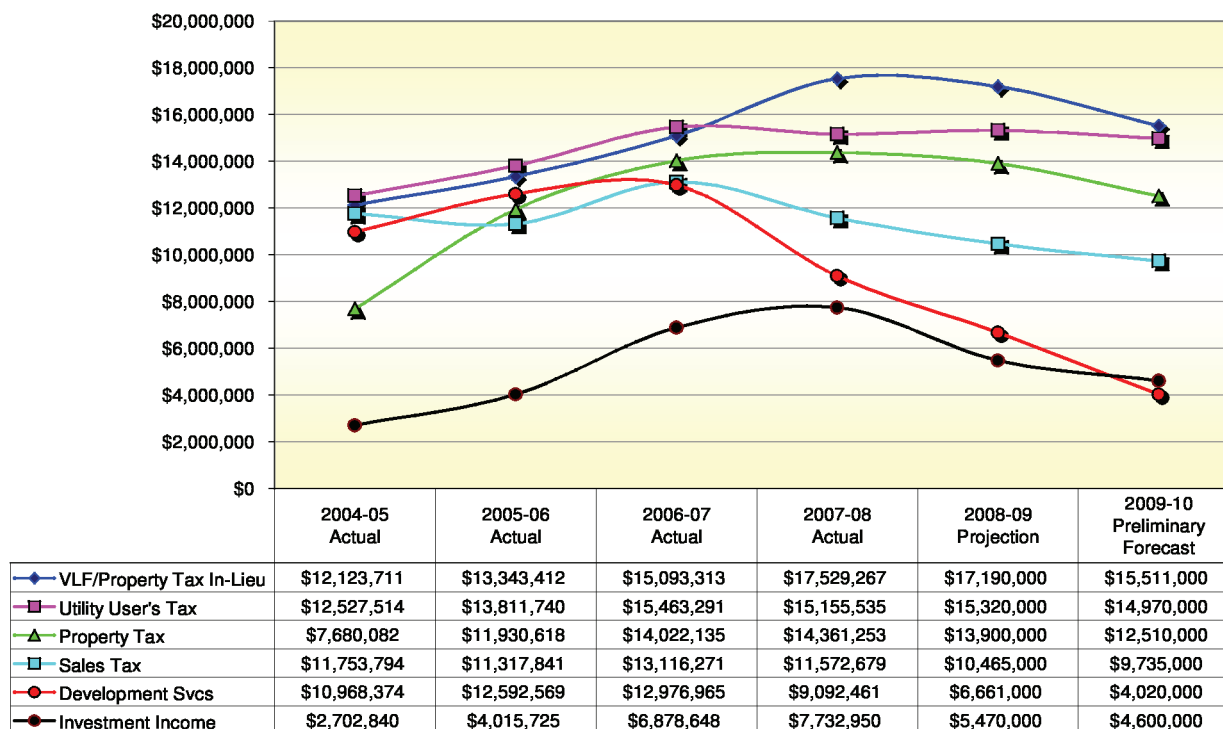
**General Fund
FY 2008-09 Year-End Revenue Projection and
FY 2009-10 Preliminary Revenue Forecast**

Revenue Source	2008-09 Adjusted Budget	2008-09 Year-End Projection	Positive (Negative) Variance	Variance %	2009-10 Preliminary Forecast	Variance from 2008-09 Projection	Variance %
Property Tax in Lieu of VLF	\$17,400,000	\$16,790,000	(\$610,000)	-3.5%	\$15,111,000	(\$1,679,000)	-10.0%
Utility User's Tax	16,500,000	15,320,000	(1,180,000)	-7.2%	14,970,000	(350,000)	-2.3%
Property Tax	14,300,000	13,900,000	(400,000)	-2.8%	12,510,000	(1,390,000)	-10.0%
Sales Tax	13,000,000	10,465,000	(2,535,000)	-19.5%	9,735,000	(730,000)	-7.0%
Development Services	8,043,500	6,661,000	(1,382,500)	-17.2%	4,020,000	(2,641,000)	-39.6%
Investment Income	5,381,400	5,470,000	88,600	1.6%	4,600,000	(870,000)	-15.9%
Other ⁽¹⁾	5,191,500	5,788,500	597,000	11.5%	5,250,000	(538,500)	-9.3%
Franchise Fees	4,800,000	4,520,000	(280,000)	-5.8%	4,400,000	(120,000)	-2.7%
Parking Control Fees	1,300,000	1,300,000	0	--	1,300,000	0	--
Fines & Forfeitures	1,000,000	1,000,000	0	--	1,000,000	0	--
Gross Receipts Tax	1,000,000	980,000	(20,000)	-2.0%	906,500	(73,500)	-7.5%
Vehicle License Fees	950,000	400,000	(550,000)	-57.9	400,000	0	--
Total	\$88,866,400	\$82,594,500	(\$6,271,900)	-7.1	\$74,202,500	(\$8,392,000)	-10.2%

⁽¹⁾ Excludes one-time transfers from other funds that are not part of ongoing operations.

To help illustrate the dramatic impact that the economic recession has had on the City's revenues, the following graph depicts the City's top six General Fund revenues for the past four fiscal years plus this year's projection and next year's preliminary forecast. Vehicle License Fees (VLF) and Property Tax in Lieu of VLF have been combined since both revenue sources relate to VLF; only the method of payment by the State has changed so that now most of the VLF is paid in the form of Property Tax.

General Fund Revenue History & Projection



The economic outlook for the foreseeable future continues to be dismal. Wall Street remains in turmoil, jobs continue to be shed, the housing market is not recovering, and consumers are earning and spending less than in prior months. In the fourth quarter of 2008, U.S. Gross Domestic Product (GDP) shrank by a 3.8% annualized rate, the biggest drop since 1982, and is expected to contract another 2.7% in the first quarter of 2009.

The jobs situation is especially bleak. The national employment rate rose sharply from 7.2% in December to 7.6% in January. In January alone 598,000 jobs were lost, the most since 1974, and payroll employment has fallen by 3.6 million since December of 2007, half of which occurred in the last three months, making for the worst three-month loss since 1945. Unemployment locally is much worse than the nation as a whole, with Riverside County at 10.4% and Moreno Valley at 12.1% as of December reporting.

These economic factors, along with high foreclosure and home vacancy rates, are the primary drivers of the revenue freefall. Home re-sales at dramatically reduced prices and property reassessments will continue to drive down the City's Property Tax and Property Tax in Lieu of VLF. The normally-stable Utility User's Tax is falling due to high residential vacancy rates (approximately 6.5%) and business closures. Sales Tax will continue to fall as a result of greatly restricted consumer spending that is a natural outgrowth of high unemployment and consumer fear driven by the recession. Development Services revenue will continue showing a dramatic decline as development activity grinds to a halt. Finally, Investment Income will continue to drop reflecting the historically low interest rates (Federal Funds rate at 0.0%-0.25%) and the sale of corporate notes to reduce investment risk during these uncertain times.

Plan for Remainder of FY 2008-09

Despite the deep economic recession and its impact on City revenues, prior actions and extensive deficit reduction planning efforts provide a plan for maintaining this fiscal year's revenues and expenditures in balance. The following table outlines this plan.

Description	\$ Impact	\$ Impact
2008-09 Projected revenue shortfall		(\$6,271,900)
Mid-Year Budget Appropriation Adjustments		(235,000)
Deficit Sub-Total		(\$6,506,900)
Implemented Solutions to Overcome Deficit:		
- Unbudgeted savings from 2007-08	\$1,800,000	
- Below-the-Line™ Deficit Reduction Options	1,278,000	
- Transfers from Other Funds	1,139,000	
- Reduced General Fund Subsidies	206,200	
- COLA deferral	179,000	
Implemented Solutions Sub-Total		\$4,602,200
Proposed Additional Solutions:		
- Non-Personnel budget reductions	\$666,900	
- Personnel Reallocations/Transfers	720,600	
- Defunding of Additional Vacant Positions	377,100	
- Defunding of Filled Positions	147,500	
Proposed Additional Solutions Sub-Total		\$1,912,100
Projected Year-End Savings		\$ 7,400

Implemented Solutions reflected in the preceding table are further described below:

- **Unbudgeted savings from 2007-08:** When the FY 2008-09 budget was adopted, prior-year savings of \$1.4 million was projected. Actual savings were \$3.2 million; leaving an additional \$1.8 million in unbudgeted savings to be used for FY 2008-09.
- **“Below-the-Line: Deficit Reduction Options:** The Deficit Reduction Plan, submitted in conjunction with the FY 2008-09 preliminary budget, identified \$5 million in additional savings that could be achieved if necessary to balance the budget. Of this amount, \$2.7 million in “above-the-line” options (those with a minimal-to-moderate service level impact) were incorporated in the adopted budget. Following the First Quarter Budget Review in November 2008, another \$1.3 million (\$1,278,000) in “below-the-line” options (those with a higher service level impact) were implemented. Therefore, a total of \$4 million in savings was achieved from the Deficit Reduction Plan. The remaining \$1 million in options not implemented were primarily Police reductions that would have impacted public safety.
- **Transfers from Other Funds:** Due to administrative support provided by the General Fund for other funds that have a current fund balance, the following transfers totaling \$1,139,000 were made to the General Fund:

- CSD Zone A (Parks & Community Services):	\$400,000
- Parkway Improvement Partnership (PIP) Fund:	\$439,000
- Electric Utility:	\$300,000
- **Reduced General Fund Subsidies:** The FY 2008-09 General Fund transfers (subsidies) to other operating budgets were reduced by \$206,200 to provide a proportionate reduction based on the expected decline in General Fund revenues. Following are the reduced subsidies, with the total 2008-09 budgeted subsidy for each fund shown for reference:

- Gas Tax (\$2,030,000 budgeted)	\$115,700
- CSD Zone L / Library (\$516,000 budgeted)	\$ 29,400
- Public Education (PEG) Fund (\$404,000 budgeted)	\$ 23,000
- NPDES Fund (\$387,000 budgeted)	\$ 22,100
- CSD Zone A / Parks (\$281,000 budgeted)	\$ 16,000
- **COLA Deferral:** In an effort to preserve career positions, employees opted to defer the cost-of-living-adjustment (COLA) scheduled to take effect in January, 2009. Some employee groups made this decision before the COLA took effect; others made the decision after it took effect such that it was implemented but will be retracted. General Fund savings from this action for the balance of the fiscal year is approximately \$179,000.

Proposed Additional Solutions itemized in the previous table are also described in more detail on the following page.

- **Non-Personnel Budget Reductions:** Through ongoing deficit reduction planning efforts, staff has identified a number of cost reduction measures that can be implemented this fiscal year. These items span City departments and represent a variety of belt-tightening measures, project deferrals, and savings that can be achieved without impacting public service levels to a significant degree. It should be noted that most of these savings are one-time in nature and will not be realized on an ongoing basis.
- **Personnel Reallocations/Transfers:** Staff has explored options for reallocating work assignments and corresponding payroll allocations from the General Fund to capital projects and other funds with alternate funding sources. In many cases, these staff reassignments will displace consulting services as staff assumes broader responsibilities for projects. These savings will carry forward into next fiscal year to the extent that the funding sources are still available.
- **Defunding of Additional Vacant Positions:** Twelve (12) additional vacant positions will be defunded, bringing the City-wide total to 52. Some of these positions have recently become vacant; others were being held open in anticipation of possibly filling them. The savings from defunding these positions will continue through FY 2009-10 and be ongoing until the positions are filled.
- **Defunding of Filled Positions:** After implementing all possible cost-saving measures, as previously described, the last step that needs to be taken to maintain expenditures within projected revenue levels throughout this fiscal year is to defund additional filled positions. In conjunction with the First Quarter Budget Review in November, four (4) filled positions were defunded. An additional 10 filled positions will now need to be defunded to avoid deficit spending based on the updated revenue projections. Defunding of these 10 positions, combined with the 4 filled positions defunded in November and the 52 defunded vacant positions, brings the City's total workforce reduction to 66 career positions, representing a 15% vacancy rate in career workforce. While it is hoped that this workforce reduction will enable the City to achieve the necessary expenditure reductions this fiscal year, additional workforce reductions may be needed if revenues fall below the projected levels. In addition, further workforce reductions will be needed to position the City for the significant financial challenges that will be faced in FY 2009-10, which is certain to be even more daunting than this fiscal year. The following section provides an advance look at the budgetary challenges that will be encountered next fiscal year.

FY 2009-10 Challenges

Based on the preliminary revenue forecast for FY 2009-10, the following table provides an advance look at the FY 2009-10 General Fund planning assumptions and the significant budgetary challenges that will be encountered.

**Planning Assumptions
FY 2009-10 General Fund Budget
(\$ million)**

	2008-09 Adopted Budget	2008-09 Projected Actual	2009-10 Preliminary Forecast	% Change from 2008-09 Proj Act to 2009-10
<u>Revenues/Sources</u>				
Operating Revenues	88.8	82.6	74.2	-10.2%
Development Services Reserve	3.0	3.0	2.3	-23.3%
Prior Year Savings	1.4	3.2	0.0	-100.0%
Operating Subtotal	93.2	88.8	76.5	-13.9%
Capital Reserve (EOC Project)	2.6	2.6	0.0	-100.0%
Total Sources	95.8	91.4	76.5	-16.3%
<u>Expenditures/Uses</u>				
Operating:				
- Police	39.8	39.8	42.4	6.5%
- Fire	17.0	17.0	17.3	2.0%
- Public Safety Subtotal	56.8	56.8	59.7	5.1%
- Non-Public-Safety	36.4	32.0	16.8	-47.5%
Operating Subtotal	93.2	88.8	76.5	-13.9%
Capital (EOC Project)	2.6	2.6	0.0	-100.0%
Total Uses	95.8	91.4	76.5	-16.3%

The following highlights should be noted regarding the planning assumptions shown above:

- **Revenues:**
 - Assumes revenue shortfall of \$6.3 million in FY 2008-09; another decline of \$8.4 million in FY 2009-10.
 - The balance of the Development Services Reserve (\$2.3 million) will be used in FY 2009-10.
 - No budgetary savings is anticipated in FY 2008-09.
- **Expenditures:**
 - Assumes 6.5% increase in Police contract (no change in service level).
 - Assumes 2.0% increase in Fire contract (no change in service level).
 - Public safety expenditures will now represent 78% of the General Fund budget.
 - Non-public-safety expenditures must be reduced by 47.5% of the 2008-09 projected actual level if there is no further use of reserves or reduction in public safety funding.
 - Additional annual expenditure of approximately \$600,000 will be required to implement Governmental Accounting Standards Board (GASB) Statement 45 concerning Accounting & Financial Reporting for Other Post-Employment Benefits.

Additional Challenges Beyond FY 2009-10

While FY 2009-10 will present significant budgetary challenges for the City, the ensuing years will also be challenging as a result of the following factors:

- Best-case economic predictions are that the economy will start its recovery in 2010; however, the recovery is expected to be slow. Therefore, City revenues are expected to remain at approximately FY 2009-10 levels throughout FY 2010-11, if not longer.
- The California Public Employees Retirement System (CalPERS) has sustained significant losses on its investment portfolio, losing more than 31% of its assets since its peak value in October 2007. These losses will be reflected in increased employer contribution rates beginning FY 2010-11 for State employees (including CalFire) and FY 2011-12 for local agencies. These rate adjustments will have a potentially significant impact on the City's payroll costs.
- The rate increase resulting from the CalPERS early retirement incentive (unless pre-paid) will begin in FY 2011-12.
- Unless further Development Impact Fees are generated, annual debt service of approximately \$2 million on the 2005 Lease Revenue Bonds will become an obligation of the General Fund beginning in FY 2010-11.
- The Development Services Reserve will have been expended as of 2009-10; funding from this source will not be available.

As a result of these factors, the City must prepare for significant long-term budgetary challenges. Most one-time savings will have been achieved, either last fiscal year or this fiscal year. Preparing for the budgetary challenges that lie ahead will require the implementation of additional ongoing cost saving measures including further workforce reduction.

Recommended Workforce Reduction

In order to maintain expenditures within the projected revenue levels for FY 2008-09, it is recommended that 10 filled positions be defunded at this time. Staff has taken into consideration the CalPERS early retirement incentive option, which has been approved by Council and is scheduled to be offered to eligible employees beginning March 27, 2009. In most cases, savings generated from this program will not be realized until next fiscal year. It is unknown how many employees may choose this early retirement option. However, it is not expected that this program will yield nearly enough retirements to offset the need for further workforce reduction next fiscal year. Therefore, due to the significant budgetary challenges to be faced in FY 2009-10 and the ensuing years, Council may also want to consider defunding up to 15 additional filled positions this fiscal year to better prepare the City to meet these challenges. The positions impacted by the workforce reduction would be determined by the City Manager based on department head recommendations, taking into consideration current workloads and respective service level impacts.

ALTERNATIVES

1. Receive and file this report.
2. Approve recommended mid-year budget appropriation adjustments.
3. Authorize the City Manager to make mid-year budget reductions to maintain current year expenditures within projected revenue levels and to prepare for next fiscal year's significant budgetary challenges.
4. Provide staff with further direction.

Staff recommends Alternative Nos. 1-3.

FISCAL IMPACT

Approval of staff's recommendations will result in the following fiscal impacts on the City's General Fund:

- The City's expenditures will remain within the projected revenue levels throughout FY 2008-09, thus maintaining a balanced budget and avoiding deficit spending.
- No further use of the Development Services Reserve will be required during this fiscal year; the remaining \$2.3 million in this reserve will be needed in FY 2009-10, as reflected in the FY 2009-10 planning assumptions.
- The City's overall financial strength and general contingency reserves will be preserved, despite the significant revenue reduction resulting from the deep economic recession. Some use of general contingency reserves may need to be considered to balance the FY 2009-10 budget so that service levels are maintained at acceptable levels.

CITY COUNCIL GOALS

Develop fiscal policies to support essential City services, regardless of economic climate.

SUMMARY

The City's General Fund is continuing to experience ongoing revenue shortfalls resulting from the deep economic recession. A revenue shortfall of at least \$5 million was projected as of the First Quarter Budget Review in November. This projected shortfall has now been updated to \$6.3 million. A further erosion of \$8.4 million in General Fund revenues is forecast for next fiscal year. To offset these expected revenue losses, staff has implemented aggressive cost-cutting measures, including a workforce reduction of 44 positions (representing over 10% of the City's career

workforce) and a number of one-time expenditure reductions. With Council's approval, a wide range of additional cost reduction measures will be implemented this fiscal year to offset the revenue loss, including non-personnel reductions of \$666,900; personnel reallocations/transfers totaling \$720,600; and defunding of 12 additional vacant positions saving another \$377,100. Having exhausted all other measures, defunding of 10 filled positions will also be required to maintain expenditures within projected revenue levels this fiscal year. Council may also want to consider defunding of up to 15 additional filled positions in preparation for FY 2009-10, which will be significantly more challenging than this fiscal year due to ongoing revenue loss. The positions to be defunded would be determined by the City Manager based on department head recommendations, taking into consideration current workloads and respective service level impacts.

NOTIFICATION

Publication of the City Council agenda

ATTACHMENTS/EXHIBITS

None

Prepared By:
 Steve Elam
 Financial & Administrative Services Director

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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City of Moreno Valley

Mid-Year Budget Review

February 24, 2009

Presentation Overview

- Previous Actions Mitigating Impact of Recession
- Recap of First Quarter Budget Review
- Mid-Year Results – General Fund
- Proposed Budget Appropriation Adjustments
- 2008-09 Projections & 2009-10 Preliminary Forecast
- Action Plan to maintain budgetary balance for 2008-09 and prepare for 2009-10
- Additional Budgetary Challenges – 2009-10 & beyond
- Workforce Reduction

Previous Actions Mitigating Impact of Recession

- 1) Development Services Reserve
- 2) Aggressive Cost-Cutting Measures
Implemented at First Sign of Recession
- 3) Deficit Reduction Planning

Recap of First Quarter Budget Review

- Revenue shortfall of at least \$5 million was projected due to deteriorating economy.
- Plan for addressing this shortfall:
 - Additional savings from FY 2007-08 (\$1.8 million)
 - Second phase of Deficit Reduction Plan (\$1.3 million)
 - Additional deficit reduction planning efforts

Mid-Year Results General Fund

- At mid-year, 29.5% of revenues historically received.
- At 12/31/08, City has experienced a \$2.3 million (-8.8%) revenue shortfall.
- Expenditures are \$5 million below year-to-date budget due to staffing vacancies and other cost-saving measures.

Proposed Mid-Year Appropriation Adjustments

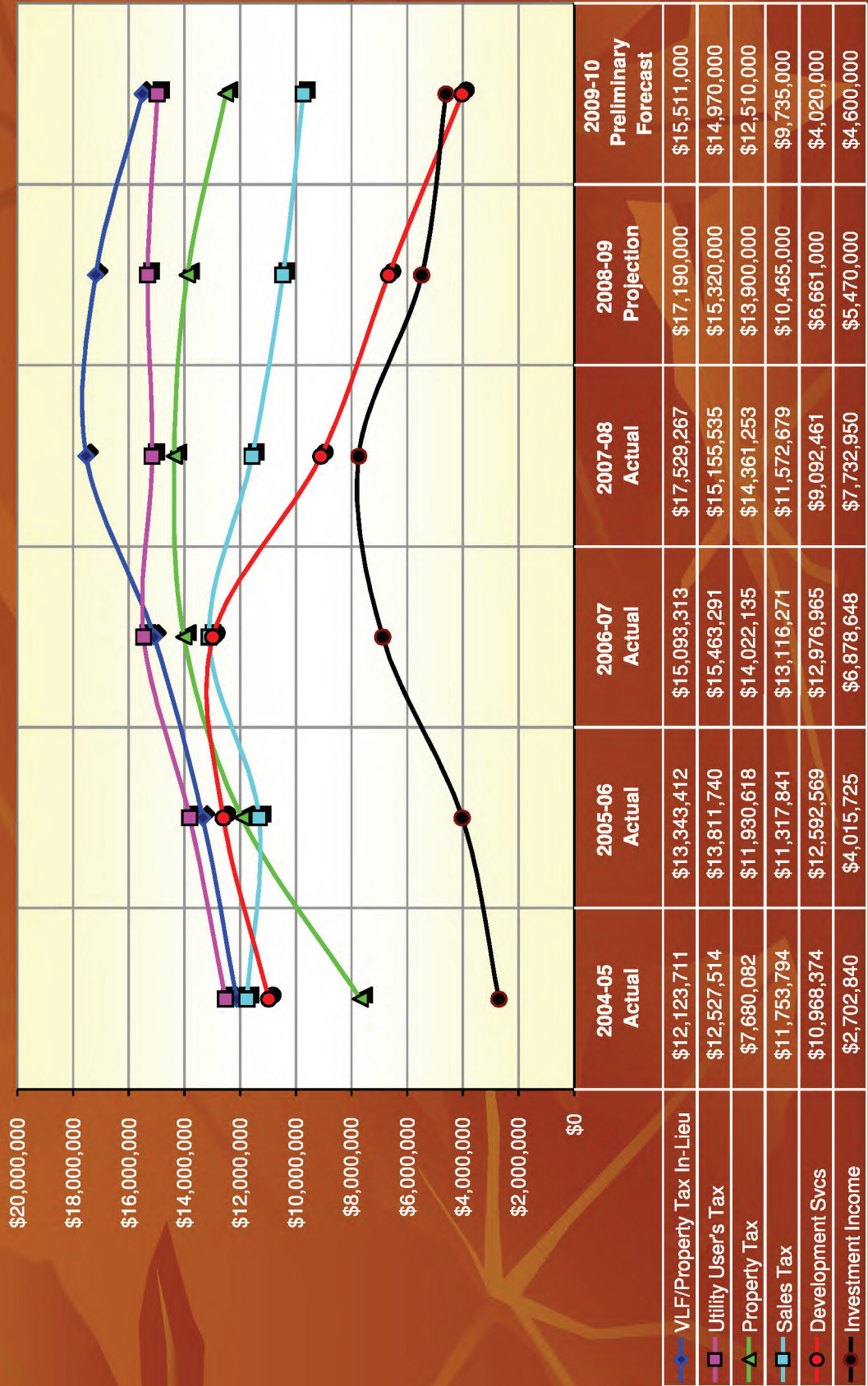
Department/Division	Description	Total Amount	General Fund Amount
City Attorney	Additional outside legal services	\$100,000	\$100,000
Non-Departmental	Consulting services related to Utility Users Tax Ordinance revision and administration	67,500	67,500
FASD/Purchasing & Facilities	Corporate Yard asbestos remediation	30,000	15,000
FASD/Purchasing & Facilities	Fire Station 65 mold remediation	60,000	30,000
Public Works/Transportation Engr.	Matching funds for TRANSIMS grant	22,500	22,500
	Total	\$280,000	\$235,000

General Fund 2008-09 Revenue Projection & 2009-10 Preliminary Forecast

Revenue Source	2008-09 Adjusted Budget	2008-09 Year-End Projection	Positive (Negative) Variance	Variance %	2009-10 Preliminary Forecast	Variance from 2008-09 Projection	Variance %
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Parking Control Fees	1,300,000	1,300,000	0	--	1,300,000	0	--
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Gross Receipts Tax	1,000,000	980,000	(20,000)	-2.0%	906,500	(73,500)	-7.5%
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Total	\$88,866,400	\$82,594,500	(\$6,271,900)	-7.1%	\$74,202,500	(\$8,392,000)	-10.2%

⁽¹⁾ Excludes one-time transfers from other funds that are not part of ongoing operations.

General Fund Revenues History & Projection



Plan for Remainder of 2008-09

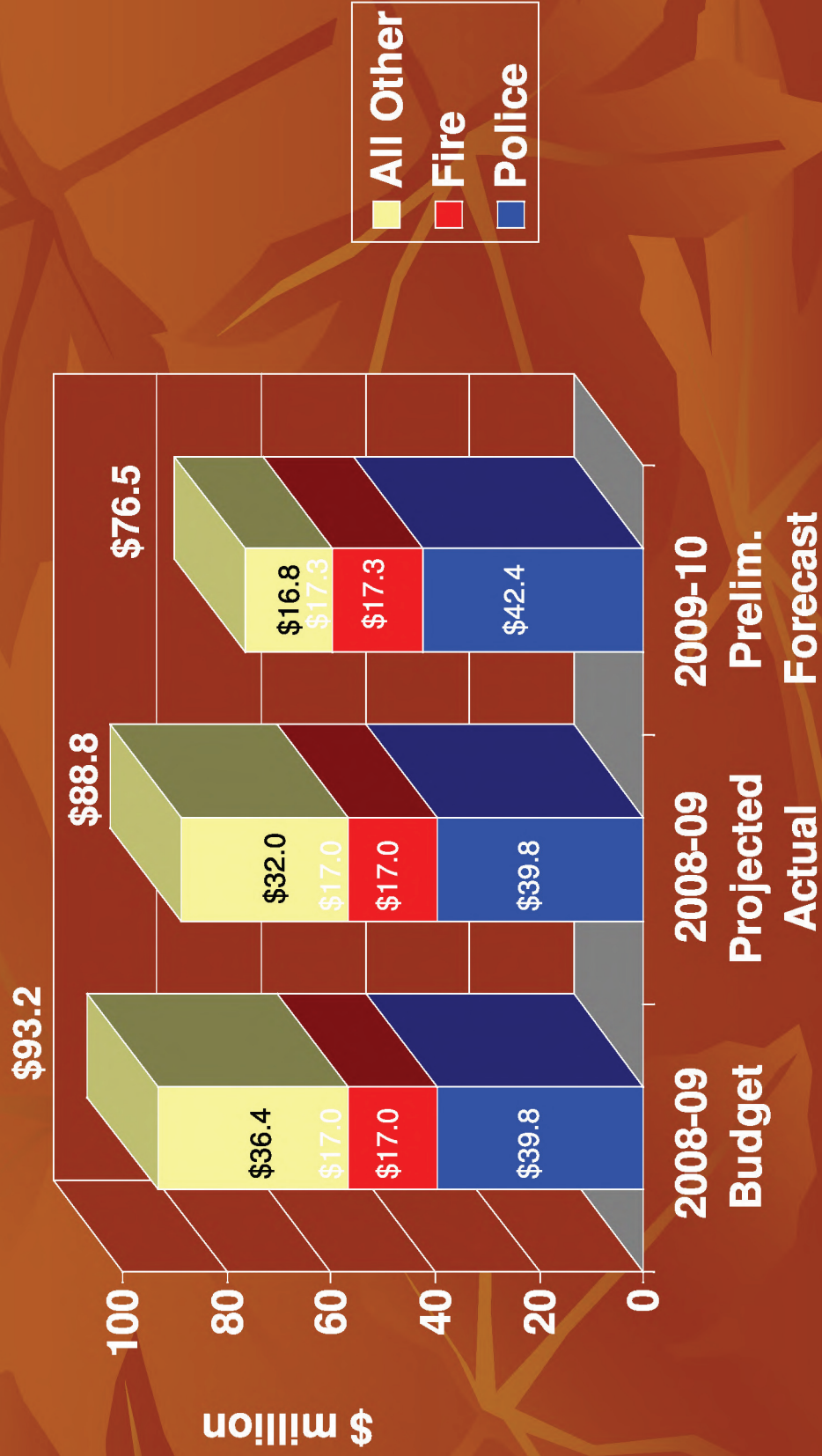
Description	\$ Impact	\$ Impact
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Mid-Year Budget Appropriation Adjustments		(235,000)
Deficit Sub-Total		(\$6,506,900)
Implemented Solutions to Overcome Deficit:		
- Unbudgeted savings from 2007-08	\$1,800,000	
- Below-the-Line" Deficit Reduction Options	1,278,000	
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- Reduced General Fund Subsidies	206,200	
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Implemented Solutions Sub-Total		\$4,602,200
Proposed Additional Solutions:		
- Non-Personnel budget reductions	\$666,900	
- Personnel Reallocations/Transfers	720,600	
- Defunding of Additional Vacant Positions	377,100	
- Defunding of Filled Positions	147,500	
Proposed Additional Solutions Sub-Total		\$1,912,100
Projected Year-End Savings		\$ 7,400

2009-10 General Fund Planning Assumptions

(\$ million)

	2008-09 Adopted Budget	2008-09 Projected Actual	2009-10 Preliminary Forecast	% Change from 2008-09 Proj Act to 2009-10
<u>Revenues/Sources</u>				
Operating Revenues	88.8	82.6	74.2	-10.2%
Development Services Reserve	3.0	3.0	2.3	-23.3%
Prior Year Savings	1.4	3.2	0.0	-100.0%
Operating Subtotal	93.2	88.8	76.5	-13.9%
Capital Reserve (EOC Project)	2.6	2.6	0.0	-100.0%
Total Sources	95.8	91.4	76.5	-16.3%
<u>Expenditures/Uses</u>				
Operating:				
- Police	39.8	39.8	42.4	6.5%
- Fire	17.0	17.0	17.3	2.0%
- Public Safety Subtotal	56.8	56.8	59.7	5.1%
- Non-Public-Safety	36.4	32.0	16.8	-47.5%
Operating Subtotal	93.2	88.8	76.5	-13.9%
Capital (EOC Project)	2.6	2.6	0.0	-100.0%
Total Uses	95.8	91.4	76.5	-16.3%

2009-10 General Fund Operating Budget Challenge



Additional Budgetary Challenges Beyond 2009-10

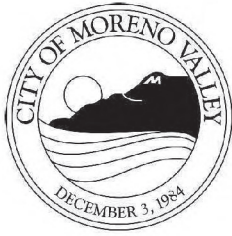
- Revenues not expected to start recovering until 2010-11; then a slow recovery.
- Expected CalPERS rate increases due to investment losses:
 - 2010-11 for State employees (CalFire)
 - 2011-12 for local agencies
- Without DIF generation, additional GF debt service obligation of \$2 million (2005 Lease Revenue Bonds).
- Ongoing retiree health obligation under GASB 45.
- Development Services Reserve has been expended.

Workforce Reduction

- 44 positions already defunded (4 filled).
- 12 additional vacant positions will be defunded.
- Recommend defunding 10 additional filled positions to keep 2008-09 budget in balance; bringing total workforce reduction to 66 career positions (15% of workforce).
- Consider defunding up to 15 additional filled positions to better prepare for significant budgetary challenges in 2009-10.

Summary of Recommended Actions

- Receive & file report.
- Approve recommended appropriation adjustments.
- Authorize City Manager to make mid-year budget reductions to maintain expenditures within projected revenue levels and to prepare for next fiscal year's significant budgetary challenges.



APPROVALS	
BUDGET OFFICER	
CITY ATTORNEY	<i>CAF</i>
CITY MANAGER	<i>RMH</i>

Report to City Council

TO: Mayor and City Council

FROM: Jane Halstead, CMC
City Clerk

AGENDA DATE: February 24, 2009

TITLE: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY ESTABLISHING A HIRING FREEZE FOR ALL VACANT CITY POSITIONS AND ADDRESSING THE USE OF CONTRACTORS AND TEMPORARY EMPLOYEES UNDER LAYOFF CONDITIONS

RECOMMENDED ACTION

Adopt Resolution No. 2009-16 establishing a hiring freeze for all vacant city positions and addressing the use of contractors and temporary employees under layoff conditions.

BACKGROUND

The item was brought forth by Council Member Hastings, seconded by Council Member Batey to be placed on the February 24, 2009 Regular City Council meeting agenda. It is the intention of the resolution that a strict hiring freeze on vacant City positions be enforced until rescinded by the City Council.

CITY COUNCIL GOALS

Revenue Diversification and Preservation. Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.

NOTIFICATION

Posting of agenda.

ATTACHMENTS/EXHIBITS

Attachment #1 - Resolution No. 2009-16

Prepared By: Jane Halstead

Department Head Approval: Jane Halstead

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

RESOLUTION NO. 2009-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORENO VALLEY ESTABLISHING A HIRING FREEZE FOR ALL VACANT CITY POSITIONS AND ADDRESSING THE USE OF CONTRACTORS AND TEMPORARY EMPLOYEES UNDER LAYOFF CONDITIONS

WHEREAS, the City of Moreno Valley is experiencing a decline in revenue due to the economic recession that will result in a budget deficit during the 2008/09 fiscal year and is projected to continue throughout the 2009/10 fiscal year.

WHEREAS, significant cost cutting measures have been enacted and are proposed and will be proposed in the future to address the budget deficit.

WHEREAS, forty-four positions have been cut from the City workforce and employees are being asked to accept a salary reduction to assist in balancing the budget and avoid layoffs.

WHEREAS, it is the intention of the City Council that a strict hiring freeze on vacant City positions be enforced until rescinded by the City Council.

NOW THEREFORE, THE CITY COUNCIL OF MORENO VALLEY DOES HEREBY RESOLVE:

1. There shall be no hiring to fill vacant positions in the City workforce or the creation of new classifications or positions without explicit approval of the City Council.
2. The City Manager shall first seek and obtain permission from the City Council before hiring to fill any vacancies in the City workforce or before creating any new classifications for which the City Manager would seek permission to fill during the hiring freeze.
3. All current recruitments to fill job opening with non-current City employees shall be suspended immediately.
4. Any opening in City positions that must be filled due to necessity will be presented to the City Council for consideration and possible waiver of the hiring freeze. Every effort shall be made to fill these openings if approved by the City Council from within the current City workforce using the promotional selection procedures. If a position is filled from within the City workforce every effort will be made to keep the position vacated unfilled for the duration of the hiring freeze.

Attachment 1

5. All work being performed by contractors that can be done by City staff at a cost equal to or less than the cost of the contractor shall be brought in-house at the first opportunity.
6. Any work being performed by temporary employees will be offered to qualified fulltime employees in lieu of layoffs during the term of the hiring freeze.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORENO VALLEY, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

APPROVED AND ADOPTED this _____ day of _____, 2009.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

RESOLUTION JURAT

[Clerk's office will prepare]

[NOTE: Any attachments or exhibits to this resolution should follow this jurat.]

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CITY MANAGER'S REPORT
**(Informational Oral Presentation only –
not for Council action)**

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