

## **NOTICE**

### **THIS MEETING WILL BE CONDUCTED VIA WEBINAR/TELECONFERENCE. THE COUNCIL CHAMBERS WILL NOT BE OPEN TO THE PUBLIC.**

Pursuant to Executive Orders issued by Governor Newsom to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting will be conducted remotely via the ZOOM virtual meeting platform. In compliance with the Executive Orders, there will be no in-person meeting location, however the public may participate using any of the remote methods described below.

### **LISTEN TO THE MEETING LIVE VIA ZOOM**

Members of the public may participate in this meeting by joining the ZOOM conference via PC, Mac, iPad, iPhone, or Android device using the URL:

<https://zoom.us/j/95239872725>

### **LISTEN TO THE MEETING LIVE VIA TELEPHONE**

The public may participate via phone only (without a computer/smart device) by dialing the below numbers:

**Dial Number: 1-669-900-6833**

**Meeting ID: 952 3987 2725**

**ALL PARTICIPANTS WILL BE MUTED AUTOMATICALLY UPON ENTERING THE MEETING.  
THE CITY CLERK WILL UNMUTE THOSE WHO WISH TO SPEAK AT THE APPROPRIATE TIME.  
PLEASE KEEP YOURSELF ON MUTE WHEN NOT SPEAKING.**

### **VERBAL PARTICIPATION USING ZOOM**

Please use the "Raise Hand" button to request to speak. Raised hands will only be acknowledged during the Public Hearing and Public Comment sections of the agenda and when the Meeting's presiding officer requests comments from the public.

If you want to provide public comments and are using a computer or laptop without a microphone connected or built in, you will also need to call in using the Teleconference Number and Meeting ID highlighted below, and dial your Participant ID on the phone when prompted. Your Participant ID is found in the "Phone Call" tab of the "Join Audio" settings. This option will also switch your audio over to the phone. Please do not use speaker mode and turn off your computer audio when speaking to prevent audio feedback.

### **VERBAL PARTICIPATION OVER THE PHONE**

Please dial \*6 to mute and unmute yourself, and \*9 to "raise your hand" to request to speak. Raised hands will only be acknowledged during the Public Hearing and Public Comment sections of the agenda and when the Meeting's presiding officer requests comments from the public. Do not use speaker mode when speaking.

### **ADA COMPLIANCE INFORMATION**

Meetings are accessible to people with disabilities. Requests in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the City Clerk at [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) or call (909) 625-9416. Every attempt will be made to swiftly address each request. (28 CFR 35.102-35.104 ADA Title II)

## **PUBLIC COMMENT PROCEDURES**

### **MAKING VERBAL COMMENTS**

To provide verbal comments during the meeting, please visit [www.cityofmontclair.org/cc-comment](http://www.cityofmontclair.org/cc-comment) to fill out a Virtual Speaker Card to request to speak in advance. You may also call the City Clerk in advance at (909) 625-9416 to fill out the Virtual Speaker Card over the phone or e-mail your name, phone number if calling in during the meeting, and subject of comment or agenda item to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) with "[Meeting Date] Virtual Speaker Card" as the subject line.

Meeting attendees who did not fill out the Virtual Speaker Card in advance will be given an opportunity to speak after those who requested to speak in advance.

### **SUBMITTING WRITTEN COMMENTS**

Written comments (250 word limit) may be submitted prior to the meeting by filling out the Virtual Speaker Card ([www.cityofmontclair.org/cc-comment](http://www.cityofmontclair.org/cc-comment)), via e-mail ([cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org)), or via U.S. Mail (Mailing Address: City of Montclair, Attn: City Clerk, Re: [Meeting Date] Public Comment, 5111 Benito Street, Montclair, CA 91763), and will be read aloud during the meeting by the City Clerk at the appropriate time.

Please submit all requests to speak or written comments at least one hour prior to the start of the meeting. The City cannot be held responsible for U.S. Mail that does not arrive on time prior to the subject meeting.



**REGULAR JOINT MEETING OF THE  
CITY COUNCIL, SUCCESSOR AGENCY, MONTCLAIR HOUSING CORPORATION,  
MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY FOUNDATION**

**AGENDA**

Monday, May 18, 2020  
7:00 p.m.

*As a courtesy, please place yourself on mute while the meeting is in session, unless speaking (Dial \*6 on the phone to toggle mute), and turn off/mute/disable all video/web cameras.*

*Persons wishing to make a public comment or speak on an agenda item, including public hearing and closed session items, are requested to complete a Virtual Speaker Card (VSC) at [www.cityofmontclair.org/cc-comment](http://www.cityofmontclair.org/cc-comment). The Mayor/Chair (or the meeting's Presiding Officer) will recognize those who have submitted a VSC at the time of the item's consideration and invite those individuals to provide comments on the item at that time. Those who did not fill out a VSC will have an opportunity to speak after those who did by using the "raise hand" function on the ZOOM meeting platform or over the phone by dialing \*9.*

*Audio recordings of the CC/SA/MHC/MHA/MCF meetings are available on the City's website at [www.cityofmontclair.org](http://www.cityofmontclair.org) and can be accessed by the end of the next business day following the meeting.*

- I. CALL TO ORDER** City Council [CC], Successor Agency Board [SA],  
Montclair Housing Corporation Board [MHC],  
Montclair Housing Authority Commission [MHA],  
Montclair Community Foundation Board [MCF]

**II. INVOCATION**

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

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS**

- A. San Bernardino County COVID-19 Update by Fourth District Supervisor and Chair of the Board of Supervisors Curt Hagman  
B. Proclamation Congratulating the 2020 Montclair High School Graduating Class

**VI. PUBLIC COMMENT**

*This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded up to five minutes to address the City Council/Boards of Directors/Commissioners. (Government Code Section 54954.3).*

*If you did not submit a Virtual Speaker Card and would like to speak on an item that is on the agenda, please request to speak during Public Comment to announce the agenda item on which you would like to comment so you may be called on to provide your comments at the time of that item's consideration.*

*Under the provisions of the Brown Act, the meeting bodies are prohibited from participating in substantial discussion of or taking action on items not listed on the agenda.*

**VII. PUBLIC HEARINGS — None**

**VIII. CONSENT CALENDAR**

A. Approval of Minutes

1. Regular Joint Meeting — May 4, 2020 [CC/SA/MHC/MHA/MCF]

B. Administrative Reports

1. Consider Receiving and Filing of Treasurer’s Report [CC] 6
2. Consider Approval of Warrant Register & Payroll Documentation [CC] 7
3. Consider Receiving and Filing of Treasurer’s Report [SA] 8
4. Consider Approval of Warrant Register [SA] 9
5. Consider Receiving and Filing of Treasurer’s Report [MHC] 10
6. Consider Approval of Warrant Register [MHC] 11
7. Consider Receiving and Filing of Treasurer’s Report [MHA] 12
8. Consider Approval of Warrant Register [MHA] 13
9. Consider Authorizing the Destruction of Certain Public Records Pursuant to the City of Montclair Records Retention Schedule [CC] 14
10. Consider Approval of the Plans and Specifications for the Holt Boulevard Pavement Rehabilitation Project [CC]  
Consider Authorizing Staff to Advertise for Bid Proposals for the Holt Boulevard Pavement Rehabilitation Project [CC] 17
11. Consider Acceptance of Grant Deed No. 1678, an Easement For Construction, Maintenance, and Use of Sidewalks and Appurtenances Located on Monte Vista Avenue South of Palo Verde Street (APN 1008-651-12) [CC]  
Consider Authorizing Staff to Record Grant Deed No. 1678 with the Office of the San Bernardino County Recorder [CC] 18
12. Consider Authorizing the Receipt of a Special One-Time Allocation of Community Development Block Grant (CDBG-CV) Funds in the Amount of \$202,737 to Respond to the COVID-19 Public Health Crisis [CC] 25
13. Consider Authorizing the Purchase of The Taco Man Gift Cards for Montclair to College Graduates in Lieu of the Annual Graduation Dinner [MCF] 27

C. Agreements

1. Consider Approval of Agreement No. 20-36 with NetFile to Implement an Electronic Filing System for Fair Political Practices Commission (FPPC) Statement of Economic Interests and Campaign Statement Forms [CC] 28

2. Consider Approval of Agreement No. 20-37 with the San Bernardino County Sheriff's Department for Pre-Employment Polygraph Services [CC] 32
3. Consider Approval of Agreement No. 20-38, the Second Amendment to Agreement No. 17-74 with Moule & Polyzoides for Preparation of the Montclair Place District Specific Plan [CC] 37
4. Consider Approval of Agreement No. 20-39, the Second Amendment to Reimbursement Agreement No. 17-76 with 5060 Montclair Plaza Lane Owner, LLC Related to Costs Associated with the Montclair Place District Specific Plan [CC] 43
5. Consider Approval of Agreement No. 20-40 with Blais & Associates, Inc. for Grant Writing Services [CC] 48  
Consider Authorizing a \$50,000 Appropriation from the Contingency Reserve Fund for Costs Related to Agreement No. 20-40 [CC]
6. Consider Approval of Agreement No. 20-41 with San Bernardino County Transportation Authority for Phase II of the Montclair Metrolink Transcenter Accessibility Improvement Project [CC] 67  
Consider Authorizing a \$230,000 Appropriation from Redevelopment Project Area No. II Tax Allocation Bonds for Costs Related to Agreement No. 20-41 [CC]
7. Consider Approval of Agreement No. 20-42 with CPS HR Consulting for Recruitment Test Rental Services [CC] 78

D. Resolutions

1. Consider Adoption of Resolution No. 20-3267 Declaring a State of Fiscal Urgency Exists in the City of Montclair and Requiring Reductions in General Fund Operating Budget Expenditures to Ensure Sustainability and Viability of the General Fund Operating Budget and City Operations for the Balance of Fiscal Year 2019-20 and Through Fiscal Year 2020-21 and Subsequent Fiscal Years [CC] 87

**IX. PULLED CONSENT CALENDAR ITEMS**

**X. COUNCIL WORKSHOP**

- A. Vital City Services Protection Transactions and Use Tax

*(The City Council may consider continuing this item to an adjourned meeting on Monday, June 1, 2020, at 5:45 p.m.)*

**XI. COMMUNICATIONS**

- A. City Attorney
- B. City Manager/Executive Director
  1. COVID-19 Update

- C. Mayor/Chairperson
- D. Council Members/Directors
- E. Committee Meeting Minutes (*for informational purposes only*) — None

## **XII. ADJOURNMENT**

*The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, June 1, 2020, at 7:00 p.m.*

*Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Acting Bodies after publication of the Agenda packet are available for public inspection in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Pursuant to the Governor's Executive Orders in relation to the COVID-19 pandemic, please call the City Clerk's Office at (909) 625-9416 or send an e-mail to [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org) to request such review of items via e-mail.*

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (909) 625-9416 or e-mail [cityclerk@cityofmontclair.org](mailto:cityclerk@cityofmontclair.org). Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)*

*I, Andrea M. Phillips, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at [www.cityofmontclair.org](http://www.cityofmontclair.org) and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, May 14, 2020.*



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	FIN520
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	J. KULBECK
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending April 30, 2020, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending April 30, 2020.

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

**RECOMMENDATION:** Staff recommends the City Council receive and file the Treasurer's Report for the month ending April 30, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	FIN540
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	L. LEW/V. FLORES
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

**BACKGROUND:** Mayor Pro Tem Raft has examined the Warrant Register dated May 18, 2020; and the Payroll Documentation dated April 12, 2020; and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated May 18, 2020, totals \$1,708,826.98; and the Payroll Documentation dated April 12, 2020, totals \$642,387.92 gross, with \$449,526.15 net being the total cash disbursement.

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



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	FIN510
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending April 30, 2020, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending April 30, 2020.

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

**RECOMMENDATION:** Staff recommends the City Council acting as Successor to the Redevelopment Agency Board of Directors receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending April 30, 2020.





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	FIN530
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending April 30, 2020, pursuant to state law.

**BACKGROUND:** Vice Chairperson Raft has examined the Successor to the Redevelopment Agency Warrant Register dated 04.01.20-04.30.20 in the amounts of \$7,532.04 for the Combined Operating Fund; \$0.00 for the Redevelopment Obligation Retirement Funds and finds it to be in order.

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

**RECOMMENDATION:** Vice Chairperson Raft recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending April 30, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending April 30, 2020, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending April 30, 2020.

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

**RECOMMENDATION:** Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending April 30, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	6	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending April 30, 2020, pursuant to state law.

**BACKGROUND:** Vice Chairperson Raft has examined the Warrant Register dated 04.01.20-04.30.20 in the amount of \$72,556.80 for the Montclair Housing Corporation and finds it to be in order.

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

**RECOMMENDATION:** Vice Chairperson Raft recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending April 30, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	7	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Board of Directors is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending April 30, 2020, pursuant to state law.

**BACKGROUND:** Included in your agenda packet is a copy of the Treasurer's Report for the period ending April 30, 2020.

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

**RECOMMENDATION:** Staff recommends the Montclair Housing Authority Board of Directors receive and file the Treasurer's Report for the month ending April 30, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	8	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending April 30, 2020, pursuant to state law.

**BACKGROUND:** Vice Chairperson Raft has examined the Warrant Register dated 04.01.20-04.30.20 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

**RECOMMENDATION:** Vice Chairperson Raft recommends the Montclair Housing Authority Board of Directors approve the Warrant Register for the period ending April 30, 2020.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	CCK280
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	CITY MGR./CITY CLERK
<b>ITEM NO.:</b>	9	<b>PREPARER:</b>	A. PHILLIPS
<b>SUBJECT:</b>	CONSIDER AUTHORIZING THE DESTRUCTION OF CERTAIN PUBLIC RECORDS PURSUANT TO THE CITY OF MONTCLAIR RECORDS RETENTION SCHEDULE		

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**REASON FOR CONSIDERATION:** The City Council is requested to authorize the destruction of certain public records pursuant to the City of Montclair Records Retention Schedule.

The subject records requested for destruction are listed on the two attached *City of Montclair Destruction of Public Records Forms*. The current lists consist of records from the Human Services Department due to the current backlog in that department; however, future approvals from the Council will consist of submission from all departments.

**BACKGROUND:** On November 19, 2012, the City Council adopted Resolution No. 12-2973 establishing the Montclair Records Retention Schedule as the City of Montclair's Official Records Management Program, and providing ongoing authority for the destruction of obsolete public records in accordance with the Records Retention Schedule by the City Clerk, with the consent of the City Attorney. This allowed the City to free up office space used solely for the storage of boxes of records, and to reduce the costs of off-site records storage for hundreds of boxes of irrelevant documents. While the practice of administratively destroying obsolete records has been successful in reducing storage costs and has been adopted by many cities over the past decade, recent legal attention to this practice and concern from the City Attorney have resulted in no records being administratively approved for destruction since 2018.

Due to a growing backlog of obsolete records, staff is requesting the City Council resume the practice of approving records for destruction in accordance with the Records Retention Schedule on a periodic basis.

**FISCAL IMPACT:** There would be no fiscal impact as a result of the City Council's authorization to destroy the subject records.

**RECOMMENDATION:** Staff recommends the City Council authorize the destruction of certain public records pursuant to the Records Retention Schedule.



# CITY OF MONTCLAIR

## DESTRUCTION OF PUBLIC RECORDS FORM

Please refer to the City of Montclair Records Retention Schedule for record retention guidelines for each department.

The retention period has expired for the records listed below pursuant to the City of Montclair's Records Retention Schedule.

Department: Human Services

Page 1 of 1

Record type & Retention Period	Description of Records	Period covered	Additional Notes
CC Committees (CU+2)	CAC Community Benefit apps & thank-you letters	2010-2016	CC = City Council
CC Committees (CU+2)	Memorial Day speech, Home Beautification scores	FY 2015-16	
CC Committees (CU+2)	CAC Volunteer of the Year apps & eval. forms	2010-2011	
CC Committees (CU+2)	Memorial Day program & thank-you letters	FY 2011-12	
<i>copy</i> Medical Record Adult (CU+2) #6	Community Health Fair applications	2010-2012	
Activity/Project File (CU+2)	Medical Clinic sign-in sheets	Jan-Dec 2016	

Approval for destruction of listed records:

Dept. Records Manager: *Alyssa C. ...* Date: 1/21/20  
 Department Head: *M. Richter* Date: 1/21/2020  
 City Clerk: *[Signature]* Date: 2/3/2020  
 City Attorney: *Alanae P. ...* Date: 2/3/2020



# CITY OF MONTCLAIR

## DESTRUCTION OF PUBLIC RECORDS FORM

Please refer to the City of Montclair Records Retention Schedule for record retention guidelines for each department.

The retention period has expired for the records listed below pursuant to the City of Montclair's Records Retention Schedule.

Department: Human Services

Page 1 of 1

<i>Record type &amp; Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
CC Committees CU+2	CAC Community Benefit Funding Invite Letters, Applications, Check Receipts/Copies	2008-2010	CC = City Council
Contracts CL+5	Signed contract class instructor agreements	2011-2013	
Class Rosters CU+2	Rec class rosters - various classes, logs detailing participant registration info	2011-2015	
Payment Requests AU+5	Contract class instructor payment requests	2011-2013	
Accounts Payable AU+4	Contract class instructor payment check stubs, copies of checks	2011-2013	
Accounts Payable AU+4	Copies of cash receipt proof lists submitted to Finance & supporting documentation	2011-2013	

Approval for destruction of listed records:

Dept. Records Manager:	<u><i>Renee Walter / Alyssa Colunga</i></u>	Date: <u><i>5/14/2020</i></u>
Department Head:	<u><i>M. Ricketts</i></u>	Date: <u><i>5/14/2020</i></u>
City Clerk:	<u><i>Andrea M Phillips</i></u>	Date: <u><i>5/14/2020</i></u>
City Attorney:	<u><i>Diane E. Robbins</i></u> (approved via e-mail)	Date: <u><i>5/14/2020</i></u>





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	STA815
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	10	<b>PREPARER:</b>	S. STANTON
<b>SUBJECT:</b>	CONSIDER APPROVAL OF THE PLANS AND SPECIFICATIONS FOR THE HOLT BOULEVARD PAVEMENT REHABILITATION PROJECT		
	CONSIDER AUTHORIZING STAFF TO ADVERTISE FOR BID PROPOSALS FOR THE HOLT BOULEVARD PAVEMENT REHABILITATION PROJECT		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of plans and specifications for the Holt Boulevard Pavement Rehabilitation Project, and to authorize staff to advertise for bid proposals for the Project.

**BACKGROUND:** On December 2, 2019, the City Council adopted the FY 2019-2024 Capital Improvement Program, which included the Holt Boulevard Pavement Rehabilitation Project. The street improvement project limits are Holt Boulevard from Mills Avenue on the west to Ramona Avenue on the east.

The Holt Boulevard Pavement Rehabilitation Project will repair damaged concrete, curb, gutter, and sidewalk; replace non-compliant pedestrian ramps; install traffic signal equipment at Amherst Avenue and resurface the street with new asphalt pavement; and replace traffic legends.

Traffic signal improvements at Amherst Avenue will include protected turning movements for east and west traffic. The traffic signal design also includes the installation of conduit for future traffic signal interconnect from Ramona Avenue to Amherst Avenue.

**FISCAL IMPACT:** The estimated project cost is \$800,000. The Holt Boulevard Pavement Rehabilitation Project is entirely funded by SB1 funds. The cost of advertising this project should not exceed \$1,500.

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

1. Approve the plans and specifications for the Holt Boulevard Pavement Rehabilitation Project.
2. Authorize staff to advertise for bid proposals for the Holt Boulevard Pavement Rehabilitation Project.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	LDA225
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	11	<b>PREPARER:</b>	N. CASTILLO

**SUBJECT:** CONSIDER ACCEPTANCE OF GRANT DEED NO. 1678, AN EASEMENT FOR CONSTRUCTION, MAINTENANCE, AND USE OF SIDEWALKS AND APPURTENANCES LOCATED ON MONTE VISTA AVENUE SOUTH OF PALO VERDE STREET (APN 1008-651-12)

CONSIDER AUTHORIZING STAFF TO RECORD GRANT DEED NO. 1678 WITH THE OFFICE OF THE SAN BERNARDINO COUNTY RECORDER

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**REASON FOR CONSIDERATION:** The City Council is requested to consider acceptance of Grant Deed No. 1678, an easement for construction, maintenance, and use of sidewalks and appurtenances located on Monte Vista Avenue south of Palo Verde Street at Assessor's Parcel No. 1008-651-12. Grant deeds for properties and easements are subject to City Council approval.

**BACKGROUND:** Site improvements are currently being constructed at the subject property to operate a senior living facility. The existing sidewalks at the site do not meet current Americans with Disabilities Act (ADA) requirements. The necessary improvements require right-of-way dedication on Monte Vista Avenue by the property owner, Chengdu Holding (USA) LLC, to the City of Montclair. The dedication would provide for sidewalks on Monte Vista Avenue that are accessible for use by wheelchair-bound individuals.

**FISCAL IMPACT:** Acceptance of Grant Deed No. 1678 would have no fiscal impact to the City. Without the acceptance of the grant deeds, the City would not have a legal authority for the use of the properties for the purposes indicated.

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

1. Accept Grant Deed No. 1678, an easement for construction, maintenance, and use of sidewalks and appurtenances located on Monte Vista Avenue south of Palo Verde Street at Assessor's Parcel No. 1008-651-12.
2. Authorize staff to record Grant Deed No. 1678 with the Office of the San Bernardino County Recorder.

<b>Recording Requested By and Mail to:</b>  <b>CITY OF MONTCLAIR P.O. BOX 2308 5111 BENITO STREET MONTCLAIR, CALIFORNIA 91763</b>	
---	--

SPACE ABOVE THIS LINE FOR RECORDERS USE

APN: 1008-651-12

## GRANT DEED

Affix I.R.S. \$ \_\_\_\_\_

**FOR A VALUABLE CONSIDERATION**, receipt of which is hereby acknowledged,  
 Yanbo Liao as managing member of Chengdu Holding (USA) LLC,  
 Hereby **GRANTS** to the **CITY OF MONTCLAIR** an easement for the purpose of constructing, maintaining, and use of sidewalks and appurtenances over the following described real property in the City of Montclair, County of San Bernardino, State of California:

See attached Exhibit A & Exhibit B **Grant Deed No.**

YANBO LIAO  
YAN BO LIAO

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
 County of Los Angeles

On 4/30/2020 before me, Bonnie Young, A Notary Public, personally appeared Liao, Yanbo 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 the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under 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.  
Bonnie Young  
 Signature of Notary



**ACCEPTANCE**

This is to certify that the interest in real property conveyed by the within instrument to the **CITY OF MONTCLAIR**, State of California, a body corporate and politic, is hereby accepted by order of the **MONTCLAIR CITY COUNCIL** made on \_\_\_\_\_, and the grantee consents to the recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_  
 By: \_\_\_\_\_  
(Seal)

City Clerk

**EXHIBIT A  
LEGAL DESCRIPTION OF THE PROPERTY**

THOSE PORTIONS OF PARCEL 1 OF PARCEL MAP NO. 3010 IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 28, PAGES 100-101, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

**PARCEL A**

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1: THENCE SOUTH 0°18'31" WEST, ALONG THE WESTERLY LINE OF SAID PARCEL 1, A DISTANCE OF 15.87 FEET TO THE TRUE POINT OF BEGINNING (TPOB): THENCE SOUTH 59°32'56" EAST, A DISTANCE OF 5.78 FEET; THENCE SOUTH 0°18'31" WEST, A DISTANCE OF 31.55 FEET: THENCE SOUTH 59°33'52" WEST, A DISTANCE OF 5.82 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 1: THENCE NORTH 00°18'31" EAST, A DISTANCE OF 37.43 FEET TO THE TRUE POINT OF BEGINNING (TPOB).

THE ABOVE PARCEL OF LAND CONTAINS 172.45 SQUARE FEET, MORE OR LESS.

**PARCEL B**

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 1: THENCE NORTH 0°18'31" EAST ALONG THE WESTERLY LINE OF SAID PARCEL 1, A DISTANCE OF 16.05 FEET TO THE TRUE POINT OF BEGINNING (TPOB): THENCE NORTH 59°33'52" EAST, A DISTANCE OF 5.82 FEET. THENCE NORTH 0°18'31" EAST, A DISTANCE OF 30.04 FEET: THENCE NORTH 59°32'56" WEST, A DISTANCE OF 5.78 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 1: THENCE SOUTH 00°18'31" WEST, A DISTANCE OF 35.92 FEET TO THE TRUE POINT OF BEGINNING (TPOB).

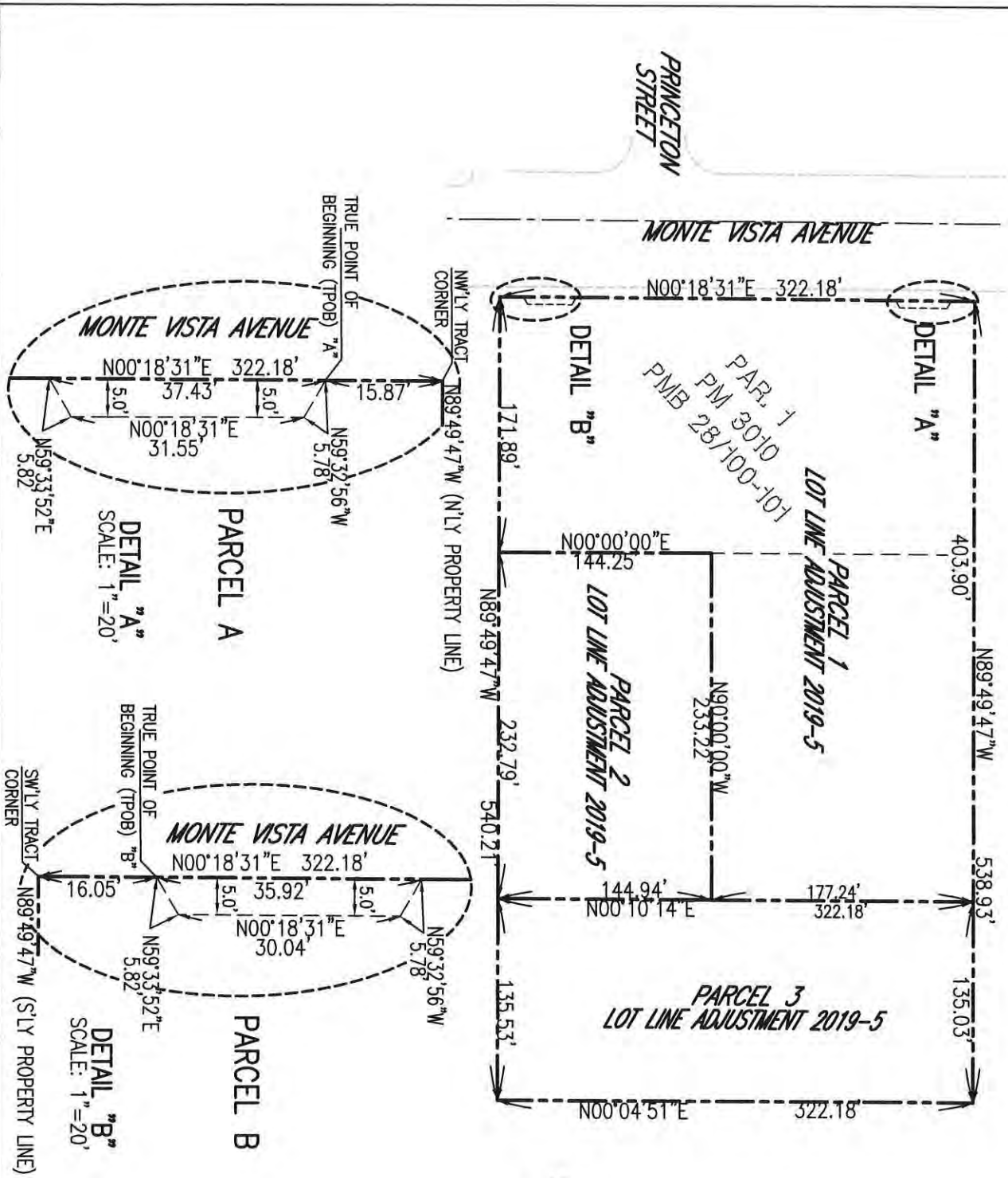
THE ABOVE PARCEL OF LAND CONTAINS 164.92 SQUARE FEET, MORE OR LESS.

PREPARED BY:  
ELKINS SURVEYING  
4391 BANDINI AVE.  
RIVERSIDE, CA 92506  
[elksurvey@AOL.com](mailto:elksurvey@AOL.com)



*James D. Elkins*  
JAMES ELKINS, L.S. 5428  
Date: 4/20/2020

**EXHIBIT "B"**  
**PEDESTRIAN ACCESS EASEMENT**



JAMES ELKINS, L.S. 5428  
 DATE: MARCH 16, 2020  
 ELKINS SURVEYING  
 4391 BANDINI AVE.  
 RIVERSIDE, CA 92506  
 951-789-4952  
 ELKSURVEY@AOL.COM

Recording Requested  
By and Mail to:

CITY OF MONTCLAIR  
P.O. BOX 2308  
5111 BENITO STREET  
MONTCLAIR, CALIFORNIA 91763

SPACE ABOVE THIS LINE FOR RECORDERS USE

APN: 1008-651-12

### GRANT DEED

Affix I.R.S. \$ \_\_\_\_\_

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Yanbo Liao as managing member of Chengdu Holding (USA) LLC,

Hereby GRANTS to the **CITY OF MONTCLAIR** an easement for the purpose of constructing, maintaining, and use of street lights and appurtenances over the following described real property in the City of Montclair, County of San Bernardino, State of California:

See attached Exhibit A & Exhibit B

Grant Deed No. \_\_\_\_\_

YANBO LIAO  
\_\_\_\_\_  
YANBO LIAO  
\_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On April 30, 2020 before me, Bonnie Young, A Notary Public, personally appeared Liao, Yan Bo 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 the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under 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.

Bonnie Young  
\_\_\_\_\_  
Signature of Notary



### ACCEPTANCE

This is to certify that the interest in real property conveyed by the within instrument to the **CITY OF MONTCLAIR**, State of California, a body corporate and politic, is hereby accepted by order of the **MONTCLAIR CITY COUNCIL** made on \_\_\_\_\_, and the grantee consents to the recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
City Clerk

(Seal)

**EXHIBIT A  
LEGAL DESCRIPTION OF THE PROPERTY**

THOSE PORTIONS OF PARCEL 1 OF PARCEL MAP NO. 3010 IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 28, PAGES 100-101, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

**PARCEL A**

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1: THENCE SOUTH 00°18'31" WEST, ALONG THE WESTERLY LINE OF SAID PARCEL 1, A DISTANCE OF 92.89 FEET TO THE TRUE POINT OF BEGINNING (TPOB); THENCE SOUTH 89°41'29" EAST, A DISTANCE OF 2.80 FEET; THENCE SOUTH 00°18'31" WEST, A DISTANCE OF 5.00 FEET; THENCE NORTH 89°41'29" WEST, A DISTANCE OF 2.80 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 1: THENCE NORTH 00°18'31" EAST, A DISTANCE OF 5.00 FEET TO THE TRUE POINT OF BEGINNING (TPOB).

THE ABOVE PARCEL OF LAND CONTAINS 14.00 SQUARE FEET, MORE OR LESS.

**PARCEL B**

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 1: THENCE NORTH 00°18'31" EAST ALONG THE WESTERLY LINE OF SAID PARCEL 1, A DISTANCE OF 84.27 FEET TO THE TRUE POINT OF BEGINNING (TPOB); THENCE SOUTH 89°41'29" EAST, A DISTANCE OF 2.80 FEET; THENCE NORTH 00°18'31" EAST, A DISTANCE OF 5.00 FEET; THENCE NORTH 89°41'29" WEST, A DISTANCE OF 2.80 FEET TO A POINT ON THE WESTERLY LINE OF SAID PARCEL 1: THENCE SOUTH 00°18'31" WEST, A DISTANCE OF 5.00 FEET TO THE TRUE POINT OF BEGINNING (TPOB).

THE ABOVE PARCEL OF LAND CONTAINS 14.00 SQUARE FEET, MORE OR LESS.



PREPARED BY:  
ELKINS SURVEYING  
4391 BANDINI AVE.  
RIVERSIDE, CA 92506  
[elksurvey@AOL.com](mailto:elksurvey@AOL.com)

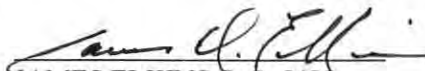
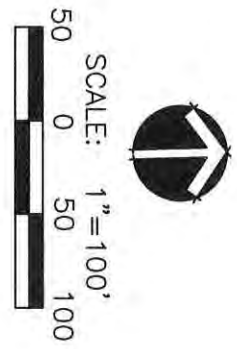
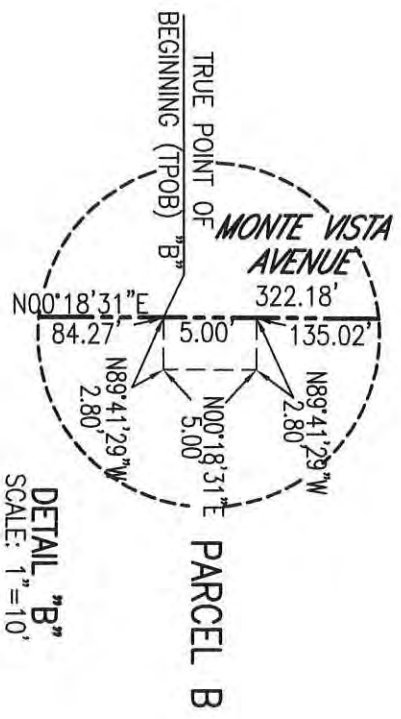
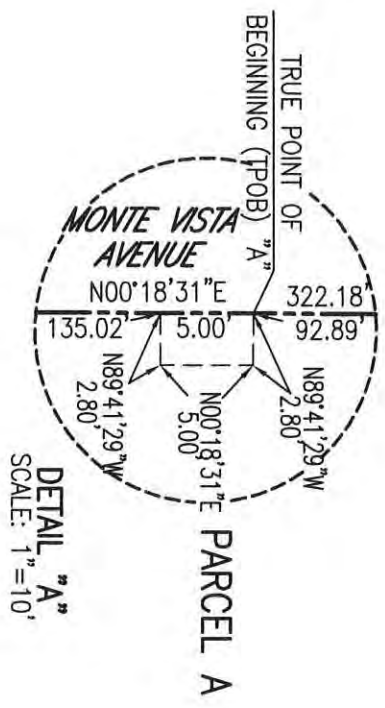
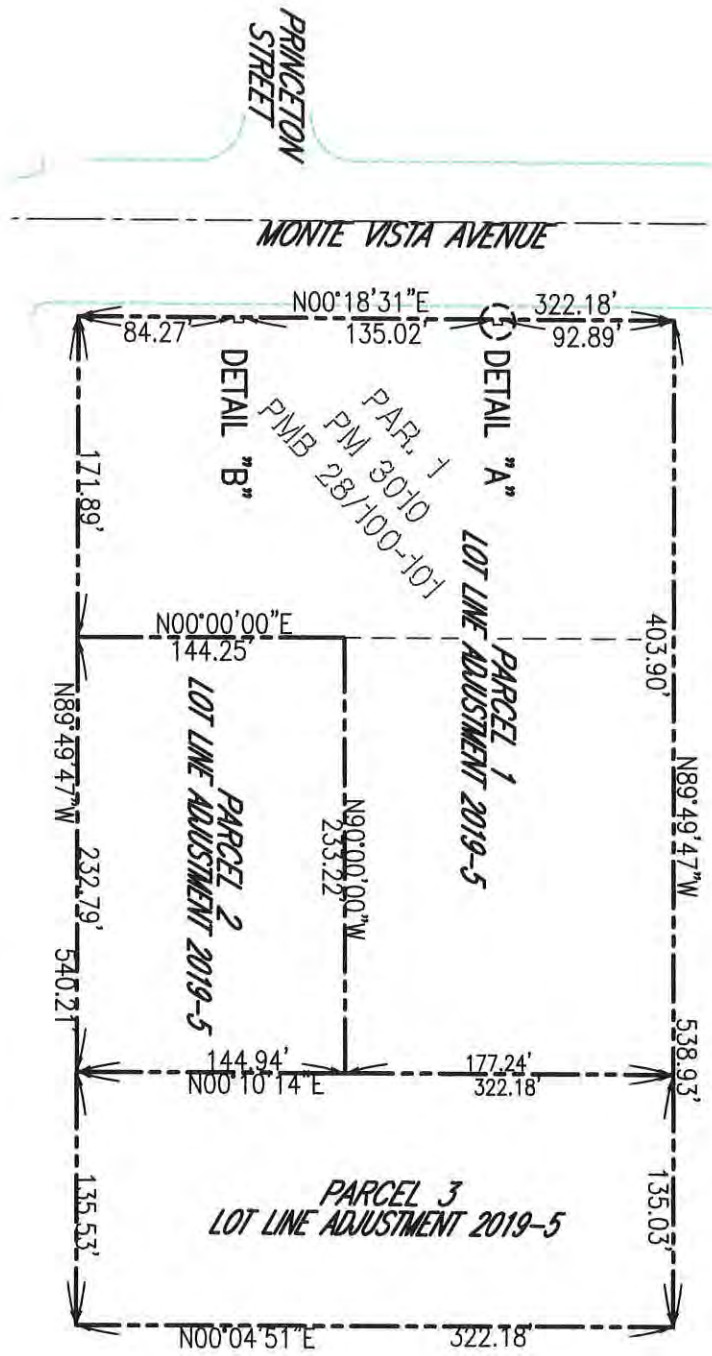
  
JAMES ELKINS, L.S. 5428  
Date: 4/20/2020

EXHIBIT "B"  
STREET LIGHT EASEMENT



JAMES ELKINS, L.S. 5428  
DATE: MARCH 16, 2020  
ELKINS SURVEYING  
4391 BANDINI AVE.  
RIVERSIDE, CA 92506  
951-789-4952  
ELKSURVEY@AOL.COM





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	GRT050
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	COMMUNITY DEV.
<b>ITEM NO.:</b>	12	<b>PREPARER:</b>	C. CALDWELL
<b>SUBJECT:</b>	CONSIDER AUTHORIZING THE RECEIPT OF A SPECIAL ONE-TIME ALLOCATION OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG-CV) FUNDS IN THE AMOUNT OF \$202,737 TO RESPOND TO THE COVID-19 PUBLIC HEALTH CRISIS		

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**REASON FOR CONSIDERATION:** The U.S. Department of Housing and Urban Development (HUD) released a special allocation of Community Development Block Grant (CDBG-CV) funds to the County for the prevention, preparation, and response to the coronavirus (COVID-19) pandemic. This allocation was authorized by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was signed by President Trump on March 27, 2020, to respond to the growing effects of this historic public health crisis. The City is eligible for a one-time CDBG-CV allocation of \$202,737. The County of San Bernardino administers the City's CDBG programs.

Staff submitted two applications to the County and has since received word that both proposed projects meet the guidelines of the CDBG-CV funding requirements and will be considered by the Board of Supervisors on May 21, 2020. The City Council is requested to consider approval of the projects and funding levels prior to consideration by the Board of Supervisors.

**BACKGROUND:** The County notified the City on April 20, 2020, that a one-time funding opportunity would be made available through a grant process. Applications were due on May 4, 2020. The City received notification on May 8, 2020, that its proposed projects were deemed eligible for CDBG-CV funding and would be forwarded to the Board of Supervisors for consideration and approval. The CDBG-CV grant covers a two-year period from June 1, 2020 through June 30, 2022. Final expenditure and performance data will be due to the County no later than June 10, 2022, in order to close out the program within the given timeframe.

The projects for consideration and approval by the Board of Supervisors include the following:

- 1. MONT-CDBG-CV-002 — MONTCLAIR FOOD PROGRAM (Montclair Senior Meal Delivery):** An eligible COVID-19 prevention program keeping people in their homes by having the City deliver prepared meals with costs being reasonable and customary.

Seniors served by the program will be low- to moderate-income Montclair residents that are sheltering in place and are unable to drive themselves to the "drive-up and take-away" daily meal distribution conducted in the City Hall parking lot. Once the COVID-19 social distancing directive is relaxed, the majority of this target population will still be unable to leave their homes because of high risk factors such as age and/or underlying medical condition(s) and continued lack of transportation.

2. **MONT-CDBG-CV-101 — MONTCLAIR HOMELESS OUTREACH PROGRAM (Montclair Homeless Emergency Housing Placement):** An eligible COVID-19 prevention program providing case management services to homeless persons with the expectation of finding them a place to shelter in place thereby decreasing the spread of COVID-19.

The Montclair Homeless Emergency Housing Placement Program is designed to protect the health and safety of the community from the spread of COVID-19 within the homeless community that involves street outreach, engagement/individual assessments, temporary and/or bridge housing, as well as wrap-around services/case management. The outreach will be conducted daily by Code Enforcement personnel. The City intends to use monies received from the grant toward personnel costs. Motel housing vouchers and associated case management costs through this program will be supported through Homeless Emergency Aid Program (HEAP) programming funds. The City’s HEAP funds cannot apply toward personnel costs.

The funding levels for the proposed projects are summarized as follows:

MONTCLAIR FOOD PROGRAM —	
Montclair Senior Meal Delivery .....	\$146,960.56
 MONTCLAIR HOMELESS OUTREACH PROGRAM —	
Montclair Homeless Emergency Housing Placement.....	\$55,776.44
<hr/>	
<b>TOTAL</b>	<b><u>\$202,737</u></b>

**FISCAL IMPACT:** The City expects to receive \$202,737 for a two-year period spanning June 1, 2020 through June 30, 2022 for the implementation of the CDBG-CV eligible projects as detailed above.

**RECOMMENDATION:** Staff recommends the City Council authorize the receipt of a special one-time allocation of CDBG-CV funds in the amount of \$202,737 to respond to the COVID-19 public health crisis.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	MCF200/MCF175
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	HUMAN SVCS./MCF
<b>ITEM NO.:</b>	13	<b>PREPARER:</b>	A. COLUNGA
<b>SUBJECT:</b>	CONSIDER AUTHORIZING THE PURCHASE OF THE TACO MAN GIFT CARDS FOR MONTCLAIR TO COLLEGE GRADUATES IN LIEU OF THE ANNUAL GRADUATION DINNER		

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**REASON FOR CONSIDERATION:** The Montclair Community Foundation (MCF) Board of Directors is requested to consider approving the use of funds granted by Kaiser Permanente Foundation to MCF to purchase gift cards to The Taco Man for Montclair to College Graduates in lieu of the annual graduation dinner.

**BACKGROUND:** The Montclair City Council serves as Board of Directors of the MCF. The vision of MCF is to work collectively and collaboratively to strengthen services and enhance the quality of life for residents by promoting health, wellness, and economic stability for all including the most vulnerable in our community. The mission of MCF is to guarantee a quality community for all by working together as diverse, committed individuals and organizations to make an impact that improves the overall well-being of the community.

MCF adheres to the purchasing policies of the City of Montclair. According to the City's purchasing manual, major purchases over \$1,000 require board approval. Staff recommends the purchase of gift cards for Montclair to College graduates to use in lieu of their graduation dinner.

Each of the sixty-seven graduates will receive one fifty-dollar gift card to The Taco Man, a Chaffey College alumni-owned business in Montclair. Chaffey College is contributing \$1,650 and MCF will contribute \$1,700 toward the purchase of gift cards.

**FISCAL IMPACT:** Staff recommends the purchase of one fifty-dollar gift card to The Taco Man per graduate, with a cost not to exceed \$1,700. Should the MCF Board approve the purchase of gift cards, \$1,700 will be used from the Kaiser Permanente Foundation grant funding for Montclair to College.

**RECOMMENDATION:** Staff recommends the Montclair Community Foundation Board of Directors authorize the purchase of The Taco Man gift cards for Montclair to College Graduates in lieu of the annual graduation dinner.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	FPP035
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	CITY MGR./CITY CLERK
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	A. PHILLIPS
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 20-36 WITH NETFILE TO IMPLEMENT AN ELECTRONIC FILING SYSTEM FOR FAIR POLITICAL PRACTICES COMMISSION (FPPC) STATEMENT OF ECONOMIC INTERESTS AND CAMPAIGN STATEMENT FORMS		

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**REASON FOR CONSIDERATION:** With the ongoing pandemic situation, impending reductions in upcoming and future budgets, and a desire to continue providing services while keeping employees and the public safe, many cities are seeking to streamline and digitize several processes to reduce the amount of staff time and in-person interactions necessary to complete certain ongoing and routine tasks. One task that requires a significant amount of staff time and in-person interactions with employees and the public is the administration of the Fair Political Practices Commission's (FPPC) Local Filing Officer Program, which requires the City Clerk to receive and store original paper statements related to public officials' financial interests and the finances of local election campaign committees, and make those statements immediately available to the public for inspection upon request.

The implementation of an electronic filing system for FPPC forms would save an immense amount of staff time spent tracking, scanning, redacting, and filing paper statements; automate the sending of reminders to non-filers; and automatically redact statements for public inspection. The system would also help to facilitate a mostly-online candidate filing process in relation to the campaign statement filings for the upcoming election cycle.

The City Council is requested to consider approval of Agreement No. 20-36 with NetFile to implement an electronic filing system for FPPC Statement of Economic Interests and Campaign Statement forms.

**BACKGROUND:** Pursuant to the provisions of the Political Reform Act and FPPC regulations, the City Clerk is responsible for administering the annual reporting of public officials' Statements of Economic Interests (Form 700), as well as receiving and maintaining campaign disclosure statements related to municipal elections (Forms 410, 460, etc.). With the exception of those designated by state law to file the Form 700 directly with the FPPC, which has its own electronic filing system, this task currently must be done manually and local agency filers are required to submit their completed and signed forms in hard copy. The FPPC has recently issued a press release in wake of the COVID-19 pandemic encouraging filers to file electronically if the option is available, which is not currently possible for the City of Montclair's local filers.

The City has approximately 70 local designated filers (employees, contractors, consultants, and commissioners) who are required to file an annual Form 700 with the City Clerk, as well as several Assuming Office and Leaving Office Form 700 statements throughout the year as those designated filers transition in and out of their respective positions. The City Clerk tracks all filings in a spreadsheet and notifies individuals of their obligation to file through a manual process. Once filed, these documents are maintained in the City Clerk's files.

The NetFile platform enables filers to electronically submit their forms through a web-based system without having to print, sign, and submit a physical copy of their form. The City Clerk will have the ability to easily track filers, generate notifications, manage filing submittals, and generate status reports. The NetFile system is compatible with the FPPC's electronic filing system, so Section 87200 Filers (Council Members, Planning Commissioners, City Manager, and City Attorney) could use the NetFile platform to automatically transmit those filings directly to the FPPC. Another benefit of the system is that it would track the compliance status for ethics training required of all Form 700 filers, ensuring all filers have undertaken ethics training within the past two years.

In addition to the Form 700 module, NetFile offers the Campaign Disclosure filing module, which allows candidate and political campaign committees to file campaign disclosure statements through the NetFile system. The City Council must adopt an ordinance to amend the Montclair Municipal Code in order to allow for the electronic filing of campaign statements, which would be brought to the City Council at a future meeting should adoption of the NetFile system be approved.

**FISCAL IMPACT:** Currently, due to a surge in the number of public agencies looking to transition to electronic filing while facing extreme financial hardship and reduced budgets, NetFile is offering the system free of charge to new subscribers through June 30, 2021, with a continuation of the contract through June 30, 2026 at the locked-in rate of \$5,000 per year. In addition, and at no obligation to the City, NetFile would pay the initial fee of \$1,000 to the FPPC, which is required from every agency prior to implementation of an electronic filing system.

The \$5,000 annual rate was previously offered to the City when staff requested a quote in December, indicating the first year's rate is being waived and not simply re-allocated to future years of the contract through the full term. Either party may terminate the contract upon 30 days' written notice, and if the service is not to the City's satisfaction it can be terminated before payment for the service is required for the following fiscal year. The annual cost of the system could be included in the Fiscal Years 2021-22 through 2025-26 Budgets if the contract is approved and service is not terminated.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 20-36 with NetFile to implement an electronic filing system for Fair Political Practices Commission (FPPC) Statement of Economic Interests and Campaign Statement forms.



2707-A Aurora Ct  
 Mariposa, CA 95338  
 Phone (209) 742-4100

<b>USER INFORMATION</b>	USER NAME City of Montclair			USER NAME – BILL TO SAME		
	ADDRESS 5111 Benito St			ADDRESS		
	CITY Montclair	STATE CA	ZIP 91763	CITY	STATE	ZIP
	PRIMARY CONTACT Andrea M. Phillips, CMC		PHONE # (909) 625-9416	AP CONTACT		PO #
	EMAIL aphillips@cityofmontclair.org		FAX	AP EMAIL		AP PHONE #

<b>SYSTEM INFO &amp; FEATURES</b>	System	Cost per System
	Form 700 E-Filing & Admin System (hosted) and Campaign E-Filing & Admin System (hosted)	COVID-19 Crisis Special Program – No Strings Attached Free service through 6/30/21
	Total for both Systems:	\$5,000/year starting 7/1/21 going forward
	Start Date: immediately	Initial term end date: 6/30/26
	<b>Features of NetFile Systems</b>	
	-Hosted platform provided by NetFile	- Kiosk mode to view unredacted filings in User’s office
	-24/7/365 access for filers and public to use	- Unlimited support and training to User
	-Admin application to manage filers and filings	- E-mail based support to filers
	-Filer application for filers to create and file filings	- Includes Ethics & Sexual Harassment Training Tracking
	-Public viewing portal	- NetFile pays \$1,000 FPPC Paperless application fee.

<b>AUTHORIZATION</b>	USER AGREES TO PAY NETFILE FOR SERVICES IDENTIFIED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT. AGREEMENT TERM IS STARTING ON THE DATE IDENTIFIED ABOVE. YOU ACKNOWLEDGE RECEIPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ACKNOWLEDGE THAT THE AGREEMENT IS NOT BINDING ON NETFILE UNTIL SIGNED BY BOTH PARTIES.	
	COMPANY	NetFile, Inc.
	AUTHORIZED SIGNATURE	AUTHORIZED SIGNATURE
	PRINT NAME	Tom Diebert
	TITLE	Vice President & COO
	DATE	5/6/2020

## Service Agreement Terms and Conditions

1. This Agreement provides to User a hosted electronic filing and administration system developed and maintained by NetFile. The system permits filers authorized by User to electronically file their respective FPPC forms. The FPPC forms that are electronically filed are dependent upon which system(s) that User agrees to pay for. If the User agrees to pay for the Form 700 E-Filing and Administration System, their filers will be able to create and electronically file FPPC Form 700 statements. If the User agrees to pay for the Campaign E-Filing and Administration System, their filers will be able to create and electronically file their Campaign Statements. Both systems are covered by NetFile's unlimited support and training policy. All NetFile systems come with a public viewing portal that automatically displays filings online in redacted form. The Form 700 E-filing system meets the requirements of AB 2062 for paperless filing in CA. The Campaign E-Filing system meets the requirements of AB2452 for paperless filing in CA. Both systems allow for paper filed documents to be stored as an unredacted document and uploaded (when redacted by User) to view on the public portal. NetFile pays for User's FPPC application fees.
2. It is the responsibility of NetFile to securely store User data and maintain backups using industry best practices. All data created by User or User's filers is the property of the User. All applications and their source code are the property of NetFile. It is the responsibility of NetFile to provide secure and safe system access for both User and the User's filers using industry best practices. NetFile's systems are guaranteed to have 99% uptime. Any planned maintenance of NetFile systems will be communicated at least a week in advance of the maintenance occurring.
3. NetFile warrants and represents that it is the owner of or has acquired the rights to use (including derivative rights) the software, technology or otherwise that is required to provide all related materials and services set forth in this Service Agreement, without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such third party rights by NetFile.
4. NetFile further warrants that (i) the NetFile servers will be free of any Harmful Code (as defined below), and (ii) NetFile will not interfere with or disrupt User or the User's filers use of the System. The term "Harmful Code" means any software code with the ability to damage, interfere with, or adversely affect computer programs, data files, or hardware without the consent or intent of the computer user. This definition includes, but is not limited to, self-replacing and self-propagating programming instructions commonly called "viruses," "Trojan horses" and "worms." NetFile agrees to implement reasonable procedures adequate to prevent any software, link or code provided to User hereunder from being contaminated with Harmful Code. If NetFile learns of or suspects the existence of any Harmful Code, NetFile will immediately notify User and make every effort to remove the Harmful Code.
5. NetFile shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers. NetFile shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. NetFile understands and agrees that violation of this clause shall be considered a material breach of the Service Agreement and may result in Service Agreement termination.
6. Subject to the limitations set forth in Section 7 below, NetFile agrees to indemnify, protect, defend, and hold harmless the User, and its employees and filers from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim, arising from NetFile's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the performance of the Services by NetFile, its agents, subcontractors and/or assigns under this Service Agreement.
7. The maximum liability to the User by NetFile and its licensors, if any, under this Service Agreement, or arising out of any claim by the User related to NetFile's services, products, equipment or software for direct damages, whether in contract, tort or otherwise, shall be limited to the total amount of fees received during the last 12 months by NetFile from the User hereunder up to the time the cause of action giving rise to such liability occurred. In no event shall NetFile or its licensors be liable to the User for any indirect, incidental, consequential, or special damages related to the use of NetFile's services, products, equipment or software or NetFile's failure to perform its obligations under this agreement, even if advised of the possibility of such damages, regardless of whether NetFile or its licensors are negligent. Provided, however, that for any peril or exposure insured against under the insurance required, the limits of liability to the User by NetFile shall not be less than the amount of applicable, valid, and collectible insurance set forth in this Agreement.
8. During the term of this Service Agreement, NetFile shall purchase and maintain in full force and effect, at no cost to User insurance policies with respect to employees assigned to the performance of services under this Service Agreement with coverage amounts as follows: Commercial General Liability Insurance of \$2,000,000 each occurrence, \$4,000,000 general aggregate, \$1,000,000 personal injury; Workers' Compensation Insurance of (\$1,000,000) policy limit Illness/Injury by disease, and (\$1,000,000) for each Accident/Bodily Injury.
9. NetFile and its employees, agents and representatives will not, without the prior written consent of User in each instance, use in advertising, publicity or otherwise the name of User or any affiliate of User, or any officer or employee of User, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, agreement or simulation thereof owned by User or its affiliates, nor represent, directly or indirectly, that any product or service provided by NetFile has been approved or endorsed by User, nor refer to the existence of this Service Agreement in press releases, advertising or materials distributed to prospective customers. Notwithstanding the foregoing, NetFile may acknowledge, when asked, that the User is a NetFile client.
10. Either User or NetFile may terminate this Service Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, NetFile shall discontinue further services as of the effective date of termination, and User shall pay NetFile for all Services satisfactorily performed up to such date. Upon termination, NetFile will provide a copy of all data created by User within 10 working days of effective termination date.
11. User accepts any and all liability resulting from the placement of documents scanned by the User that are made available on the Internet for public viewing through the services of NetFile. In no event does NetFile accept liability created by any document scanned into the system by the User.
12. Except as otherwise indicated herein, this Agreement will commence on the start date and remain in effect throughout the Term as stated on the signature page. Upon expiration, this Agreement will automatically renew on a quarterly or annual basis unless User provides NetFile with written notice of its intent to cancel. Any extension will be billed in the same manner as set forth herein.
13. This Agreement shall be governed in accordance with the laws of the State of California, and the Parties submit to the jurisdiction of said state. This Agreement contains the entire agreement and understanding of the parties with respect to Service, Maintenance and Support. There are no representations, inducements, promises or agreements, oral or otherwise, not embodied herein or also embodied in any attached agreement. Any and all prior discussions, negotiations, commitments and understandings relating to Service, Maintenance or Support are merged herein.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	PDT175
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	M. BUTLER
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 20-37 WITH THE SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT FOR PRE-EMPLOYMENT POLYGRAPH SERVICES		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 20-37 with the San Bernardino County Sheriff's Department for pre-employment polygraph services.

Proposed Agreement No. 20-37 has been approved by the City Attorney and is attached for the City Council's review and consideration.

**BACKGROUND:** For many years, the Police Department has contracted with the San Bernardino County Sheriff's Department (Sheriff's Department) to provide pre-employment polygraph examinations for employment candidates. The City regularly utilizes an alternative vendor for pre-employment polygraph examinations, and thus the services of the Sheriff's Department are rarely used. However, should the need arise, polygraph services provided by the Sheriff's Department would be utilized on an as-needed-basis to complete the pre-employment background investigation process in a timely manner. Upon completion of a polygraph examination, a written report would be submitted to the Police Department within five working days. The Sheriff's Department provides fully qualified and licensed polygraphists to perform the examinations.

The current contract period between the Police Department and the Sheriff's Department will end on June 30, 2020. Proposed Agreement No. 20-37 would commence on July 1, 2020, and end on June 30, 2025.

**FISCAL IMPACT:** The Sheriff's Department charges \$188 per examination or the most current rate established by the County of San Bernardino, which is updated July 1 of each year. Should the City Council approve Agreement No. 20-37, costs incurred per examination would be charged to the Administrative Services Budget under the Personnel/Risk Management Program.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 20-37 with the San Bernardino County Sheriff's Department for pre-employment polygraph services.





Contract Number

SAP Number  
N/A

### Sheriff/Coroner/Public Administrator

<b>Department Contract Representative Telephone Number</b>	<u>John Ades, Captain</u> <u>(909) 387-0640</u>
<b>Contractor</b>	<u>City of Montclair, Montclair Police Department (hereinafter called CONTRACTOR)</u>
<b>Contractor Representative Telephone Number</b>	<u>Robert Avels, Chief of Police</u> <u>(909) 448-3600</u>
<b>Contract Term</b>	<u>7/01/2020 – 6/30/2025</u>
<b>Original Contract Amount</b>	<u>\$0</u>
<b>Amendment Amount</b>	<u>\$0</u>
<b>Total Contract Amount</b>	<u>\$0</u>
<b>Cost Center</b>	<u>4430001000</u>

**IT IS HEREBY AGREED AS FOLLOWS:**

**WHEREAS**, CONTRACTOR is a recognized public entity organization and desires to contract for polygraph services; **AND**

**WHEREAS**, COUNTY can provide said service through the Sheriff/Coroner/Public Administrator’s Department (hereinafter referred to as “SHERIFF”);

**NOW, THEREFORE**, the parties mutually agree as follows:

**A. SCOPE OF AGREEMENT**

- A.1** SHERIFF shall administer pre-employment polygraph examinations for CONTRACTOR’s employment applicants, as requested by CONTRACTOR.
- A.2** SHERIFF will supply to CONTRACTOR pre-polygraph questionnaires to be completed by each applicant prior to the polygraph examination.

- A.3** Upon receipt, by SHERIFF, of completed questionnaire(s), each applicant will be scheduled for a pre-examination interview and polygraph examination. If during the examination significant response is noted, the examiner will conduct a post-test interview in an attempt to obtain admissions by applicant. Additional testing may be conducted at that time as needed.
- A.4** Upon completion of the polygraph examination, a written report will be submitted to CONTRACTOR by SHERIFF, within five (5) working days.
- A.5** If audio/video records are required, CONTRACTOR shall provide to SHERIFF all digital video discs (DVD) required for examination purposes.
- A.6** The Sheriff of San Bernardino County, or his duly authorized designee, shall control the assignment of polygraph examiners under this Agreement, at his sole discretion. In all instances, a fully qualified and licensed polygraphist shall be assigned.
- A.7** Normal duty hours of polygraph examiners for purposes of this Agreement shall be Monday through Friday from 7:00 a.m. until 5:00 p.m.

**B. TERM AND TERMINATION**

The term of this Agreement shall be for a period commencing on July 1, 2020, or upon the date of approval by the SHERIFF, whichever is later, and ending on June 30, 2025. Notwithstanding the foregoing, this Agreement may be terminated at any time, with or without cause, by CONTRACTOR or by COUNTY, upon written notice given to the other party at least thirty (30) days prior to the date specified for said termination. In the event of such termination, each party shall fully pay and discharge all obligations in favor of the other, accruing prior to the date of such termination, and each party shall be released from all obligations or performance which would otherwise accrue subsequent to the date of termination. Notwithstanding the foregoing, COUNTY may terminate this Agreement at any time, without advance notice to CONTRACTOR, in the event CONTRACTOR fails to comply with any term of this Agreement.

SHERIFF shall have the authority to exercise the COUNTY's rights and authority under this Agreement, including the right to give notice of termination of this Agreement, at his sole discretion.

**C. FISCAL PROVISIONS**

**C.1** In consideration for services performed by SHERIFF, CONTRACTOR agrees to pay a sum of \$188.00 per examination, or the most current rate established by the COUNTY, updated July 1 of each year. CONTRACTOR will be invoiced monthly for all examinations administered during the prior month. Payment shall be due within forty-five (45) days from the date of each invoice.

**C.2** CANCELLATION POLICY: CONTRACTOR agrees to pay the full cost of any scheduled polygraph examination unless the appointment has been cancelled more than twenty-four (24) hours prior to the scheduled time, by calling the SHERIFF's Specialized Investigations Division at (909) 387-0625.

**D. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**D.1 Mutual Indemnification**

The CONTRACTOR agrees to indemnify, defend, and hold harmless the COUNTY and its authorized officers, employees, agents, and volunteers (Indemnitees) from any and all claims, actions, losses, damages, and/or liability arising from CONTRACTOR's negligent acts, errors or omissions, including, but not limited to, acts, errors, or omissions concerning referral for polygraph testing, obtaining any necessary consent for the procedures to be performed under this Agreement, and/or the use or dissemination of the polygraph, interview, or pre-polygraph questionnaire results, and for any costs or expenses incurred by COUNTY on account of any claim therefor, except where such indemnification is prohibited by law.

The COUNTY agrees to indemnify and hold harmless the CONTRACTOR and its authorized agents, officers, volunteers, and employees against any and all claims or actions arising from COUNTY's negligent acts or omissions in administering the polygraph tests, interviews, and pre-polygraph

questionnaires and for any costs or expenses incurred by CONTRACTOR on account of any claim therefor. Notwithstanding the above indemnity, in no event will the COUNTY be in any way responsible or liable for the acts, errors, or omissions of the persons referred for polygraph testing, nor will COUNTY be in any way responsible or liable for CONTRACTOR's use or dissemination of any data or reports provided to the CONTRACTOR regarding the polygraph testing and/or interviewing or failure to obtain any required consent to the polygraph testing or use or dissemination of test, interview, or questionnaire results.

**D.2 Waiver of Subrogation Rights**

The CONTRACTOR shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the CONTRACTOR and CONTRACTOR'S employees or agents from waiving the right of subrogation prior to a loss or claim. The CONTRACTOR hereby waives all rights of subrogation against the County.

**D.3 Comparative Fault**

In the event that the COUNTY and/or CONTRACTOR are determined to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, the COUNTY and/or CONTRACTOR shall indemnify the other to the extent of its comparative fault.

**D.4 Self-Insurance**

COUNTY and CONTRACTOR are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.

**E. NOTICES**

All written notices provided for in this Agreement or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

San Bernardino County Sheriff's Department  
Bureau of Administration Contracts Unit  
655 East Third Street  
San Bernardino, CA 92415-0061  
Fax Number: (909) 387-3444

City of Montclair  
Montclair Police Department  
4870 Arrow Highway  
Montclair, CA 91763

Notice shall be deemed communicated two (2) COUNTY working days from the time of mailing if mailed as provided in this paragraph.

**F. ENTIRE AGREEMENT**

This Agreement represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promise, negotiations or representations relating to the subject matter of this Agreement not expressly set forth herein are of no force or effect. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Agreement and signs the same of its own free will. Any amendment to this Agreement shall be in writing signed by both parties.

**IN WITNESS WHEREOF**, San Bernardino County and the Contractor have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

Montclair Police Department

San Bernardino County Sheriff's Department

\_\_\_\_\_  
Contractor Authorized Signature

\_\_\_\_\_  
Sheriff-Coroner Authorized Signature

Javier John Dutrey

\_\_\_\_\_  
Name of person signing agreement (print or type)

\_\_\_\_\_  
Name of person signing agreement (print or type)

Mayor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

May 19, 2020

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Andrea M. Phillips, City Clerk



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	MPL050
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	COMMUNITY DEV.
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	M. STAATS
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 20-38, THE SECOND AMENDMENT TO AGREEMENT NO. 17-74 WITH MOULE & POLYZOIDES FOR PREPARATION OF THE MONTCLAIR PLACE DISTRICT SPECIFIC PLAN		

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**REASON FOR CONSIDERATION:** Proposed amendments to the Scope of Work for Professional Services Agreements require City Council approval when the consideration for the work exceeds ten percent of the amount of the Agreement. An amendment to Agreement No. 17-74, a Professional Services Agreement with Moule & Polyzoides, is presented for consideration to provide for completion of certain tasks related to the Montclair Place District Specific Plan.

Proposed Agreement No. 20-38 is attached for City Council consideration. Professional Services Agreement No. 17-74 and Agreement No. 19-82, the First Amendment to Agreement No. 17-74, are also included in the agenda packet for City Council reference.

**BACKGROUND:** As the City Council is aware, staff is working with the owners of Montclair Place on the development of the Montclair Place District Specific Plan. Agreement No. 17-74 authorized Moule & Polyzoides to prepare the Specific Plan for the Montclair Place District Specific Plan in late 2017. In 2019, Agreement No. 19-82 was approved by the City Council extending the term of the Professional Services Agreement with Moule & Polyzoides for completion of the Specific Plan.

The draft Specific Plan document has been reviewed by staff and the owners of Montclair Place. Staff has requested the addition or amendment of several tasks related to completion of the Specific Plan requiring an amendment to the Scope of Work originally presented in Professional Services Agreement No. 17-74. The main revisions to the Scope of Work include the following items based on the review of the draft Specific Plan:

- Recalculate development potential based on the proposed phasing pattern.
- Recalculate development potential based on the street grid adjustments.
- Reformat and update signage standard language and signage section based on staff comments.
- Clarify shop front overlay requirements.
- Update parking standards, parking waiver requirements, tandem parking and incorporate parking garage interior design standards.
- Introduce solid waste standards into document.
- Provide adjustments to Plan following public review of Specific Plan
- Attend adoption hearings.
- Edit final Plan.

The costs associated with revisions to the Scope of Work in the Professional Services Agreement are subject to reimbursement by the owners of Montclair Place. Staff representing the Montclair Place owner requested Moule & Polyzoides bring the proposed changes to the Scope of Work forward at this time for their budgeting purposes.

**FISCAL IMPACT:** Approval of Agreement No. 20-38 by the City Council would create no fiscal impact for the City.

The City would be reimbursed by the owner of Montclair Place, 5060 Montclair Plaza Lane Owner, LLC, for costs associated with Agreement No. 20-38. The cost for the work to be performed by Moule & Polyzoides is estimated to be \$52,960. The estimate includes a contingency amount of \$10,480. The original cost of the Professional Services Agreement with Moule & Polyzoides was \$528,000. Authorization from the City Council is required for contractual changes exceeding ten percent of the original amount of the Agreement.

**RECOMMENDATION:** Staff recommends that the City Council approve Agreement No. 20-38, the Second Amendment to Agreement No. 17-74 with Moule & Polyzoides for preparation of the Montclair Place District Specific Plan.

## AGREEMENT NO. 20-38

### SECOND AMENDMENT TO AGREEMENT NO. 17-74

**THIS SECOND AMENDMENT TO AGREEMENT NO. 17-74** (this “Second Amendment”) is entered into as of May 18, 2020, by and between the City of Montclair, a Municipal Corporation (“City”) and Moule and Polyzoides, Architects and Urbanists, a California Corporation (“Consultant”). In consideration of the mutual covenants and conditions set forth in Agreement No. 17-74 and Agreement No. 19-82 herein, the parties agree as follows:

#### RECITALS

A. The City and Consultant executed an Agreement for Consultant Services (Agreement No. 17-74) on November 5, 2017. Pursuant to the terms of the Agreement Moule & Polyzoides, Architects and Urbanists will provide a Specific Plan document for the area denoted by the City as the Montclair Place District. The Montclair Place District Specific Plan will focus on the preparation of a redevelopment strategy and physical design scheme that transforms the current mall site and the area south of the mall into a walkable, mixed use, compact and diverse open-air town center, and a new downtown for the City of Montclair.

B. The City and Consultant executed the First Amendment to Agreement No 17-74 (Agreement No. 19-82) to extend the term of Agreement No. 17-74 to December 31, 2020.

C. The City and Consultant now propose to amend Agreement No. 17-74 to include the addition of tasks not specified in the original Scope of Services (Exhibit A to Agreement No. 17-74).

**NOW THEREFORE**, the City and Consultant hereby agree as follows:

1. Section 2 of Agreement No. 17-74 shall be amended to read as follows:

2. SERVICES

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

2. Section 5 (A) of Agreement No. 17-74 shall be amended to read as follows:

5. SERVICES

(A) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment set forth in Exhibit A, changes made pursuant to the authority of the City Manager described in Section 5 (b) and Amended Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$605,960 for the total term of the Agreement unless additional payment is approved as provided in the Agreement.

3. Except as provided above, all other terms of Agreement No. 17-74 and Agreement No. 19-82, shall remain in full force and effect as written. All terms used herein and not defined but defined in Agreement Nos. 17-74 and Agreement No. 19-82 shall have the meaning given to such terms therein.

4. This Second Amendment shall become effective upon adoption by the City Council.

**IN WITNESS WHEREOF**, the City and Consultant have executed this First Amendment as of the date set forth above.

CITY  
**CITY OF MONTCLAIR,**  
a Municipal Corporation

CONSULTANT  
**MOULE & POLYZOIDES**  
a California Corporation

\_\_\_\_\_  
Javier "John" Dutrey, Mayor

\_\_\_\_\_  
Stefanos Polyzoides, Exec. Vice President

**ATTEST:**

\_\_\_\_\_  
Andrea M. Phillips, City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Diane E. Robbins, City Attorney

Date: May 18, 2020



**MONTCLAIR PLACE DISTRICT SPECIFIC PLAN**

Additional Services Request

April 27, 2020

Task	Hours					Total Hours	Total Fee
	SP	JGN	VB	Designer			
	\$ 340.00	\$ 180.00	\$ 180.00	\$ 120.00	\$ 120.00		
<b>I. PUBLIC DRAFT SPECIFIC PLAN</b>							
2.1. Recalculated Development Potential for EIR based upon revised street grid.	0.5	8.0	-	-	-	8.5	\$ 1,610
2.2. Calculated Development Potential by phase for EIR.	0.5	4.0	-	-	-	4.5	\$ 890
3. Confirmed that building area numbers by use were consistent with the EIR traffic analysis assumptions.	0.5	4.0	-	-	-	4.5	\$ 890
4. Adjusted the street grid to move small park from southwest area to freeway-adjacent park and adjusted configuration of entry to Rambla from Central Avenue.	0.5	4.0	-	-	-	4.5	\$ 890
5. Recalculated development potential based on aforementioned street grid adjustments.	0.5	4.0	-	-	-	4.5	\$ 890
6. Worked with City Staff to update signage standards language and reformatted signage section to include new signage type diagrams and make signage section more user friendly.	1.0	8.0	-	-	-	9.0	\$ 1,780
7. Incorporated additional City staff comments into MPDSP document, including: a. Adjustments (text and reformatting) to Section 5.1.050 (Panning Compatibility and Architectural Review). b. Clarification of Shopfront Overlay requirements (Section 5.2.010) c. Update and reformatting of Land Use Table (Table 5-2). d. Update of Section 5.4 (Building and Articulation Standards) to make more user-friendly e. Update to Section 5.8.010 (Parking Design), including location of parking space standards, waiver of parking requirements, tandem parking requirements, parking garage interior design standards. f. Introduced new Solid Waste Standards (Section 5.80.030). g. Updated Glossary (Section 5.12).	1.0	40.0	-	-	-	41.0	\$ 7,540

Task	Hours				Total Hours	Total Fee
	SP	JGN	VB	Designer		
8. Projected Hours to finalize Specific Plan text edits for EIR (Week of 04/27/2020)	0.5	30.0	-	-	30.5	\$ 5,570
<b>SUBTOTAL TASK I</b>	<b>5.0</b>	<b>102.0</b>	<b>-</b>	<b>-</b>	<b>107.0</b>	<b>\$ 20,060</b>
<b>II. PUBLIC HEARING DRAFT AND FINAL SPECIFIC PLAN</b>						
1. Adjustments to Plan following Public Review of SP and EIR	1.0	24.0	-	-	25.0	\$ 4,660
2. Adoption Hearings	8.0	8.0	-	-	16.0	\$ 4,160
3. Edits to Final Plan	1.0	16.0	-	-	17.0	\$ 3,220
<b>SUBTOTAL TASK II</b>	<b>10.0</b>	<b>48.0</b>	<b>-</b>	<b>-</b>	<b>58.0</b>	<b>\$ 12,040</b>
<b>III. ADDITIONAL TASKS</b>						
1. Additional hours above February 19, 2020 Additional Services Request	2.0	21.0	-	41.0	64.0	\$ 9,380
2. Contingency	4.0	16.0	8.0	40.0	68.0	\$ 10,480
<b>SUBTOTAL TASK III</b>	<b>6.0</b>	<b>37.0</b>	<b>8.0</b>	<b>81.0</b>	<b>132.0</b>	<b>\$ 19,860</b>
Total Hours	21.0	187.0	8.0	81.0	462.0	
Total Professional Fee	\$ 7,140	\$ 33,660	\$ 1,440	\$ 9,720		\$ 51,960
Total Expenses Allowance (Printing, travel)						\$ 1,000
<b>Total</b>						<b>\$ 52,960</b>



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	MPL050
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	COMMUNITY DEV.
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	M. STAATS
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 20-39, THE SECOND AMENDMENT TO AGREEMENT NO. 17-76 WITH 5060 MONTCLAIR PLAZA LANE OWNER, LLC RELATED TO REIMBURSEMENT OF COSTS ASSOCIATED WITH THE MONTCLAIR PLACE DISTRICT SPECIFIC PLAN		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 20-39, the Second Amendment to Reimbursement Agreement No. 17-76 with 5060 Montclair Plaza Lane Owner, LLC related to costs associated with the Montclair Place District Specific Plan. Costs for consulting services that are incurred by the City related to development of the Montclair Place District Specific Plan are subject to reimbursement pursuant to Reimbursement Agreement No. 17-76 with 5060 Montclair Plaza Lane Owner, LLC (CIM Group).

Additional services from the consultants preparing the draft Montclair Place District Specific Plan and certain environmental documentation for the proposed development have been requested. Reimbursement Agreement No. 17-76 requires amendment to include the costs that will be paid to the City for the additional consulting services.

A copy of proposed Agreement No. 20-39 is attached for consideration by the City Council. Reimbursement Agreement No. 17-76 and Agreement No. 20-27 (the First Amendment) are included in the agenda packet for reference.

**BACKGROUND:** The City and 5060 Montclair Plaza Lane Owner, LLC executed Reimbursement Agreement No. 17-76 on January 18, 2018. Through the Reimbursement Agreement, the City is reimbursed for professional consulting services associated with preparation of a Specific Plan for the Montclair Place area. The proposed Specific Plan includes the area north of the I-10 Freeway and south of Moreno Street between Monte Vista and Central Avenues.

Agreement No. 20-27 was the First Amendment to the Reimbursement Agreement. The First Amendment was approved by the City Council on April 20, 2020 to include the services of David Evans and Associates Inc. The First Amendment authorized costs for analyses to be performed by David Evans and Associates Inc., related to sewer system capacity.

Proposed Agreement No. 20-39 will add provisions for the reimbursement of costs for work to be performed by David Evans and Associates Inc., and for Moule & Polyzoides. The work to be performed by David Evans and Associates, Inc., will be expanded to include some additional modeling and flow attribution. Moule & Polyzoides is charged with development of the Specific Plan document. A draft Specific Plan document is undergoing staff review.

The additional work to be provided by David Evans and Associates Inc., would further define sewer flow generation based on land-use distribution and phasing within the proposed Montclair Place Specific Plan area. The additional analyses would also identify the trigger points for implementing sewer system capacity upgrades and would determine proportional sewer flow attributable to the Montclair Place District Specific Plan and the North Montclair Downtown Specific Plan.

Moule & Polyzoides will provide additional work including changes in the draft specific plan to clarify overlay requirements, update land use tables, update parking requirements, add solid waste standards and update signage standards. Recalculation of developable square feet is also needed based on adjustments to the proposed street grid pattern.

**FISCAL IMPACT:** Approval of Agreement No. 20-39 by the City Council would create no fiscal impact for the City.

The City would be reimbursed by 5060 Plaza Lane Owner, LLC for costs associated with the professional consulting services to be provided by David Evans and Associates Inc., and Moule & Polyzoides. The cost of the additional work to be performed by David Evans and Associates, Inc., is estimated to be \$3,900. The cost of the work to be performed by Moule & Polyzoides is \$52,960 which includes a \$10,480 contingency.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 20-39, the Second Amendment to Agreement No. 17-76 with 5060 Montclair Plaza Lane Owner, LLC related to costs associated with the Montclair Place District Specific Plan.

## AGREEMENT NO. 20-39

### SECOND AMENDMENT TO AGREEMENT NO. 17-76

**THIS SECOND AMENDMENT TO AGREEMENT NO. 17-76** (this “Second Amendment”) is entered into as of May 18, 2020, by and between the City of Montclair, a Municipal Corporation (“City”) and 5060 Montclair Plaza Lane Owner, LLC, a Delaware limited liability company (“Applicant”). In consideration of the mutual covenants and conditions set forth in Agreement No. 17-76 and herein, the parties agree as follows:

#### RECITALS

A. The City and Applicant executed a Reimbursement Agreement on January 8, 2018 regarding reimbursement of fees incurred by the City related to the professional services necessary to develop the Montclair Place District Specific Plan.

B. The City Council approved the First Amendment to Agreement No. 17-76 (Agreement No. 20-27) on April 20, 2020 to retain the services of a fourth consulting firm to provide needed expertise and information necessary for the City’s review process concerning the proposed project.

C. The City and Applicant now propose to amend Agreement No. 17-76 to add tasks to the Scope of Services to be performed by Moule & Polyzoides in preparation of the Montclair Place District Specific Plan and to memorialize costs for additional work approved by the Applicant that was performed by David Evans and Associates.

NOW, the City and Applicant hereby agree as follows:

1. Pursuant to Section 5 of Agreement No. 17-76, the City finds it necessary to amend the Scope of Work for Moule & Polyzoides. Applicant has been supplied the description to the proposed changes to the Scope of Work and provides consent to such changes. Applicant and City also seek to memorialize additional costs related to a change in the Scope of Work performed by David Evans and Associates.

2. Section 5.1 of Agreement No. 17-76 shall be amended to read as follows:

5.1 Estimated Costs; Deposit Account: The City aggregated initial costs for all consultant work were \$983,982. Through the First Amendment to Agreement No. 17-76, the City and Applicant approved supplemental services by Dudek, Moule & Polyzoides and David Evans and Associates in the amount of \$146,110 for an estimated aggregated total of \$1,130,092. In addition to the aggregated costs presented in the First Amendment to Agreement No. 17-76, the City and Applicant now approve supplemental services in the amount of \$3,900 with David Evans and Associates and \$52,960 in supplemental service with Moule & Polyzoides. Total estimated costs for consultant services are estimated at One Million One Hundred Eighty Six Thousand, Nine Hundred and Fifty-Two Dollars (\$1,186,952) (the “**Estimated Costs**”). Notwithstanding the details provided for the Estimated Costs, the Estimated Costs also include Costs expended by the City for the

Project that were incurred prior to the submittal of a formal application, and a portion of the Estimated Costs will be used to reimburse the City for its previous Costs. Within forty-five (45) calendar days after the execution of this Agreement, the Applicant shall submit a deposit in the amount of One Hundred Thousand Fifty Dollars (\$150,000) to cover the Estimated Costs, which amount the City shall separately account for in a Project deposit account (the "**Deposit Account**").

3. Exhibit C-Estimated Costs for Each Consultant are hereby amended and attached to this Second Amendment to Agreement No. 17-76.

4. Except as provided above, all other terms of Agreement No. 17-76 and Agreement No. 20-27, shall remain in full force and effect as written. All terms used herein and not defined but defined in Agreement No. 17-76 shall have the meaning given to such terms therein.

5. This Second Amendment shall become effective upon adoption.

**IN WITNESS WHEREOF**, the City and Consultant have executed this Second Amendment as of the date set forth above.

CITY

**CITY OF MONTCLAIR,**  
a Municipal Corporation

CONSULTANT

**5060 MONTCLAIR PLAZA LANE OWNER LLC**  
a Delaware Limited Liability Company

\_\_\_\_\_  
Javier "John" Dutrey, Mayor

\_\_\_\_\_  
Name:  
Title:

**ATTEST:**

\_\_\_\_\_  
Andrea M. Phillips, City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Diane E. Robbins, City Attorney

Date: May 18, 2020

**EXHIBIT C**

**ESTIMATED COSTS FOR EACH CONSULTANT**

**DUDEK**

Dudek & Associates' current published rates for an initial total estimated amount of \$267,982.54. Amendments to the scope of work are estimated at \$128,410.00. Total estimated amount of consultant agreement is \$396,392.54.

**MOULE & POLYZOIDES ARCHITECTS**

Moule & Polyzoides Architects' current published rates for an initial total estimated amount of \$543,000. The first addition to the scope of work was \$10,000. The total estimated cost for the revised scope of work for the Second Amendment to Agreement No. 17-76 is \$52,960. The total estimated amount of the consultant agreement is \$605,960.

**BEST BEST & KRIEGER LLP**

Standard private rates per attorney (minus 10% discount) for a total estimated amount of \$173,000.

**DAVID EVANS AND ASSOCIATES LLP**

David Evans and Associates rate for the sewer system analyses is a fixed fee of \$7,500 not including expenses. Expenses are not anticipated to exceed \$200.00. The first addition to the scope of work was \$3,900. The total estimated amount of the consultant agreement is \$11,600.

**OTHER CONSULTANTS**

To be determined.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	GRT400
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	N. CASTILLO
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 20-40 WITH BLAIS & ASSOCIATES, INC. FOR GRANT WRITING SERVICES		

CONSIDER AUTHORIZING A \$50,000 APPROPRIATION FROM THE CONTINGENCY RESERVE FUND FOR COSTS RELATED TO AGREEMENT NO. 20-40

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 20-40 with Blais & Associates, Inc. (Blais) for grant writing services and authorization of a \$50,000 appropriation from the Contingency Reserve Fund for costs related to Agreement No. 20-40.

A copy of Agreement No. 20-40 is attached for the City Council's review and consideration.

**BACKGROUND:** On March 4, 2019 City Council awarded a grant writing services contract Agreement No. 19-22 to Blais for \$50,000. Since then, the City has successfully applied for and obtained a 5.1 million dollar grant for the Reeder Ranch Park. Additionally, the City of Montclair applied for the 2019 Caltrans Sustainable Transportation Planning Grant and we are patiently awaiting good news. Based on Blais work, the City is benefitting from a return on investment ratio of \$226 to \$1. For every dollar spent on Blais services, the City has seen a return of two hundred twenty six dollars in grant funding. The City would like to continue to pursue grant funding when possible to address a variety of needs in the community. There are current funding announcements that staff would like to pursue, along with announcements of future opportunities in the coming months. Each of these funding opportunities requires an extraordinary amount of time and specific expertise to complete.

The completion of three comprehensive planning documents, Safe Routes to School Planning grant (SRTS), the Active Transportation Planning grant (ATP), and the Systemic Safety Analysis Report (SSAR), is imminent. The development and completion of these plans opens the door for many other funding opportunities in the future.

Blais services over this past year have been outstanding. City staff went through a vetting process to make sure that Blais is the best value for the City. Therefore, proposals from other firms were not sought, since Blais continues to be the best value for the City. Staff recommends to continue utilizing Blais to provide grant writing services, since it is in the best interest and value of the City and within our purchasing guidelines.

Blais & Associates, Inc. can identify future grant opportunities best suited for individual projects the City is pursuing, in addition to attending funding workshops on behalf of the City. Additionally, Blais & Associates, Inc. can provide technical writing and legislative assistance/government advocacy on behalf of the City. Blais can also provide post grant award Grant Management Services. Because of their prior assistance in securing the Active Transportation Plan funding, Blais & Associates, Inc. are knowledgeable about the City's needs and can assist immediately with grant applications.



It is anticipated that the original appropriation will run out with the pending work. Although there are no guarantees stipulated in the contract for future expenditures or awards, it is anticipated that aggregate expenses for future services will be approximately \$50,000.

**FISCAL IMPACT:** Staff estimates preparing future grant applications will cost \$50,000. It is recommended that the Contingency Reserve Fund be utilized to fund the grant writing services.

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

1. Approve Agreement No. 20-40 with Blais & Associates, Inc. for grant writing services.
2. Authorize a \$50,000 appropriation from the Contingency Reserve Fund for costs related to Agreement No. 20-40.

**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**GRANT WRITING**

THIS AGREEMENT is made and effective as of May 18, 2020, between the City of Montclair, a municipal corporation ("City") and Blais & Associates, Inc. a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on May 18, 2020 and shall remain and continue in effect for a period of 18 months until tasks described herein are completed, but in no event later than June 30, 2023, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

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

3. **PERFORMANCE**

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

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 6 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed

\$50,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 6(c).

7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

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

8. OWNERSHIP OF DOCUMENTS

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

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

## 9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Contractor shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Contractor herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents, and other persons or entities performing work for Contractor.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Contractor shall contractually indemnify, defend and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to Contractor's officers, agents, representative, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, caused by or arising out of all negligent acts or omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents and other persons or entities performing work for Contractor. Indemnification shall include any claim that Contractor, or Contractor's employees or agents, are or may be considered and treated as employees of the City, or are entitled to any employee benefits from City including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties. Contractor's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

(c) Subcontractors and Indemnification. Contractor agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant, or other person or entity involved by, for, with, or on behalf of Contractor in the performance of any aspect of this Agreement. In the event Contractor fails to obtain such indemnity

obligations, Contractor shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Contractor and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Contractor further agrees to pay or cause to be paid to the Indemnified Parties’ benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Contractor or of Contractor’s officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Contractor further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City’s Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Contractor under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Contractor begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Contractor. The indemnity obligations of Contractor shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact the City’s rights to contribution from Contractor, or for the City to dispute Contractor’s refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Contractor shall not be responsible for indemnification for claims or losses caused by the sole negligence or intentional wrongdoing of Indemnified Parties. Further, the indemnity provided shall be interpreted as broadly as permitted under California law and as to agreements between parties and shall if required be reformed to be consistent with those laws to protect and save this provision for the protection of the Indemnified Parties.

(g) The obligations of Contractor under this or any other provision of this Agreement shall not be limited by the provisions of any workers’ compensation act or similar act. The Contractor expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Contractor’s indemnity obligation set forth in this Section 9 shall not be limited by the limits of any policies of insurance required or provided by the Contractor pursuant to this Agreement.

(h) The Contractor’s covenant under this Section 9 shall survive the expiration or termination of this Agreement.

10. INSURANCE

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(a) Types of Required Coverages

Without limiting the indemnity provisions of the Contract, the Contractor shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$3,000,000 per occurrence, and \$5,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$5,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers’ Compensation: Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$3,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement. The insurance policies shall contain, or be endorsed to contain, the following provisions:

(1) Commercial General Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of contractor
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Agreement

Additional Insured Endorsements shall be at least as broad as ISO Forms CG 20 10 11 85; or CG 20 and 10 and CG 2037.

Primary Insurance: This insurance shall be primary and any other insurance, whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement, shall be in excess of, and shall not contribute with, this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(2) Auto Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor.

Primary Insurance: This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(3) Workers' Compensation

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(c) Notice of Cancellation

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.



(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Contractor or the City.

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this Agreement. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this Agreement.

(h) Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Contract. In addition, the City may either immediately terminate this

Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon.

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

(i) Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

(j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Contractor's Agreement with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

(k) Insurance for Subcontractors

Contractor shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractors' policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as good as CG 20 38 04 13.

11. INDEPENDENT CONTRACTOR

(a) Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control and shall not be construed to be employees of City for any purpose, including eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Consultant shall be solely responsible and hold the City harmless for all matters relating to the payment of Consultant's employees, including compliance with Social Security withholdings and all other regulations governing such matters.

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

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

(c) Consultant shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement. Further, Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant's covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

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

To City:	Noel Castillo City Engineer City of Montclair 5111 Benito Montclair, CA 91763
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To Consultant: Neil Blais  
President & Ceo  
Blais & Associates, Inc.  
4017 Moonlight Drive  
Little Elm, TX 75068

17. ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, nor any monies due hereunder, without prior written consent of the City. The City's consent to an assignment of rights under this Agreement shall not release the Contractor from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at assignment or delegation by the Contractor in violation of this Section 17 shall be void and of no legal effect and shall constitute grounds to terminate this Agreement for cause. The Contractor shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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

21. CONTENTS OF REQUEST FOR PROPOSALS

Consultant is bound by the contents of City's Request for Proposal, Exhibit "C" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, Exhibit "D" hereto. In the event of conflict, the

requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Consultant's proposals.

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement. Consultant's covenant under this Section shall survive the expiration or termination of this Agreement.

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and any application of the terms shall remain valid and enforceable under this Agreement or California law.

25. CLAIMS AGAINST CITY

Contractor must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

26. AUTHORITY TO EXECUTE THIS AGREEMENT

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

27. NO THIRD PARTY BENEFICIARIES

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

28. COST OF LITIGATION

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort or both), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

29. AUTHORITY TO EXECUTE THIS AGREEMENT

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

30. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

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

**CITY OF MONTCLAIR**

**Blais & Associates, Inc.**

By: \_\_\_\_\_  
Javier John Dutrey, Mayor

By: \_\_\_\_\_  
President & CEO

Attest:

By: \_\_\_\_\_  
Andrea M. Phillips, City Clerk

By: \_\_\_\_\_  
Founder

Approved as to Form:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Diane E. Robbins, City Attorney

Date: \_\_\_\_\_

**EXHIBIT A****Grant Consulting Services**

**Grant Monitoring/Fact Sheet Distribution/Monthly Grant Call.** B&A will provide monitoring services for all applicable federal, state, regional, and non-profit (project specific) grant funding opportunities and we will alert staff when an announcement is released. This effort includes notification of open grant solicitations utilizing Fact Sheets, coordination with City staff regarding the “go” or “no-go” decision, keeping the Needs Assessment current, and responding to questions from staff. B&A will maintain a Grant Activity Report (GAR) and will provide monthly grant coordination conference calls. The GAR allows you to keep the City Council apprised of grant activities and ensures that everyone is aware of the cost and benefit of the program. Because all of B&A’s full service clients benefit from the research effort, the cost is pro-rated over all of our clients, meaning the City of Montclair gets the benefit at a significantly reduced cost.

**Grant Writing (Task Order Basis).** Providing a budget estimate for grant writing is difficult because it depends on the availability of grant programs open each year, the status and availability of competitive projects, and how the projects will compete within the scoring criteria set by the funding agencies. However, B&A has extensive experience with cities of similar size and has learned through the years the approximate average number of grants most cities will apply for in any given year. This budget is for discussion and planning purposes and B&A will provide not-to-exceed quotes for each grant application the City is interested in pursuing. Once the quote has been approved, B&A will follow our standard process. This includes developing a Checklist and Timeline outlining the roles and responsibilities for each party, turnkey narrative development, scope of work, schedule, budget, maps, figures, visuals, and support letters, etc. B&A will develop an 80% draft application for technical review (scope of work, budget, and other key information). B&A will adjust the application based on the City’s review of the 80% draft and will bring the application to 100% final. City staff will review the final draft, provide feedback, and provide approval to submit. B&A submits all applications, on-time, and in accordance with the program guidelines on behalf of each client.

Based on our experience with cities of similar size, development, and services, we anticipate that the City of Montclair may pursue approximately four (4) grant applications averaging 75 hours or \$7,875 per application. In FY 2019-2020 Montclair pursued two grant applications.

**Grant Management (Task Order Basis).** B&A can assist with post-award grant management including all reporting and close-out efforts. This effort includes working with the City reviewing the grant agreement, developing a master Tracking Table, which documents grant reporting requirements, a schedule for request for reimbursements (or drawdown requests), project reporting requirements, and project close-out, to name a few. B&A will provide the City with an Audit Binder (electronic or hard copy as requested) containing all information needed for the audit process. Grant management is quoted for each assignment, very similar to the quoting process for grant writing, due to the wide variety in reporting requirements among grant programs.



The cost to manage grant and loan programs can vary significantly. For purposes of this proposal, B&A calculated the average cost to manage the nearly 80 grant programs in our current “grant management” portfolio. Many of the grant management assignments are multi-year projects requiring requests for reimbursements and quarterly progress reports for the duration of the performance period and the average annual cost is approximately \$15,000.

NOTE: As discussed in the meeting, post-award administration costs can sometimes be built into the grant proposal so the grant award pays for the cost of administering the program, or the City may use the post-award administrative costs as part of the local match, thereby spreading the costs over the period of performance for the awarded grant. A combination of the two approaches may reduce the fiscal impact to the City.

**EXHIBIT B**



**Standard Rate Sheet – FY 2020-2021**

The table below reflects B&A’s current rates. B&A reserves the right to adjust the rates annually depending on the cost of doing business, typically on the anniversary of contract extensions or renewals.

**Schedule of Costs**

Description	Fee
Staffing/Labor (billed in 15-minute increments)	\$105/hour
Mileage (billed at current IRS rate)	\$0.575/mile
Travel (tolls, airfare, hotel, cab)	Cost – no mark up
Copies/Reprographics	Cost – no mark up
Telephone (long distance only)	Cost – no mark up
Courier Service	Cost – no mark up
Postage or Express Mail	Cost – no mark up

All out-of-pocket expenses are billed at cost without markup. B&A provides monthly itemized invoices and can, at your request, provide receipts for all out-of-pocket expenses.



# CITY COUNCIL AGENDA REPORT

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**DATE:** MAY 18, 2020                      **FILE I.D.:** TRN500  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** PUBLIC WORKS  
**ITEM NO.:** 6    **PREPARER:** N. CASTILLO

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 20-41 WITH SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY FOR PHASE II OF THE MONTCLAIR METROLINK TRANSCENTER ACCESSIBILITY IMPROVEMENT PROJECT

CONSIDER AUTHORIZING A \$230,000 APPROPRIATION FROM REDEVELOPMENT PROJECT AREA NO. II TAX ALLOCATION BONDS FOR COSTS RELATED TO AGREEMENT NO. 20-41

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 20-41 with San Bernardino County Transportation Authority (SBCTA) for Phase II of the Montclair Metrolink Transcenter accessibility Improvement project. SBCTA has obtained grant funding throughout its jurisdiction for access improvements to various transportation facilities, including the Montclair Transcenter. SBCTA and the City wish to enter into a cooperative agreement to design and construct the improvements.

A copy of Agreement No. 20-41 is attached for the City Council's consideration.

**BACKGROUND:** On February 12, 2016 the City executed Cooperative Agreement No. 16-13 for Phase I of the Metrolink Transcenter Accessibility Improvement Project. Construction of Phase I was completed in March of 2019. This agreement will set the roles and responsibilities for Phase II. Under this agreement, the City agrees to contribute towards the project an estimated \$184,140 for Phase II, as outlined in attachment A of the agreement. Staff is requesting authorization of up to \$230,000 as design of the project has not commenced and the costs at time of bid solicitation may increase. SBCTA agrees to take the lead for project management, planning, environmental, design, estimates, right-of-way acquisition, and construction

SBCTA was granted Active Transportation Program Cycle 4 funds for the project. The application covered several station upgrades along the San Bernardino Metrolink line. One of the stations included in the grant application was the Montclair transcenter. Improvements proposed for Montclair include crosswalks, sidewalks, and wayfinding signs on Arrow Highway and Fremont Avenue. Additionally, there will be improvements to the Pacific Electric Trail trailhead that is located west of Monte Vista Avenue.

**FISCAL IMPACT:** The City will waive any and all plan check and permit fees for the project. The funding commitments associated with the project will be funded from the Redevelopment Project Area No. II Tax Allocation Bonds.

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

1. Consider approval of Agreement No. 20-41 with San Bernardino County Transportation Authority for phase II of the Montclair Metrolink Transcenter Accessibility Improvement Project.
2. Consider authorizing a \$230,000 appropriation from the Redevelopment Project Area No. II Tax Allocation Bonds for costs related to Agreement No. 20-41.

**COOPERATIVE AGREEMENT NO. 20-1002314**

**BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**THE CITY OF MONTCLAIR**

**FOR**

**PLANNING AND ENVIRONMENTAL; PLANS, SPECIFICATIONS AND ESTIMATE (PS&E); RIGHT OF WAY (ROW); AND CONSTRUCTION FOR PHASE II OF THE MONTCLAIR METROLINK STATION ACCESSIBILITY IMPROVEMENT PROJECT**

**I. PARTIES AND TERM**

- A. THIS COOPERATIVE AGREEMENT (“AGREEMENT”) is made and entered into by and between the San Bernardino County Transportation Authority (“SBCTA”) and the City of Montclair (“CITY”). SBCTA and CITY may be referred to individually as a “PARTY” and collectively as “PARTIES”.
- B. On February 12, 2016, SBCTA and the City of Montclair executed Cooperative Agreement 15-1001127 for Phase I of the Metrolink Station Accessibility Improvement Project. Construction for Phase I was completed in March 2019.
- C. THIS AGREEMENT is for Phase II of the Metrolink Station Accessibility Improvements and shall terminate upon completion of SBCTA’s management of the planning, environmental, PS&E, ROW and construction phases, or December 31, 2026, whichever is earlier in time, except that the indemnification provisions shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any claims arising out of this AGREEMENT be asserted against one of the PARTIES, the PARTIES agree to extend the fixed termination date of this AGREEMENT, until such time as the claims are settled, dismissed or paid.
- D.

**II. RECITALS**

- A. WHEREAS, Phase I and Phase II improvements in the City of Montclair are depicted in Attachment B. “PHASE I” consists of the Active Transportation Program Cycle 1; “PHASE II” is the Active Transportation Program Cycle 4. ”; and
- B. WHEREAS, SBCTA has completed PHASE I and proposes to construct PHASE II, which includes location-specific improvements to various facilities within the City of Montclair (“PROJECT”); and
- C. WHEREAS, the PARTIES wish to enter into this AGREEMENT to delineate roles, responsibilities, and funding commitments relative to the Project Management, Planning, Environmental, PS&E, ROW and Construction activities of the PROJECT; and
- D. WHEREAS, the CITY has requested SBCTA to complete the implementation of the PROJECT, including project management, engineering design, construction, procurement and management of contractors, and coordination with other cities and agencies; and

- E. WHEREAS, SBCTA has requested the CITY to contribute funding to cover a portion of PHASE II costs for project management and construction, as outlined in Attachment A; and
- F. WHEREAS, the CITY is the PROJECT owner and this AGREEMENT does not transfer ownership; as such, the CITY retains all legal responsibilities associated with ownership, operation and maintenance of the existing and future improvements; and
- G. WHEREAS, SBCTA is the California Environmental Quality Act (CEQA) Lead Agency for the PROJECT and The State of California, Department of Transportation (Caltrans) is the National Environmental Policy Act (NEPA) Lead Agency for the PROJECT.

NOW, THEREFORE, the PARTIES agree to the following:

III. **SBCTA RESPONSIBILITIES:**

SBCTA agrees:

- A. To be the lead agency for Project Management, Planning, Environmental, PS&E, ROW, and Construction work and to diligently undertake and complete, the Planning, Environmental, ROW, PS&E, and Construction work on the PROJECT, including the selection and retention of consultants and contractors. Performance of services under these consultant and/or contractor contracts shall be subject to the technical direction of SBCTA's Director of Project Delivery, or his/her designee, with input and consultation from the CITY.
- B. To contribute towards the Planning, Environmental, PS&E, ROW, and Construction phases of the PHASE II PROJECT, an estimated \$6,131,664. The actual cost of a specific phase or improvements within a specific city may ultimately vary and cause the total project cost to change from the estimate provided in Attachment A. The total project costs remaining after contributions from the CITY and other participating cities, exclusive of the CITY-provided services specified in Part IV of this AGREEMENT, is to be borne solely by SBCTA.
- C. To execute appropriate agreements with other cities and agencies to facilitate and coordinate the completion of the PROJECT.
- D. To invoice CITY within 45 days of execution of this agreement, for City's contribution to the project as noted in the Funding Table, Attachment A.
- E. To certify the California Environmental Quality Act Notice of Exemption (CEQA NOE) and coordinate with Caltrans to certify the National Environmental Policy Act Categorical Exclusion (NEPA CE).
- F. To designate a Project Manager to represent SBCTA through whom all communications between the PARTIES shall be channeled.
- G. To provide the CITY with a proposed project schedule to complete the PROJECT.
- H. To include the CITY in Project Development Team (PDT) meetings and related communications on PROJECT progress as well as to provide the CITY with copies of PDT meeting minutes and action items.
- I. To perform the design and construction in accordance with State and Federal standards and practices.

- J. To include the CITY in design decisions that could impact the CITY's general plans and aesthetic considerations.
- K. To make all PROJECT work performed by SBCTA available for review and comment by CITY. The CITY shall transmit all review comments to the SBCTA within 20 working days after the submittal is received by the CITY. If comments are not provided by the 20th working day, SBCTA will deem the submittals approved by the CITY and shall notify the CITY of its intention to move forward with PROJECT execution. The CITY agrees the submittals may be in the form of plans, specifications, estimates, reports, studies, environmental documents or other PROJECT-related submittals requiring the CITY to review and comment. SBCTA and CITY shall review all comments received regarding the PROJECT and mutually agree upon comments which shall be incorporated into the PROJECT.
- L. To apply for encroachment permits authorizing entry of SBCTA and its consultants and contractors onto CITY right of way to perform investigative activities, including surveying and geotechnical borings, and construction activities required by the PROJECT; and to receive encroachment permits from the CITY at no cost to SBCTA.
- M. To obtain all necessary PROJECT permits, agreements and/or approvals from appropriate agencies; all necessary PROJECT permits, agreements, and/or approvals from the CITY shall be provided at no cost to SBCTA. All mitigation, monitoring, and/or remedial action required by said permits and/or agreements obtained from agencies other than the CITY shall constitute part of the PROJECT cost.
- N. To identify the utilities within the PROJECT area and coordinate with the utility companies to determine their location, and if necessary, their relocation.
- O. To provide written notice to the CITY upon SBCTA's determination that the PROJECT is substantially completed in accordance with the plans and specifications. For the purposes of this AGREEMENT, "substantially completed" shall mean that the PROJECT can be reasonably used for its intended purposes, notwithstanding that certain nonmaterial work remains to be completed, it being understood that SBCTA shall promptly pursue the completion of such nonmaterial work.
- P. Upon completion of construction of the PROJECT, SBCTA shall deliver to the CITY a complete set of redline "as-built" plans of the PROJECT.

IV. **CITY RESPONSIBILITIES:**

CITY agrees:

- A. To designate a responsible staff member to serve as the CITY Project Manager for the PROJECT who will coordinate with SBCTA staff and consultants; who will be CITY's representative in attending the PDT meetings, receiving day-to-day communication and reviewing the PROJECT documents; and who will coordinate with the SBCTA project delivery team for communication with the selected designer. All communication by the CITY Project Manager to the selected designer and contractor will be coordinated with and ultimately given through the SBCTA Project Manager.

- B. To contribute, within 45 days of receiving SBCTA's invoice, towards the PS&E and Construction phases of the PROJECT, an estimated \$184,140.00 for Phase II. The actual cost of a specific phase may ultimately vary and cause the total project cost to change from the estimate provided in Attachment A. The total project costs remaining after contributions from the CITY and other participating cities, exclusive of the CITY-provided services specified in Part IV of this AGREEMENT, is to be borne solely by SBCTA.
- C. To distribute the PROJECT submittals for review and comment by CITY's Public Works Department.
- D. To review and comment, at no cost to the PROJECT, on all PROJECT work performed by SBCTA. CITY shall transmit all review comments to SBCTA within 20 working days after the submittal is received by CITY. If comments are not provided by the 20th working day, SBCTA will deem the submittals approved by CITY and shall notify CITY of its intention to move forward with PROJECT execution. CITY agrees the submittals may be in the form of plans, specifications, estimates, reports, studies, environmental documents or other PROJECT-related submittals requiring CITY review and comment. SBCTA and CITY shall review all comments received regarding the PROJECT and mutually agree to which comments shall be incorporated into the PROJECT.
- E. To provide encroachment permits authorizing entry of SBCTA and its consultants and contractors onto CITY right of way to perform investigative activities, including surveying and geotechnical borings, and construction activities required by the PROJECT at no cost to the PROJECT. If encroachment permits are necessary, the CITY agrees to facilitate coordination with adjacent properties, residences, and businesses impacted.
- F. To provide all CITY permits and waive CITY fees required to construct the PROJECT. SBCTA/contractor(s) shall obtain and pay the fees for all other non-CITY permits required for the construction of the PROJECT.
- G. To prepare CITY staff reports for City Council consideration and SBCTA agrees to provide supporting documentation for the staff reports.
- H. The CITY agrees to exempt SBCTA from plan check fees for submittal reviews.
- I. The CITY agrees it will issue zero fee encroachment, traffic control, and street cut permits or other permits required by the CITY to perform investigative activities required by the PROJECT.
- J. The CITY agrees to provide, at no cost to the PROJECT, existing improvement plans, and standard plans and specifications.

- K. The CITY agrees to provide SBCTA copies of the franchise/utility agreements for the utilities in the PROJECT area for the purposes of determining prior rights and estimating utility relocation costs.
- L. The CITY agrees it will invoke its franchise/utility agreements and have its prior rights imposed on utilities if it is determined utilities are in conflict with the PROJECT and require relocation. The CITY will formally inform the utilities of the CITY's prior rights and request the relocation of utilities pursuant to the franchise/utility agreements.
- M. To accept in writing the PROJECT within thirty (30) days of receipt of written notice from SBCTA that the PROJECT is substantially completed as described by Paragraph "N" in Section III, which acceptance shall not be unreasonably withheld or delayed. Withholding or delaying acceptance because of nonmaterial work remaining to be completing shall be deemed unreasonable.

V. MUTUAL RESPONSIBILITIES:

- A. The scope of the PROJECT is depicted in Attachment B "Conceptual Layout". The scope of Phase II improvements is an "estimate" of improvements and is subject to change. To adhere to available funding limits for Phase II, as shown in Attachment A, certain improvements in Phase II may be eliminated.
- B. The CITY agrees SBCTA is completing project management, environmental, PS&E, ROW, construction management, procurement and oversight of a construction contractor to complete the PROJECT. SBCTA will complete these tasks using SBCTA staff or contracted services.
- C. Neither the CITY nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by SBCTA under or in connection with any work, authority or jurisdiction delegated to SBCTA under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, SBCTA shall fully defend, indemnify and save harmless the CITY, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SBCTA under or in connection with any work, authority or jurisdiction delegated to SBCTA under this AGREEMENT.
- D. Neither SBCTA nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by the CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, the CITY shall fully defend, indemnify and save harmless SBCTA, its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the CITY under or in connection with any work, authority or jurisdiction delegated to the CITY under this AGREEMENT.



- E. This AGREEMENT shall continue in full force and effect through completion and closeout of the PROJECT or on December 31, 2026, whichever is earlier in time. Should any claims arising out of the 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 claims are settled, dismissed or paid.
- F. The CITY is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
- G. SBCTA is a public entity with Professional Liability, General Liability and Automobile Liability policies of \$10,000,000 each and Workers' Compensation insurance coverage in the statutory limits, to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
- H. All PARTIES hereto warrant that they are duly authorized to execute this AGREEMENT on behalf of said PARTIES and that, by so executing this AGREEMENT, the PARTIES hereto are formally bound to this AGREEMENT.
- I. Except on subjects preempted by Federal law, this AGREEMENT shall be governed and construed in accordance with the laws of the State of California. All PARTIES agree to follow all local, state, county and federal laws and ordinances with respect to performance under this AGREEMENT.
- J. The PARTIES agree that each PARTY and any authorized representative, designated in writing to the PARTIES, and upon reasonable notice, shall have the right during normal business hours to examine all PARTIES' financial books and records with respect to this AGREEMENT. The PARTIES agree to retain their books and records for a period of five (5) years from the later of: (a) the date on which this AGREEMENT terminates; or (b) the date on which such book or record was created.
- K. If any clause or provision of this AGREEMENT is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the PARTIES that the remainder of this AGREEMENT shall not be affected but shall remain in full force and effect.
- L. This AGREEMENT can be amended with a written amendment when agreed upon and duly authorized and executed by both PARTIES.
- M. In the event of litigation arising from this AGREEMENT, each PARTY to this AGREEMENT shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs C and D of this section.
- N. This AGREEMENT may be signed in counterparts, each of which shall constitute an original.
- O. Any notice required or authorized to be given hereunder or any other communications between the PARTIES provided for under the terms of this AGREEMENT shall be in writing, unless otherwise provided for herein, and shall be served personally or by reputable courier or by email addressed to the relevant PARTY at the address/fax number stated below.

P. Notice given under or regarding this AGREEMENT shall be deemed given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), email or private courier including overnight delivery services. Notice shall be sent to the respective PARTY at the address indicated below or to any other address as a PARTY may designate from time to time by a notice given in accordance with this paragraph.

a. If to CITY:

City of Montclair  
5111 Benito Street  
Montclair, CA 91763  
Attention: Noel Castillo  
Public Works Director/City Engineer  
Email:

b. If to SBCTA:

San Bernardino County Transportation Authority  
1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410  
Attention: Paula Beauchamp  
Director of Project Delivery and Toll Operations  
Email: pbeauchamp@gosbcta.com

Q. The Recitals stated above are true and correct and are incorporated by this reference into the AGREEMENT.

R. Attachments A and B are attached to and incorporated into this AGREEMENT.

**SIGNATURE PAGE TO  
COOPERATIVE AGREEMENT NO. 20-1002314  
BETWEEN  
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
AND  
CITY OF MONTCLAIR**

**SAN BERNARDINO COUNTY  
TRANSPORTATION SBCTA**

**CITY OF MONTCLAIR**

By: \_\_\_\_\_  
Raymond W. Wolfe  
Executive Director

By: \_\_\_\_\_  
Javier John Dutrey  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Andrea M. Phillips  
City Clerk

APPROVED AS TO FORM AND  
PROCEDURE:

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
Julianna K. Tillquist  
General Counsel

By: \_\_\_\_\_  
Diane E. Robbins  
City Attorney

**ATTACHMENT A  
PROJECT FUNDING TABLE**

*Table 1. Phase II Costs for Montclair Metrolink Station*

<b>Fund</b>	<b>Amount</b>
<b>City of Montclair</b>	
ATP Local Contribution for Design and Construction	\$92,070
Project Management Cost	\$92,070
<b>Total City Contribution</b>	<b>\$184,140</b>
ATP Phase II Project Funding allocated to Montclair	\$828,630
Total Cost	\$1,012,770





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	MAY 18, 2020	<b>FILE I.D.:</b>	PER825
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	ADMIN. SVCS. - PERSONNEL
<b>ITEM NO.:</b>	7	<b>PREPARER:</b>	S. HICKERSON
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 20-42 WITH CPS HR CONSULTING FOR RECRUITMENT TEST RENTAL SERVICES		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of proposed Agreement No. 20-42 with Cooperative Personnel Services dba CPS HR Consulting (CPS) for recruitment test rental services, a copy of which is attached for the City Council's review and consideration.

**BACKGROUND:** The Personnel Division of the Administrative Services Department conducts employment recruitments for the City's personnel staffing vacancies. These recruitments consist of posting job advertisements, reviewing job applications for conformance with minimum and desirable qualifications, coordinating the testing and interview process, and establishing the employment eligibility list.

CPS HR Consulting (CPS) is an agency that provides integrated HR solutions to government agencies and nonprofit organizations, including but not limited to recruitment test products and services. CPS testing and assessment services range from test administration to test rental, and includes rental access to stock tests, as well as creation of semi-stock and custom tests. The City's Personnel Division has used CPS test rental services in the past; however, a new 2-year test rental agreement is required at this time.

Although the City has a substantial bank of recruitment tests, from time to time a recruitment is held for a position that is infrequently recruited for, or infrequently filled, or may be highly specialized, such as in the case of public safety supervisory classifications. These situations may require updating a recruitment test for a number of reasons, for instance, age of the test, changes in a position, or in an effort to deter unfair advantage to those who may have applied in the past and taken the same test. CPS would be used as a resource in a last resort scenario if other test revision options are unsuccessful or are not available (i.e. revising our own test adequately or revising that of another agency). In such a case, using the test rental services by CPS would enhance the City's ability to assess qualified applicants for these positions.

**FISCAL IMPACT:** The fiscal impact would be minimal due because it is likely this service will be rarely used. Test rental consists of a base rate of \$295.00 plus \$9.00 per candidate plus shipping. Funds to cover the cost of this service are included in the Personnel/Risk Management, Personnel Testing section of the Administrative Services Department Fiscal Year 2019-20 Budget.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 20-42 with CPS HR Consulting for test rental services.

Please have the head of your agency (or the person who can enter into contract on your agency's behalf) initial each page as well as sign and date page 3. ***It will be important that the individuals listed as Authorized Representatives receive a copy of the Agreement so they are aware of our policies and procedures and also sign the agreement on the designated area.***

Please scan and email all completed pages of the agreement to [testrental@cpshr.us](mailto:testrental@cpshr.us).

*\*For your convenience you can complete most of the agreement electronically and print for initials and signatures.*

Feel free to contact any of our Test Rental Team members if you have any questions.

## TEST RENTAL AND USE AGREEMENT

**This Test Rental and Use Agreement (“Agreement”) is by and between Cooperative Personnel Services, dba CPS HR Consulting, a California Joint Powers Authority (“CPS HR”) and the Agency or Organization named in the signature block at the end of the Agreement (“Client”).**

- A. Purpose.** This Agreement defines CPS HR test rental, use and security policies and procedures.  
CPS HR develops and rents tests for a number of purposes and in a number of formats (including but not limited to print and electronic media). For that reason, some of the below paragraphs apply under certain circumstances. But, unless specifically limited, each paragraph applies to all testing purposes and formats.
- B. Ownership of CPS HR Tests.**
  - 1. CPS HR owns all rights, title and interest, including copyrights, in all tests provided under this Agreement. They are the property of CPS HR and shall remain the property of CPS HR, even while in the custody of Client.
  - 2. Additionally, tests that have been constructed or modified based on information provided by the client shall not be considered works made for hire, as that term is defined under U.S. Copyright Law. CPS HR shall own all rights, title and interest, including the copyright, in any test it creates for the Client.
  - 3. Ownership of tests specifically developed for a client and of individual test questions supplied by Client, if any, shall be governed by a separate Agreement between CPS HR and Client.
- C. Test Materials.** Test Materials consist of all used and unused test booklets, proctors instructions, proctors manuals, scoring instructions, key sheets, key overlays, keyed booklets, scoring keys, instructions, CDs (for oral tests), and any other materials generated at the test administration, such as completed answer sheets (if applicable), scratch paper, note paper and the like.
- D. Test Security.** CPS HR security standards are designed to protect the mutual interests of all Clients that use Test Materials as well as the interests of applicants who take CPS HR tests. In order that no person may gain special advantage by having improper access to the material, all users must sign this Agreement and agree to fulfill its terms, before the Agreement is effective.
  - 1. Client agrees to take all reasonable and diligent steps to keep CPS HR tests, sample tests, and testing processes confidential and free from unauthorized access and use. This includes, but is not limited to, client agreeing not to divulge, convey, copy in whole or part, duplicate, convert to another format or medium, or otherwise disseminate tests, portions of tests, or test materials.
  - 2. For on-line tests, client further agrees to take all reasonable and diligent steps to prevent any modification to or reverse engineering of the testing software, and any transfer, storage or dissemination of tests or testing software and data on any storage medium or computer server other than those specifically authorized by CPS HR.
  - 3. Should Client suspect any breach of test security, Client agrees to immediately notify CPS HR and immediately take all steps necessary to preserve evidence of or related to the breach, whether physical or electronic.
- E. Test Review, Ordering and Administration.**
  - 1. **Review Copies.** Review of CPS HR tests, regardless of format, is subject to the test security standards.
    - (a) **Test Rental Division:** To help in deciding whether to rent exams, Client may review CPS HR stock tests and other stock test materials free of charge (e.g., stock supplements, structured interview packages, and specialized item sets).
    - (b) **SLPP:** CPS HR does not offer review copies of the Spanish Language Proficiency Program (SLPP) tests. However, for new clients, CPS HR can provide a sample written test booklet showing the different components of the test.
    - (c) **On-line Testing:** To help in deciding whether to utilize on-line testing, Client may review sample on-line tests free of charge.
  - 2. **Ordering Testing Materials and Scheduling of Examinations.**
    - (a) **Test Rental Division and SLPP:**
      - (i) To ensure materials are received in time, Client must notify CPS HR at least 10 business days prior to the test date of the total number of candidates in each job classification to be tested. If orders are placed less than 10-business-days prior to the test date, rush shipment charges may apply and timely delivery cannot be guaranteed.
      - (ii) Client shall rent one test booklet per candidate to be tested. CPS HR shall provide Client with Test Materials including instructions for administering the test, sufficient test booklets and any other material CPS HR deems necessary.
    - (b) **On-line Testing:**
      - (i) To ensure Client equipment is functioning and capable of administering on-line testing, Client must request testing from CPS HR at least 10 business days prior to the test date on the first time Client utilizes on-line testing. After Client has successfully used on-line testing, 5 working days notice is normally sufficient for subsequent testing.
      - (ii) Client recognizes that CPS HR has no control over the functioning of the internet, and any problems with on-line testing due to the failure thereof are not attributable to CPS HR.



**3. After the test date.**

**(a) Test Rental Division and SLPP:**

- (i) Within 10 business days of the test date, Client shall return to CPS HR all Test Materials including all materials provided by CPS HR for the test administration.
- (ii) Client shall not reuse printed tests on the test date or on any other date but shall return Test Materials to CPS HR, whether or not the test was administered.

**(b) On-line Testing:**

- (i) After the scheduled test date(s), CPS HR will suspend access to the on-line test site.
- (ii) Within 10 business days of the test date, Client shall destroy all CPS HR Test Materials including scratch paper and note paper in a way that make the materials unrecoverable.

**F. Billing, Pricing, and Payment.**

1. CPS HR shall bill Client at the billing address provided in Exhibit A, unless notified in writing of a new billing address.
2. The bill shall be derived from the most current applicable Rate Sheet (s): Exhibit B for Test Rental, Exhibit C for SLPP, and Exhibits D. Client acknowledges and understands that the Test Price List(s) are only effective as of the date shown each of them and are subject to change.
3. Client shall be billed for any work done on a canceled or postponed test up to the time CPS HR is notified of such cancellation or postponement. Under certain circumstances, and in CPS HR's sole discretion, credit may be given for work already performed if the test is rescheduled.
4. CPS HR may charge Client for lost or compromised tests if Test Materials are not returned according to 3(a) above. Client shall be liable for the actual cost associated with the creation of a substantially similar replacement test up to a maximum of \$15,000.
5. Client agrees to and shall pay all invoices within thirty (30) days of receipt of invoice.

**G. Candidate Inspections**

**1. Test Materials.**

CANDIDATE INSPECTION OF TEST MATERIALS SHALL **NOT** BE ALLOWED EXCEPT IN CASE OF ANSWER SHEETS AS DESCRIBED BELOW

**2. Answer Sheets.**

- (a) If a candidate files a protest regarding the scoring of his or her test, inspection of a candidate's own answer sheet(s) for the purpose of detecting whether any clerical or other error has been made in the scoring of the answer sheets shall be allowed, upon request by the Client, for a 10-business-day period immediately following the notification to the candidate of test results.
- (b) Candidates are not allowed to review the question booklet during this inspection period.
- (c) Not more than one hour will normally be allowed for answer sheet(s) review. A representative of Client's Personnel or Administrative office shall be present to assure that no changes or marks of any kind are made

by the candidate on the answer sheet(s) or keyed answer sheet.

**H. Client Responsibilities.**

1. Client shall perform all parts of the testing process which are not performed by CPS HR. Client has the responsibility for assuring that the testing process performed by Client conforms to any applicable laws, rules or ordinances, and for the test as a whole. Under the federal Uniform Guidelines on Employee Selection Procedures, the Client as test user is responsible for local validation efforts (e.g., SME review, job analysis studies) and the results of the selection process, and Client understands and acknowledges that it must be prepared to demonstrate that the process is valid and meets other testing standards if it adversely affects groups protected by fair employment laws.
2. Client is responsible for insuring that all persons who handle or have access to Test Materials in any capacity for Client shall do so in compliance with this Agreement, and are trained to handle Test Materials and administer tests before they do so.

**I. Legal Proceedings Involving Test Materials.**

1. If Client receives notice of any administrative or court proceeding involving a CPS HR test, or a request for disclosure of Test Materials, such as a subpoena, or a public records or freedom of information request, Client shall notify CPS HR of such request immediately and well before a response is due.
2. Upon CPS HR request, Client shall maintain the confidentiality of the Test Materials pending the grant or denial of a protective order or the decision of a court or administrative body as to whether the requested Test Materials must be disclosed under the applicable public records statute.
3. Client shall cooperate with CPS HR in seeking any relief necessary to maintain the confidentiality of the Test Materials.
4. Client shall indemnify and hold CPS HR harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorney fees and costs) arising out of or in connection with administration of a test, or with maintaining confidentiality of Test Materials.

**II. Term and Termination of Agreement.**

1. Term. This Agreement is effective beginning the date it is signed by both parties and continuing until June 30, 2022 unless earlier terminated by either party as stated below.
2. Immediate Termination upon Material Breach. Either party may terminate this Agreement immediately upon any material breach by the other party. For purposes of this Agreement, but without limiting the meaning of material breach, any breach of the test security provisions, however minor, shall be considered a material breach. Client understands and acknowledges that immediate termination by CPS HR may result in the withholding or recall of Test Materials.
3. Termination Without Cause. CPS HR and Client may terminate the Agreement without cause upon thirty days written notice to the other party.

4. Return of Test Materials. Upon termination of the Agreement, Client shall immediately return to CPS HR any Test Materials that it possesses.

**K. Miscellaneous.**

1. **Notices.** Any notice to the parties required or permitted under this Agreement shall be given in writing and shall be sent to Client at the address provided for the Principal Signer and to CPS HR at 2450 Del Paso Rd, Ste 220, Sacramento, CA 95834.
2. **Dispute Resolution; Remedies.**
  - (a) In the event of a dispute, the parties may agree to pursue mediation or either binding or nonbinding arbitration to resolve their dispute, under such rules as the parties may agree.
  - (b) Client acknowledges that breach of this Agreement may result in irreparable harm to CPS HR for which damages would be an inadequate remedy and, therefore, in the event of a breach, in addition to its rights and remedies otherwise available by law, CPS HR shall be entitled to seek equitable relief, including injunction.
3. **Attorneys Fees.** If any legal action or arbitration or other proceeding is brought to enforce or construe the term of this Agreement or because of an alleged dispute, breach or default in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys fees and other costs incurred in that action, arbitration or proceeding in addition to any other relief to which it may be entitled.
4. **Waiver.** The failure of any party at any time or times to require performance of any provisions of this Agreement shall in no manner affect its right to

enforce such provision at a later time. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself. No waiver shall be enforceable unless made in writing and signed by the party granting the waiver.

5. **Entire Agreement; Modifications.** This Agreement constitutes the entire Agreement between the parties regarding the subject matter hereof and supersedes all other Agreements, representations and warranties. All modifications and supplements to this Agreement must be in writing and signed by both parties.
6. **Counterparts; Facsimile Signature; Electronic Signature.** This Agreement may be executed in any number of counterparts. If this Agreement or any counterpart is signed and then faxed or e-mailed by PDF or otherwise, the faxed or e-mailed copy bearing the signature shall be as good as the original wet-ink signed copy for all intents and purposes.
7. **Interpretation; Jurisdiction.** This Agreement shall be interpreted and enforced under the laws of the State of California and jurisdiction shall be in Sacramento County, California. The Agreement shall be interpreted in a fair and balanced manner to best preserve its intent, and without bias against the drafter.
8. **Authority to Sign.** The person signing this Agreement on behalf of the Client (the Principal Signer) represents that he or she is the head of the agency or is otherwise duly authorized to sign this Agreement and to bind the Client.

**Principal Signer** By signing below, I represent that the persons(s) listed in Exhibit A and on any attached sheets is/are authorized to handle CPS HR Test Materials on Clients behalf. I affirm that I will handle all CPS HR Test Materials in accordance with the terms of the CPS HR Test Rental Agreement then in effect, and that I will ensure all individuals handling and/or administering tests are properly trained.

**Cooperative Personnel Services dba  
CPS HR Consulting,  
A California Joint Powers Authority**

**Client**

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature (Head of Agency)

Name: Amy Bigone

Name: Javier "John" Dutrey

Title: Test Rental Program Manager

Title: Mayor

Date: \_\_\_\_\_

Email: jdutrey@cityofmontclair.org

Date: May 19, 2020

ATTEST:

\_\_\_\_\_  
Andrea M. Phillips, City Clerk

Client Initials \_\_\_\_\_

## Exhibit A

**Authorized Representative(s)** *(use an additional page if needed)* By signing as an Authorized Representative, I affirm that I will handle all CPS HR Test Materials in accordance with the terms of the CPS HR Test Rental Agreement then in effect.

Name, Title Edward C. Starr, City Manager	Signature
E-mail Address ecstarr@cityofmontclair.org	Phone Number (909) 625-9405

Name, Title Jon Hamilton, Director of Admin. Services & Human Resources	Signature
E-mail Address jhamilton@cityofmontclair.org	Phone Number (909) 625-9406

Name, Title Robert Avels, Executive Director, Office of Public Safety	Signature
E-mail Address ravel@cityofmontclair.org	Phone Number (909) 448-3602

Name, Title Stephanie Hickerson, Personnel Services Coordinator	Signature
E-mail Address shickerson@cityofmontclair.org	Phone Number (909) 625-9407

Name, Title	Signature
E-mail Address	Phone Number

Name, Title	Signature
E-mail Address	Phone Number

### II. Billing Contact

Contact Name and Title Victor Flores, Junior Accountant		
Agency City of Montclair		
Street Address, City, State, Zip 5111 Benito Street, Montclair, CA 91763		
E-Mail vflores@cityofmontclair.org	Phone Number (909) 625-9421	Fax Number (909) 621-1584

### III. Physical Address

Agency / Department Name City of Montclair/Administrative Services, Personnel Division
Street Address, City, State, Zip 5111 Benito Street, Montclair, CA 91763

**Exhibit B**  
**CPS HR Test Rental Division Rates (Effective March 25, 2009 – Subject to Change)**

	<b>STOCK TESTS*</b>	<b>MODULAR TESTS</b>	<b>SEMI-STOCK TESTS</b>	<b>CUSTOM TESTS</b>	<b>AGENCY TESTS</b>
<b>Base Fee (per order) ‡</b>	\$295.00	\$395.00	\$595.00	\$995.00	\$350.00
1-100 Candidates (per candidate)	\$9.00	\$12.00	\$14.00	\$15.00	\$10.00
101-500 Candidates (per candidate)	\$8.50	\$11.00	\$13.00	\$14.00	\$9.50
501+ Candidates (per candidate)	\$8.00	\$10.00	\$12.00	\$13.00	\$9.00
New Item Writing/Entry	N/A	N/A	N/A	\$35 per item	N/A
Pick Up/Handling	5%	5%	5%	5%	5%
Standard Shipping/Handling **	10%	10%	10%	10%	10%
Expedited Shipping/Handling **	15%	15%	15%	15%	15%
Premium Shipping/Handling **	20%	20%	20%	20%	20%
Shipping outside contiguous U.S.	CALL FOR DETAILS				
<b>Entry Law/Fire Candidate Preparation Manuals</b> <b>**Now available Online**</b>			<b>Structured Interview Packages</b>		
Quantity Per Booklet/Candidate Fee 10 - 1000 \$ 3.00 1001+ Call for volume discount details			Base Fee: \$ 595.00 Per Candidate Fee: 1 - 500 \$7.50		

\*CPS HR will apply a credit of \$35.00 for each **fully paid UNOPENED package of Stock Exams** of test booklets on the current **STOCK test order**.

\*\*Standard shipping applies to orders placed at least 10 business days prior to test date. Expedited shipping applies to orders placed less than 10 business days prior to test date. Orders placed 3 or less than business days prior to the test date will be charged at the premium shipping rate.

‡ Base fee includes the following at no additional charge: Proctor's Manual, Scoring Manual, CPS HR Scoring, CPS HR answer sheets and a scoring report.

**SPECIAL SERVICES**

Stock Supplements	\$ 2.00 per book when ordered with a Stock test
Writing Proficiency Exam	\$ 350.00 Base Fee + \$ 15.00 per candidate (Professional Scoring included)
Scoring Keys	Available at no additional charge
Re-Scoring/Hand-Scoring of Answer Sheet	\$ 30.00 (Requested directly by Agency)
Non-specified special services	CALL FOR DETAILS (Billed at applicable hourly rate)

**Test Rental Contact Information:**

CPS HR Consulting  
 Attn: Test Rental Division  
 2450 Del Paso Rd., Ste. 220, Sacramento CA 95834  
 Telephone: 916.263.1800 / Toll Free 866.867.5272  
 Fax: 916.921.6240 / E-mail: [testrental@cps hr.us](mailto:testrental@cps hr.us)

## Exhibit C

### Spanish Language Proficiency Test Rental Division Rates

**Effective March 25, 2009 -- Subject to Change**

	WRITTEN TEST	ORAL TEST
<b>Base Fee (per order)</b>	\$295.00	\$295.00
**Per Booklet Fee	\$9.00	N/A
***Per Tape Scoring Fee	N/A	\$120.00
Expedited Shipping	*20%	*20%
*Orders placed less than two weeks prior to the exam date will incur expedited shipping charges **Per Booklet Fee will be charged for number of books ordered ***Billed for the number rated		

<b>SPECIAL SERVICES</b>	
Faxing/Emailing Test Results	Available at no additional charge
Hand Scoring	\$30.00
Proctoring Services	Call for details/quote
SLPP Extended Use Program	Call for details

## Exhibit D

### CPS HR On-line Skills Test Pricing Schedule Effective August 2015 – Subject to Change

Online Skills Test Pricing Schedule	Single-Subject Test	Two-Subject Test	Each Additional Subject
1 - 25 Candidates (per candidate)	\$20.00	\$30.00	\$6.00
26 - 100 Candidates (per candidate)	\$18.00	\$27.00	\$6.00
101 - 250 Candidates (per candidate)	\$17.00	\$25.50	\$6.00
251 - 1,000 Candidates (per candidate)	\$15.00	\$22.50	\$6.00
1,001+ Candidates (per candidate)	\$12.00	\$18.00	\$6.00

Access 2007 or 2010	Excel 2007 or 2010	Word 2007 or 2010
Advanced Skills	Advanced Skills	Advanced Skills
Basic Skills	Basic Skills	Basic Skills
Standard	Standard	Standard
PowerPoint 2007 or 2010	Windows XP	Digital Literacy 2008
Advanced Skills	Advanced Skills	Computing
Basic Skills	Basic Skills	Internet
Standard	Standard	Software Skills
Other Exams		
Basic Computer Literacy	Typing Test	
Excel Functions	Ten Key Test	
Publisher 2003 - Standard	Data Entry Test - Numeric	
Outlook 2007 or 2010 - Standard	Data Entry Test - Alphanumeric	



# CITY COUNCIL AGENDA REPORT

**DATE:** MAY 18, 2020

**FILE I.D.:** FIN355

**SECTION:** CONSENT - RESOLUTIONS

**DEPT.:** CITY MGR.

**ITEM NO.:** 1

**PREPARER:** E. STARR

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 20-3267 DECLARING A STATE OF FISCAL URGENCY IN THE CITY OF MONTCLAIR AND REQUIRING REDUCTIONS IN GENERAL FUND OPERATING BUDGET EXPENDITURES TO ENSURE SUSTAINABILITY AND VIABILITY OF THE GENERAL FUND OPERATING BUDGET AND CITY OPERATIONS FOR THE BALANCE OF FISCAL YEAR 2019-20 AND THROUGH FISCAL YEAR 2020-21 AND SUBSEQUENT FISCAL YEARS

**REASON FOR CONSIDERATION:** On March 19, 2020, Governor Gavin Newsom issued [Executive Order N-33-20](#) requiring residents of the state of California, excluding [Essential Critical Infrastructure Workers](#), to stay at home for all but essential activities such as grocery shopping, retrieving prescriptions from a pharmacy, or caring for relatives. This stay-at-home order (“SHO”), the first such statewide order issued in the United States, was intended to reduce novel coronavirus 2019 (COVID-19) cases and associated mortalities. The first outbreak of COVID-19, a coronavirus that can produce serious health risks and mortality among various sectors of the population, was first reported in December 2019 in Wuhan, China. Since then, 213 countries and territories around the world have reported a total of [4,417,202 confirmed cases](#) of the coronavirus and [297,324 deaths](#) as of May 13, 2020.

[Executive Order N-33-20](#) effectively stopped most of the retail activity in California, which serves as one of the primary sources of tax revenue for municipalities. The subsequent economic fallout on the state, regional, and local economies has created significant fiscal risk for governments in the state.

Based on the projected negative economic impact on Montclair, Resolution No. 20-3267 declares that a State of Fiscal Urgency exists in the City, requiring reductions in General Fund Operating Budget Expenditures to ensure sustainability and viability of the General Fund Operating Budget and City operations for the balance of Fiscal Year 2019-20 and through Fiscal Year 2020-21 and subsequent fiscal years.

**BACKGROUND:** In December 2019, an outbreak of a new coronavirus, SARS-CoV-2, renamed COVID-19 by the World Health Organization (the “WHO”), was detected in Wuhan, Hubei Province, China. According to the Centers for Disease Control and Prevention (“CDC”), the symptoms of COVID-19 resemble that of influenza, but with serious respiratory implications. Symptoms include fever, chills, headaches, sore throat, body aches, cough, shortness of breath, an inability to arouse, and blue lips or face. Despite this “symptomatic” association to influenza, the severe respiratory symptoms associated with COVID-19 appear to result in a mortality rate that is far greater than that of the flu.

The WHO estimates that worldwide, the flu kills between 250,000 to 500,000 people each year. In the United States, an estimated 10 percent of the population contracts influenza annually — approximately 100,000 are hospitalized and roughly 36,000 die. In contrast, COVID-19-related data demonstrates that in the United States, the novel

coronavirus is having a far greater health impact on the public than does the influenza, and the U.S. COVID-19 mortality estimate is projected to top 100,000 sometime in June 2020 — a pandemic mortality toll that will have transpired in roughly four months.

Recorded deaths associated with COVID-19-related illness are heavily concentrated among the elderly and persons with underlying health conditions, including respiratory ailments, high blood pressure, diabetes, and heart disease. However, there are also deaths and serious health complications reported among children and younger adults contracting COVID-19, including strokes and a toxic-shock-like inflammation that resembles a rare childhood illness called [Kawasaki disease](#), which can lead to inflammation of the blood vessels, especially the coronary arteries.

At the time of this writing, and according to the [Worldometer](#), as of May 13, 2020, COVID-19 has spread to 213 countries [around the world](#), including the United States. Confirmed COVID-19 cases worldwide increased forty-fold from 100,000 reported cases in the first week of March 2020 to more than 4.418 million on May 13, 2020, including an estimated 297,324 reported deaths. The United States has become the world epicenter of COVID-19, with more than 1.428 million confirmed cases as of May 13, 2020, and more than 85,000 deaths. California has reported approximately 68,000 confirmed COVID-19 cases and more than 2,800 deaths.

In the United States, the following conditions have acutely exacerbated the risk of exposure to COVID-19:

- A characteristic of the virus for a high degree of contagion — the coronavirus is highly contagious, and is easily transmitted by direct and indirect contact, including through respiratory droplets and aerosol spray from normal speaking, coughing, breathing, nose-blowing, and sneezing, which is why the wearing of face coverings, which contain the circumference spread of the virus to approximately three feet, should be considered an important, ongoing element of virus suppression;
- A slow ramp-up of per capita testing, including serology testing — while the U.S. has now tested an estimated 10 million Americans, increasing the total number of persons tested on a per capita basis, the testing is only now ramping up and has not been sustained since the onset of the pandemic. It is this slow ramp-up of testing for COVID-19 that has resulted in a high infection and mortality rate in the U.S. Current testing capacity is an important metric; however, a review of per capita testing data compiled by the website [Our World in Data \(https://ourworldindata.org/\)](https://ourworldindata.org/) shows that of countries for which daily figures were available in April 2020, the U.S. per capita testing rate was higher than 40 other countries, but that it remained lower than 10, including Australia, Bahrain, Denmark, Italy, Lithuania, Luxembourg, New Zealand, Qatar, Russia and Great Britain; and
- Transmission of the virus by persons who are both symptomatic and asymptomatic — people who are unaware they have the virus due to an ongoing lack of readily available testing, can circulate through the public and unwittingly pass the virus to others through the normal breathing process, coughing, nose-blowing, sneezing, talking, and close physical contact. The CDC also states that the incubation period for COVID-19 can be anywhere from 2 to 14 days, during which time transmission of the virus to others may occur.



To combat COVID-19, pharmaceutical companies worldwide are scrambling to enter into clinical trials for a COVID-19 vaccine; however, the time required to develop a vaccine or other therapy is unlikely to solve immediate concerns related to (1) reopening the economy; (2) rolling back social distancing and gathering guidance; and (3) the expectation that a re-emergence of the virus would overtax the health system, create a demand-surge for hospitals, and require re-imposition of draconian stay-at-home measures.

Early fears over shortages of ventilators, intensive care unit beds, and protective personal equipment (PPE) have been somewhat ameliorated by the concerted action of various state governors; but at the early onset of the COVID-19 outbreak, supply shortages caused policymakers to seek a number of strategies to (1) bend or flatten the curve of infections; (2) reduce the peak number of infections; and (3) distribute the incidence of infection over an extended period. Governor Newsom's March 19, 2020, [Executive Order N-33-20](#) is emblematic of this policy strategy. [Executive Order N-33-20](#) is intended to protect the public health, safety, and welfare; establish policy and guidance consistency throughout the state to mitigate COVID-19's infection and mortality rate; and take other actions that "bend the curve" and disrupt the spread of the virus. [Executive Order N-33-20](#) also incorporates the Order of the California State Public Health Officer issued on the same date, ordering all individuals living in California to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors as outlined in the [Essential Critical Infrastructure Workers](#) list.

The WHO, CDC, and public health officers throughout the nation were also active in recommending other mitigation measures, including recommending that individuals frequently wash hands, avoid shaking hands, self-isolate when flu-like symptoms are observed, practice social/physical distancing, and avoid unnecessary contact with non-household members.

However, it is the adoption of "stay-at-home", "shelter-in-place", and "safer-at-home" orders that served as the central policy strategy used to induce the social/physical distancing required to prevent the person-to-person spread of COVID-19.

In adopting stay-at-home orders ("SHOs"), California's public health officials believed they could affect COVID-19 cases and mortality through the following assumptions:

- Using SHOs would reduce exposure of uninfected individuals to those who are infected, and thereby reduce the transmission rate of the virus;
- SHOs may affect the COVID-19-related infection and mortality rate because symptomatic and asymptomatic individuals may choose to remain at home and not venture into the public arena; and
- SHOs would reduce demand for nonessential medical procedures such as elective surgery, thereby freeing up healthcare system resources for COVID-19 treatment.

While each of the above assumptions have proved prescient, they are only marginally effective while there is an inadequacy in quality and widespread testing and contact tracing, and a lack of treatment therapies such as a COVID-19 vaccine. An accurate and expansive testing and contact tracing system would provide for the identification of COVID-19 positive individuals and their isolation and the isolation of those they came

into contact with; further, an effective vaccination program would, of course, eliminate the long-term threat of a continuing COVID-19 pandemic.

Instead of an effective means of control and abatement, what has emerged is one of the most serious public health challenges in American history, second, perhaps, only to the 1918 Spanish Influenza Pandemic, where the number of deaths is estimated at approximately 50 million worldwide, including more than 675,000 deaths occurring in the United States. During the 1918 Pandemic, mortality was high in the following groups: (1) people younger than 5 years old; (2) people between 20 to 40 years of age; and (3) those 65 years and older. The high mortality rate among younger, generally healthy people is considered unique to the 1918 Spanish Influenza Pandemic.

There have certainly been other pandemics over the last century, including the 1968-70 flu pandemic caused by an H3N2 strain of the influenza that killed an estimated one million people worldwide, including approximately 100,000 people in the United States according to the CDC. However, for many of history's pandemics, mortality projections and infection results typically occurred over multiple years, and often with some levels of immunity extant in the general population. In contrast, infection and mortality projections for the COVID-19 have been considered a threat to public health for the following reasons: (1) the virus is a new strain; (2) immunities to the virus were not natural to the population; (3) to some degree the early onset of effective containment strategies were lacking; and (4) readily available treatment therapies have not been in play. Furthermore, the coronavirus is achieving high mortality and infection rates in a vastly compressed timeframe, despite the presumed availability of greatly improved medical care.

While the novel coronavirus is a worldwide pandemic that apparently started in China, it is the United States that is now the epicenter of the outbreak. The U.S. has now recorded more than one-fourth of all confirmed cases worldwide and nearly 30 percent of all reported deaths. The reasons for the U.S. as the locus of the outbreak may be many and nuanced, but it is clear that in contrast to many countries throughout the world, the nation's centralized response was weak from the start. Instead, many of the authorities used to combat the public health threat were exercised largely by state and local officials. This lack of centralization resulted in disjointed, and weak to strong, state and local responses. Furthermore, some of the responses have been shaped, driven, and qualified by economics, while others have been shaped, driven and qualified by science.

The primary policy strategy to prevent the spread of COVID-19 has been the SHOs, and the State of California was at the forefront of this policy strategy as the COVID-19 crisis unfolded nationwide.

Governor Newsom's [Executive Order N-33-20](#) required all California residents to remain in their homes for all but essential activities such as purchasing food or medicine, caring for others, exercise, or employment-related travel. While grocery stores, pharmacies, restaurant delivery services, and other essential businesses are permitted to operate, non-essential businesses were ordered closed. In addition, residents were advised to continue social distancing with non-household members, and public gatherings of non-household members were discouraged. Violations of the SHO are subject to a fine and up to 6 months of imprisonment, or both. Enforcement, however, has been typically administered through social pressure and warnings.

In issuing the SHO, Governor Newsom created an important policy rationale that was not simply to “curb” or “bend” the growth of the virus, but to delay or stop any surge and thereby give the healthcare system additional time to obtain PPE, ventilators, hospital beds, and ICU rooms, setup field hospitals, and have medical staff in place to meet a surge in demand for COVID-19-related healthcare.

California’s early adoption of SHO and other Guidance functioned to quickly contain potential clusters of infection. These efforts included closing schools, colleges and universities, asking people to work from home, banning small and large gatherings, and a range of other measures designed to stop and reverse the spread of the coronavirus. By early April 2020, over 90 countries worldwide, half of the world’s population, were on SHOs, increasing to all but a few dozen countries worldwide in early May 2020.

Was California’s early policy decision to issue a statewide SHO effective? According to [covidactnow.org](https://covidactnow.org), a science-based and public health driven website operated by Georgetown University Medical Center, Stanford Medicine Clinical Excellence Research Center and Grand Rounds, Inc. (a private healthcare IT company that connects patients with specialty care in more than 120 countries), as of May 12, 2020, California has achieved a moderate-risk-level for a COVID-19 outbreak based on the following metrics:

1. Infection growth rate. According to the website, on average, each person in California with the virus is infecting 1.04 other people. Because this number is only slightly above 1.0, it means the COVID is growing in the state, but slowly. Most health care experts recommend an infection rate of less than 1.0 for two weeks before reopening.
2. Positive test rate. According to the website, a relatively sizable percentage (5 percent) of COVID tests were positive, which indicates that testing in California is not widespread, and many cases probably go undetected. The WHO recommends a positive test rate of less than 10 percent before reopening. The countries most successful in containing COVID-19 have rates of 3 percent or less.
3. ICU headroom used. According to the website, California has about 7,881 ICU Beds, of which 29 percent (2,285) are occupied by non-COVID patients. Of the remaining 5,596 ICU beds, the website estimates 1,328 are occupied by COVID-19-related patients, or 24 percent of available beds. This suggests there is probably enough capacity to absorb a wave of new COVID infections. While healthcare experts agree surge capacity is critical, there is no recommended benchmark. Assuming current trends and interventions continue, California hospitals are unlikely to become overloaded in the next 3 months. However, evidence suggests that any reopening should happen in a slow and phased fashion. If all restrictions were completely lifted today, [covidactnow.org](https://covidactnow.org) projects that hospitals would overload in early June 2020.

As the nation’s most heavily populated, dynamic state with major ports of entry from Asia, California’s moderate ranking is commendable. The state’s metrics for “infection growth rate” and “ICU headroom used” are at or near the low-risk level, and is directly attributable to decisive action by the state’s leadership. However, the [covidactnow.org](https://covidactnow.org) website reports that California should continue on its current reopening trajectory; and that without the state’s SHO, modeling demonstrates that California may have realized a population infection rate greater than 70 percent, and a mortality rate in excess of 200,000, by mid-August 2020.

Other data also demonstrate a decisively positive outcome for the state based on California's lead in issuing a SHO. State-specific daily counts of COVID-19 cases and deaths from March 12 through April 20, 2020, collected by the CDC, made public by the Kaiser Family Foundation, and reported by the National Bureau of Economic Research (NBER), demonstrate that as of the April 20, 2020 end date of the study a total of 778,328 confirmed COVID-19 cases were reported in the U.S., of which 4.3 percent (33,862) were in California. Additionally, and for the same period, the U.S. reported 37,372 coronavirus-related deaths, of which 3.2 percent (1,223) were attributed to California.

The study period also demonstrated that the average coronavirus case rate in California was 30.8 per 100,000 population; further, the growth rate for the virus during the same subject period (March 12 to April 20) ranked sixth lowest among the 50 states and the District of Columbia. The study also demonstrated that California had the lowest growth rate among the most highly urbanized and densely populated states according to the NBER report.

The NBER analysis also demonstrates that the United States' COVID-19 mortality rate reportedly grew by 8.56 deaths per 100,000 population for the same study period; but in California it grew by less than one half (3.08 per 100,000 population). In terms of the mortality rate, California ranked lowest among the most highly urbanized states.

Based on the above data, it does appear that California's statewide results for its early SHO demonstrates substantial short-term public health benefits. However, there has also been substantial economic cost and job loss associated with the state's early SHO intervention. Further, the relief funds committed by U.S. authorities toward the pandemic, including those contemplated for commitment, represent the largest generational shift of economic resources in history.

Some of the economic impacts and job losses are likely to be short-term, to the extent that they are due to a temporary decrease in consumer spending — an activity that may rebound once the state's SHO is lifted, the infection growth rate is lessened, and daily testing becomes more widespread — this latter objective being central to Governor Newsom's recovery program.

Despite the adverse economic outcomes, there is evidence that government spending packages such as the Coronavirus Aid, Relief, and Economic Security (CARES) Act and CARES Act 2 may blunt the total job loss impact as employees return to work following expiration of the SHO.

In any event, the economic impact of the SHO on Montclair's fiscal profile, at least for the balance of the current fiscal year and into the next fiscal year, is expected to be significant.

- Fiscal Year 2019–20 — Sales Tax. For Fiscal Year 2019–20, Montclair's sales tax revenue is projected to decline from a Fiscal Year 2018–19 actual of \$14,120,931 to a projected \$12,173,060, representing an overall decline of \$1,948,688, or 13.8 percent — this projection assumes exposure for the 90-day sales tax deferral granted by the Governor via [Executive Order N-40-20](#), estimated at \$910,116, will be restored to the City and recorded for Fiscal Year 2019–20. After the 90-day deferral period ends, the taxpayer can enter into a 12-month installment plan that would further defer an estimated \$390,289 through July 31, 2021.

- Fiscal Year 2019-20 — Transactions and Use Tax. For Fiscal Year 2019-20, Montclair’s transactions and use tax revenue is projected to decline from a Fiscal Year 2018-19 actual of \$2,431,378 to a projected \$2,097,000, representing an overall decline of \$334,378, or 13.8 percent.
- Fiscal Year 2020-21 — Sales Tax. For Fiscal Year 2020-21, Montclair’s sales tax revenue is projected to decline from a Fiscal Year 2019-20 projection of \$12,173,060 to a projected \$10,831,810, representing a decline of \$1,341,250, or 11.0 percent — this decline incorporates the loss of sales tax revenues associated with the closure of Nordstrom.
- Fiscal Year 2020-21 — Transactions and Use Tax. For Fiscal Year 2020-21, Montclair’s transactions and use tax revenue is projected to decline from a Fiscal Year 2019-20 projection of \$2,097,000 to a projected \$1,839,000, representing an overall decline of \$258,000, or -12.2 percent.
- Fiscal Year 2020-21 — General Fund Operating and Revenue Budget. Montclair’s General Fund Operating and Revenue Budget is projected to decline from a Fiscal Year 2019-20 year end projection of \$30,641,585 to \$26,799,191 for Fiscal Year 2020-21 — a projected decline of \$3,842,394, or -12.5 percent.
- Fiscal Year 2021-22 — Sales Tax. For Fiscal Year 2021-22, Montclair’s sales tax revenue is presently projected to increase from a Fiscal Year 2020-21 projection of \$10,831,810 to a projected \$13,241,373, representing an increase of \$2,409,563, or 22.2 percent — this increase assumes a novel coronavirus 2019 vaccine has been developed and is available, the COVID-19 pandemic is under control, unemployment has declined significantly, and the local economy has returned to near-normal operation.
- Fiscal Year 2021-22 — Sales Tax. For Fiscal Year 2022-21, Montclair’s transactions and use tax revenue is presently projected to increase from a Fiscal Year 2020-21 projection of \$1,839,000 to a projected \$2,242,000, representing an increase of \$403,000, or 22.0 percent — this increase assumes a novel coronavirus 2019 vaccine has been developed and is available, the COVID-19 pandemic is under control, unemployment has declined significantly, and the local economy has returned to near-normal operation.

Sales and transactions and use tax revenue projections are subject to a variety of factors including (1) when the economy reopens; (2) how many businesses in Montclair remain closed due to economic losses; (3) consumer confidence and orientation to a re-opened economy; (4) changes in consumer shopping habits with further migration towards online purchases; (5) and a fall-winter reappearance and resurgence of the novel coronavirus. Therefore, the estimates provided, while intended to reflect current fiscal trends, can and may be altered during the course of succeeding years as the economy reopens and consumers and businesses respond to the dynamics of reopening and an ongoing or post-COVID-19 world.

In the event the economic effects of the COVID-19 economic shock result in even far greater injury to businesses, including major corporate businesses at Montclair Place, the economic impact to the Montclair community would be catastrophic, mandating major institutional changes to the City’s governmental operations. For this reason, in Fiscal Year 2020-21, City staff intends to return to the City Council on a quarterly basis

to report on the state of the City's budget and fiscal health, and receive direction from the City Council.

In addition to other federal relief legislation addressing the economic impacts of COVID-19, Congress is considering new legislation — *The Health and Economic Recovery Omnibus Emergency Solutions Act of 2020*, or the "HEROES Act" — the HEROES Act includes more than \$3 trillion in aid for local and state governments, hazard pay for health care workers, and direct payments to individuals. If signed into law, the HEROES Act would provide state and local coronavirus relief funds that could be used for COVID-19-related expenses, to replace foregone revenues not projected on January 31, 2020, or to respond to the negative economic impacts of the COVID-19 outbreak.

The HEROES Act currently includes the following state and local government funding components:

#### States — \$500 billion

- \$250 billion awarded within 30 days of enactment to the 50 states and District of Columbia, as follows:
  - \$51 billion divided equally among the 50 states and District of Columbia
  - \$49 billion awarded based on each state's share of COVID-19 cases
  - \$150 billion awarded based on each state's share of population
- \$250 billion awarded by May 3, 2021 to the 50 states and District of Columbia, as follows:
  - \$51 billion divided equally among the 50 states and District of Columbia
  - \$199 billion based on each state's share of unemployed individuals

#### Local governments — \$375 billion

- \$250 billion awarded within 30 days of enactment to all municipalities and counties, as follows:
  - \$125 billion to municipalities using a modified CDBG formula:
    - \$87.5 billion to entitlement municipalities (generally defined as those with populations of at least 50,000)
    - \$37.5 billion to non-entitlement municipalities (generally defined as those with populations of less than 50,000). These funds would be awarded to states, which must make awards to non-entitlement cities based solely on population within 30 days of receipt.
  - \$125 billion to counties based on population
- \$125 billion awarded one year after the date of enactment to all municipalities and counties
  - \$62.5 billion to municipalities using a modified CDBG formula

- \$43.75 billion to entitlement municipalities (generally defined as those with populations of at least 50,000)
- \$18.75 billion to non-entitlement municipalities (generally defined as those with populations of less than 50,000). These funds would be awarded to states, which must make awards to non-entitlement cities based solely on population within 30 days of receipt.
- \$62.5 billion to counties, based on population

In addition, the HEROES Act makes improvements to the CARES Act by expanding the use of funds to cover lost, delayed, or decreased revenue stemming from the COVID-19 public health emergency. Under the Act, the approximately \$15 billion received by the state of California and the nearly \$400 million received by San Bernardino County could be used to offset their respective revenue losses, making it unlikely any of those funds would flow to municipalities if the HEROES Act becomes law.

Based on initial House Committee estimates, Montclair would receive \$12,980,017 in Fiscal Year 2020-21, followed by \$6,490,009 in Fiscal Year 2021-22. Nonetheless, the fate of the HEROES Act, introduced by the House of Representatives, is uncertain. It faces significant opposition in the U.S. Senate. Ahead of the bill's release on May 12, 2020, the Senate Majority Leader indicated the bill would not pass the Senate. The House version differs significantly from a bill introduced last week in the Senate, titled *The Monthly Economic Crisis Support Act*, that is also designed to provide relief funds, including a monthly income stream to millions of Americans. It is likely that the HEROES Act will function as a starting point to move negotiations along to achieve common ground between members of the House and Senate.

Not knowing if, or when, federal or state economic assistance would be available to municipalities, or the total sum of any such assistance, the City of Montclair faces significant fiscal hurdles for the balance of the current fiscal year and certainly into next fiscal year, and perhaps beyond through the next several fiscal years.

Therefore, Resolution No. 20-3267 asks that the City Council declare that a State of Fiscal Urgency exists in the City of Montclair. A state of fiscal urgency is defined by the Resolution as *"a local government declaration stemming from a single, series, or combination of economic, legal, natural, manmade, and/or legislative actions or circumstances, either seen or unforeseen, resulting from natural or uncontrolled conditions, inaction(s), or by intent or purpose beyond control of the local governing body, requiring immediate resolution that may result in reductions in personnel, either by layoff, furlough, hiring freeze or attrition, and/or reductions/delays in providing local government services and/or public works-related projects to achieve an immediate and long-term state of economic stability and balanced operational and revenue budgets as mandated by act of law, and/or required for preservation of the public health, safety, and welfare."*

The declaration of a state of fiscal urgency is not, and should not be interpreted to be, the same as a State of Fiscal Emergency as defined by §53760.5 of the Government Code which reads, in part, that a state of fiscal emergency is a condition of adverse fiscal health *"in which a local public entity may file a petition and exercise powers pursuant to applicable federal bankruptcy law, if the local public entity declares a fiscal emergency and adopts a resolution by a majority vote of the governing board at a noticed public*

*hearing that includes findings that the financial state of the local public entity jeopardizes the health, safety, or well-being of the residents of the local public entity's jurisdiction or service area absent the protections of Chapter 9. The resolution [for a State of Fiscal Emergency] shall make findings that the public entity is or will be unable to pay its obligations within the next 60 days. Prior to a declaration of fiscal emergency and adoption of a resolution, the local public entity shall place an item on the agenda of a noticed public hearing on the fiscal condition of the entity to take public comment."*

By its adoption of Resolution No. 20-3267, the City Council establishes that the following are true and correct fiscal conditions:

1. A state of fiscal urgency exists. An unforeseen and projected decline in public funds has occurred that necessitates immediate action, and that the decline does not stem from decisions of the City, including labor relations decisions, and that the actions proposed in Resolution No. 20-3267 are designed and intended to address the fiscal urgency facing the City of Montclair and Montclair community.
2. By declaring a State of Fiscal Urgency, the City Council is taking reasonable steps to address fiscal matters prior to taking the step to invoke a fiscal emergency. Implicit in the concept of "emergency" is the notion that the public agency must have taken reasonable steps to avoid the emergency. By adoption of Resolution No. 20-3267, the City Council is taking steps to avoid a state of fiscal urgency from migrating to a state of fiscal emergency. Further, the declaration of a state of fiscal urgency is intended to arrest the fiscal slide and provide time to develop strategies for raising revenues, finding ways to provide services more efficiently, considering and examining opportunities for outsourcing services, bargaining with employee organizations, or simply attempting to maintain services with the expectation that the economic outlook will brighten.
3. By adopting Resolution No. 20-3267, the City Council demonstrates a nexus between the state of fiscal urgency and the actions taken and proposed, and that such actions are both reasonable and necessary to serve an important public purpose.
4. By adopting Resolution No. 20-3267, the City Council demonstrates it is and has considered alternatives to an emergency declaration, and that it is weighing all available options at its disposal including raising taxes, consolidating or reducing services, addressing labor and benefit issues, using reserve funds, and using other cost saving measures that are reasonable and necessary to serve an important public purpose.

On March 16, 2020, the City Council recognized the public health danger represented by the COVID-19 crisis and adopted Resolution No. 20-3263 declaring that a local public health emergency exists in the City of Montclair, and that by adoption of Resolution No. 20-3263 established the City's eligibility for federal and state funding assistance.

On March 19, 2020, to protect the public health, to establish consistency throughout the state in order to ensure that California mitigates the impact of COVID-19, and to "bend the curve" and disrupt the spread of the virus, Governor Newsom issued [Executive Order N-33-20](#), incorporating the Order of the California State Public Health Officer



issued on the same date, ordering all individuals living in California to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors as outlined in the [Essential Critical Infrastructure Workers](#) list.

[Executive Order N-33-20](#) also required (1) that individuals leaving their homes to engage in essential services such as grocery shopping, banking, doctor's visits, and picking up prescription medications shall practice social distancing at all times; and (2) that the healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment (PPE), for the providers providing direct care.

**ECONOMIC EFFECTS:** As indicated earlier in this agenda report, there are now clear and obvious indications that California's state and local economies are beginning to demonstrate serious fiscal effects from (1) the COVID-19 pandemic, (2) the shutting down of the state's economy as a public health measure pursuant to Governor Newsom's [Executive Order N-33-20](#), and (3) the series of federal, state, and local orders, proclamations, resolutions, directives, and guidance issued to address the emergency.

This sudden decline in economic output is significantly altering the fiscal outlook for state and local governments, including Montclair, due to consumer consumption declines following nonessential business closures stemming from the SHO, which will likely produce a sharp drop in sales tax revenues that will vary by jurisdiction.

City staff is now of the opinion that uncertainty related to the following reasons necessitate that the City Council address the current loss of revenues resulting from the COVID-19 outbreak and SHO that has shutdown much of the state and local economy by declaring a State of Fiscal Urgency:

- The rapid emergence of the COVID-19 outbreak and the extended period of time the outbreak is projected to last;
- A series of emergency orders, declarations, and Guidance that have effectively shuttered the state's economy;
- The economic downturn resulting from California's declared State of Emergency;
- The announcement from a major retailer such as Nordstrom that it will not reopen its store at Montclair Place;
- The potential collapse of small businesses in the wake of the shutdown of the economy;
- The further acceleration of consumers toward online shopping, vis-à-vis shopping at brick-and-mortar stores;
- The decline in the stock market and its impact on rapidly increasing pension costs;
- A national unemployment rate for April 2020 that reached 14.7 percent — the highest unemployment rate since the Great Depression, and a May 2020 unemployment rate that is projected to equal or exceed the unemployment rate for the Great Depression — estimated to have been roughly 25 percent;

- A California unemployment rate that demonstrates 4.6 million Californians have filed unemployment claims since mid-March 2020, representing 23.3 percent of the state’s current workforce of 19.3 million people, and the number of filings is expected to continue growing;
- The impacts California’s State of Emergency is having on supply chains for all industry sectors;
- The current and delayed impact California’s State of Emergency will have on a range of municipal revenue tax sources including, but not limited to, sales, use, transactions, gas, transient occupancy, and property taxes;
- The potential impact the COVID-19 outbreak may have on the housing, construction, and development sectors;
- Fiscal deficits at all levels of government;
- Decline in consumer confidence — a combination of personal and family health concerns, lack of employment, and household financial impacts; and
- Other economic, societal, political, and legal impacts yet to be discerned as a result of the COVID-19 outbreak and the subsequent governmental actions designed to deal with stopping the spread of the novel coronavirus.

In order to address the fiscal impacts on Montclair stemming from the COVID-19 outbreak and the federal, state, regional and local responses thereto, City staff requests that the City Council consider authorizing the City Manager to take short- and long-term actions required to reduce and minimize potential budget deficits for Fiscal Years 2019-20 and 2020-21, and future fiscal years. These short- and long-term actions may include, but not be limited to, the following:

1. Reduce General Fund Operating Expenditures.
2. Enact and/or recommend reductions in personnel, as necessary, by a combination of layoffs, furloughs and maintenance of vacant positions where appropriate.
3. As appropriate, consolidate service programs, and/or evaluate and recommend service contracting/reductions in service.
4. As necessary, delay project start dates.
5. Maintain program outputs commensurate with organizational/community needs and revenue inflow.
6. Develop economic growth by pursuing the following:
  - a. Complete housing and mixed-use components of the North Montclair Downtown Specific Plan.
  - b. Complete the Montclair Place District Specific Plan.
  - c. Complete the General Plan Update.
  - d. Complete the Arrow Highway Mixed-Used District (AHMUD) Specific Plan.
  - e. Complete the Gold Line to the Montclair Transcenter.
  - f. Pursue development of other areas of the City.

7. Secure funding to meet debt service on the 2014 Issue of Lease Revenue Bonds.
8. Identify, implement and/or present alternatives for revenue enhancement including, but not limited to, the following:
  - a. A voter-approved transactions and use tax district, placed before the voters at the November 3, 2020 municipal election.
  - b. Present for City Council consideration a commercial cannabis ordinance and provisions for a potential tax measure.
  - c. Restoration of the Utility Users Tax to the maximum voter-approved 4.75 percent tax rate.
9. Achieve and maintain Montclair's Unrestricted General Fund Reserve Fund at 25 percent of the General Fund Operating Budget.
10. Evaluate a pension bond measure as a means to reduce the City's annual payment to the California Public Employee Retirement System (CalPERS) — Montclair's annual employer rate and unfunded liability payment has increased from a rate of 0 percent in Fiscal Year 2002-03 to an estimated \$7.050 million in Fiscal Year 2020-21.

The above recommendations are contemplated so that the City of Montclair can achieve the following:

1. Address the projected economic fallout related to the COVID-19 outbreak through Fiscal Year 2020-21, and potentially beyond to succeeding fiscal years;
2. Resolve local fiscal issues related to a projected deficit in Montclair's current and Fiscal Year 2020-21 General Fund Budget;
3. Prevent a long-term structural deficit in Montclair's General Fund related to the COVID-19 outbreak;
4. Maintain the General Fund Unrestricted Fund to cope with an extended fiscal crisis related to the COVID-19 outbreak;
5. Address the uncertainty of potentially spiraling economic impacts related to the shuttering of the state's economy related to the COVID-19 outbreak;
6. Address economic impacts from laws and court cases that are likely to shift much of the economic responsibility related to the contraction of COVID-19 during employment to the employer;
7. Continue and maintain an acceptable level of local municipal services;
8. Maintain commitment to the City's fiduciary responsibilities; and
9. Maintain a commitment to the public health, safety, and welfare.

**FISCAL IMPACT:** Adoption of Resolution No. 20-3267 will direct the City Manager to move forward to implement strategies to lessen and perhaps reverse the economic fallout attributed to the COVID-19 outbreak; minimize deficit-related impacts on the City's annual operating and revenue budgets; preserve the health of the General Fund and General Fund Undesignated Reserve Fund; maintain to the extent practical the City's schedule of programs and services to the community; protect the health, safety and welfare of the community; maintain adequate levels of employee staffing; and otherwise preserve, protect and secure the City of Montclair's fiscal integrity.

**RECOMMENDATION:** City staff recommend the City Council adopt Resolution No. 20-3267 declaring a State of Fiscal Urgency in the City of Montclair and requiring reductions in General Fund Operating Budget expenditures to ensure sustainability and viability of the General Fund Operating Budget and City Operations for the balance of Fiscal Year 2019-20, and through Fiscal Year 2020-21 and subsequent fiscal years.

**RESOLUTION NO. 20-3267**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR DECLARING A STATE OF FISCAL URGENCY IN THE CITY OF MONTCLAIR AND REQUIRING REDUCTIONS IN GENERAL FUND OPERATING BUDGET EXPENDITURES TO ENSURE SUSTAINABILITY AND VIABILITY OF THE GENERAL FUND OPERATING BUDGET AND CITY OPERATIONS FOR THE BALANCE OF FISCAL YEAR 2019-20 AND THROUGH FISCAL YEAR 2020-21 AND SUBSEQUENT FISCAL YEARS**

**WHEREAS**, a pneumonia of unknown cause detected in Wuhan City, Hubei Province, China, was first reported to the World Health Organization (WHO) Country Office in China on December 31, 2019; and

**WHEREAS**, the outbreak was declared a Public Health Emergency of International Concern on January 30, 2020; and

**WHEREAS**, on February 11, 2020, the WHO named the 2019 novel coronavirus disease COVID-19; and

**WHEREAS**, according to the Worldometer (<https://www.worldometers.info/>), as of May 10, 2020, COVID-19 has spread to more than 212 countries around the world, including the United States; and

**WHEREAS**, as of May 10, 2020, confirmed COVID-19 cases worldwide increased forty-fold from 100,000 reported cases in the first week of March to 4,417,202 confirmed cases of the coronavirus and 297,324 deaths as of May 13, 2020; and

**WHEREAS**, the United States has become the epicenter of COVID-19, with more than 1.428 million confirmed cases as of May 13, 2020, and more than 85,000 deaths; and

**WHEREAS**, as of May 13, 2020, California has reported approximately 68,000 confirmed COVID-19 cases and more than 2,800 deaths; and

**WHEREAS**, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency proclaiming a state of emergency to exist in California as a result of the COVID-19 pandemic and ordering actions and interdictions including but not limited to the following:

1. In preparing and responding to COVID-19, all agencies of state government are to comply with the Office of Emergency Services, the State Emergency Plan, the California Department of Public Health and the Emergency Medical Services Authority;
2. All residents of the state are directed to heed the advice of emergency officials with regard to the declared emergency to protect their safety;
3. State agencies shall enter into contracts to procure materials, goods and services to assist local governments, protect the public health and prepare for, contain, and respond to mitigating the effects of, and recovering from, the spread of COVID-19;
4. Applicable provisions of the Government Code and Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address COVID-19;
5. The time limitation for price gouging, as set forth in Penal Code Section 396.(b), in time of an emergency is waived for emergency and medical supplies, and shall be in effect through September 4, 2020;
6. The 30-day time period in the Health and Safety Code Section 101080, within which a local governing authority must renew a local health emergency, is waived for duration of the statewide emergency, and any local emergency proclaimed will remain in effect until each respective local governing authority terminates its local emergency;

7. To support consistent practices statewide, state departments, in coordinating with the Office of Emergency Services, shall update specified guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities;
8. State entities are authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information limited to monitoring, investigation and control and treatment and coordination of care; and

**WHEREAS**, on March 4, 2020, Governor Gavin Newsom issued Executive Order N-25-20 proclaiming a State of Emergency to exist in California as a result of the COVID-19 pandemic and ordering actions and interdictions including but not limited to the following:

1. State and local public health officials may, as deemed necessary in the interest of public health, issue guidance limiting or recommending limitations upon attendance at public assemblies, conferences, or other mass events;
2. All residents are to heed any orders and guidance of state and local public health officials, including social distancing measures;
3. Individuals and businesses impacted by complying with a state or local public health official's imposition or recommendation of social distancing measures related to COVID-19 shall be granted extensions for filing, payment, audits, billing, notices, assessments, claims for refund, and relief from subsequent penalties and interest;
4. The Health and Human Services Agency and Office of Emergency Services shall identify hotels and other places of temporary residence, medical facilities, and other facilities that are suitable for use as places of temporary residence or medical facilities as necessary for quarantining, isolating, or treating individuals who test positive for COVID-19;
5. During the period in which state and local public officials impose or recommend measures to promote social distancing, all requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk, or other personnel of the body, or of the public as a condition of participation in a quorum for a public meeting are waived; and

**WHEREAS**, on March 16, 2020, to protect the public health and slow the rate of transmission of COVID-19, the California Department of Public Health (CDPH) issued its Guidance for the Prevention of COVID-19 Transmission for Gatherings, ordering that the following types of gatherings should be postponed or canceled across the state of California until further guidance is issued by the CDPH:

- All gatherings, including concerts, conferences, and professional, college and school sporting events.
- Gyms, health clubs, and theaters were directed to close.
- Food and beverage establishments were directed to close sit-down seating and rely on takeout and delivery services.
- A "gathering" is defined as any event or convening that brings together people in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, cafeteria, or any other indoor or outdoor space.
- The Gathering Guidance applies to all non-essential professional, social, and community gatherings regardless of their sponsor. Gatherings that do not meet the aforementioned criteria should only be conducted when they are essential — that is, if the activity is essential and could not be postponed or achieved without gathering, meaning that some other means of communication could not be used to conduct the essential function; and

**WHEREAS**, on March 16, 2020, the Montclair City Council adopted Resolution No. 20-3263, declaring that a local public health emergency exists in the City of Montclair, and that by adoption of the Resolution established City eligibility for federal and state funding assistance; and

**WHEREAS**, adoption of Resolution No. 20-3263 provided the City Manager, as Director of Emergency Services, authority to execute the purpose and intent of Resolution No. 20-3263 and carry out the powers and duties provided to him pursuant to Resolution No. 20-3263 and Section 6.08.060 of Chapter 6.08 of Title 6 of the Montclair Municipal Code, and to report as necessary to the Disaster Preparedness Council; and

**WHEREAS**, on March 17, 2020, the County of San Bernardino Public Health Officer issued a Gathering Guidance and Order directing the cancellation, outside of the home, of all gatherings of two or more people within the County — within the home, only members of the household are permitted to gather; and the Order also required the closing of all non-essential businesses, and food and beverage establishments were directed to follow Guidance issued by the CDPH; and

**WHEREAS**, on March 19, 2020, to protect the public health, to establish consistency throughout the state in order to ensure that California mitigates the impact of COVID-19 and to "bend the curve" and disrupt the spread of the virus, Governor Newsom issued Executive Order N-33-20, incorporating the Order of the California State Public Health Officer issued on the same date, ordering all individuals living in California to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors as outlined in the Essential Critical Infrastructure Workers list; and

**WHEREAS**, Executive Order N-33-20 also required (1) that individuals leaving their homes to engage in essential services such as grocery shopping, banking, doctor's visits, and picking up prescription medications shall practice social distancing at all times; and (2) the healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment (PPE), for the providers providing direct care; and

**WHEREAS**, On April 18, City of Montclair Emergency Order No. 04-18-20-1A was issued mandating the wearing of face coverings and ordering essential worker protections, and Emergency Order No. 04-18-20-1A reads, in part:

- a. The State Public Health Officer has designated a list of "Essential Critical Infrastructure Workers" to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. In order to protect the health and safety of medical and non-medical Essential workers, Essential Montclair businesses, as defined by the Essential Critical Infrastructure Workers list, that are open for business in compliance with the Stay at Home Orders issued on March 19 by Governor Newsom (Executive Order N-33-20) and the State Health Officer (Order of the State Public Health Officer) must comply with the following:
  - i. An owner or operator of an Essential business subject to this Order shall require employees to wear non-medical grade face coverings in compliance with this Order.
  - ii. An owner or operator of an Essential business subject to this Order must provide, at the employer's expense, non-medical grade face coverings for their employees.
  - iii. An owner or operator of an Essential business subject to this Order shall refuse admission or service to any individual, customer, client or visitor who fails to wear, or properly wear, a non-medical grade face covering as required by this Order.
  - iv. Employers subject to this Order must permit their employees to wash their hands at least every 30 minutes, and use hand sanitizer with minimum 60% alcohol content, as conditions require and at the discretion of the employee.

- v. Employers subject to this Order must ensure that their employees have access to clean, sanitary restrooms, stocked with all necessary hand cleaning products or sanitizing agents required to observe hand sanitation protocols recommended by the CDC, provided at the employer's expense.
  - vi. Employers subject to this Order must ensure that work places are regularly sanitized, including the regular disinfection of high-touch surfaces, and disinfection of all payment portals, pens, and styluses after each use.
  - vii. Retail businesses subject to this Order shall provide for special, early shopping hours for vulnerable members of the community including, but not limited to, senior citizens 65 years of age or older.
  - viii. Employers subject to this Order must implement and maintain social/physical distancing measures for customers, visitors and employees that limit the number of people who enter into the facility at any one time to ensure that people in the facility can easily maintain, at all times, a minimum 6-foot physical buffer from others, to the extent practicable, between individuals that are not family members or household contacts. Retail businesses subject to this Order may achieve social/physical distancing by requiring customers in interior and exterior lines to be in control of a shopping cart that is placed before each customer, or individuals from the same household, to separate them from the customer ahead of them in line.
- b. For purposes of this Order, all Essential workers who work at businesses or perform services that are exempt under § 1) of Governor Newsom's March 19 Executive Order N-33-20 shall include, but not be limited to, Essential workers identified in Exhibit 1 attached and incorporated into this Emergency Order, and as identified under the State of California's Essential Critical Infrastructure Workers list.
  - c. For purpose of this Order, all non-essential businesses (those businesses and their workers not identified on the State of California's Essential Critical Infrastructure Workers list) are required to be closed and remain closed pursuant to Governor Newsom's March 19 Executive Order N-33-20. Furthermore, non-essential businesses shall remain closed until such time that Governor Newsom and/or the State Public Health Officer, in cooperation with the Health Officer of the County of San Bernardino, rescinds, modifies, extends, or otherwise alters Executive Order N-33-20 and the Order of the State Public Health Officer, and all non-essential workers shall comply and continue to comply with Executive Order N-33-20.
  - d. All businesses subject to this Order shall prominently place, at all building or service yard entry points, appropriate sized signage that reads, "***By Order of the City of Montclair, all persons entering this business are required to wear a face covering over their nose and mouth. Failure to comply is a misdemeanor.***"
  - e. All persons in Montclair shall wear non-medical grade face coverings over their nose and mouth when in public and/or when working in Essential non-medical businesses.
    - i. A non-medical grade face covering is not required for a driver traveling alone or with members of their household, unless a window in the vehicle must be lowered to interact with first responders, food service workers, or others who are not members of their household. When an occupied vehicle is at rest, for any reason, and any window is open and members of the public are within 6-feet of the vehicle, each occupant of the vehicle shall wear a non-medical grade face covering.
    - ii. A non-medical grade face covering is not required for solitary outdoor exercise/activity or for members of the same household



engaging together in outdoor exercise/activity; however, if other non-household members are present and within 6-feet, including approaching individuals, whether known or unknown to each other, a non-medical grade face covering must be worn by each individual.

iii. A non-medical grade face covering may be made of cotton, silk, linen or other material that covers the nose and mouth, and is secured to the head with ties or straps or simply wrapped around the lower face. A non-medical grade face covering may be factory- or home-made, and can be improvised from household items such as scarves (dense and without holes), bandanas, neck gaiters, T-shirts, sweatshirts, and towels.

1) For individual health, safety and hygiene, face coverings should be washed frequently, ideally after each use, or at least daily, with detergent and hot water.

2) If a face covering must be worn multiple times between washings, the wearer of the face covering should wash his/her hands each time the face covering is removed and put back on.

3) Face coverings should be discarded if they no longer cover the nose and mouth, have holes or tears, or have damaged straps.

f. All persons, including non-medical members of the Essential workforce, are discouraged from using PPE, such as N95-type facemasks, for non-medical reasons; and

**WHEREAS**, City of Montclair Emergency Order No. 04-18-20-1A was issued for the following reasons:

a. A non-medical grade face covering worn by a person infected with COVID-19 could act as a physical barrier to prevent dangerous droplets from being transmitted to others or falling on surfaces, and prevent transmission by a person who lacks symptoms and does not know they have a novel coronavirus infection.

b. Wearing a non-medical grade face covering could substantially reduce the chance of a healthy person inhaling the COVID-19 virus from someone who is infected.

c. Non-medical grade face coverings serve as physical reminders that people should not touch their eyes, nose, or mouth.

d. Non-medical grade face coverings serve a social cue, reminding others that we are living through a dangerous pandemic and that we should keep our distance from each other.

e. Non-medical grade face coverings do not guarantee protection from infection, but they may provide protection by filtering the air breathed in and out.

f. Emerging medical data support that the novel coronavirus could spread as an aerosol while people are speaking, coughing or sneezing, and use of a non-medical grade face covering can minimize the aerosol effect.

g. Emerging medical data suggest the spread of the novel coronavirus declines when a majority of the population wear non-medical grade face coverings; and

**WHEREAS**, City of Montclair Emergency Order No. 04-18-20-1A is based on provisions of the non-medical Cloth Face Coverings Guidance issued by the California Department of Public Health on Wednesday, April 1, 2020 and the April 17, 2020 Order of the Health Officer of the County of San Bernardino for the Control of COVID-19 and is not a substitute for existing Guidance, including the following:

- a. Social/Physical Distancing. To fight the spread of COVID-19, the CDC issued a Social Distancing Guidance. Proper social distancing requires a 6-foot separation between persons other than household members. To be effective, social/physical distancing requires a separation of at least 6-feet between people, no group gatherings, and avoid crowds.
- b. Gathering Guidance. On March 16, the California Department of Public Health (CDPH) issued Guidance for the Prevention of COVID-19 Transmission for Gatherings, followed on March 17 by a Guidance and Order from the County of San Bernardino Public Health Officer ordering the cancellation, outside of the home, of all gatherings of two or more people within the County (within the home, only members of the household are permitted to gather). The Order also required the closing of all non-essential businesses, and food and beverage establishments were directed to follow Guidance issued by the CDPH.
- c. Handwashing & Protection. The CDC issued a series of Handwashing & Protection Guidance recommendations to educate the public on (1) the spread of COVID-19, (2) proper handwashing, (3) avoiding close contact with others who are sick, (4) using face coverings, (5) covering coughs and sneezes, and (5) cleaning and disinfecting.
  - I. The CDC recommends avoiding exposure as the best way to avoid illness. The novel coronavirus is thought to spread mainly from person-to-person contact who are within 6-feet; and through respiratory droplets produced when an infected person talks, speaks, or sneezes. Medical evidence suggests the virus can be spread from people who do not demonstrate symptoms.
  - II. The CDC encourages frequent (at least every 30 minutes) and vigorous handwashing for at least 20 seconds, using soap and warm water to destroy the fatty layer that encases each novel coronavirus molecule. Handwashing should occur each time after using the restroom; before and after eating; after blowing the nose, coughing or sneezing; after removing or putting on a face covering; and before and after touching the face, nose or eye area. If soap and water are not available, a hand sanitizer with at least 60% alcohol should be used to cleanse hands.
  - III. The CDC recommends that unless an individual is a health care provider or first responder on a medical emergency call, avoid direct contact with people who are sick. An individual exposed to a person suspected of having COVID-19 or who is diagnosed with COVID-19, should self-quarantine for 14 days and seek the advice and assistance of a health care provider.
  - IV. On April 1, 2020, The California Department of Public Health issued a non-medical Cloth Face Coverings Guidance, and the CDC offers instructions on how to use face covering to stop the spread of COVID-19.
  - V. The CDC recommends cleaning and disinfecting frequently touched objects and surfaces using EPA-registered household disinfectants. Surfaces include tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, and sinks; and

**WHEREAS**, there are clear and obvious indications that California's state and local economies are beginning to demonstrate serious fiscal effects from the COVID-19 pandemic and the shutting down of the state's economy as a public health measure pursuant to Governor Newsom's Executive Order N-33-20; and

**WHEREAS**, since the issuance of Executive Order N-33-20, a series of federal, state and local orders, proclamations, resolutions, directives and guidance have been issued to address the following:

- Limiting the spread of the novel coronavirus;

- Provide relief to unemployed workers, small and large businesses, hospitals, and governments;
- Protect individuals, property owners, renters and taxpayers;
- Defer payment of taxes, mortgages, utilities, and other monthly expenses by individuals and businesses;
- Bolster businesses, and fend off economic collapse stemming from the economic and social effects created by the COVID-19 outbreak; and

**WHEREAS**, the sudden decline in economic output that followed the federal, state and local response to the COVID-19 outbreak has significantly altered the fiscal outlook for state and local governments; and

**WHEREAS**, a sizable share of the nation's economic output derives from state and local government activity, and state and local governments spent \$3.7 trillion in 2017, or 19 percent of gross domestic product (GDP); and

**WHEREAS**, as significant as state and local government economic activity has been, early evidence suggests that the COVID-19 economic shock will have a significant impact on state and local budgets due to consumer consumption declines following nonessential business closures stemming from Governor Newsom's stay-at-home order, which will likely produce a sharp drop in sales tax revenues that will vary by jurisdiction throughout the state; and

**WHEREAS**, local governments will be affected differently by the COVID-19 pandemic, based on each community's type of economic base, with revenue impacts to be felt most severely in cities that host or rely on the following sectors:

- Tourism based economies (tourist destinations, ski resorts, beach resorts, golf resorts, sports tournaments). Primary tax revenues affected: Hotel Occupancy Tax, Sales and Use Tax, Transactions and Use Tax, and Business Operations Tax;
- Entertainment and sports, theater, music, movie and TV production. Primary tax revenues affected: Sales and Use Tax, Transactions and Use Tax, and Business Operations Tax;
- Casinos. Primary tax revenues affected: Business Operations Tax, Sales and Use Tax, and Transactions and Use Tax;
- Oil industry – refineries and other related businesses. Primary tax revenues affected: Business Operations Tax;
- Bars, restaurants. Primary tax revenues affected: Sales and Use Tax, Transactions and Use Tax, and Business Operations Tax;
- Traditional retail (apparel, autos, appliances). Primary tax revenues affected: Sales and Use Tax, Transactions and Use Tax, and Business Operations Tax;
- Transportation – service stations / fuel. Primary tax revenues affected: Sales and Use Tax, Transactions and Use Tax, and State fuel excise tax (state Local Streets and Roads allocations – HUTA and RMRA);
- Major airports. Primary tax revenues affected: Sales and Use Tax, Transactions and Use Tax, State fuel excise tax (state Local Streets and Roads allocations – HUTA and RMRA), and airport-related taxes and fees; and

**WHEREAS**, some municipal revenue sources have a more direct and immediate relationship to the economy than do others, and can be adversely affected by an emergency shutdown of economic activity, and these revenue sources include, but are not limited to, the following:

- Property Tax. The property tax will generate an estimated \$13 billion for California local governments in FY2019-20. Because of the way taxable property is assessed, due and paid, property tax revenues are slow to respond to changes in economic conditions. To the extent that the

COVID-19 pandemic has an immediate effect on property values, the impact is not expected to show up significantly in revenue allocations until Fiscal Year 2021-22; and even then, the effects may be mild when it comes to the taxable value of property.

- Pursuant to Executive Order N-40-20, issued May 6, 2020, Governor Newsom provided tax, regulatory and licensing extensions for businesses. The executive order allows the California Department of Tax and Fee Administration (CDTFA) to offer a 90-day extension for tax returns and tax payments for all businesses filing a return for less than \$1 million in taxes. Small businesses will have until the end of July to file their first-quarter returns.
  - The Order gives counties the right to waive late penalties, fees and interest for many home and small-business owners who can't pay their property taxes because of the coronavirus.
  - The Order extends through May 6, 2021, and covers not just the second half of 2020's property taxes that were due April 10, 2020, but also the first and second payment for 2020-21 taxes due December 10, 2020 and April 10, 2021. A state law currently lets county tax collectors waive late penalties for an individual taxpayer if a late payment is due to reasonable cause and circumstances beyond the taxpayer's control.
  - Property owners would have to apply for a waiver and demonstrate that they suffered economic hardship due to the COVID-19 pandemic, or any local, state, or federal government response to COVID-19. To qualify, the tax due must be on a "real property occupied by the taxpayer" or "real property owned and operated by a taxpayer that qualifies as a small business under the Small Business Administration's Regulations, Code of Federal Regulations, Title 13, section 121.201." What qualifies as a small business under this section varies, depending on the type of small business. The waiver does not apply to any taxes that were already delinquent March 4, 2020, nor does it apply to property taxes paid through an impound account.
  - The Order does not say the property must be the homeowner's primary residence.
  - The Order does not waive taxes, only the penalty in certain cases. Unpaid taxes still would be owed.
  - It is unclear if the Order applies to the tax due August 31, 2020, on unsecured business property — such as computers and office equipment — owned by a small business. The Order first says it applies to taxes on "property on the secured or unsecured roll," but then says it must be "real property owned and operated by" a small business.
  - Additionally, the Order extends the statute of limitations to file a claim for refund by 60 days to accommodate tax and fee payers.
- Based on the language of the Order, it is likely that counties will see an increase in property tax appeals requesting a reduction in property tax rates. Lowering property tax rates has short - and long-term implications for revenue flow.
- Like most California counties, San Bernardino County operates under the Teeter Plan (1949), which provides California counties an alternative method for allocating delinquent property tax revenues. Using the accrual method of accounting, counties operating under the Teeter plan allocate property tax revenues

based on the total amount of property taxes billed, but not yet collected. The Teeter Plan allows counties to finance property tax receipts for local agencies by borrowing money to advance cash to each taxing jurisdiction in an amount equal to the year's delinquent property taxes. In exchange, the counties receive the penalties and interest on the delinquent taxes when collected. For counties not under the Teeter Plan, interest and penalties are allocated to all agencies based on their pro rata share of the delinquent property tax. However, the county retains the penalty on delinquent property taxes if the delinquency is cleared up within the same fiscal year.

- Sales/Use/Transactions Tax. Sales and Use Taxes, including transactions and use taxes, are estimated to have generated about \$8 billion for California's local governments in 2019-20. The COVID-19 emergency's effect on a municipality will depend on the sales tax's percentage share of general fund revenues for the local economy. For the average California city, sales tax revenue represents an estimated 7 percent of total city revenues, or 20 percent of general fund revenues. In recent fiscal years, sales and use tax and transactions and use tax revenue represents approximately 54 percent of Montclair's Total General Fund Revenue Budget.

The effects of the pandemic and related economic conditions are having an immediate effect on sales tax revenues, especially for the following categories:

- Fuel/Service Stations. Taxable sales of motor vehicle fuel and related products have fallen dramatically due to the stay-at-home order. The service station category typically represents approximately 8 percent of statewide sales tax revenue.
- Auto Sales. Auto sales have fallen significantly. Most auto dealerships have closed their dealership floor, relying exclusively on internet sales. Due to a trending shift to used auto sales, new auto sales were already down prior to the COVID-19 emergency. Auto sales represent approximately 13 percent of statewide sales tax revenue.
- Restaurants v. Groceries. The shift from dining out to grocery purchases will severely impact sales tax revenues, as restaurant dining is taxable and grocery sales are not. Restaurants and bars represent approximately 10 percent of statewide sales tax revenue.
- Decline in Retail Sales. A decline in consumer confidence is expected to negatively impact retail sales well into Fiscal Year 2020-21, although online sales may abate some of the decline.
- Hotel Tax/Transient Occupancy Tax. The Transient Occupancy Tax (TOT) provides an estimated \$3 billion annually to local governments statewide. Typically the TOT comprises 5 to 10 percent of general revenues for tourism oriented cities. TOT revenues are being hit hard by the pandemic event, although some tourism cities have already had their "high season" outside the March through June period.
- Business License Tax. The Business License Tax generates an estimated \$2 billion statewide for local governments, and represents from 2 to 8 percent of general fund revenues. Like sales tax revenue, business tax revenue amounts and characteristics vary greatly among communities with different economies. Some cities get large revenues from some specific industries; e.g., casinos and refineries. Most business tax ordinances are structured as a base flat tax with a sliding scale based on gross business receipts reported in the prior year; consequently, the effects of the mid-2020 COVID-19 event is not expected to show up until Fiscal Year 2021-22.

- Parking Meter Revenues. Parking meter revenues are a relatively small portion of general revenues in cities that have metered parking. However, the effects on these revenues is immediate and severe due to tourism and workforce impacts.
- Parking Tax. Only 18 California cities have parking taxes – cities near major airports or tourist destinations. However, the effects on these revenues is immediate and severe due to tourism and workforce impacts.
- Admissions Tax. Only fifteen California cities have an admissions tax due to their unique local economies. However, the effects on these revenues is immediate and severe due to tourism and workforce impacts.
- Other local revenues: Utility User Taxes, Utility Fees, Parcel Taxes, Benefit Assessments, and other add-on taxes are unlikely to be affected as significantly by the near-term impacts of the COVID-19 emergency; and

**WHEREAS**, on March 30, 2020, Governor Gavin Newsom issued Executive Order N-40-20, expanding sales tax relief for small business taxpayers; and

**WHEREAS**, pursuant to Executive Order N-40-20, the California Department of Tax and Fee Administration (CDTFA) announced the following on March 31, 2020:

- All small businesses will have an additional three months to file returns and pay taxes administered by the department;
- All businesses will have an extra 60 days to file claims for refund from CDTFA or to appeal a CDTFA decision to the Office of Tax Appeals;
- Further, the CDTFA is providing a three-month extension for a tax return or tax payment to any businesses filing a return for less than \$1 million in tax;
- For the estimated 99.5 percent of business taxpayers below the \$1 million threshold for their current California sales and use tax obligation, returns for the First Quarter of calendar year 2020 will now be due on July 31, 2020;
- Further, the same provisions apply to the other tax and fee programs administered by the CDTFA;
- Finally, qualifying taxpayers are not required to file a request for extension or request relief from penalty or interest, and this automatic extension will remain in effect through the reporting of taxes and fees due on or before July 31, 2020; and

**WHEREAS**, the CDTFA's action expands on the relief previously granted to small businesses under the Small Business Sales and Use Tax Payment Relief Plan by giving them an extra 90 days to file and pay any business taxes and fees administered by the CDTFA without incurring any penalties or interest; and

**WHEREAS**, by including the \$1 million threshold, the CDTFA offered much-needed relief to small businesses across the state, while noting that approximately 55 percent of the sales and use tax collected by the state goes back to cities and counties, which count on the revenue to provide essential public services; and

**WHEREAS**, in addition to the three-month extension of time to file and pay taxes, Executive Order N-40-20 provides business taxpayers with additional time to file claims for refund and appeals to the Office of Tax Appeals, and taxpayers looking to make refund claims with the CDTFA during this period would have an additional 60 days to file; further, taxpayers seeking an appeal of a CDTFA tax determination to the Office of Tax Appeals would have 60 additional days to file the appeal request; and

**WHEREAS**, the California Department of Tax and Fee Administration (CDTFA), Local Revenue Branch (LRB), on April 3, 2020, issued the following directive:

- Returns and Payments Filing. In accordance with Executive Order issued on March 30, 2020, taxpayers reporting \$1 million or less in quarterly taxes are granted an automatic three-month extension on the filing of first quarter 2020 tax returns, extended to July 31, 2020. This extension

also includes a waiver of interest and penalties, and qualifying taxpayers are not required to file a request for extension or request relief from penalty or interest. This extension will remain in effect through the reporting of taxes and fees due on or before July 31, 2020.

- 12-Month Interest-Free Payment Plans up to \$50,000 of in Sales and Use Tax Liability. The CDTFA will allow small business taxpayers to enter into interest-free payment plans spanning 12-months for up to \$50,000 in sales and use tax liability. The interest-free loans would allow taxpayers with annual taxable sales below \$5 million to enter into a 12-month payment plan for up to \$50,000 of their sales and use tax liability at *zero interest*. Rather than paying their first quarter taxes in full, they could hold up to \$50,000 in cash and pay that tax liability over 12-months starting on July 31, 2020, without incurring interest or penalties.
  - The CDTFA will maintain discretion in providing relief to taxpayers who may fall outside the set criterion in cases of extreme hardship.
  - Taxpayers that do not exceed the \$50,000 cap with their first quarter 2020 liability can add amounts to their payment plans for the second quarter 2020 prepayments, second quarter monthly return payments, or Fiscal Year 2019–20 return payments, up to the \$50,000 cap. The pay-off terms, however, will not extend beyond July 31, 2021. No additional interest relief will be given past this date for the impacted periods.
- Applicable to small businesses only. The Executive Orders for tax deferral apply only to small taxpayers, and large taxpayers are expected to file and pay as scheduled.
- Payments to Local Governments. Given business disruption related to COVID-19, the CDTFA announced there will be a material impact on all local jurisdictions in California. However, there is not yet sufficient data to forecast the magnitude of the statewide impact. The State Department of Finance estimates the deferrals could total as much as \$3 billion and provide relief for up to 300,000 businesses statewide.
- Impact on Montclair. The sales tax category represents about 7 percent of total city revenues for the average California City, or 20 percent of general fund revenues, and for Montclair sales tax revenues represent approximately 54 percent of Total General Fund Revenue; therefore, Montclair can expect to see an estimated 15 percent temporary reduction in both Sales and Use Tax and Transactions and Use Tax Revenue for the last quarter of the current fiscal year related to the small business relief programs. For the 90-day deferral the fiscal impact on Montclair for the balance of Fiscal Year 2019–20 is estimated at \$910,115, and for Fiscal Year 2020–21, the continuing 12-month deferral/installment payment fiscal impact is estimated to be \$391,000; and

**WHEREAS**, prior to Executive Order N-40-20, the CDTFA had authority to grant deferral of tax payments under certain circumstances, including granting a 90-day extension to taxpayers owing taxes of less than \$1 million, but the CDTFA typically received no more than 20,000 individual requests for relief, making the projected 300,000 application number unprecedented; and

**WHEREAS**, the \$3 billion estimated statewide impact from Executive Order N-40-20 represents approximately 5 percent of total statewide annual Sales and Use Tax collections; and

**WHEREAS**, taxable sales are heavily concentrated among a relatively small number of very large taxpayers, with fewer than 0.5 percent of all taxpayers accounting for a majority of sales and use tax revenue; and

**WHEREAS**, while lower receipts mean lower payments to the state and local agencies that receive sales tax, the CDTFA will continue to make monthly payments to cities and counties; and

**WHEREAS**, as currently designed, approximately 45 percent of the revenue delay would affect the State General Fund, with the balance affecting local

governments, including voter-approved add-on sales tax rates (transactions and use taxes); and

**WHEREAS**, because local sales tax and add-on sales tax revenues are based on where the taxable event occurs, the effect of the small business tax relief programs locally will depend on the number of businesses that qualify and enroll in the programs; and

**WHEREAS**, to the extent businesses do participate, the small business relief plans will help businesses in the community survive, producing long-term benefits to local economies; and

**WHEREAS**, the CDTFA reports that due to the financial impact of COVID-19, the April 2020 Local and District tax payments, alone, are down by approximately 5 percent on average across the state, compared to the March 2020 payment, and this estimate will impact all Sales and Use Tax programs (Bradley Burns 1 percent local tax, ¼ percent County Local Transportation Fund, and Transactions and Use Tax Districts); and

**WHEREAS**, HDL, the City's sales tax consultant, projects the following statewide sales tax trends:

- First Quarter Calendar Year 2020 = -7.5 %
- Second Quarter Calendar Year 2020 = -36.1 %
- Fiscal Year 2020-21 = -1.5 %

**WHEREAS**, a re-opened economy is not projected to produce any immediate increase in spending until consumer confidence returns, making it difficult to forecast local government revenues; and

**WHEREAS**, a number of projections suggest that consumer confidence is likely to remain low at least until September 2020, when it is assumed the first wave of COVID-19 will have run its course, meaning that a decline in sales tax revenue will likely continue through the fourth quarter of calendar year 2020, with only moderate gains for several quarters thereafter, with the most dramatic decreases occurring from March through June 2020; and

**WHEREAS**, marginal or overly leveraged businesses still may not survive a lengthy shutdown even with federal subsidies, and particularly if consumer confidence remains low, which would further aggravate the business climate, causing businesses to remain cautious about capital investment and hiring employees after the economy fully reopens; and

**WHEREAS**, there are clear and obvious indications that other sectors of California's state and local economies are beginning to demonstrate serious fiscal effects from the COVID-19 pandemic and the shutting down of the state's economy – effects that include the following:

- Local Streets Funds. Formula based city and county local streets (LSR) funds – comprised of both the Highway Users Tax Account (HUTA – excise tax on fuel) and the Road Maintenance and Rehabilitation Account (RMRA – comprised of the SB 1 excise tax on fuel and Transportation, and improvement Fees derived from the vehicle registration tax).
  - Due to Executive Order N-33-20 and the recent drop in the price for a barrel of crude oil, it is apparent the Fiscal Year 2019-20 estimates for HUTA and RMRA must be revised downward substantially, and the decline may extend into Fiscal Year 2020-21 based on any continued suppression of road transportation.
  - Fuel taxes are collected each month for fuel purchases occurring in the prior month, and then allocated according to statute; therefore, the effect of COVID-19 on LSR allocations will appear on May allocations.
  - Initial indications suggest Fiscal Year 2019-20 RMRA allocations will be down from -10 percent to -20 percent, and HUTA allocations will be down from -15 percent to -30 percent, with a



milder decline projected for Fiscal Year 2020-21, unless fuel prices continue to decline and the economy fails to rebound.

- Autos/Transportation. The auto sales and transportation category is projected to decline as follows:
  - First Quarter of 2020 = **-12.0%**
  - Second Quarter of 2020 = **-55.0%**
  - Fiscal Year 2020-21 = **-6.3%**
  - Numerous industry observers, including Cox and JD Power, predict 80 percent or more declines in auto sales while stay-at-home regulations are in force. This projected decline is similar to reported results from Chinese auto dealers in February.
  - Once showrooms are fully reopened, auto sales are expected to remain depressed as consumers suffer from job losses and heightened levels of economic anxiety. Recent industry forecasts from ALG, JD Power, RBC and others predict that new car sales will decrease anywhere from -10 percent to -34 percent in calendar year 2020. HdL, the City's sales tax consultant, is projecting a decrease of -25 percent for the auto/transportation category as a whole, exceeding the -20 percent decline seen in 2008 during the Great Recession.
- Building/Construction. The building and construction category is expected to decline as follows:
  - First Quarter of 2020 = **-7.0%**
  - Second Quarter of 2020 = **-40.0%**
  - Fiscal Year 2020-21 = **-0.1%**
  - In many regions of the state construction is on hold, in part because supply chain issues have choked construction. If supplies are not readily available, it is likely that statewide permit levels will decline and unemployment will remain high.
  - Without government incentives, housing development is likely to decrease significantly in some areas of the state as the effects of growing unemployment further limit the pool of prospective home buyers.
  - Commercial projects, even those with entitlements and permits, may no longer pencil for investors; and in the event that construction demand improves, a backlog of projects may limit construction capacity.
  - Montclair has just completed a major high-density housing project (The Alexan), and two high-density housing projects (The Village at Montclair and Bravo) are moving toward entitlement. While both developers have indicated intent to move forward, it is unclear if, in the end, investors will agree.
  - Montclair is in the final stages of completing a General Plan Update and a Specific Plan for the Montclair Place District and a the Arrow Highway Mixed-Used District (AHMUD) Specific Plan. Based on current timelines, the City does not anticipate any major impacts related to completing both projects and moving toward future entitlement of projects in the Montclair Place District.

- **Business/Industry.** The business and industry category is expected to decline as follows:
  - First Quarter of 2020 = **-15.0%**
  - Second Quarter of 2020 = **-30.0%**
  - Fiscal Year 2020-21 = **-5.4%**
  - Most categories within this group are expected to decline over the next few quarters – a decline produced largely by a disruption in supply chains. Companies needing components for manufacture of consumer electronics, pharmaceuticals, machinery and trucks may be particularly impacted. Depending on inventory availability, there may be a temporary boost in the demand for food processing, medical, and telecommunication equipment and supplies.
  - Industrial zoned fulfillment and logistics centers will produce some offsets, particularly if they have a “point of sale” locus for a local community; however, fulfillment centers are typically assigned to a County pool for sales tax apportionment based on population. The stay-at-home order is expected to accelerate the shift from brick-and-mortar stores to online shopping, producing double-digit gains for online retailers.
- **Food/Drugs.** The food and drug industries are expected to perform as follows:
  - First Quarter of 2020 = **+5.0%**
  - Second Quarter of 2020 = **+5.0%**
  - Fiscal Year 2020-21 = **+2.0%**
  - The COVID-19 outbreak has not restricted access to grocery and drugs stores. Many stores have implemented operational and safety modifications, and consumers can still acquire household essentials at supermarkets, big boxes, and local establishments. Some products are temporarily in short supply as anxious shoppers acquire larger quantities of certain products.
  - Cannabis businesses are also open and expected to perform well.
- **Fuel/Service Stations.** The fuel and service station category is expected to decline as follows:
  - First Quarter of 2020 = **-10.0%**
  - Second Quarter of 2020 = **-50.0%**
  - Fiscal Year 2020-21 = **0.0%**
  - The consumption of fuel has slowed significantly. The combination of strong supply and weak demand for fuel has pushed oil barrel prices down to historically low levels. Fuel prices in California are now averaging less than \$2.50 per gallon.
  - With lower prices and less fuel being consumed because of the stay-at-home order, taxes generated are expected to significantly drop in the second quarter of 2020 and remain down until the middle of the first quarter of 2021 (see HUTA and RMRA discussion, above under Local Streets Fund). Oil prices are expected to increase back to the range of \$45 to \$55 per barrel toward the end of 2021 and into 2022, if not earlier. However, oversupply may keep gas prices relatively low and moderate potential sales tax recovery from fuel sales.

- General Consumer Goods. The general consumer goods category is projected to decline as follows:
  - First Quarter of 2020 = **-15.0%**
  - Second Quarter of 2020 = **-45.0%**
  - Fiscal Year 2020-21 = **-2.5%**
  - Core retail sales are seeing significant declines under the stay at home order, and these declines are expected to continue until the end of the second quarter of calendar year 2020. If consumer confidence remains low and unemployment woes worsen, the effects on the retail industry are expected to remain throughout calendar year 2020. Shuttered malls, shopping centers and retail stores will be adversely impacted, and some retailers may not reopen.
- Restaurants/Hotels. The restaurant and hotel industries are projected to decline as follows:
  - First Quarter of 2020 = **-10.0%**
  - Second Quarter of 2020 = **-60.0%**
  - Fiscal Year 2020-21 = **-6.5%**
  - The restaurant industry is reporting 65 percent drops in revenue and the hotel industry is reporting drops of over 85 percent due to the COVID-19 stay at home order. Restaurants and other facilities that prepare and serve food are restricted to delivery or take-out. Consumers are shifting their food spending to groceries as quarantines continue, which could impact the long-term outlook for the sector if dining habits change. After the stay at home order is lifted, dining rooms are expected to operate at reduced capacity for continued social distancing. The restaurant industry is very vulnerable to closure given the already tight operating margins and staff costs.
  - Most major hotels have laid off employees, while others have announced they will temporarily shut down.
- State and County Pools. State and county pools are expected to perform as follows:
  - First Quarter of 2020 = **+15.0%**
  - Second Quarter of 2020 = **+10.0%**
  - Fiscal Year 2020-21 = **+7.3%**
  - State and county sales tax pools represent one of only two segments expected to stay positive – the other food/drugs. The primary driver is the coincidental arrival of new out of state taxes resulting from the Wayfair decision implementation, which launched in the second quarter of 2019 under AB147, adding new revenues at the State and local level. Current and next year forecasting comprises Wayfair’s total impact on anticipated use taxes distributed via the countywide pools.
  - Online shopping surged in March as buyers complied with the stay-at-home order, with some shoppers stocking up with the expectation of weeks of limited store access. Going forward, spending will continue to be focused on high priority necessities, balanced against available retailer inventories and rapid increases in unemployment, which shrinks overall purchasing capacity.

- California Unemployment Rate. The big unknown is how long the shock to the economy will last, and what it will do both short- and long-term to employment. More than 4.6 million Californians have filed unemployment claims since mid-March 2020, representing 23.3 percent of the state's current workforce of 19.3 million people, and the number of filings is expected to continue growing.
  - Coupled with federal stimulus packages and a resumption of some semblance of normalcy in the economy by June 2020, immediate economic hardships could be temporary. If the economy remains shuttered beyond May 2020, economists predict California's economy could face a tumultuous year ahead.
- California Home Prices. HdL, the City's sales and property tax consultant, predicts that home prices will not drop under a baseline scenario, but the likelihood of home prices being affected continues to increase if the economy remains in a shutdown mode.
- California Residential Building Permits. The number of housing permits issued in the state peaked in the first quarter of 2018 and has trended lower since then. Even before the COVID-19 downturn, the state was in the midst of a housing shortage that prompted the State Legislature to adopt a number of laws designed to spur housing construction. As the housing shortage persists, it is expected to put upward pressure on housing prices and exacerbate affordability problems.

**WHEREAS**, the local economy remains in a weak and tentative state with restrained consumer spending, high unemployment, and continued instability in the financial and real estate sectors that continue to dampen economic recovery; and

**WHEREAS**, The economic recession contributed greatly to significant declines in Montclair's General Fund Revenue stream, including significant decreases in sales taxes, transactions and use taxes, property taxes, and inter-government revenues; and

**WHEREAS**, for Fiscal Year 2019-20, Montclair's sales tax revenue is projected to decline from a Fiscal Year 2018-19 actual of \$14,120,931 to a projected \$12,173,060, representing an overall decline of \$1,948,688, or -13.8 percent – this projection assumes exposure for the 90-day sales tax deferral granted by the Governor via Executive Order N-40-20, estimated at \$910,116, will be restored to the City and recorded for Fiscal Year 2019-20; and after the 90-day deferral period ends, the taxpayer can enter into a 12-month installment plan that would further defer an estimated \$390,289 through July 31, 2021; and

**WHEREAS**, for Fiscal Year 2019-20, Montclair's transactions and use tax revenue is projected to decline from a Fiscal Year 2018-19 actual of \$2,431,378 to a projected \$2,097,000, representing an overall decline of \$334,378, or -13.8 percent; and

**WHEREAS**, for Fiscal Year, 2020-21, Montclair's sales tax revenue is projected to decline from a Fiscal Year 2019-20 projection of \$12,173,060 to a projected \$10,831,810, representing a decline of \$1,341,250, or -11.0 percent – this decline incorporates the loss of sales tax revenues associated with the closure of Nordstrom; and

**WHEREAS**, for Fiscal Year 2020-21, Montclair's transactions and use tax revenue is projected to decline from a Fiscal Year 2019-20 projection of \$2,097,000 to a projected \$1,839,000, representing an overall decline of \$258,000, or -12.2 percent; and

**WHEREAS**, for Fiscal Year, 2021-22, Montclair's sales tax revenue is presently projected to increase from a Fiscal Year 2020-21 projection of \$10,831,810 to a projected \$13,241,373, representing an increase of \$2,409,563, or +22.2 percent – this increase assumes a novel coronavirus 2019 vaccine has been developed and is available, the COVID-19 pandemic is under control, unemployment has declined significantly, and the local economy has returned to near-normal operation; and

**WHEREAS**, for Fiscal Year, 2021-22, Montclair's transactions and use tax revenue is presently projected to increase from a Fiscal Year 2020-21 projection of \$1,839,000 to a projected \$2,242,000, representing an increase of \$403,000, or +22.0 percent — this increase assumes a novel coronavirus 2019 vaccine has been developed and is available, the COVID-19 pandemic is under control, unemployment has declined significantly, and the local economy has returned to near-normal operation; and

**WHEREAS**, sales and transactions and use tax revenue projections are subject to a variety of factors including (1) when the economy reopens, (2) how many businesses in Montclair remain closed due to economic losses, (3) consumer confidence and orientation to a reopened economy, (4) changes in consumer shopping habits that further migrate toward online purchases, and (5) a fall-winter reappearance and resurgence of the novel coronavirus; and

**WHEREAS**, if the economic effects of the COVID-19 economic shock result in even far greater injury to businesses, including major corporate businesses at Montclair Place, the economic impact to the Montclair community would be catastrophic, mandating major institutional changes to the City's governmental operations; and

**WHEREAS**, Montclair's General Fund Revenue Budget is projected to decline from a Fiscal Year 2019-20 year end projection of \$30,641,585 to \$26,799,191 for Fiscal Year 2020-21 — a projected decline of \$3,842,394, or -12.5 percent; and

**WHEREAS**, Montclair's future prospect for stabilization and/or fiscal growth depends on the actions taken to ameliorate the threat to the City's overall fiscal health; and

**WHEREAS**, by this Resolution, the Montclair City Council is directing pursuit and implementation of a number of strategic measures designed to address and resolve economic issues addressed herein.

**NOW, THEREFORE**, the City Council of the City of Montclair does hereby declare and direct the following:

**BE IT RESOLVED**, that for purposes of this Resolution, a State of Fiscal Urgency is defined as a local government declaration stemming from a single, series, or combination of economic, legal, natural, manmade, and/or legislative actions or circumstances, either seen or unforeseen, resulting from natural or uncontrolled conditions, inaction(s), or by intent or purpose beyond control of the local governing body, requiring immediate resolution that may result in reductions in personnel, either by layoff, furlough, hiring freeze or attrition, and/or reductions/delays in providing local government services and/or public works-related projects to achieve an immediate and long-term state of economic stability and balanced operational and revenue budgets as mandated by act of law, and/or required for preservation of the public health, safety, and welfare.

**BE IT FURTHER RESOLVED**, that a declaration of a State of Fiscal Urgency is not, and shall not be interpreted to be the same as a State of Fiscal Emergency as defined by § 53760.5 of the Government Code, *in which a local public entity may file a petition and exercise powers pursuant to applicable federal bankruptcy law, if the local public entity declares a fiscal emergency and adopts a resolution by a majority vote of the governing board at a noticed public hearing that includes findings that the financial state of the local public entity jeopardizes the health, safety, or well-being of the residents of the local public entity's jurisdiction or service area absent the protections of Chapter 9. The resolution [for a State of Fiscal Emergency] shall make findings that the public entity is or will be unable to pay its obligations within the next 60 days. Prior to a declaration of fiscal emergency and adoption of a resolution, the local public entity shall place an item on the agenda of a noticed public hearing on the fiscal condition of the entity to take public comment.*

**BE IT FURTHER RESOLVED**, that a State of Fiscal Urgency, as defined herein, is not required to meet the same standard as that established for a State of Fiscal Emergency as set forth by § 53760.5 of the Government Code and as defined by case law.

**BE IT FURTHER RESOLVED**, that by adoption of this Resolution, the City Council has established that the following are true and correct:

1. A state of fiscal urgency exists. An unforeseen and projected decline in public funds has occurred that necessitates immediate action, and that the decline does not stem from decisions of the City, including labor relations decisions, and that the actions proposed in this Resolution are designed and intended to address the fiscal urgency facing the City of Montclair and Montclair community.
2. By this declaration of a State of Fiscal Urgency, the City Council is taking reasonable steps to address the fiscal crisis and ward off the step to invoke a fiscal emergency. Implicit in the concept of "emergency" is the notion that the public agency must have taken reasonable steps to avoid the emergency. By adoption of this Resolution, the City Council is taking steps to avoid a state of fiscal urgency from migrating to a state of fiscal emergency. Further, the declaration of a state of fiscal urgency is intended to arrest the fiscal slide and provide time to develop strategies for raising revenues, find ways to provide services more efficiently, consider and examine opportunities for out-sourcing services, bargain with employee organizations, or simply attempt to maintain services with the expectation that the City's economic outlook will brighten.
3. By this Resolution, the City Council demonstrates a nexus between the state of fiscal urgency and the actions taken and proposed, and that such actions are both reasonable and necessary to serve an important public purpose.
4. By this Resolution, the City Council demonstrates it is and has considered alternatives to an emergency declaration, and that it is weighing all available options at its disposal including raising taxes, consolidating or reducing services, addressing labor and benefit issues, using reserve funds, and using other cost savings measures that are reasonable and necessary to serve an important public purpose.

**BE IT FURTHER RESOLVED**, that uncertainty related to the following necessitates that the City Council address the current loss of revenues resulting from the COVID-19 outbreak and stay-at-home order that has shutdown much of the state and local economy by declaring a State of Fiscal Urgency:

- The rapid emergence of the COVID-19 outbreak and the extended period of time the outbreak is projected to last;
- A series of emergency orders, declarations, and Guidance that have effectively shuttered the state's economy;
- The economic downturn resulting from California's declared State of Emergency;
- The announcement from a major retailer such as Nordstrom that it will not reopen its store at Montclair Place;
- The potential collapse of small businesses in the wake of the shutdown of the economy;
- The further acceleration of consumers toward online shopping, vis-à-vis shopping at brick-and-mortar stores;
- The decline in the stock market and its impact on rapidly increasing pension costs;
- A national unemployment rate for April 2020 that reached 14.7 percent – the highest unemployment rate since the Great Depression, and a May 2020 unemployment rate that is projected to equal or exceed the unemployment rate for the Great Depression;
- A California unemployment rate that demonstrates 4.5 million Californians have filed unemployment claims since mid-March 2020, representing 23.3 percent of the state's current workforce of 19.3 million people, and the number of filings is expected to continue growing;
- The impacts California's State of Emergency is having on supply chains for all industry sectors;
- The current and delayed impact California's State of Emergency will have on a range of municipal revenue tax sources including, but not limited to, sales, use, transactions, gas, transient occupancy, and property taxes;

- The potential impact the COVID-19 outbreak may have on the housing, construction, and development sectors;
- Fiscal deficits at all levels of government;
- Decline in consumer confidence – a combination of personal and family health concerns, lack of employment, and household financial impacts; and
- Other economic, societal, political, and legal impacts yet to be discerned as a result of the COVID-19 outbreak and the subsequent governmental actions designed to deal with stopping the spread of the novel coronavirus.

**BE IT FURTHER RESOLVED**, On March 16, 2020, the City Council recognized the public health danger represented by the COVID-19 crisis and adopted Resolution No. 20-3263, declaring that a local public health emergency exists in the City of Montclair, and that by adoption of Resolution No. 20-3263 established the City's eligibility for federal and state funding assistance.

**BE IT FURTHER RESOLVED**, on March 19, 2020, to protect the public health, to establish consistency throughout the state in order to ensure that California mitigates the impact of COVID-19 and to "bend the curve" and disrupt the spread of the virus, Governor Newsom issued Executive Order N-33-20, incorporating the Order of the California State Public Health Officer issued on the same date, ordering all individuals living in California to stay at home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors as outlined in the Essential Critical Infrastructure Workers list.

**BE IT FURTHER RESOLVED**, Executive Order N-33-20 also required (1) that individuals leaving their homes to engage in essential services such as grocery shopping, banking, doctor's visits, and picking up prescription medications shall practice social distancing at all times; and (2) the healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment (PPE), for the providers providing direct care.

**BE IT FURTHER RESOLVED**, there are clear and obvious indications that California's state and local economies are beginning to demonstrate serious fiscal effects from the COVID-19 pandemic and the shutting down of the state's economy as a public health measure pursuant to Governor Newsom's Executive Order N-33-20.

**BE IT FURTHER RESOLVED**, since the issuance of Executive Order N-33-20, a series of federal, state and local orders, proclamations, resolutions, directives and guidance have been issued and enumerated herein to address the following:

- Limit spread of the novel coronavirus;
- Provide relief to unemployed workers, small and large businesses, hospitals, and governments;
- Protect individuals, property owners, renters and taxpayers;
- Defer payment of taxes, mortgages, utilities, and other monthly expenses by individuals and businesses; and
- Bolster businesses, and fend off economic collapse stemming from the economic and social effects created by the COVID-19 outbreak.

**BE IT FURTHER RESOLVED**, the sudden decline in economic output that followed the federal, state and local response to the COVID-19 outbreak has significantly altered the fiscal outlook for state and local governments, including Montclair.

**BE IT FURTHER RESOLVED**, as significant as state and local government economic activity has been in response to the COVID-19 outbreak, early evidence suggests that the economic shock will have a notable impact on state and local budgets due to consumer consumption declines following nonessential business closures stemming from the stay-at-home orders, which will likely produce a sharp drop in sales tax revenues that will vary by jurisdiction.

**BE IT FURTHER RESOLVED**, that to address the local fiscal impacts on Montclair stemming from the COVID-19 outbreak and the federal, state, regional and local responses thereto, the Montclair City Council hereby directs the City Manager to take

the short- and long-term actions required to reduce a potential budget deficit for Fiscal Year 2019–20, Fiscal Year 2020–21, and future fiscal years.

**BE IT FURTHER RESOLVED**, the Montclair City Council directs that the strategic measures to be taken by the City Manager to reduce and or avoid successive budgetary deficits may include, but not be limited to, the following:

1. Reduce General Fund Operating Expenditures.
2. Enact and/or recommend reductions in personnel, as necessary, by a combination of layoffs; furloughs, and/or maintenance of vacant positions where appropriate.
3. As appropriate, consolidate service programs, and/or evaluate and recommend service contracting/reductions in service.
4. As necessary, delay project start dates.
5. Maintain program outputs commensurate with organizational/community needs and revenue inflow.
6. Develop economic growth by accomplishing the following:
  - a. Complete housing and mixed-use components pursuant to the North Montclair Downtown Specific Plan.
  - b. Complete the Montclair Place District Specific Plan.
  - c. Complete the General Plan Update.
  - d. Complete the Arrow Highway Mixed-use Development (AHMUD) Specific Plan.
  - e. Complete the Gold Line to the Montclair Transcenter.
  - f. Pursue development within other areas of the City.
7. Secure funding to meet debt service on the 2014 Issue of Lease Revenue Bonds.
8. Identify, implement and/or present alternatives for revenue enhancement including, but not limited to, the following:
  - a. A voter-approved transactions and use tax district.
  - b. Present for City Council consideration a commercial cannabis ordinance and provisions for a potential tax measure.
  - c. Restoration of the Utility Users Tax to the maximum voter-approved 4.75 percent tax rate.
9. Achieve and maintain Montclair's Unrestricted General Fund Reserve Fund at 25 percent of the General Fund Operating Budget.
10. Evaluate a pension bond measure as a means to reduce the City's annual payment to the California Public Employee Retirement System (CalPERS) — Montclair's annual employer rate has increased from a rate of 0 percent in Fiscal Year 2002-03 to an estimated \$7.050 million in Fiscal Year 2020-21.

**BE IT FURTHER RESOLVED**, City staff is actively engaged in addressing each of the strategic measures outlined by the Montclair City Council in items 1 through 10, above.

**BE IT FINALLY RESOLVED**, all recitals deemed true and correct, the City Council of the City of Montclair hereby finds and declares that a State of Fiscal Urgency exists in the City of Montclair; and that this State of Fiscal Urgency is due to the COVID-19 outbreak, state and county orders, directives and Guidance designed to protect the public's health, safety and welfare, and the adverse economic effects of the COVID-19 outbreak on the City of Montclair's fiscal health and opportunities, and that the actions and proposals set forth herein are reasonable and necessary, and driven by the need to:

1. Address projected economic fallout in Montclair related to the COVID-19 outbreak through Fiscal Year 2020–21, and potentially beyond to succeeding fiscal years;
2. Resolve local fiscal issues related to a projected deficit in Montclair's current and Fiscal Year 2020–21 General Fund Budget;



3. Prevent a long-term structural deficit in Montclair's General Fund related to the COVID-19 outbreak;
4. Maintain the health of the General Fund Unrestricted and Restricted Reserve Funds to cope with an extended fiscal crisis related to the COVID-19 outbreak;
5. Address the uncertainty of potentially spiraling economic impacts related to the shuttering of the state's economy related to the COVID-19 outbreak;
6. Address economic impacts from laws and court cases that are likely to shift much of the economic responsibility related to contraction of COVID-19 during employment to the employer;
7. Continue and maintain an acceptable level of local municipal services;
8. Maintain commitment to the City's fiduciary responsibilities; and
9. Maintain a commitment to the public health, safety, and welfare.

Such actions, as stated above, combining to contribute to the welfare of the Montclair community and the fiscal and fiduciary integrity of the City's government.

**APPROVED AND ADOPTED** this XX day of XX, 2020.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

I, Andrea Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 20-3267 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2020, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Andrea Phillips  
City Clerk