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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.

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THOSE WHO WISH TO SPEAK WILL BE UNMUTED AT THE APPROPRIATE TIME.
PLEASE KEEP YOURSELF ON MUTE WHEN NOT SPEAKING.**

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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 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 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 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), via e-mail (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, December 7, 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. 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. Please*

Audio recordings of the CC/SA/MHC/MHA/MCF meetings are available on the City's website at 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. SELECTION OF MAYOR PRO TEM

VI. PRESENTATIONS — None

VII. 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.

VIII. PUBLIC HEARINGS

- A. Consider Adoption of Resolution No. 20-3285 Approving Tentative Tract Map No. 20273 to Subdivide a 6.68-Acre Site into Six Numbered Parcels and One Lettered Lot for a Public Park and Approving Precise Plan of Design No. 2017-20 and a Parking Management Plan for a Mixed-Use Project Within the Station District of the North Montclair Downtown Specific Plan [CC] 6
- B. Second Reading — Consider Adoption of Ordinance No. 20-994 Amending Section 3.36.050 (Telephone Users Tax) of the Montclair Municipal Code to Provide Technical Clarification in Conformity with Existing Law [CC] 75

IX. CONSENT CALENDAR

- A. Approval of Minutes
 - 1. Regular Joint Meeting — November 16, 2020 [CC/SA/MHC/MHA/MCF]
- B. Administrative Reports
 - 1. Consider Authorizing a \$487,588 Appropriation from the Economic Development Fund to be Used as a Local Match as Part of San Bernardino County’s CARES Act Coronavirus Relief Fund Infrastructure Program [CC] 80
 - 2. Consider Lifting the Temporary Suspension of Parking Restrictions on Scheduled Street Sweeping Days and Resume Parking Enforcement [CC] 84
 - 3. Consider Adoption of the City of Montclair Active Transportation Plan [CC]
Consider Adoption of the City of Montclair Safe Routes to School Plan [CC] 86
 - 4. Consider Approving County-Required Increases to the Senior Nutrition Program Eligible Participants’ Suggested Donation Amount from \$2.00 to \$2.50 on January 1, 2021, and to \$3.00 on July 1, 2021 [CC]
Consider Approving an Increase to the Senior Nutrition Program Guest Fee from \$5.50 to \$6.00 on January 1, 2021 [CC] 89
 - 5. Consider Authorizing the Purchase of a 2021 Schwarze Model A7 Natural Gas Street Sweeper from Municipal Maintenance Equipment [CC] 91
 - 6. Consider Authorizing a \$1,350 Appropriation from the Prop 30/AB 109 Fund to Purchase Two Mobile GPS Tracking Units from Live View GPS, Associated Mounting Hardware, and Monthly Service Monitoring Fees for the Remainder of the 2020-21 Fiscal Year [CC] 93
 - 7. Consider Receiving and Filing a Status Report on Emergency Contracting Procedures Related to HVAC Replacement at the Kids Station Facility Located at the Montclair Transcenter [CC]
Consider Declaring a Termination of the Emergency Action Authorized on November 16, 2020 Related to HVAC Replacement at the Kids Station Facility [CC] 94
 - 8. Consider Approval of Warrant Registers & Payroll Documentations [CC] 95
 - 9. Consider Approval of the Montclair Housing Authority Annual Report Pursuant to Section 3416.1(f) of the Health and Safety Code (SB 341) for Fiscal Year 2019-20 [CC/MHA] 96

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10. Consider Review and Acceptance of the Montclair Housing Authority Annual Report for Fiscal Year 2019-20 [MHA]	105
C. Agreements	
1. Consider Approval of Agreement No. 20-92 with Hinderliter, de Lamas & Associates (HdL) for Transaction Tax Audit and Information Services [CC]	
Consider Authorizing City Manager Edward C. Starr to Execute Agreement No. 20-92 with HdL for Transaction Tax Audit and Information Services [CC]	109
2. Consider Approval of Agreement No. 20-93 with San Bernardino County for the Phillips Boulevard and Other Roads Rehabilitation Project [CC]	125
D. Resolutions	
1. Consider Adoption of Resolution No. 20-3292 Authorizing City Manager Edward C. Starr to Execute Agreement Nos. 20-94 and 20-95 with the California Department of Tax and Fee Administration For Implementation of a Local Transactions and Use Tax [CC]	
Consider Adoption of Resolution No. 20-3293 Authorizing the Examination of Sales and Use Tax Records Pursuant to Revenue and Taxation Code Section 7056 [CC]	134
2. Consider Adoption of Resolution No. 20-3295 Declaring the Need for Emergency Contracting Procedures for Air Conditioning Equipment at the Police Facility [CC]	
Consider Authorizing a \$128,220 Appropriation from the Equipment Replacement Fund, Including a \$10,000 Contingency, for Air Conditioning Equipment Replacement at the Police Facility [CC]	149
3. Consider Adoption of Resolution No. 20-3296 Adopting the City's Conflict of Interest Code, as Amended, Pursuant to the Political Reform Act [CC]	153
X. PULLED CONSENT CALENDAR ITEMS	
XI. COUNCIL WORKSHOP	
A. Review of the Ralph M. Brown Act and Public Meeting Conduct Presented by City Attorney Diane Robbins	
<i>(The City Council may consider continuing this item to an adjourned meeting on Tuesday, January 19, 2021, at 5:45 p.m.)</i>	
XII. COMMUNICATIONS	
A. Department Reports — None	
B. City Attorney	
1. AB 571 — Campaign Contribution Limits	
C. City Manager/Executive Director	
1. COVID-19 Update	

- D. Mayor/Chairperson
 - 1. Reorganization of City Council Committee/Liaison Assignments [CC]
 - 2. Cancellation of December 21, 2020, and January 4, 2021 Regular Joint Meetings [CC/SA/MHC/MHA/MCF]
- E. Council Members/Directors
- F. Committee Meeting Minutes — None

XIII. CLOSED SESSION — None

XIV. ADJOURNMENT

The next regularly scheduled joint meetings of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board on December 21, 2020, and January 4, 2021, have been cancelled. The next regular joint meeting will be held on Tuesday, January 19, 2021, 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 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. 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 <http://www.cityofmontclair.org/agendas> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, December 3, 2020.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	LDU350/LDU375/ENV075
SECTION:	PUBLIC HEARINGS	DEPT.:	COMMUNITY DEV.
ITEM NO.:	A	PREPARER:	M. DIAZ
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 20-3285 APPROVING TENTATIVE TRACT MAP NO. 20273 TO SUBDIVIDE A 6.68-ACRE SITE INTO SIX NUMBERED PARCELS AND ONE LETTERED LOT FOR A PUBLIC PARK AND APPROVING PRECISE PLAN OF DESIGN NO. 2017-20 AND A PARKING MANAGEMENT PLAN FOR A MIXED-USE PROJECT WITHIN THE STATION DISTRICT OF THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN		

REASON FOR CONSIDERATION: Final review authority for all subdivisions of land requests and entitlements associated with development projects within the boundaries of the North Montclair Downtown Specific Plan (NMDSP) is under purview of the City Council.

On Monday, October 5, 2020, a public hearing for *The Village at Montclair* project was conducted at which time the project was presented to the City Council and public comment was received. During the hearing, the Applicant/Developer presented modifications to Condition No. 20 of proposed **Resolution** No. 20-3285 regarding Flex/Commercial Units for City Council consideration. Since the proposed changes were significant and offered late in the day, the City Council and City staff did not have sufficient time to evaluate proposed changes and make an informed decision. To provide opportunity to study the issue further, the agenda item was continued to the City Council's regularly scheduled meeting date on November 2, 2020. At the November 2, 2020 meeting, and again at its November 16, 2020 meeting, the City Council continued review of the item to the December 7, 2020, meeting to again allow staff and the developer additional time to mutually agree to final language regarding Condition No. 20 related to Flex/Commercial Units within the project.

After considerable effort and discussion, City staff and the developer mutually agree that conditions regarding Flex and Commercial Units has been resolved in a manner that balances the concerns expressed by the developer, while safeguarding the goals and objectives of the City and the NMDSP of accomplishing a mixed-use project envisioned at the north end of the Station District, contiguous to the Montclair Transcenter. Revised Draft Resolution No. 20-3285 with new Condition No. 20 is discussed below and is attached to the report (Exhibit E) for the City Council's consideration.

BACKGROUND: *The Village at Montclair* project, initiated by Village Partners Ventures LLC, is a proposed mixed-use development project on 6.68 gross acres of land within the NMDSP. The subject property is located within the Station District zoning area of the North Montclair Downtown Specific Plan (NMDSP). The Arrow Station residential community is on the west, Montclair Transcenter on the north, and the Pep Boys auto store and self-serve car wash on the east.

Copies of the plans for the project have been distributed to the City Council and are also available to view on the City's website at:

<https://www.cityofmontclair.org/comfit/cd/2020-08-24-VAM-VP.pdf>

Project Description

The project involves the development of approximately 373,660 square feet of new residential and commercial space (not **including** the parking garage). The total commercial ground floor lease space is approximately 24,919 square feet within 30 lease spaces on the ground floors of Buildings 1, 2, and 4. Implementation of the commercial spaces will occur in a phased strategy (ten spaces at the beginning of the project within the Gateway Focus Area) as discussed further below and in revised Condition No. 20. The residential component of the project includes 330 permanent dwelling units plus 20 Flex Units, which may be utilized as interim residential uses at the outset of the project for a total of 350 dwelling units if the developer is unsuccessful in initially leasing the Flex Units as commercial spaces. Over the next several years following completion of the Project and issuance of Certificates of Occupancy, the 20 Flex Units will transition to permanent commercial uses, leaving the 330 units located on the upper floors of the affected buildings as permanent residential units. The project also features a multi-level parking structure, the dedication of a 0.22-acre site for a public park, and public pedestrian easements to link the project to the Arrow Station project to the west and the Montclair Transcenter to the north side of the site.

Tentative Tract Map No. 20273

The proposed tentative tract map is designed to create six numbered lots and one (1) lettered lot for a public park from the existing 6.68-acre site (Exhibit “A”). The new lots, ranging in size from 0.52 to 1.31-acres in size, are arranged around the “U” shaped public street configuration that connects at two points to Arrow Highway. The proposed street configuration also includes a street segment extending eastward to the east property line to establish a connection point for a future development on the adjacent parcel. The single lettered lot (“A”) is 0.22 acre in size and situated at the center of the site where it will be developed into a public park. Public parking would be allowed along the proposed public streets.

Tentative Tract Map No. 20273		
The Village at Montclair – Lot Size and Site Improvements		
Lot	Size	Proposed Site Improvements
1	0.78 ac	Multi-story building – 28 parking spaces (9 tandem) 7.5’- wide aerial easement over public sidewalk Central Solid Waste Collection/Compactor facility
2	0.52 ac	Multi-story Building
3	0.72 ac	Multi-story Building
4	0.92 ac	Multi-story Building – 5-level Parking Structure – 483 spaces 10’ wide public pedestrian easement
5	1.31 ac	Multi-story Building – Community Building ¹ 10’- wide public pedestrian easement
6	0.74 ac	Surface Parking Lot (27 spaces) and Dog Park Site of future Public Parking Structure ²
“A”	0.22 ac	Public Neighborhood Park
¹ Building 4 on Lot 5 is the proposed location for community building serving the project and includes leasing and management offices, a fitness center, meeting rooms, mail room, and community pool. ² Lot 6 is the parcel where the future public parking structure would be built on the subject site, as generally depicted in Figures 3-2 and 3-3 and described in 3.2.F of the NMDSP.		

The tentative map also includes three public easements, two of which are located on Lots 4 and 5. These easements are intended to **facilitate** public pedestrian access to the site from the west (the Arrow Station community) and from the site to the Montclair

Transcenter immediately north of the site, inclusive of the commuter rail lines. The third public easement is an aerial easement at the north side of Building 1 to allow the design of the building to extend over the public sidewalk.

The NMDSP envisions the construction of two parking structures on the site — one public and one private parking structure. Based on the proposed **subdivision** and project site plan, Lot 6 would be the parcel where the future public parking structure would be constructed for use as short-term parking to support transit ridership and future commercial uses in the area. Since the timing for construction of the future parking structure is unknown at this time, surface parking spaces on Lot 6 would be “temporary” until the new structure is built or the NMDSP is officially amended to allow for a different use. The parking structure in Building 4 is a private structure and is needed to meet parking requirements for the residential portion of the project.

Public Park

The proposed public park is located at the center of the site and intended to provide an open space area to be used by future residents for open space, passive recreational activities, and public events. The new park is rectangular in shape, approximately 9,571 square feet (0.22-acre) in size, and has approximate dimensions of 54 feet wide by 190 feet long. Proposed park amenities include a tree-lined turf area, a pavilion, water feature, and seating.

Precise Plan of Design

The Village at Montclair mixed-use project consists of a total four multi-level buildings (up to five stories) situated around a **centrally** located public park (Exhibit “B”). As indicated above, the project includes a pedestrian link to the Arrow Station residential development (through Building 4) to the west and a north link to the Montclair Transcenter.

As a mixed-use development, the project provides approximately 24,919 square feet of commercial lease space located primarily on the ground level of Buildings 1, 2, and 4. The remaining ground level spaces in each building (identified as “Apartments” on the Ground Floor Leasing Plan, dated November 25, 2020), and all-upper levels are dedicated to residential uses. The maximum number of dwelling units proposed by the developer for the project is 330 units, 20 Flex Units (as interim residential), and 10 ground floor spaces to be commercial units at the beginning stage of the project. The 20 Flex Units may be initially leased as commercial spaces, or as interim residential units based on commercial market conditions. However, Condition No. 20 does stipulate that the residential use of Flex Units is temporary, and Flex Units are to be converted to permanent commercial uses once market studies support the conversion. “Flex Unit” locations are also depicted on the updated “Ground Floor Leasing Plan,” dated November 25, 2020.

The breakdown of the number, distribution, and sizes of the proposed units (including Flex Units) for the project are provided in the following tables:

The Village at Montclair – Dwelling Units (Non – Flex Units)		
<i>Building</i>	<i>Stories</i>	<i>Residential Units</i>
1	3-5	69 Units
2	3-4	52 Units
3	3-5	79 Units
4	3-5	130 Units
Total		330 Units¹
¹ Total count excludes Flex Units as residential units noted in Table below: Flex Units		

The Village at Montclair – Apartment (Non – Flex Units) Size Range and Number		
<i>Floor Plan</i>	<i>Size Range</i>	<i>Number of Units</i>
Studio	413 – 613 s.f.	77
1 Bedroom	613 – 948 s.f.	150
2 Bedrooms	953 – 1,137 s.f.	88
3 Bedrooms	1,302 – 1,319 s.f.	15
Total		330 Units

The Village at Montclair – Flex Units¹		
<i>Building</i>	<i>Flex Units¹ (Ground Level)</i>	<i>Square Feet</i>
1	6	4,585 s.f.
2	3	2,449 s.f.
3	0	---
4	11	7,769 s.f.
Totals	20 units	14,803 s.f.
¹ Ground floor commercial spaces specifically identified in Buildings 1,2, and 4 for use as interim residential units as depicted on the Ground Floor Leasing Plan, dated 11-25-20		

Parking

NMDSP parking requirements for residential units is 1.5 spaces per unit, plus one visitor space per four units. Commercial space requirements are one space per 300 square feet of gross floor area. Based on these standards required parking for the mixed-use project would be 662 total spaces. However, the developer is seeking City Council approval of a 15 percent overall reduction in parking as provided for by the NMDSP. The applicant/developer must obtain City Council approval to be eligible for the parking reduction. In recent years, the Arrow Station and Alexan-Montclair projects were approved with the full reduction in parking.

As required for all projects, the applicant has submitted a Parking Management Plan (PMP) for the project and is seeking City Council approval (Exhibit “C”). For design purposes, parking for the project assumes approval of the full 15 percent reduction, and the PMP is designed with that in mind. The following table indicates required and proposed parking for the project:

The Village at Montclair – Parking Summary			
<i>Use</i>	<i>Standard</i>	<i>Parking Required</i>	<i>Parking Provided (w/ proposed 15 percent reduction)¹</i>
Residential – 330 units	1.5 per unit 1:4 visitor	495 spaces 83 spaces	421 spaces 71 spaces
Sub-Totals		578 spaces	492 spaces
Commercial – 25,174 s.f.	1:300 s.f.	84 spaces ¹	70 spaces
Totals		662 spaces	562 spaces
¹ Parking total indicated based on 15 percent reduction request subject to City Council review and approval.			
² Commercial uses may utilize short-term parking on public street			

Based on the above discussion, proposed on-site parking totals 538 spaces, and 598 spaces overall which includes on-street short-term public spaces for visitors and future customers as shown below:

Village at Montclair – Parking Provided Summary	
<i>Type/Location</i>	<i>Quantity Provided*</i>
Parking Structure (5 Levels)	483 spaces
Lot 1 – Surface	28 spaces (9 tandem)
Lot 6 – Surface	27 spaces
Sub-Total ¹	538 spaces
Public Street Parking	60 spaces
Grand Total	598 spaces total
¹ Number of spaces are based on a 15 percent reduction, if approved by the City Council	

The five-level parking structure incorporated into Building 4 would provide the bulk of the required parking spaces at 483, intended for residents, some guests, and employees of the management company. The other parking locations include 28 surface parking spaces on the east side of Building 1 on Lot 1, and 27 interim parking spaces on Lot 6, east of Building 4, at the location planned for a future public parking structure.

The developer also proposes to manage on-site parking for the residents by assigning the number and the location of parking spaces for each residential unit, as provided for in the PMP. All on-street parking would be for public use on a short-term basis (length of time to be determined by the City) for visitors and customers of commercial uses in the project area. Public on-street parking spaces would not be assignable to any resident or a commercial use in the project.

Basic Elements of the Parking Management Plan

- **Application Process:** As part of the initial rental application process, all potential renters will be given written notice of on-site parking conditions and requirements. Further, the PMP will be available at all times on the project’s website and referenced in the executed lease agreement. Each lease agreement will require a signed acknowledgment that the prospective resident agrees to the terms of the PMP.
- **Parking Stalls:** All parking stalls within the project (not public street parking spaces) will be identified by number to allow for easy monitoring of parking within the project site. Parking stall and unit designations are shown on a site plan within the PMP with a parking matrix identifying specific unit numbers, types, and stall assignments.

- **Assigned Spaces:** All dwelling units will be assigned a minimum of one parking space within the project area. Tandem stalls will be assigned to two-bedroom units. Not all two-bedroom units within the project will have two assigned spaces. Property management will also inform potential tenants that parking spaces within adjacent developments are not available for their use.
- **Guest Parking:** Short-term guest parking is available for visitors and future customers on public streets within the development. Any extended-time parking would be accommodated on lots or within parking structures located on private property. Under no circumstances shall residents or guests be assigned a space on a public street and/or public parking lot/structure. The property manager shall be responsible for providing and managing on-site guest parking passes.
- **Parking Permit Program:** Vehicle license plates and descriptions of vehicles assigned with each unit are registered in an electronic database maintained by Property Management. In addition, vehicles will be issued a numbered and branded windshield decal at move-in and voided upon lease termination.
- **Enforcement:**
 - The developer will install regulatory signs for on-site parking areas and structures under their control. Project signs shall state that unauthorized vehicles will be towed at vehicle owner's expense.
 - The Property Management Company will retain the services of a licensed, qualified tow company, provide emergency contact information signage within the property, and will meet the signage requirements of the Montclair Municipal Code.
 - Property Management Company shall be responsible for noting and enforcing all on-site parking violations. Public street parking enforcement shall be the responsibility of the Montclair Police Department.

Solid Waste Removal Plan

The applicant has prepared a draft Solid Waste Removal Plan (SWRP) to address the collection and disposal of solid waste and recyclable materials generated by the project. The plan proposes preliminary collection points for each multi-story building, with solid waste transferred to a final (central) collection site. The central collection point is to be developed on the east side of Building 1 and equipped with trash compactors. When full, the compacted solid waste materials would be picked up by Burrtec (the City's franchise solid waste provider) for disposal off site. The SWRR would also address the collection of organic waste, recyclables, and bulk items.

Architecture

The proposed architecture of the project is generally described as variations of the geometrical shapes, details, colors, and materials associated with the Southern California Mediterranean style. According to the project architect, Torti Gallas and Partners:

"The design of the architecture is structured in ways to allow the residents of the village to enjoy the inviting Mediterranean type climate of Montclair. The

architectural facades draw from both Spanish and Italian variants that arrived in Southern California over a century ago, having endured and evolved with the times. The architectural facade identities are in varying widths, each of which create a scale that will promote the village character, pedestrian scale and walkable streetscapes.”

Each of the proposed three- to five-story buildings features a mix of architectural design details such as strong cornices, wrought iron balconies, deep-set classically proportioned windows, stucco with GFRC or formed-metal cornices, stone trim, clay style details, stucco moldings, timber-trimmed verandas on upper levels, and bracketed timber balconies with tile roofs. Architectural elements are extended to all sides of the buildings, except the north and west sides of the parking structure in Building 4. The north (facing the Montclair Transcenter) and west sides of the parking structure feature a complementary design that includes simple design details reminiscent of the “Art Deco” style.

Building 4 is intended and designed to be the key focal point of reference for the project and includes a clock tower feature on axis with the northern terminus of Fremont Avenue. Building 4 also includes the courtyard area that will provide a public pedestrian access point from the site to the Montclair Transcenter on the adjacent property to the north.

Landscaping/Hardscape

The applicant has submitted a comprehensive landscape conceptual plan for the project site. The selection and distribution of plant materials are intended to complement the urban context established with the project and the proposed architecture of the buildings. In addition to trees and shrubs, these spaces will include several decorative elements such as group seating and tables, string lighting, benches, grills, fire pits, decomposed granite, enhanced paving finishes, etc.

The proposed tree and shrub palettes feature a wide variety of plant materials, the majority of which are drought tolerant. The proposed tree list includes Washingtonian and Date Palms, Camphor, Chitalpa, Strawberry, Crape Myrtle, Pine, and Olive trees. The shrub list includes Agaves, Boxwood, Ceanothus, Cistus, Italian Cypress, Lavender, and ornamental grasses. Lastly, the landscape plan does include street trees for each public street segment, but the specific species have yet to be determined. When the street tree selections are finalized they will be in accordance with, and complementary to the final landscape plans adopted for improving the Arrow Highway and Fremont Avenue streetscapes adjacent to the project site.

Discussion

For the past few years, City staff has worked with the applicant, their architect, and the City’s architectural design consultant to ensure the project was developed in accordance with the development standards and guidelines of the NMDSP. Staff supports the proposed project, as it will result in an immediate and significant transformation of the site and the appearance of the surrounding area. The subject site is currently comprised of an old industrial structure and vacant areas. Moreover, the improvements with this project will meet the objectives of the NMDSP.

As the City's first mixed-use project, and key project in implementing the goals of the NMDSP, the project requires close attention to details. The project site is ideally located and designed to provide direct public pedestrian access to the Montclair Transcenter. As more development occurs within the boundaries of NMDSP, this project will serve as the key element in providing the essential link for access to and from the Montclair Transcenter and surrounding developments.

Overall, the project is well designed, visually attractive, and consistent with the intent and design goals of the NMDSP. When completed, *The Village at Montclair* will function as a key development project within the NMDSP area. The project establishes a central town square, and provides the physical means to link pedestrians to existing and future developments within the NMDSP area, and to the Montclair Transcenter and the various transit services it provides. Moreover, the neighborhood created by the project continues expansion of a developing walkable, pedestrian-oriented, retail, and residential "place" that will ultimately link south to the Montclair Place District Specific Plan (MPDSP) area.

Tentative Tract Map

Staff finds the proposed tentative tract map design to be appropriate and a logical means for supporting the anticipated development of the site. The proposed lot design around a central open space/park is ideal, and the lot sizes will be of adequate size and dimension to accommodate the proposed buildings. The street configuration will provide good access and allow for appropriate internal pedestrian and vehicular circulation. The proposed public street within the project boundaries will be fully improved and serve to implement the eventual goal of a linked street system that promotes walkability and connectivity to adjacent properties and uses, including the existing transit center.

Precise Plan of Design

The architecture of the project makes a bold statement about the City and its emerging importance as a destination point serving the Inland Empire and east end of Los Angeles County. The project will simultaneously present an attractive face to those traveling through Montclair by train and to motorists passing south on Arrow Highway. Moreover, the project will complement the plans for remaking nearby Montclair Place, as envisioned in the recently adopted MPDSP.

The project would be consistent with the intent of the "Station District" (SD) land use designation for the site, which states in part, that the SD zone is intended to be the:

"...social and commercial heart of the North Montclair. It will be anchored by the MetroLink/Gold Line train station to the north, and contain compact, walkable mixture of housing and community-oriented retail."

A significant feature exemplifying how the project meets the design goals of the NMDSP is the attention to careful massing and varied building heights for each building – details that eliminate uniform building heights and monotonous building facades. There is a distinct base, middle and top to each of the buildings. There are projecting elements such as lower level roofs, canopies, balconies, and bay windows that help lower the scale of the massing to a more pedestrian level. As such, the project architecture is relatively simple in form and utilizes an appropriate range of architectural details and application

of durable materials that will be long lasting. Architectural design and details are extended to all sides of the buildings. Staff believes the project architecture and colors selected for the project will help provide a comfortable level of distinction from the adjacent developments. The final architectural details for the project are subject to refinement as part of the review process for NMDSP projects by the City's consultant for Architectural Design.

Including the 20 Flex Units as interim dwellings, the project results in a maximum of 350 residential units, at a starting density of 66 dwelling units per net acre. When all 30 ground floor units are occupied with commercial uses, the 330 permanent residential units yields a density of 63 dwelling units per net acre, which is consistent with the minimum 60 dwelling unit density level of the SD zone. If approved, this project will represent the highest density level achieved by any new project in the NMDSP plan area to date. As a mixed-use project, *The Village at Montclair* also represents significant progress in meeting the transit-oriented goals set forth by the NMDSP, including the provision of pedestrian access to the Montclair Transcenter.

Staff finds that the proposed conceptual landscaping plan, including hardscape elements, is well done and appropriate for the proposed architecture and urban setting created by the project. Plant materials, the majority of which are drought tolerant, are well distributed around the site, and add visual interest.

Parkway landscaping for the new public streets will continue the street theme and appearance established by recent developments such as *The Paseos*. A condition of approval would require the developer to work with City staff on the final details of the landscape plan as it relates to the public park and public street frontages.

Flex/Commercial Units

As the first mixed-use project for the City, *The Village at Montclair* project is designed to provide for a variety of uses that allow people to live, work, and shop in one place. The project is also intended to become a destination for people from other surrounding neighborhoods. Because it is directly adjacent to the existing Montclair Transcenter, the project is expected to benefit from this proximity and play a key role in the advancement of the goals of the NMDSP. The project provides for approximately 24,919 square feet of ground-level commercial lease space dispersed to three of the four buildings proposed for the project. In addition, both the developer and City agree that the integrity of the site as a mixed-use development is important for maintaining consistency with the NMDSP.

However, the project developer has expressed concerns about timing and their ability to lease all ground floor areas designated as commercial space immediately after construction is complete. To address this concern, the concept of Flex/Commercial Units is included in Condition 20 to allow the interim residential use of some ground floor spaces for a reasonable time period until market conditions become more favorable for converting the remaining Flex Units into local serving commercial uses (e.g., restaurant, retail, service, office uses). This approach is consistent with a provision in the NMDSP that recognizes commercial uses are dependent on market conditions:

2.1 Plan Program: Mixed-Use, Small Office, and other Uses -

It is recommended that the mixed-use portions of the plan allow for multiple ground floor uses, retail or small office or housing, to allow developers maximum flexibility as the market changes with the new households that move to North Montclair. It is estimated that approximately 50,000 to 80,000 square feet of retail and restaurant and 50,000 to 100,000 square feet of small office will eventually be feasible as ground floor uses; however, the evolution of this demand will take time and these increments may not be appropriate or feasible in the first phases of development.

In discussions with the developer, City staff has recommended a “phased” approach that seeks to balance the concerns of the developer with the desire of the City to see a mixed-use project achieved as soon as possible. As such, the developer is encouraged to pursue a leasing strategy that breaks down the process of commercial occupancy into smaller steps that create intact commercial areas at key locations within the project. This approach would reduce the burden to lease the entire commercial space within the project so they can direct their efforts to leasing specific commercial spaces that have the best promise from “opening day” for achieving the City’s objective of a mixed-use community. Ground floor lease spaces not identified as prime commercial spots in the first phase (20 total at the opening of the project), may be used as flex residential units for a minimum of 24 months after the date each unit is first leased. This phased approach allows the project to provide a maximum of 350 residential units upon completion of the project when the 20 units are taken into consideration.

With justification supported by a Retail Market Analysis as identified in Condition No. 20, the developer may request subsequent 12-month extensions until market conditions have evolved to transition the units to permanent commercial uses. Staff believes the time frame provided for in Condition No. 20—initial 2-year lease period, plus the ability to request subsequent 1-year extensions—is a reasonable accommodation that allows the commercial market (based on then current Market Analyses) to determine when Flex Units can transition to permanent commercial uses. Staff believes this approach is more practical than trying to predict what economic conditions will be in the future.

The two focus areas identified with this approach are described as follows and depicted on the “Ground Floor Leasing Plan,” dated November 12, 2020 (Exhibit B):

- **Gateway Focus Area** (Intersection of Arrow Highway at Fremont Avenue at Buildings 1, 2, 4) Total Number of Units: 17
 - Commercial Unit Nos.: 1-110, 1-112, 1-116, 1-118, 2-102, 2-103, 2-104, 2-105 (8 Units)
 - Flex Unit Nos.: 1-102, 1-104, 1-106, 1-108, 1-120, 1-121, 2-101, 2-113, 2-114 (9 Units)
 - Total Floor Area: 17,150 square feet

- **Station Promenade Focus Area** (Area leading to Montclair Transcenter at Building 4). Total Number of Units: 13
 - Commercial Unit No.: 4-135, 4-136 (2 Units)
 - Flex Unit No.: 4-101, 4-102, 4-103, 4-104, 4-106, 4-107, 4-108, 4-109, 4-110, 4-137, 4-139 (11 Units)
 - Total Floor Area: 7,769 square feet

The benefit of the above-described phased approach, allows the developer to focus and build on the characteristics of each area (i.e., visibility), proposed improvements in each area (e.g., immediate availability of street parking), and the momentum created by new development in and around the area of the project.

Other requirements of the proposed strategy in the amended Condition No. 20, proposed for City Council consideration are:

- Each Flex/Commercial Unit shall be built to commercial occupancy standards. The overall objective is to fully construct the designated 30 ground floor units as commercial spaces, with the intent of fully leasing each of the units for commercial use upon completion of the project. The designation of 20 of the 30 ground floor spaces as Flex Units provides the developer additional time to identify and recruit commercial tenants if market conditions do not support immediate commercial use of the units as commercial spaces.
- The use of Flex Units for residential occupancy shall be an interim use only. This interim use is part of a phased strategy to achieve full occupancy of the designated Flex Unit ground floor areas with permanent commercial uses to support the approved mixed-use development. As indicated above, the Flex Unit strategy shall only be utilized if the developer is unable to lease any of the Flex Units as commercial spaces upon project completion.
- Limit residential tenant use of each Flex Units to short-term lease agreements (24 months, followed by 12-month extensions upon submission and approval of an application, supported by a current commercial market analysis). As indicated above, this approach provides the developer additional time to identify and recruit commercial tenants, and convert Flex Units to commercial uses.
- Units designated as Commercial shall be reserved for that use in perpetuity after each Commercial unit receives its Certificate of Occupancy.

Parking and Parking Reduction Request

As noted earlier in this agenda report, the design of the project anticipates City Council consideration in approving the full 15 percent reduction in the number of spaces as provided to previous projects. In addition to refining the overall site plan for parking, the applicant/developer also prepared a Parking Management Plan (PMP) to address the mixed-use nature of the project. Staff believes the distribution of parking for the project is appropriate to meet the overall needs of the mixed-use nature of the project, and in keeping with the goals of the NMDSP for developing a transit-oriented district (TOD) within a half-mile of public transportation.

However, to ensure that parking for residents, guests, employees, and future customers remains sufficient and readily available, proper and effective management of the PMP is imperative. The applicant (developer) is aware of the City's concerns to properly control parking and has confirmed their commitment to fully implement the provisions of the proposed PMP. The PMP, if approved, would assign parking spaces for every unit and limit the number of assigned spaces accordingly. The bulk of assigned resident parking is located in the parking structure in Building 4 and on surface parking behind Building 1. Parking on Lot 6 provides an additional 27 spaces on the east side of the project—Lot 6 is also the designated site for development of a future public parking structure. Since the timing for construction of a future parking structure is unknown at this time, parking spaces on Lot 6 would be "temporary" until a new structure is constructed, or the NMDSP is amended to allow for a different use. Although residents may not have the most conveniently located parking space, the spaces will be in secure locations and within easy walking distance of the units.

Concerning parking for visitors and future customers of retail and food uses, the project relies on 61 on-street public parking spaces for short-term use. As public spaces, street parking spaces would not be assignable to tenants nor reserved for long-term parking purposes (e.g., transit riders or long-term guests). The Montclair Police Department will be responsible for enforcement of parking matters on the public streets within the project.

Based on the proposed PMP, City staff believes that parking can be effectively maintained by the developer, and therefore recommends approval of the requested parking reduction and the ability to count street parking toward the overall number of required short-term parking spaces to support future commercial uses within the project.

Property Maintenance/Management

When completed, management of the project will be conducted by an on-site, institutional quality professional property management company with an on-site manager to oversee all management, leasing, and maintenance functions for the development. The selection of the property management firm retained by the property owner is subject to the approval of the Executive Director of Public Safety/Police Chief.

As part of the condition to provide property management, the applicant will be required to record a Regulatory Operations Agreement against the entire property providing for the perpetual maintenance of all buildings and on-site improvements, including private parking areas and roadways, retaining walls, drainage facilities, and water and sewer systems.

Community Facilities District (CFD)

A CFD is required for the project to offset public service-related costs. The establishment of the CFD, which has been requirement since the NMDSP was originally adopted, would provide the means for collecting funds to maintain public improvements such as curbs and gutters, sidewalks, paving, streetlights, street sweeping, signage, street furniture, public park elements and maintenance, and landscaping in the public right-of-way. The CFD would also serve to subsidize public safety services. City staff has begun the process of working with a consultant to lay groundwork and implement a CFD. Completion and City approval of the CFD will be a condition of approval before the final tract map can be recorded.

Solid Waste Removal Plan

A draft Solid Waste Removal Plan (SWRP) has been submitted for the project by the developer. The major elements of the SWRP have been addressed and are supported by staff and Burrtec, the City's current franchise solid waste refuse service. The intended focus of SWRP is on the day-to-day operational standards to ensure that the collection and removal of solid waste from the site is appropriate, timely, and efficient. A completed SWRP (written operations and plans) specifically addressing several elements is a condition of approval for the applicant to complete prior to the issuance of building permits for the project.

Findings for Tentative Tract Map No. 20273

- A. The proposed subdivision of the 6.68-gross acre site is designed, to the extent feasible, to provide for passive or natural heating or cooling opportunities. The lot pattern and proposed arrangement buildings on the site are generally oriented, spaced, and designed to allow for access to adequate light and air. Each dwelling unit will have operable windows to allow for passive cooling provided by seasonal winds. Moreover, the project includes a formal open space area at the center of the project site, and several private open space areas dispersed throughout the development in the form of courtyards at each building, and community access to a pool. Moreover, the project will provide tree-lined streets and public park for shade, air filtering, and other environmental benefits.
- B. The proposed subdivision and the provisions for its design and improvement are consistent with the General Plan for the City of Montclair ("General Plan") and the applicable NMDSP:
 1. The Tentative Tract Map would provide for land uses compatible with the land use classification for the subject site by the General Plan and NMDSP. The overall goal of the General Plan is to promote good planning practices and orderly development within the City and to recognize the potential of specific areas for special treatment. The proposed development of the 6.68-gross acre site and project design and improvements would be consistent with the General Plan land use designation for the site.
 2. The Tentative Tract Map provides for land uses compatible with the "Station District" land use classification for the subject site in the NMDSP. Moreover, the design for the project is of a high quality and consistent with the high expectations of improvements for projects within the NMDSP.
- C. The subject site is physically suitable for the type and density of development proposed in the Tentative Tract Map given the overall size of the property. The site is 6.68 acres in overall area and is of a configuration that has sufficient width and depth to allow for orderly site development, the provision of open space areas between the proposed structures in the project, and sufficient setbacks from the adjacent single-family residential properties located to the west at the Arrow Station residential community. The project site is also located adjacent to fully-improved streets that will provide good access and allow for appropriate internal pedestrian and vehicular circulation. The proposed public streets within the project boundaries will be fully improved and serve to implement the eventual

goal of a linked-street system that promotes walkability and connectivity to adjacent properties and uses, including a direct link to the Montclair Transcenter.

- D. The subdivision design and improvements proposed in the Tentative Tract Map is not likely to cause substantial environmental damage nor substantially injure fish, wildlife, or their habitat. As explained in the North Montclair Downtown Specific Plan Supplemental Environmental Impact Report (SCH#2016101001) ("SEIR"), the site is surrounded by urban development and streets, does not contain any bodies of water, and is not linked to any wildlife corridors. Further, the SEIR explains that the site does not contain any known habitats of significance including rare or endangered species of plant, animal, or insect life.
- E. The subdivision design and type of improvements proposed in the Tentative Tract Map are not likely to cause serious public health problems because all development and public improvements will be performed per the requirements of all applicable standards and codes including the zoning and building codes. As a condition of approval, the applicant is required to submit an acoustical analysis demonstrating that interior noise standards of each unit will comply with Municipal Code requirements and applicable Mitigation Measures identified in the SEIR.
- F. The subdivision design and type of improvements proposed in the Tentative Tract Map will not conflict with any easements acquired by the public at large for access through or use of the subject site because no such easements exist on the subject site. However, the map provides for new public easements specifically intended to allow for public access at key points in the new plan, and in particular or facilitate pedestrian public access from the site to the Montclair Transcenter.
- G. The discharge of waste into the existing sanitary sewer system from the development proposed in the Tentative Tract Map will not cause a violation of existing requirements prescribed by the regional water quality control board. The entire project will be required to connect to a sanitary sewage system pursuant to California Plumbing Code and Municipal Code requirements. Sewer mains exist in the Arrow Highway right-of-way and are in close proximity to the site to facilitate ease of connection.

Precise Plan of Design Findings

- A. The proposed mixed-use project is consistent with the "Planned Development" land use designation of the City's General Plan Land Use Map, and the Station District "SD" land use designation of the NMDSP. The SD land use district is intended to establish a denser, urban-oriented, fabric of buildings, appropriate for locations in close proximity to new and existing roadways. Moreover, the NMDSP depicts the site as the focal point of the plan given its central location and planned connection point to the Montclair Transcenter. When the aforementioned connection point is completed both sides of the NMDSP will be linked by easy access between the north and south sides of the NMDSP planning area. Lastly, the mixed-use development on the subject site will serve as a catalyst to further attractive urban development on Arrow Highway.
- B. The proposed project would result in a significant improvement to the appearance of the area by redeveloping an underutilized area within the NMDSP into a well-

designed mixed-use development, which makes efficient use of the site and complies with the intent and applicable development standards of the NMDSP. The 330 permanent dwelling units proposed with this project amounts to 63 units per net acre, which is consistent with the low end of the SD density range of 60–80 dwelling units per acre, and the highest density rate to date within the NMDSP and City.

- C. The site plan, building form, massing, and height will contribute to the ongoing formation of the streetscape and development pattern envisioned by the NMDSP. The proposed mix of three, four, and five-story buildings and their arrangement on the site will contribute to the ongoing transformation and improvement of the Arrow Highway streetscape envisioned by the NMDSP.
- D. The proposed architectural design of the project as indicated on the submitted plans is well done, attractive, and complementary to recent development in the area. The design is distinctive and appropriate for the prominent role this site plays in the development of the NMDSP. Moreover, the project design is consistent with the architectural style guidelines depicted in the NMDSP, and features high-quality exterior materials and finishes and incorporates appropriate lighting, landscaping, and hardscape materials.

Planning Commission Review and Recommendation

On December 16, 2019, the project proposal and status report was presented to the City Council and the Planning Commission during a joint public workshop meeting.

The Planning Commission conducted a public hearing on the project at its regularly scheduled meeting on August 24, 2020. By a vote of 5-0, the Planning Commission recommended that the City Council make findings pursuant to the California Environmental Quality Act and approve the project under Case No. 2017-20 pursuant to Resolution No. 20-1942.

Environmental Review

According to State CEQA Guidelines, Section 15182, when a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for the mixed-use project undertaken pursuant to and in conformity to that specific plan if the project meets the requirements of Section 15182. The main requirement of Section 15182 that a project must satisfy is that the project cannot trigger any of the conditions in State CEQA Guidelines Section 15162 requiring subsequent environmental review. As long as subsequent environmental review is not triggered, and the project is consistent with the specific plan for which an EIR has been certified, then the City may find the project exempt from further CEQA review.

All potentially significant environmental impacts of the proposed project that could be mitigated to less than significant levels would be mitigated to less than significant levels with mitigation measures contained in the Mitigation Monitoring and Reporting Program for the NMDSP EIR. There are no changes to the significant and unavoidable impacts disclosed in the EIR. In sum, the project would not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and that additional or different mitigation measures are not required to reduce the impacts of the project to a level of non-significance.

For all of the reasons outlined above, the proposed residential project is consistent with and would be in conformity to the NMDSP, should it be approved by the City Council. Therefore, the project satisfies the first criterion in State CEQA Guidelines, Section 15182.

FISCAL IMPACT: Approval of *The Village at Montclair* project would result in positive, long-term economic benefits for the City. The project introduces the City's first mixed-use project, offering new opportunities for combined residential, office, and commercial uses. The project would also serve as a key link to the Montclair Transcenter and be a catalyst for continued improvements towards achieving a transit-oriented district. Property improvements to the existing underutilized property will enhance property values in the area and contribute to additional property tax revenue to the City. The mixed-use aspect of the project will contribute to the City's sales tax base.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 20-3285 Approving Tentative Tract Map No. 20273 to subdivide a 6.68-acre site into six numbered lots and one lettered lot for a public park and approving Precise Plan of Design No. 2017-20 and a Parking Management Plan for a mixed-use project within the Station District of the North Montclair Downtown Specific Plan.

Exhibit A – Tentative Tract Map No. 20273

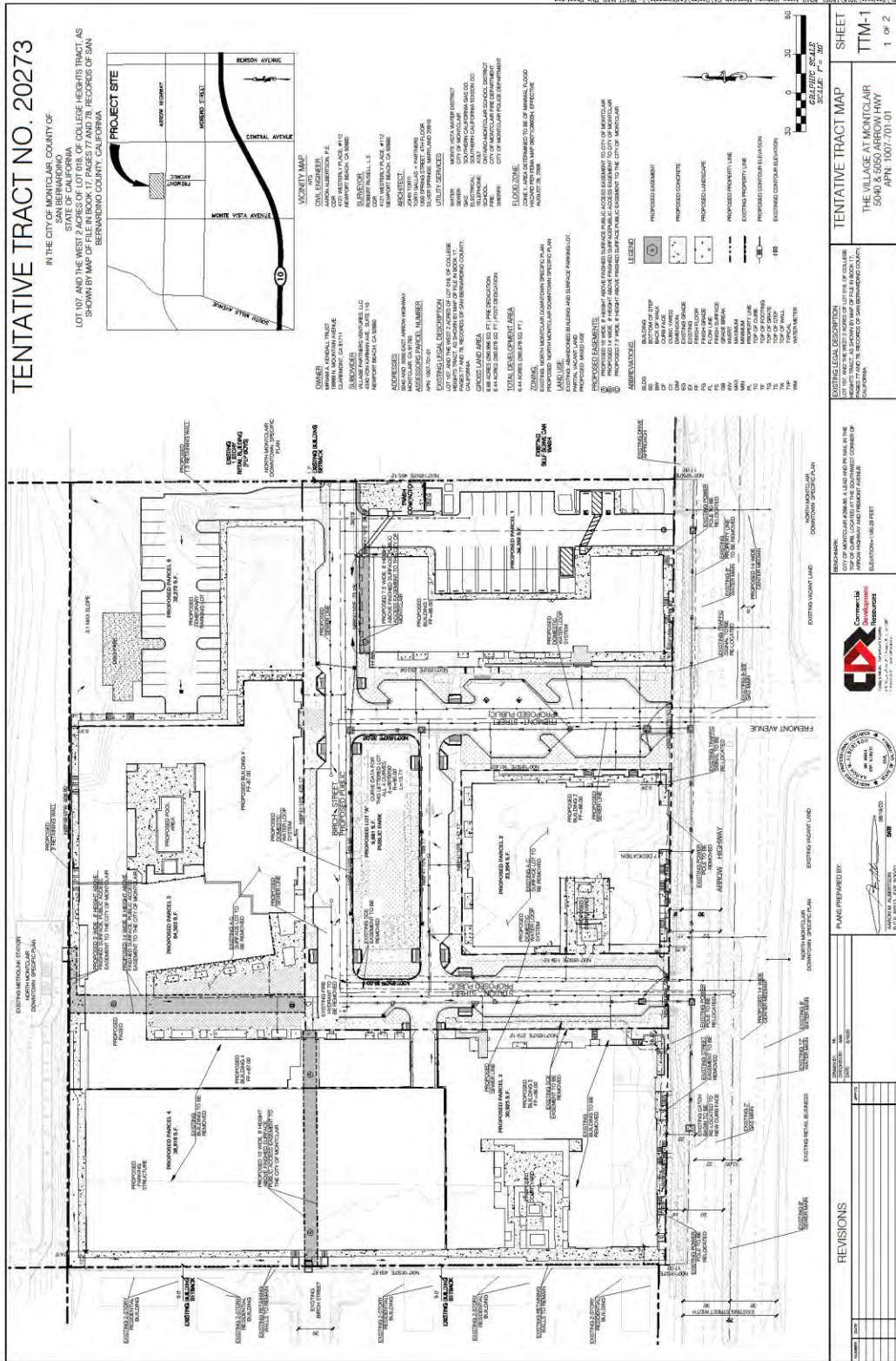


Exhibit B – Village at Montclair Project Site Plan Map



- 1 Concrete Pavement
- 2 Enhanced Paving
- 3 Sawcut Joints
- 4 Tile Pavers
- 5 Asphalt Paving
- 6 Cast-in-place Concrete Steps
- 7 Concrete Access Ramp
- 8 Decomposed Granite Surface
- 9 Cast-in-place Seatwall
- 10 Planting Area
- 11 Central Lawn
- 12 Kiosk
- 13 Pool
- 14 Spa
- 15 Pavilion
- 16 Retaining Wall
- 17 Residential Patio
- 18 Water Feature
- 19 Outdoor Fireplace
- 20 Grill Area
- 21 Overhead Trellis
- 22 Screen Wall
- 23 Monument Sign
- 24 Courtyard/Patio Tree
- 25 Fan Palm
- 26 Date Palm
- 27 Street Tree
- 28 Flowering Tree
- 29 Pine Tree
- 30 Bike Rack
- 31 Dog Run

VILLAGE PARTNERS, INC.
Developers

THE VILLAGE AT MONTCLAIR
MONTCLAIR, CA
AUGUST 19, 2020

AHBE
Landscape Architects

Torti Gallas + Partners
Town Planners and Architects

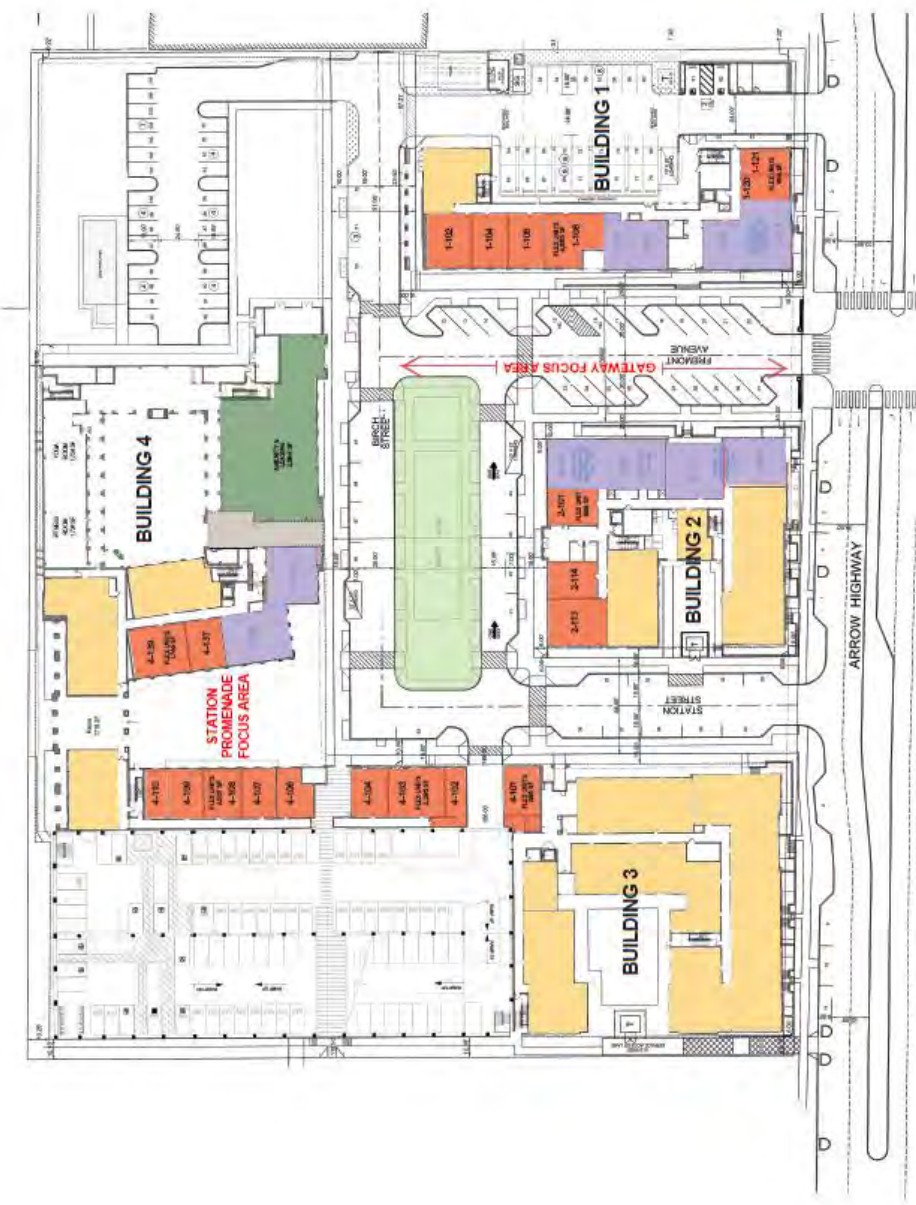
Exhibit C – Ground Floor Lease Plan (Replaces Page 10 in Plan Set)

GROUND FLOOR LEASING PLAN
at Full Occupancy -
After All Leasing
Initiatives/Periods
plus NMDSP
Area Maturity

- COMMERCIAL
- APARTMENTS
- FLEX UNIT, APT.
RETAIL OR OFFICE
- AMENITY AND LEASING



VILLAGE PARTNERS, INC.
Developers



THE VILLAGE AT MONTCLAIR
MONTCLAIR, CA
November 25, 2020

Torti Gallas + Partners
Town Planners and Architects

Exhibit D – Village at Montclair Parking Management Plan

The Village at Montclair **PARKING MANAGEMENT PLAN**

August 19, 2020

I. Parking Management Plan Introduction

This Parking Management Plan (PMP) has been prepared for the Village at Montclair , a mixed use community comprised of 330 apartments and 24,919 square feet of commercial ground floor lease space located at 5050 E Arrow Highway in the City of Montclair (“City”). The Village at Montclair is directly adjacent to the Montclair Transit Center and has direct access via an on-site tunnel.

The Village at Montclair is a mixed-use community within the boundaries of the North Montclair Downtown Specific Plan (NMDSP), a transit-oriented development (TOD) plan designed to link new development with the Montclair Transcenter. The Montclair Transcenter is currently served by local bus services, the Metrolink commuter rail, and is planned as terminus for Metro Gold Line light rail service extending from Los Angeles County. Moreover, The Village at Montclair mixed-use community is within a block of the Montclair Place regional shopping center.

The objective of the Parking Management Plan is to ensure available parking spaces are appropriately used by residents and their guests to eliminate parking conflicts. As part of a TOD, future residents of the Village at Montclair project are encouraged to take advantage of their key location between existing and developing public transportation alternatives, the shopping opportunities at Montclair Place, and other commercial retail and service businesses within easy walking and bicycling distances.

GIVEN THE LIMITED AMOUNT OF PARKING SPACES ON-SITE, PROSPECTIVE TENANTS ARE ADVISED THAT THE MAJORITY OF THE UNITS IN VILLAGE AT MONTCLAIR PROJECT WILL BE ASSIGNED ONLY 1 PARKING SPACE(S) PER UNIT. ONLY TENANT SPACES ASSIGNED A TANDEM PARKING CONFIGURATION WILL BE ALLOWED AN ADDITIONAL ON-SITE PARKING SPACE.

II. Applicability

The provisions of this PMP apply to the Village at Montclair mixed-use community and do not apply to other neighborhoods or developments within the City of Montclair. The PMP is intended to manage the parking aspects of Village at Montclair mixed-use community by providing the framework for managing parking within the project and minimizing parking impacts on the surrounding community. Residents and visitors are expected to comply with the provisions of the approved PMP, which are enforced by the owner and/or project’s property management company. Parking on public streets is enforced by the Montclair Police Department.

III. Availability of On-Site Parking

Required on-site parking spaces shall be continually maintained and used for tenant parking throughout the life of the project as approved. None of the 562 parking spaces allocated on-site at the Village at Montclair mixed-use community shall be reduced and/or relocated without prior City Council approval.

See *Exhibit A* for location of on-site parking spaces for the project.

IV. Parking Space and Unit Summary

The following parking stalls are available for residents and guests:

<u>Parking Allocation for Project</u> Village at Montclair			
<i>Unit Type</i>	<i>No. of Units</i>	<i>Assigned Space¹</i> <i>(includes tandem space)²</i>	<i>Sub Total</i>
Studio	77	1 space (77 Units)	77
One Bedroom	150	1 space (150 Units)	150
Two Bedroom	88	1 space (22 Units) 2 spaces (66 units)	154
Three Bedroom	15	2 spaces (7 units) 3 spaces (8 Units)	38
Residential Totals	330		420
Visitor		<i>1 space per 4 apartments</i>	71
Residential + Visitor Total			496
Flex/Retail	30	25,173/1:300 SF	71
Total Parking	360		562

¹ Standard Parking Space
² Only 18 tandem spaces available. Tandem spaces shall only be assigned to and for parking vehicles assigned to the occupants of the same unit.

<u>Parking Provided</u> Village at Montclair	
<i>Location</i>	<i>Number</i>
Curb	52
Lot 6	27
Surface behind Building 1	10
Tandem Behind Building 1	18
Garage	483
<i>Total Parking Provided</i>	<i>590 spaces</i>

Guest and Street Parking		
Village at Montclair		
<i>Type of Parking Space</i>	<i>Number Required</i>	<i>Location</i>
Guest/Visitor	71	Garage
Street ¹	71	Internal Streets and Along Project Frontage
<i>Total Stalls</i>		<i>142 spaces</i>
<small>¹ Street parking is open for use by the public and is only available for short term parking for short term visitors and retail guests of the Village at Montclair mixed-use community. Under no circumstances are street parking spaces assignable to tenants nor shall be reserved for such purposes. All vehicles parked on a public street are subject to the rules and regulations contained in the California Vehicle Code and Chapter 8.36.150 of the Montclair Municipal Code.</small>		

V. Parking Management Plan Objective and Strategy

The objective of the PMP is to ensure available parking spaces are properly used by residents in an efficient manner at all times to minimize parking issues. The strategy to reach this objective entails focused regulations with a deliberate emphasis on user information and clear enforcement strategies.

Pursuant to the availability outlined above, which is consistent with the requirements of the NMDSP, the overarching objective of this PMP is to provide definitive parking regulations that are easily enforced by Property Management, yet simple to understand for the Project’s residents. This should result in the PMP contributing to a pleasant and safe living environment for residents and their guests, clarity with respect to management’s enforcement rights, and ultimately, the alleviation of residents seeking offsite parking in adjoining neighborhoods. The requirements in this PMP are designed to work together to meet the City’s parking management goals and requirements of the NMDSP and in support of other City regulatory efforts on public streets within in and/or adjacent to the project boundaries.

This objective is to ensure the available parking stalls outlined in Section 2 are utilized by residents as efficiently as possible and that parking regulations will be enforced by Property Management along with the Parking Management Plan contained in resident leases.

Each tenant on the lease agreement must sign the acknowledgement form in the PMP indicating their receipt of a copy of the Parking Management Plan, indicating their understanding of the parking constraints and regulations for the Village at Montclair mixed-use community.

VI. Parking Regulations

The parking guidelines include the following:

- A. Licensed and Operable Vehicles. All vehicles and motorcycles permitted to park at the Village at Montclair mixed-use community shall be legally registered with the State of California Department of Motor Vehicles (DMV) including current tags properly affixed to the vehicle pursuant DMV regulations. Further, all vehicles shall be maintained in operational condition at all times. At no time shall inoperable vehicles be allowed to remain on the premises.

- B. Cloud-Based Parking Management. Property management will utilize Parking Boss System (or equivalent), a cloud-based system that allows management to identify every vehicle on the property, set custom guest parking limits, provide detailed informational reports, and digitally track permits. All residents are required to register all vehicles make, model, color and license plate number with management upon signing a lease. Each resident will be provided with a “Smart Decal”, a window sticker with serial number and unique barcode that is accessible through smart phone validation. The Smart Decal allows for three kinds of scans: Public Scan, Patroller Scan, and Manager Scan. This Public Scan option allows any community member to use their smartphone for a quick barcode scan that displays the corresponding decal number, license plate of the vehicle it’s assigned to, space number it should be parked in, and most critically whether or not the decal is active or inactive. The Patroller Scan allows a patroller to scan a Smart Decal and see the unit number the vehicle belongs to—perfect in case of emergency or for a courtesy notice before towing. Upon Manager approval, Field Agents are able to see all the resident contact information as well. Field Agents can also add notes or record a violation. The Manager Scan function of the Smart Decal allows property management to instantly edit or pull up all information associated with permits and the permit holder’s contact information.
- C. Vehicle Registration. All residents will be required to register all vehicles make, model, color and license plate number with management upon signing a lease. All residents will then be provided a parking “Smart Decal” to identify vehicles assigned to tenant leases. All forms of vehicle identification will be unique to the project and must be placed on residents’ vehicles in specified locations on the vehicle where noted below:
1. Each unit will be assigned no more than one (1) parking space, except for larger units may be assigned an additional tandem parking space when such units/spaces are available and only where indicated on the approved site plan. Tandem spaces shall only be assigned to and for parking vehicles assigned to the occupants of the same unit.
 2. A resident Parking “Smart Decal” will be supplied to each resident to be placed on the registered vehicle owned by the resident. The decal must be displayed at all times on the vehicle in the Right corner of the windshield. Vehicle decals are not transferable.
 3. Each vehicle must park in its assigned space. Vehicles will be expressly prohibited from parking in any other stall than the vehicle’s assigned stall.
 4. Parking Decals shall be issued annually to each resident in the complex. Each resident shall affix the Decal on their vehicle.
- D. Parking Orientation. Prior to issuance of keys to new residents, all unit occupants with a driver’s license and/or provisional instruction permit will be required to attend a parking orientation with Project management. Each resident will be required to sign an acknowledgement of their attendance at the parking orientation. At the parking orientation, management will review all of the parking rules with the resident(s) so that the resident(s) understand the parking rules related to parking, assigned parking spaces, and public street parking. Property management will utilize Parking Boss System (or equivalent), a cloud-based

system that allows management to identify every vehicle on the property, set custom guest parking limits, provide detailed informational reports, and digitally track permits. This parking orientation will review this system with residents.

- E. Parking Acknowledgment in Lease or Rental Agreement. New residents shall also acknowledge the number of assigned parking spaces to be available for use by the new resident in their lease or rental agreement. This section of the lease or rental agreement shall state the consequences for violation of the PMP. The new resident shall initial this portion of the lease or rental agreement acknowledging parking terms.
- F. Guest Parking Notification. Tenants shall be notified that Village at Montclair mixed-use provides no on-street guest parking spaces. Moreover, parking spaces on adjacent public streets cannot be assigned as designated spaces for guests or visitors to the site. Parking spaces on public streets are only available for short-term use by the general public pursuant to the rules and regulations contained in the California Vehicle Code and Chapter 8.36.150 of the Montclair Municipal Code. Tenants are advised to notify their guests of this limitation. Visitor parking is available on the first floor of the garage under supervision of property management. All residents will be required to notify the Project's management of any overnight guests that utilize the Project's visitor parking areas. Residents will be required to provide management with the color, make and model and duration of their guests visit prior to, or immediately upon, said guest's arrival.
- G. Use of All Available Spaces. In the event that any spaces allocated to a unit are not used (e.g., a resident leases a 3-bedroom unit but only has one vehicle), the unused space may be made available for other residents' use. Additional spaces, however, will be capped at one (1) per unit so as to prevent a single resident from amassing surplus parking stalls to the detriment of other residents. Residents not utilizing all of their allocated spaces will receive a pre-agreed upon credit against their rent each month.
- H. Tandem Spaces. Tandem Spaces in the complex may only be used to park primary vehicles assigned to a specified unit. The Property Manager shall conduct an audit of tandem space usage twice annually to ensure that all residents are in compliance with this requirement.
- I. Parking of Vehicles or Motorcycles Only. Parking spaces shall be used only for the parking of registered and operable vehicles or motorcycles only. No parking space (including tandem spaces) shall be used for the purposes of storing personal belongings, storage containers of any size, commercial vans or trucks, inoperable vehicles, construction equipment/trailers, recreational vehicles or trailers, or other recreational equipment (e.g., water craft, etc.).
- J. Parking in Adjoining Neighborhoods. Residents are highly discouraged from parking in any adjoining neighborhood. Parking in existing neighborhoods invariably leads to existing resident complaints about and street parking and requests to restrict on street parking. Residents of The Village at Montclair Project mixed-use community will be made aware of this issue during parking orientation.

- K. Parking on Public Streets. Street parking is open to use by the public and is only available for short-term parking for guest/visitors of Village at Montclair mixed-use community. Under no circumstances are street parking spaces assignable to tenants nor shall be reserved for such purposes. All persons parking vehicles on a public street are subject to the rules and regulations contained in the California Vehicle Code and Chapter 8.36.150 of the Montclair Municipal Code.
- L. Residential Parking. Parking for residents of the Village at Montclair will be provided in the parking structure. All residents will be assigned a space in the structure, and through the cloud-based parking management system, property management will be able to conveniently monitor resident parking and ensure residents are parked in their appropriate space. The only exception to residential parking in the garage is the 18 tandem spaces behind Building 1. In the following section, the allocation of these tandem spaces will be specified.
- M. Retail Employee Parking. Retail and Restaurant employees of the Village at Montclair will be encouraged to walk, bike, and take transit. Parking will be available as well, and employees will have the option of purchasing a parking permit to park on the first level of the garage. The first level of the garage will have 13 spaces available for permitted employee parking.
- N. Parking Structure. The parking structure will be secured by an electronic security gate. The first floor of the garage will provide additional parking for flex-retail uses and visitor parking. The second, third, fourth and fifth floor of the garage will be reserved for residential parking.

VII. Parking Enforcement

Parking enforcement will be a collaborative effort between the Property Management and a parking enforcement company selected by the Property Management Company. The respective obligations of each party will be the following:

- A. Violation Policy. The Cloud Based Parking Management system manages permits and keeps track of all violations. If someone with a permit is in violation, any of the property management staff or courtesy patrol company can look up the permit holder's contact and unit information in order to advise the resident to move the car. A resident's first violation of the PMP will result in a warning notice and request to immediately comply with the provisions of the PMP within 12 hours of receipt of notice for the first violation. Failure to comply within the stated timeframe of the first violation notice will result in a second violation, then Project Management will serve the resident with a 3-Day Notice to Cure. If the violation is not cured within the prescribed timeframe of the second violation, penalty fines shall be attached to monthly rent with a Notice to Quit.

The Property Management group shall hire a local tow company to tow vehicles parked within the development that are determined to be in violation of these policies (e.g., have more than three violation warnings). If a car does have a permit, the management will allow a 24-hour grace period before towing. However, all these cars will be cited in the system and tracked.

- B. Parking Patrol. A Parking Patrol provider will make nightly parking patrols seven (7) days per week in the complex, and provide a nightly report to management summarizing the following:
1. Vehicles parked within the complex (excluding the public street) in violation of the PMP for corrective action by management.
 2. Any suspicious persons or activity.
- C. Management Property Tour. Project Management will enforce the PMP policies by performing the following:
1. Tour the complex twice daily (morning and early evening) to confirm that no vehicles are parked in violation of the PMP. Twice daily inspections are expected to be sufficient as parking is less of a premium during daytime working hours. Further, a log will be kept of Management's inspections that will be made available upon the City's request.
 2. Noticing residents of parking violations based upon either Management's observations of parking violations or those observed by the Parking Patrol provider.
 3. Management will then enforce the violation policy discussed in Section 6.
- D. Resident Self-Policing. Signs will be clearly posted on Project property indicating that vehicles can be towed if parked in violation of the parking policies. Residents shall inform Property Management of any vehicle using a parking stall in violation of the PMP.

VIII. Parking Management Plan Monitoring and Evaluation

The owner and/or property management company shall continuously monitor the effectiveness of the PMP for *Village at Montclair mixed-use* community, and provided periodic reports to the City of Montclair for evaluation and/or modifications to the PMP, if warranted to meet new issues related to parking. The provisions of the approved PMP shall not be amended with prior City review and approval of a modified PMP by the Montclair City Council.

IX. Parking Space Assignment

The Village at Montclair			
Residential Tandem Parking Assignments – Building 1			
	<i>Type</i>	<i>Parking Stall Number</i>	<i>Parking Space Type</i>
1	2B	67/68	Tandem–1 Standard & 1 Compact
2	2B	69/70	Tandem–1 Standard & 1 Compact
3	2B	71/72	Tandem–1 Standard & 1 Compact
4	2B	73/74	Tandem–1 Standard & 1 Compact
5	2B	75/76	Tandem–1 Standard & 1 Compact
6	2B	77/78	Tandem–1 Standard & 1 Compact
7	2B	79/80	Tandem–1 Standard & 1 Compact
8	2B	81/82	Tandem–1 Standard & 1 Compact
9	2B	83/84	Tandem–1 Standard & 1 Compact
Totals			
9 Units		18 Spaces	18 Tandem
<i>The table above describes the allocation of non–garage residential parking. These 18 tandem spaces behind building 1 are the only residential parking allocations outside of the garage. All other residential parking is contained within the garage.</i>			

The Village at Montclair				
Parking Assignments – Visitor				
	<i>Type</i>	<i>Parking Stall Number</i>	<i>Location</i>	<i>Parking Space Type</i>
1	Visitor	G101	Garage 1st Floor	Single Space
2	Visitor	G102	Garage 1st Floor	Single Space
3	Visitor	G103	Garage 1st Floor	Single Space
4	Visitor	G104	Garage 1st Floor	Single Space
5	Visitor	G105	Garage 1st Floor	Single Space
6	Visitor	G106	Garage 1st Floor	Single Space
7	Visitor	G107	Garage 1st Floor	Single Space
8	Visitor	G108	Garage 1st Floor	Single Space
9	Visitor	G109	Garage 1st Floor	Single Space
10	Visitor	G110	Garage 1st Floor	Single Space
11	Visitor	G111	Garage 1st Floor	Single Space
12	Visitor	G112	Garage 1st Floor	Single Space
13	Visitor	G113	Garage 1st Floor	Single Space
14	Visitor	G114	Garage 1st Floor	Single Space
15	Visitor	G115	Garage 1st Floor	Single Space
16	Visitor	G116	Garage 1st Floor	Single Space

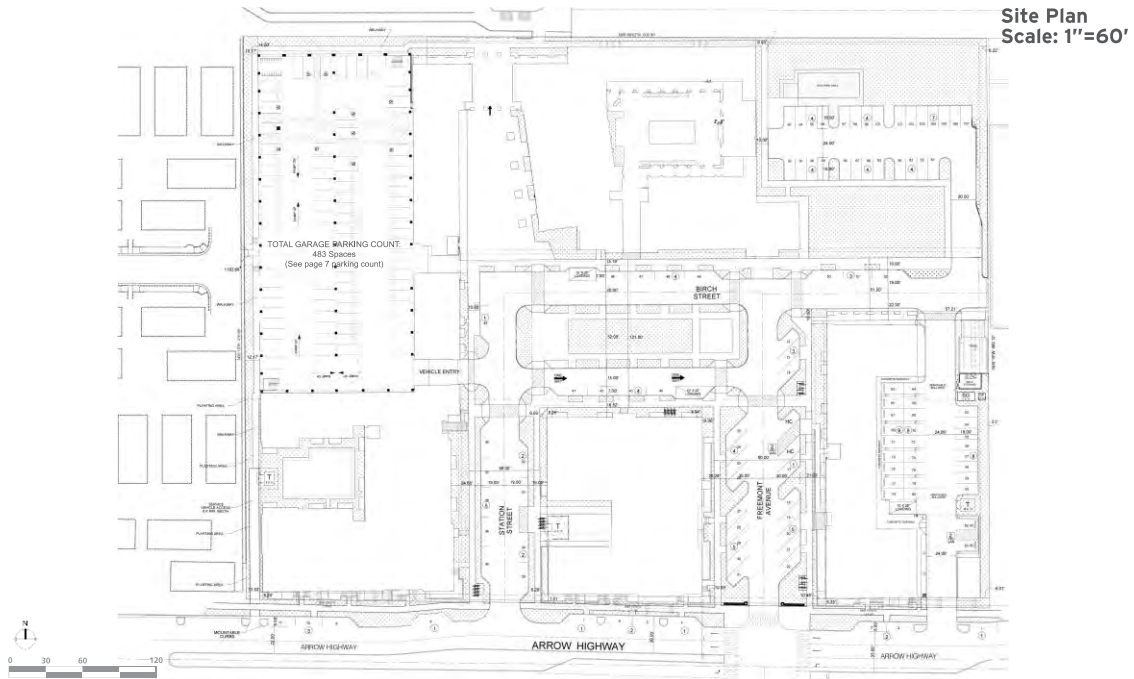
17	Visitor	G117	Garage 1st Floor	Single Space
18	Visitor	G118	Garage 1st Floor	Single Space
19	Visitor	G119	Garage 1st Floor	Single Space
20	Visitor	G120	Garage 1st Floor	Single Space
21	Visitor	G121	Garage 1st Floor	Single Space
22	Visitor	G122	Garage 1st Floor	Single Space
23	Visitor	G123	Garage 1st Floor	Single Space
24	Visitor	G124	Garage 1st Floor	Single Space
25	Visitor	G125	Garage 1st Floor	Single Space
26	Visitor	G126	Garage 1st Floor	Single Space
27	Visitor	G127	Garage 1st Floor	Single Space
28	Visitor	G128	Garage 1st Floor	Single Space
29	Visitor	G129	Garage 1st Floor	Single Space
30	Visitor	G130	Garage 1st Floor	Single Space
31	Visitor	G131	Garage 1st Floor	Single Space
32	Visitor	G132	Garage 1st Floor	Single Space
33	Visitor	G133	Garage 1st Floor	Single Space
34	Visitor	G134	Garage 1st Floor	Single Space
35	Visitor	G135	Garage 1st Floor	Single Space
36	Visitor	G136	Garage 1st Floor	Single Space
37	Visitor	G137	Garage 1st Floor	Single Space
38	Visitor	G138	Garage 1st Floor	Single Space
39	Visitor	G139	Garage 1st Floor	Single Space
40	Visitor	G140	Garage 1st Floor	Single Space
41	Visitor	G141	Garage 1st Floor	Single Space
42	Visitor	G142	Garage 1st Floor	Single Space
43	Visitor	G143	Garage 1st Floor	Single Space
44	Visitor	G144	Garage 1st Floor	Single Space
45	Visitor	G145	Garage 1st Floor	Single Space
46	Visitor	G146	Garage 1st Floor	Single Space
47	Visitor	G147	Garage 1st Floor	Single Space
48	Visitor	G148	Garage 1st Floor	Single Space
49	Visitor	G149	Garage 1st Floor	Single Space
50	Visitor	G150	Garage 1st Floor	Single Space
51	Visitor	G151	Garage 1st Floor	Single Space
52	Visitor	G152	Garage 1st Floor	Single Space

53	Visitor	G153	Garage 1st Floor	Single Space
54	Visitor	G154	Garage 1st Floor	Single Space
55	Visitor	G155	Garage 1st Floor	Single Space
56	Visitor	G156	Garage 1st Floor	Single Space
57	Visitor	G157	Garage 1st Floor	Single Space
58	Visitor	G158	Garage 1st Floor	Single Space
59	Visitor	G159	Garage 1st Floor	Single Space
60	Visitor	G160	Garage 1st Floor	Single Space
61	Visitor	G161	Garage 1st Floor	Single Space
62	Visitor	G162	Garage 1st Floor	Single Space
63	Visitor	G163	Garage 1st Floor	Single Space
64	Visitor	G164	Garage 1st Floor	Single Space
65	Visitor	G165	Garage 1st Floor	Single Space
66	Visitor	G166	Garage 1st Floor	Single Space
67	Visitor	G167	Garage 1st Floor	Single Space
68	Visitor	G168	Garage 1st Floor	Single Space
69	Visitor	G169	Garage 1st Floor	Single Space
70	Visitor	G170	Garage 1st Floor	Single Space
71	Visitor	G171	Garage 1st Floor	Single Space

The table above describes the allocation of visitor parking. All residential visitor parking is contained within the first floor of the garage, and will be monitored by property management through the use of the cloud-based parking management system.

Draft Parking Management Plan

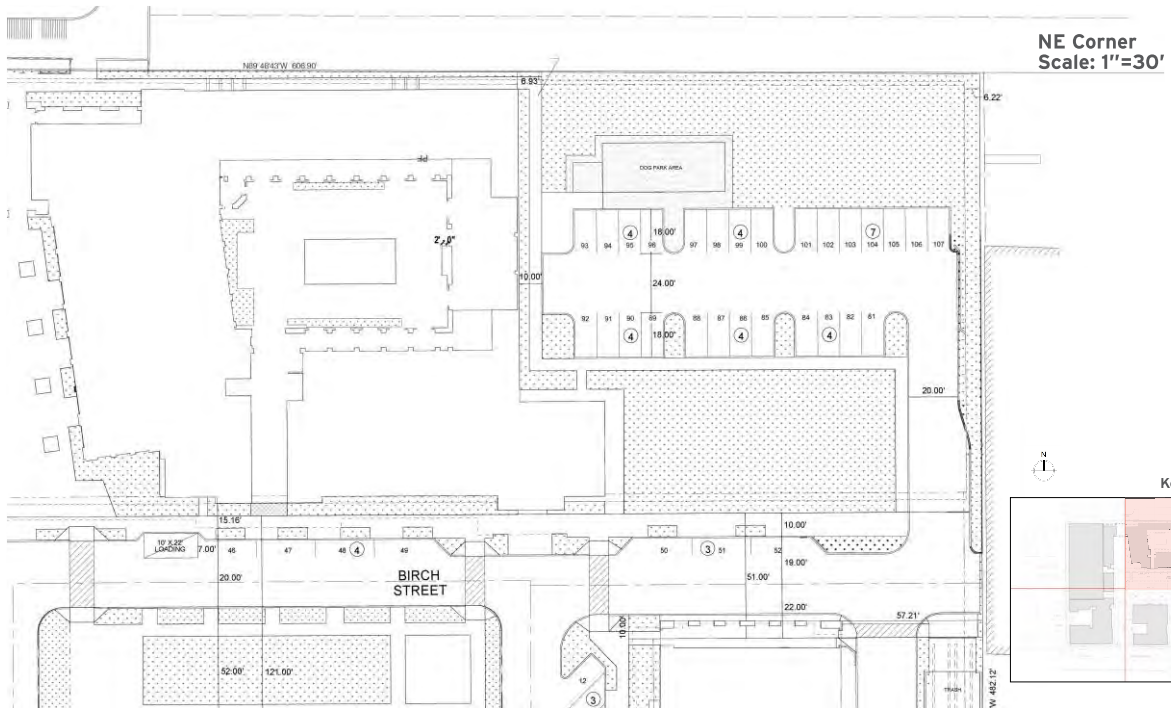
Exhibit A



Torti Gallas + Partners
Town Planners and Architects

THE VILLAGE AT MONTCLAIR
MONTCLAIR, CA
AUGUST 19, 2020

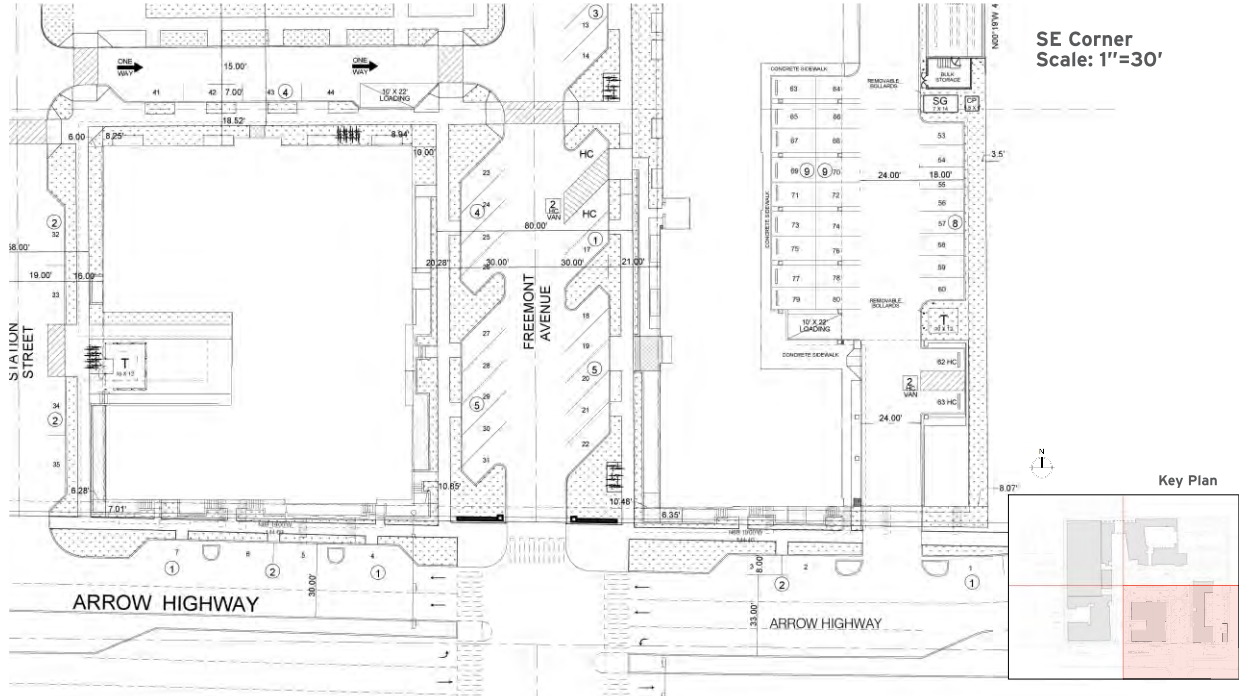
VILLAGE PARTNERS, INC.
Developers



Torti Gallas + Partners
Town Planners and Architects

THE VILLAGE AT MONTCLAIR
MONTCLAIR, CA
AUGUST 19, 2020

VILLAGE PARTNERS, INC.
Developers



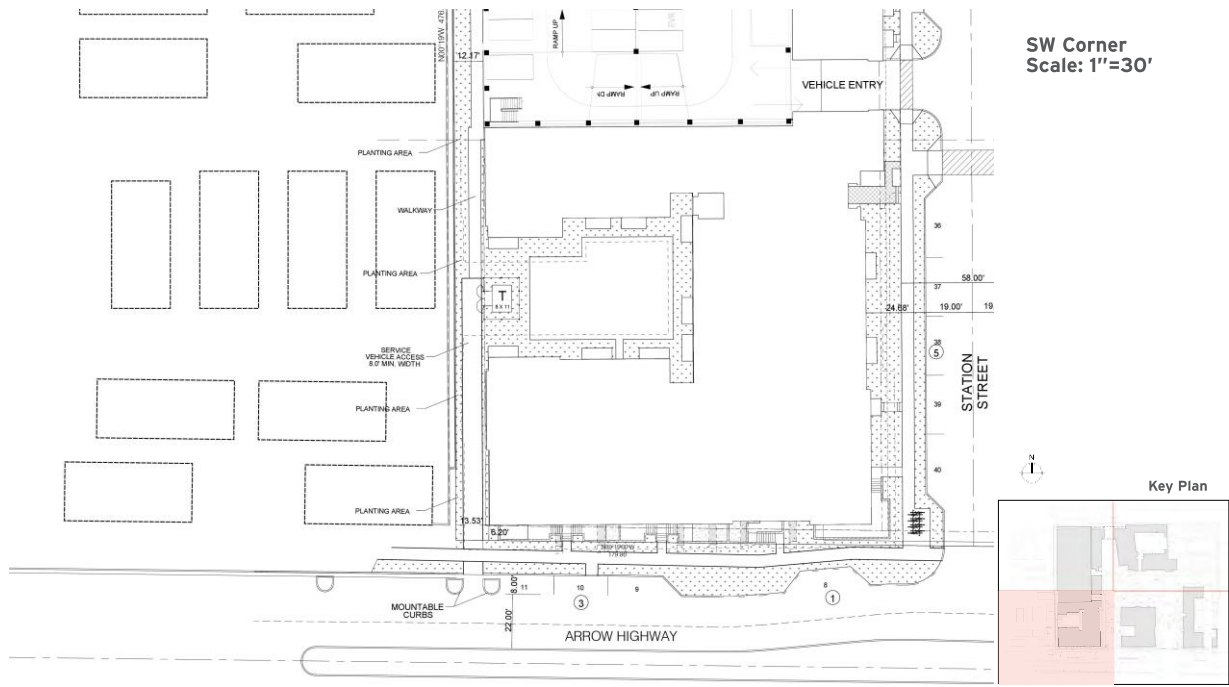
SE Corner
Scale: 1"=30'

Key Plan

 Torti Gallas + Partners
Town Planners and Architects


THE VILLAGE AT MONTCLAIR
MONTCLAIR, CA
AUGUST 19, 2020

 VILLAGE PARTNERS, INC.
Developers



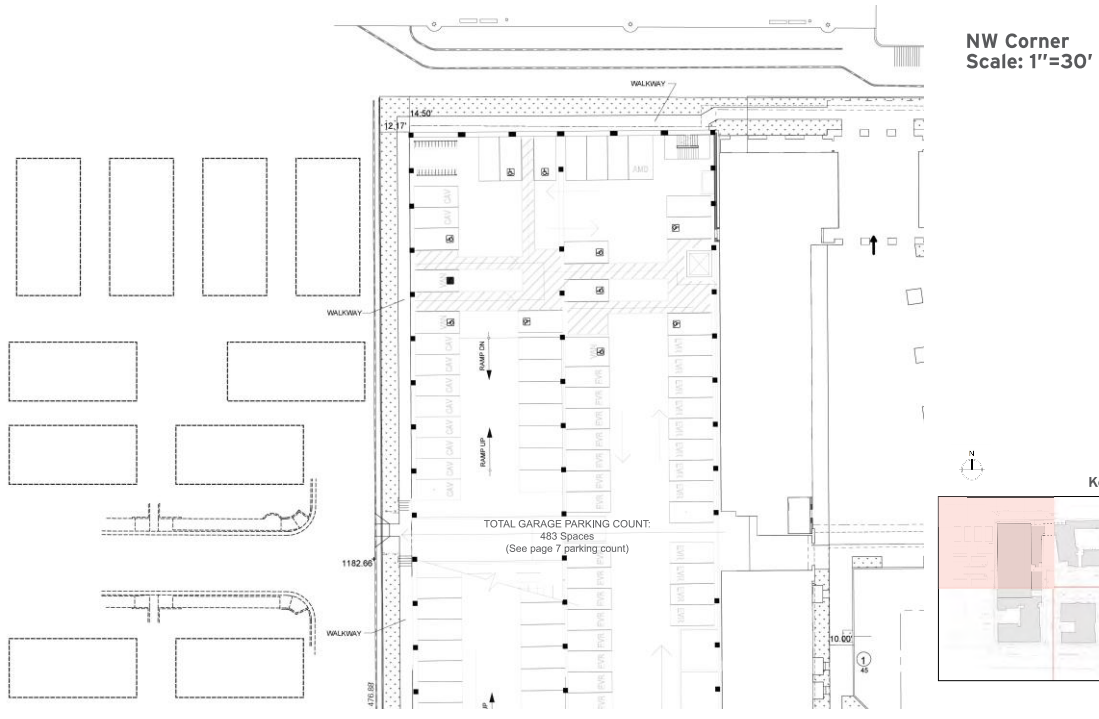
SW Corner
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Key Plan

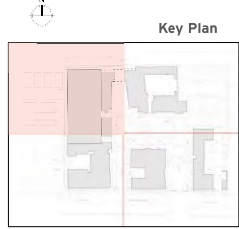
 Torti Gallas + Partners
Town Planners and Architects

THE VILLAGE AT MONTCLAIR
MONTCLAIR, CA
AUGUST 19, 2020

 VILLAGE PARTNERS, INC.
Developers



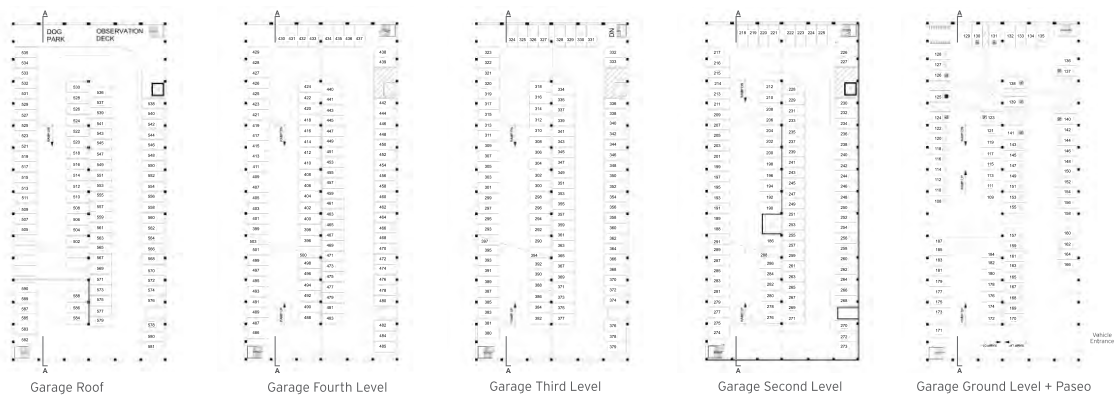
NW Corner
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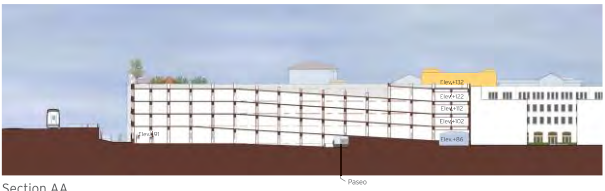
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THE VILLAGE AT MONTCLAIR
MONTCLAIR, CA
AUGUST 19, 2020

VILLAGE PARTNERS, INC.
Developers



Garage Parking Count
Scale: 1"=60'



Section AA

Garage Parking Tabulation

Ground Level	79
Second Floor	104
Third Floor	106
Fourth Floor	106
Roof	88
Total	483

Torti Gallas + Partners
Town Planners and Architects

THE VILLAGE AT MONTCLAIR
MONTCLAIR, CA
AUGUST 19, 2020

VILLAGE PARTNERS, INC.
Developers

RESOLUTION NO. 20-3285

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING TENTATIVE TRACT MAP NO. 20273 AND A PRECISE PLAN OF DESIGN UNDER CASE NO. 2017-20 FOR A MIXED-USE ON 6.68 GROSS ACRES LOCATED AT 5050 ARROW HIGHWAY, WITHIN THE STATION DISTRICT OF THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN (APN 1007-701-1)

WHEREAS, Village Partners Ventures, LLC on behalf of the Miriam A. Kendal Trust (current Property Owner), filed an application on January 23, 2017, for a Tentative Tract Map, and Precise Plan of Design under Case No. 2017-20 (Application) in conjunction with a proposal to construct a mixed-use development on 6.68 acres (gross), currently addressed as 5050 Arrow Highway; and

WHEREAS, the proposed mixed-use project is named *The Village at Montclair*; and

WHEREAS, the subject site is located within the "Station District" land use district of the North Montclair Downtown Specific Plan (NMDSP); and

WHEREAS, the subject site is currently vacant with an existing metal warehouse building, a paved parking area, and vacant land; and

WHEREAS, the objective of the NMDSP is to introduce urban style residential and mixed-use projects to the area and begin the process of creating a "downtown" environment with walkable neighborhoods, local retail and service businesses, and convenient access to rail transit; and

WHEREAS, Tentative Tract Map No. 20273 would subdivide the 6.68-gross acre project site into six lots and one lettered lot (public park) for the project, as depicted on the attached Exhibit "A," a map incorporated herein by reference; and

WHEREAS, the proposed subdivision provides public easements to facilitate pedestrian access between project and existing development to the west and the Montclair Transcenter to the north of the site; and

WHEREAS, the Precise Plan of Design is for the overall site plan, floor plans, elevations, colors, materials, conceptual landscape plan, and associated site plan improvements for the proposed mixed-use project Exhibits "B;" and

WHEREAS, the mixed-use project provides approximately 24,919 square feet of ground level commercial lease space, and 330 permanent apartment units as generally depicted in Exhibit "C"; and

WHEREAS, the proposed mixed-use development consists of four multi-story buildings ranging from three- to five-stories in height, one of which includes a five-level parking structure, and

WHEREAS, the proposed development plan also includes a dedicated 0.22-acre site for development of a public park; and

WHEREAS, the tract map and subsequent development of the site with a mixed-use project, complies with the guidelines and development standards outlined in the NMDSP; and

WHEREAS, the NMDSP requires 1.5 parking spaces per dwelling unit with an additional requirement for one guest parking space for every four units. Further, required parking for commercial lease space is one parking space per 300 square feet; and

WHEREAS, the applicants have requested City Council approval of a 15 percent parking reduction as allowed by the NMDSP; and

WHEREAS, Chapter 5.4.010.C.1 of the NMDSP allows the City Council to approve up to a 15 percent reduction in parking requirements when a development is under single ownership and/or under the control of the same professional management

company, and subject to specific requirements, including the preparation of a Parking Management Plan; and

WHEREAS, on December 16, 2019, the project proposal and status report was presented to the City Council and the Planning Commission during a public workshop meeting; and

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

WHEREAS, the Planning Commission finds the requested entitlements to be consistent with the adopted General Plan, the NMDSP, and good planning principles; and

WHEREAS, on March 20, 2017, the City Council certified Supplemental Environmental Impact Report (SCH# 2016101001) ("SEIR") for the updated and amended North Montclair Downtown Specific Plan (hereafter Specific Plan); and

WHEREAS, in connection with its consideration of the SEIR, the City Council adopted a Mitigation Monitoring and Reporting Program, and adoption of a Statement of Overriding Considerations for the updated and amended Specific Plan; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) Guidelines, the City certified a Supplemental Environmental Impact Report (SEIR) on March 20, 2017, in connection with the City's approval of an amended and updated North Montclair Downtown Specific Plan, which included the subject site and anticipated improvements. According to Government Code Section 65457 and State CEQA Guidelines Section 15182, where a public agency has prepared an EIR on a Specific Plan after January 1, 1980, no EIR or negative declaration need be prepared for a project undertaken pursuant to and in conformity to that specific plan. The proposed mixed-use project is in conformity to the Amended North Montclair Downtown Specific Plan, for which an EIR was certified in 2017; and

WHEREAS, all potentially significant environmental impacts of the proposed project that could be mitigated to less than significant levels would be mitigated to less than significant levels with mitigation measures contained in the Mitigation Monitoring and Reporting Program for the North Montclair Downtown Specific Plan EIR. There are no changes to the significant and unavoidable impacts disclosed in the EIR. In sum, the project would not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and that additional or different mitigation measures are not required to reduce the conditions listed in Section 15162 of the CEQA Guidelines requiring the preparation of a subsequent or supplemental EIR are present and the second criterion of State CEQA Guidelines, Section 15182 can be satisfied. Therefore, the proposed project qualifies for the exemption for mixed-use residential projects described in Section 15182 of the State CEQA Guidelines; and

WHEREAS, on August 1, 2020, the City gave public notice of the City of Montclair's Planning Commission's ("Planning Commission") public hearing on the proposed project by advertisement in a newspaper of general circulation, and posted the public notice at City Hall, and mailed to all property owners within 300 feet of the project boundaries; and

WHEREAS, on August 10, 2020, the Planning Commission opened the public hearing on the Application and then at City staff's request continued its review of the proposed Application to its next regularly scheduled meeting date on August 24, 2020; and

WHEREAS, on August 24, 2020, the Planning Commission conducted a duly noticed public hearing on the Application at which time all persons wishing to testify in connection with the Application were heard and the Application was comprehensively reviewed; and

WHEREAS, on August 24, 2020, the Planning Commission, by a vote of 5-0, recommended that the City Council approve Tentative Tract Map No. 20273 and Precise Plan of Design subject to the conditions of approval contained in Exhibit "C," the Draft City Council Resolution No. 20-3285 prepared for the project, pursuant to Planning Commission Resolution No. 20-1942; and

WHEREAS, on September, 11, 2020, the City gave public notice of the City Council's public hearing by advertisement in a newspaper of general circulation, and

posted the public notice at City Hall, and mailed to all property owners within 300 feet of the project site boundaries; and

WHEREAS, on September 21, 2020 the City Council opened the hearing for public comment and at staff's request (in consultation with the developer) voted to continue the public hearing for the item to Monday, October 5, 2020, to further refine the proposed conditions of approval; and

WHEREAS, the City Council conducted the public hearing on *The Village at Montclair* project proposal on October 5, 2020, at which time all interested parties were provided an opportunity to give testimony for or against the proposal; and

WHEREAS, at the October 5, 2020 meeting the Applicant/Developer presented modifications to Condition No. 20 of proposed Resolution No. 20-3285 regarding Flex/Commercial Units for City Council consideration. Since the proposed changes were significant and offered late in the day, the City Council did not have sufficient time to evaluate and make an informed decision on the matter. To provide more time to study the issue further, the item was continued to the City Council's regularly scheduled meeting date on November 2, 2020; and

WHEREAS, at the November 2 and November 16, 2020, City Council meetings the item was continued to provide more time for staff and the developer to iron out details regarding Condition No. 20 related to Flex/Commercial Units within the project; and

WHEREAS, on November 16, 2020, the City Council continued the review of the project proposal to the City Council's regularly scheduled meeting date on December 7, 2020; and

WHEREAS, staff and the developer were able to reach agreement on the language of Condition No. 20 of this Resolution, and the item was prepared for final City Council review on December 7, 2020; and

WHEREAS, the City Council conducted a public hearing on *The Village at Montclair* project proposal on December 7, 2020, at which time all interested parties were provided an opportunity to give testimony for or against the proposal; and

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

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

WHEREAS, the City Council finds the requested entitlements to be consistent with the adopted General Plan and the NMDSP and following good planning principles; and

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

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

SECTION 1. Based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment for the application, the City Council finds that the proposed project is exempt from further environmental review pursuant to State CEQA Guidelines, Section 15182 based on the following findings of fact:

- A. On March 20, 2017, the City Council certified the SEIR for the Amended Specific Plan and approved the Amended Specific Plan.
- B. The proposed mixed-use project undertaken pursuant to and in conformity with the North Montclair Downtown Specific Plan. The proposed residential units were contemplated in the SEIR and were evaluated as part of that environmental analysis. The particular application subject to this resolution is a land subdivision to support the residential project.
- C. None of the conditions in State CEQA Guidelines, Section 15162 are present. Specifically,

1. substantial changes are not proposed in the project that would require major revisions of the SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
2. substantial changes with respect to the circumstances under which the project is undertaken that would require major revisions to the SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects have not occurred; and
3. new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the SEIR was certified or adopted, as applicable, showing any of the following, has not come to light: (i) that the project would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those previously analyzed would substantially reduce one or more significant effects on the environment, but which the applicant declined to adopt.

- D. Based on these findings and all evidence in the record, the City Council finds that the project is exempt from CEQA pursuant to State CEQA Guidelines, Section 15182 and no additional environmental review is required in connection with the City's consideration of Case No. 2017-20 for *The Village at Montclair* mixed-use development project.

SECTION 2. Based on the entire record before the City Council, all written and oral evidence presented to the City Council, and the findings and recitals set forth in this Resolution, the City Council approves Tentative Tract Map No. 20273 and a Precise Plan of Design under Case No. 2017-20 for *The Village at Montclair* mixed-use project consisting of 24,919 s.f of ground level lease space, 330 permanent apartment units, 20 Flex Units, and a public park, subject to the conditions of approval set forth in the attached Exhibit "D" and as depicted in the submitted plans and renderings dated August 19, 2020.

SECTION 3. Pursuant to California Government Code Section 66410, *et seq.*, based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of the Tentative Tract Map No. 20273:

- A. The proposed subdivision of 6.68-gross acre site, is designed, to the extent feasible, to provide for passive or natural heating or cooling opportunities. The lot pattern and proposed arrangement buildings on the site are generally oriented, spaced, and designed to allow for access to adequate light and air. Each dwelling unit will have operable windows to allow for passive cooling provided by seasonal winds.
- B. The project includes a formal open space area at the center of the project site, and several private open space areas dispersed throughout the development in the form of courtyards at each building, and community access to a pool. Moreover, the project will provide tree-lined streets and a public park for shade, air filtering, and other environmental benefits.
- C. The proposed subdivision and the provisions for its design and improvement are consistent with the General Plan for the City of Montclair ("General Plan") and the applicable NMDSP:
 1. The Tentative Tract Map would provide for land uses compatible with the land use classification for the subject site by the General Plan and NMDSP. The overall goal of the General Plan is to promote good planning practices and orderly development within the City and to

recognize the potential of specific areas for special treatment. The proposed development of the 6.68-acre site and project design and improvements would be consistent with the General Plan land use designation for the site.

2. The Tentative Tract Map provides for land uses compatible with the "Station District" land use classification for the subject site in the NMDSP. Moreover, the design for the project is of a high quality and consistent with the high expectations of improvements for projects within the NMDSP.
- D. The subject site is physically suitable for the type and density of development proposed in the Tentative Tract Map given the overall size of the property. The site is 6.68 gross acres in overall area and is of a configuration that has sufficient width and depth to allow for orderly site development, the provision of open space areas between the proposed structures in the project, and sufficient setbacks from the adjacent single-family residential properties located to the west at the Arrow Station residential community. The project site is also located adjacent to fully-improved streets that will provide good access and allow for appropriate internal pedestrian and vehicular circulation. The proposed public streets within the project boundaries will be fully improved and serve to implement the eventual goal of a linked-street system that promotes walkability and connectivity to adjacent properties and uses, including a direct link to the Montclair Transcenter.
 - E. The subdivision design and improvements proposed in the Tentative Tract Map is not likely to cause substantial environmental damage nor substantially injure fish or wildlife or their habitat. As explained in the North Montclair Downtown Specific Plan Supplemental Environmental Impact Report (SCH#2016101001) ("SEIR"), the site is surrounded by urban development and streets, does not contain any bodies of water, and is not linked to any wildlife corridors. Further, the SEIR explains that the site does not contain any known habitats of significance including rare or endangered species of plant, animal, or insect life.
 - F. The subdivision design and type of improvements proposed in the Tentative Tract Map are not likely to cause serious public health problems because all development and public improvements will be performed per the requirements of all applicable standards and codes including the zoning and building codes. As a condition of approval, the applicant is required to submit an acoustical analysis demonstrating that interior noise standards of each unit will comply with Municipal Code requirements and applicable Mitigation Measures identified in the SEIR.
 - G. The subdivision design and type of improvements proposed in the Tentative Tract Map will not conflict with any easements acquired by the public at large for access through or use of the subject site because no such easements exist on the subject site. However, the map provides for new public easements specifically intended to allow for public access at key points in the new plan, and in particular or facilitate pedestrian public access from the site to the Montclair Transcenter.
 - H. The discharge of waste into the existing sanitary sewer system from the development proposed in the Tentative Tract Map will not cause a violation of existing requirements prescribed by the regional water quality control board. The entire project will be required to connect to a sanitary sewage system pursuant to California Plumbing Code and Municipal Code requirements. Sewer mains exist in the Arrow Highway right-of-way and are in close proximity to the site to facilitate ease of connection.

SECTION 4. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of a Precise Plan of Design under Case No. 2017-20:

- A. The proposed mixed-use project is consistent with the "Planned Development" land use designation of the City's General Plan Land Use Map, and the "Station District" (SD) land use designation of the NMDSP. The SD land use district is intended to establish a denser, urban oriented,

fabric of buildings, appropriate for locations in close proximity to new and existing roadways. Moreover, the NMDSP depicts the site as the focal point of the plan given its central location and planned connection point to the Montclair Transcenter. When the aforementioned connection point is completed both sides of the NMDSP will be linked by easy access between the north and south sides of the NMDSP planning area. Lastly, the mixed-use development on subject site will serve as a catalyst to further attractive urban development on Arrow Highway.

- B. The proposed project would result in a significant improvement to the appearance of the area by redeveloping an underutilized area within the NMDSP into a well-designed mixed-use development, which makes efficient use of the site and complies with the intent and applicable development standards of the NMDSP. The 330 permanent dwelling units proposed with this project amounts to 63 units per net acre which is consistent with the low end of the SD density range of 60–80 dwelling units per acre, and the highest density rate to date within the NMDSP and City.
- C. The site plan, building form, massing, and height will contribute to the ongoing formation of the streetscape and development pattern envisioned by the NMDSP. The proposed mix of three, four, and five-story buildings and their arrangement on the site will contribute to the ongoing transformation and improvement of the Arrow Highway streetscape envisioned by the NMDSP.
- D. The proposed architectural design of the project as indicated on the submitted plans is well done, attractive, and complementary to recent development in the area. The design is distinctive and appropriate for the prominent role this site plays in the development of the NMDSP. Moreover, the project design is consistent with the architectural style guidelines depicted in the NMDSP, and features high-quality exterior materials and finishes and incorporates appropriate lighting, landscaping, and hardscape materials.

SECTION 5. The City Council finds the requested 15 percent reduction in parking requirements is appropriate and meets the criteria set forth in Chapter 5.4.010.C.1 of the NMDSP; as follows:

- A. The subject site is uniquely situated to serve as the central connection point of the NMDSP linking pedestrian access to and from the Montclair Transcenter. Moreover, *The Village at Montclair* mixed-use development is directly adjacent to the Montclair Transit Center providing immediate access for its residents and customers to alternative transit options lessening the need to own and/or use vehicles as the primary means of travel. As such, the project meets the overall intent and goals of transit oriented development (TOD) which the NMDSP was created to promote the utilization of public transit and less use of private automobiles. The Village at Montclair mixed-use development utilizes the type of improvements to support the desired minimum density level of the Station District with sufficient on-site parking for both residents, future businesses, and visitors to the site. The proposed 15 percent reduction in parking coupled with the proposed Parking Management Plan (PMP) provides a workable method to ensure a sufficient amount of parking spaces are available to meet the needs of on-site tenants as regulated by an approved PMP. Lastly, the proposed temporary surface parking and the eventual development of permanent structured parking on Lot 6 would supplement any future need for short-term parking in the immediate area for the project.
- B. The operating characteristics of the proposed use are such that granting the parking reduction will not cause unreasonable negative impacts to the surrounding property owners or neighborhoods. The project is designed to stand alone and not require the use of adjacent properties to satisfy parking requirements. Short term guest and customer parking for future businesses would be along the public streets within the project site and not be assigned to tenants. The PMP will be the key mechanism to ensure that non-public parking spaces for the project are maintained sufficient in number, properly allocated to tenant and users, and enforced to meet the needs of tenants, customers, and visitors at the subject site.

- C. A Parking Management Plan (PMP) has been prepared by the applicants for the project which complies with requirements of Section 5.4.010.E. A key element of the PMP is the mandatory notification to prospective tenants of the on-site parking conditions and requirements at the complex during the initial rental application process. All executed lease agreements will contain the entire PMP as an exhibit to their lease agreement, including a signed acknowledgment that the resident(s) agree to the terms of PMP. Moreover, the subject development is under single ownership and/or will be under the control of the same professional management company to ensure that the PMP is appropriately applied and enforced.
- D. The PMP and an appropriate legal instrument of agreement among the affected owner(s) of the property(ies) will be recorded with the County Recorder to ensure the PMP is binding upon the owner and its successors and assigns and shall limit and control the use of land included in the development to those uses and conditions approved by the Director of Community Development.

SECTION 6. Pursuant to Section 66412.3 of the Government Code, based on the entire record before the City Council and all written and oral evidence presented, the City Council finds the subdivision and improvements proposed will help the City of Montclair meet its regional housing needs as the project proposes the construction of 330 permanent residential units, which will help the City meet its identified housing unit RHNA allocation.

SECTION 7. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds the nature and extent of the dedications, reservations, impact fees, and other exactions are reasonably related to public needs and roughly proportional to the impacts created by the subdivision and improvements proposed in the Tentative Tract Map. In addition, several conditions, including conditions relating to the imposition of operational covenants for the mixed-use development are necessary to assure the development maintains compliance with City general plan and zoning standards.

SECTION 8. The location and custodian of the documents and any other material that constitute the record of proceedings upon which the City Council based its decision is as follows: Director of Community Development, Community Development Department, City of Montclair, 5111 Benito Street, Montclair, California 91763, or by telephone at (909) 625-9477.

SECTION 9. Effective Date. This Resolution shall become effective upon its adoption.

APPROVED AND ADOPTED this XX day of XX, 2020.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 20-3285 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 M. Phillips
City Clerk

EXHIBIT A
TENTATIVE TRACT MAP 20273

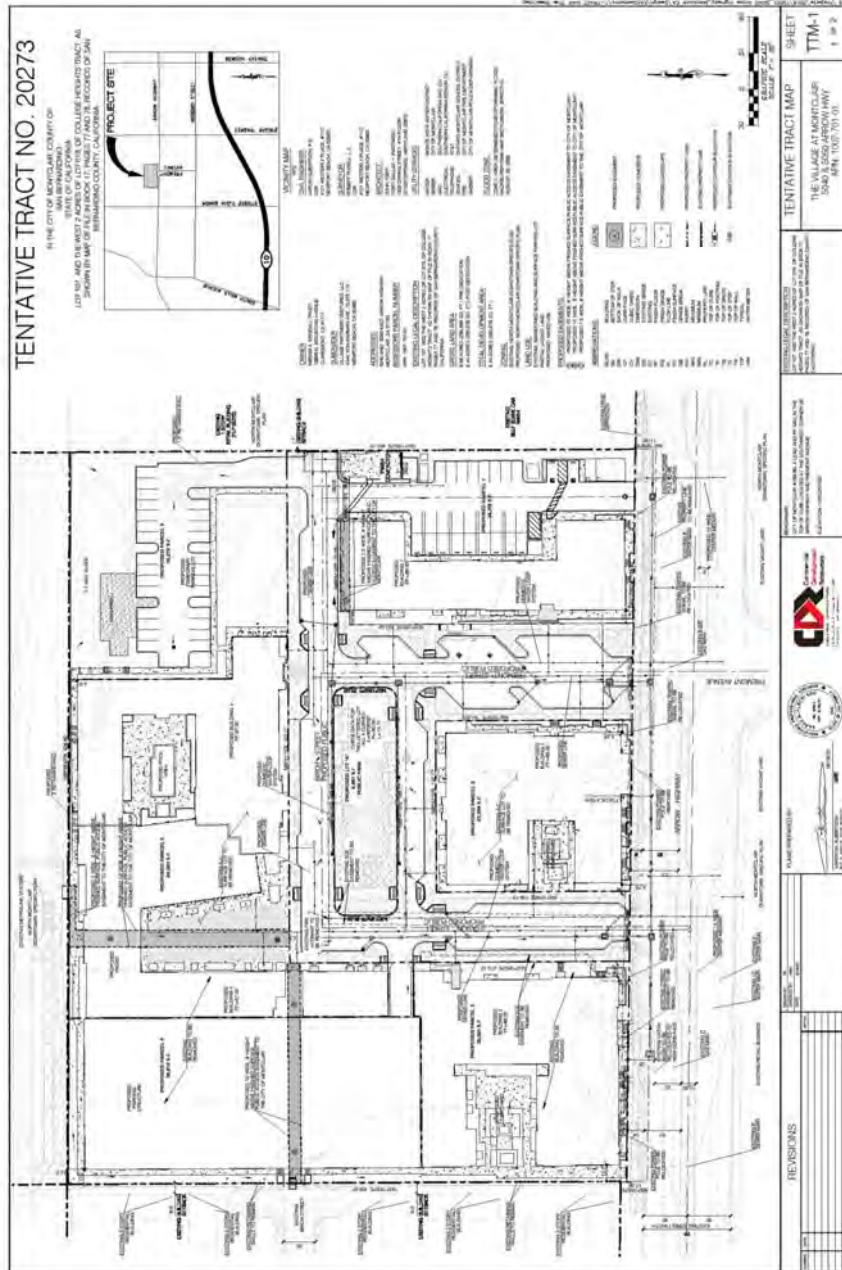


EXHIBIT B SITE PLAN



EXHIBIT C

GROUND FLOOR LEASING PLAN

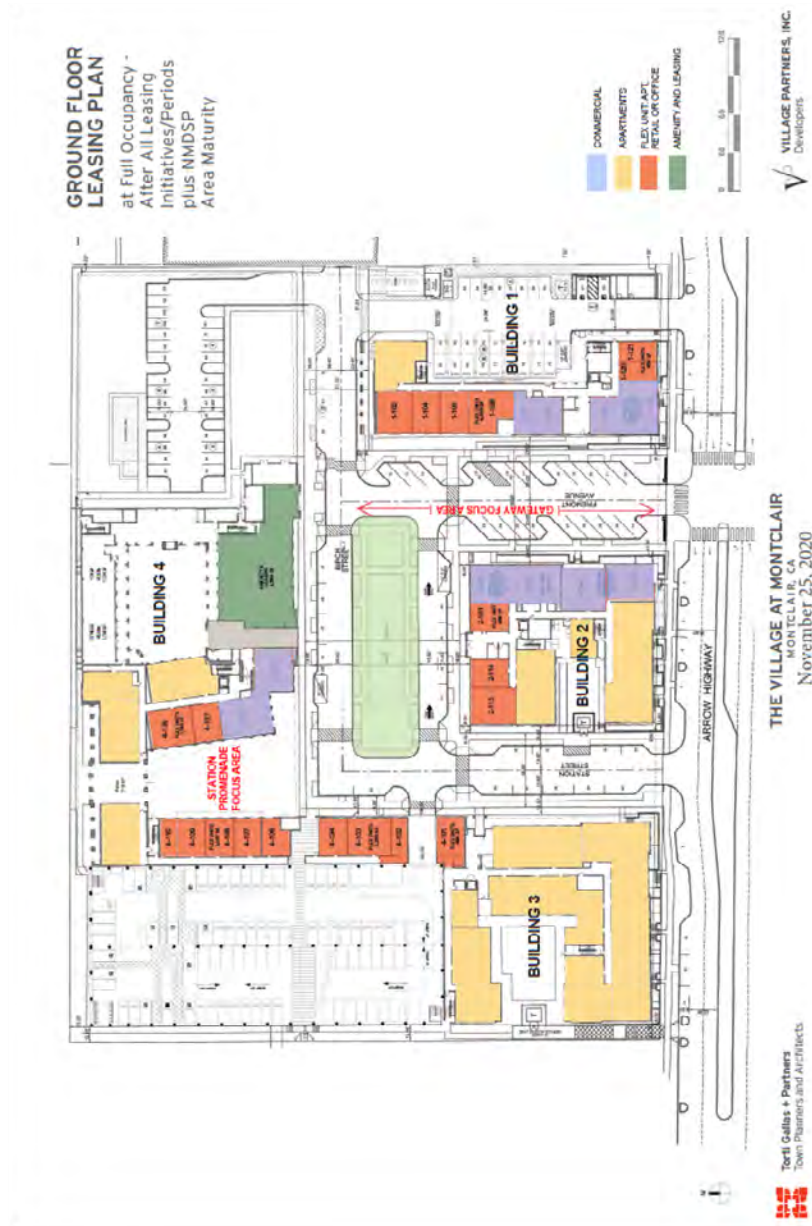


EXHIBIT D

Resolution No. 20-3285
Case No. 2017-20

CONDITIONS OF APPROVAL

The Village at Montclair

Project Approvals & General Conditions

GENERAL CONDITIONS

1. The approval for The Village at Montclair project includes the following elements:
 - a. Tentative Tract Map No.20273, subdividing a 6.68-gross acre site into six numbered lots, and one lettered lot (for a public park), for the purpose of developing a mixed-use project which includes a maximum number of 330 permanent apartment units, and ultimately 24,919 square feet of ground floor commercial lease space on a project site located on the north side of Arrow Highway at its intersection with Fremont Avenue, with associated on-and off-site public improvements, attached hereto as Exhibit A.
 - b. A Precise Plan of Design (PPD) approving the site plan, floor plans, elevations, colors and materials, conceptual landscape plan, and public park space associated with the construction of the project as described in the staff report and depicted on approved plans on file with the Planning Division and generally depicted in Exhibit B.
 - c. A 0.22-acre (9,881 square foot) neighborhood public square in accordance with the North Montclair Downtown Specific Plan (NMDSP) and to be constructed consistent with the Conceptual Landscape and Park Design Plan depicted in Exhibit B. The final construction drawings for the improvements to the neighborhood park on the project site shall be submitted to the Planning Division during the plan check process for review and approval.
 - d. A paved surface parking area with 27 parking spaces, a fenced dog park area, and landscaping for Lot 6 as depicted on the approved site plan.
2. The above entitlements are granted based upon the maps, plans and elevations submitted by Village Partners Ventures, LLC, and dated August 19, 2020. However, final design review shall be required pursuant to Section 5.1.050.2 of the NMDSP upon the submittal of construction drawings for the project, to review building, park, and architectural construction design, details, and standards. Such review is intended to ensure high quality development and to prevent misunderstanding during the construction process. The Community Development Director shall conduct the review in consultation with the City's reviewing architect. Costs to conduct architectural review shall be reimbursed to the City pursuant to the Reimbursement Agreement No. 17-33 between the Owner and the City.
3. This approval shall supersede any and all previously approved entitlements for the subject project site.
4. Any modification, intensification, or expansion of the use beyond that which is specifically approved by the aforementioned entitlements and that is not reflected in the map, plans, and drawings approved with this action by the City Council shall require review and approval by the City Council.
5. In the event that exhibits and written conditions are inconsistent, the written conditions shall prevail.
6. The applicant/owner shall be required to pay any applicable fees as shown below; within five (5) days of approval by the City Council:
 - a. A check in the amount of **\$50**, payable to "Clerk of the Board of Supervisors," to cover the filing fee for the Notice of Exemption (NOE) as required by the California Environmental Quality Act (CEQA).

- b. A check in the amount of **\$2,057.80**, payable to "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law for the Planning Commission review on August 10, 2020; and
 - c. A check in the amount of **\$1,089.62**, payable to "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law for City Council review on September 21, 2020.
7. In establishing and conducting the subject use, the applicant shall at all times comply with any and all laws, ordinances and regulations of the City of Montclair, the County of San Bernardino and the State of California. Approval of this PPD shall not waive compliance with any such requirements.
 8. Applicant/Owner shall comply with all applicable Mitigation Measures as contained in the North Montclair Downtown Specific Plan Amendment Project Supplemental EIR (January 2017); including but not limited to mitigation measures regarding Tribal Cultural Resources (Mitigation Measure F and G); and Noise (construction and post construction), etc.
 9. Notice to Applicant/Owner/Subdivider: The conditions of approval for this project include certain fees, dedication requirements, reservation requirements, and/or other exactions more specifically described in the conditions of approval herein. The subdivider/applicant is hereby notified that the 90-day protest period to challenge such items has begun as of the date of the project approval. For purposes of this notice, "project approval" shall mean the date that the City Council approves the application for the Tentative Tract Map referenced in Condition No. 1, Precise Plan of Design for the project. All impact fees shall be due and payable at the time stated in the adopted ordinance, resolution or policy adopting and imposing such fees, or at the time building permits are issued. If the applicant fails to file a protest regarding any of the fees, dedications, reservations, or other exaction requirements as specified in Government Code §66020, the subdivider/applicant shall be legally barred from later challenges.
 10. The applicant/owner/subdivider shall reimburse the City for the legal costs associated with the preparation/review of any agreements and covenants required by these conditions prior to the time of their initiation.
 11. Precise Plan of Design (PPD) approval shall be valid for a period of one year and shall automatically expire on the anniversary date of City Council approval, unless the applicant is diligently pursuing building plan check toward eventual construction of the project. The applicant/owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's PPD expiration date.
 12. The applicant/owner shall ensure that a copy of this Resolution is reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the Project.
 13. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the permitted use and development of said property as set forth by this permit together with all conditions that are a part thereof. These specific requirements must be recorded with all title conveyance documents at the time of escrow closing.

***CONDITIONS PRIOR TO THE SUBMITTAL OF A FINAL MAP (Condition Nos. 14–19)
Planning/Administration***

14. Prior to the approval of the Final Map by the City Council for the project, the map prepared by owner/subdivider shall complete and/or show the following items:
 - a. Obtain written approval and documentation from the San Bernardino County Transit Authority (SBCTA) and other affected agencies allowing access and authorizing developer to construct any associated improvements on their property(ies) (e.g., walkways, stairs/ramps, walls,

fences, gates, signs, lighting, etc.) necessary to facilitate pedestrian access from the subject site to the Montclair Transcenter.

- b. A dedication of the following public access easements to the City of Montclair for the purposes of allowing the general public to access Montclair Transcenter from the project site as depicted on Exhibit A, including:
 - i. A 14-foot wide (minimum 10-foot high) access easement through the Station Promenade area of Building 4, from the public sidewalk on the north side of Birch Street (or approved street name) extending northward through Building 4 as shown on the approved site plan. Thereafter, the public easement may be reduced to a horizontal width of 8 feet along the north side of Building 4 for the distance necessary to link with the access point from the Montclair Transcenter; and
 - ii. A 10-foot wide (minimum 8-foot high) pedestrian access easement from the western property line of the site, commencing at the Arrow Station residential development, through the proposed parking structure in Building 4, and ending with an 8 feet, 8 inches wide (8'-8") by 10-foot tall (minimum) entry point where the easement meets the public sidewalk on Station Street, and
 - iii. A public easement to allow for an arcade over a public sidewalk created by the overhang of Building 1. Said public easement shall provide and maintain the following dimensions:
 1. A minimum clearance of 6 feet in width at each entry point to the arcade; and
 2. A minimum interior dimension of 8 feet in horizontal width within the arcade, and
 3. A minimum 10-foot height within the arcade; and
 4. A length of approximately 70-75 feet, as depicted on approved plans.
 - iv. All public access easements on the recorded Final Map shall meet minimum height requirements stated above. Minor encroachments of architectural features or appurtenances attached to the buildings (e.g. lighting, structural elements, fire sprinklers, arch radius, ornamental molding, etc.) may be permitted provided that such elements do not impede pedestrian passage, subject to City approval.
 - c. A dedication of an 0.22-acre parcel to the City of Montclair for development of a neighborhood public park in accordance with the NMDSF and as depicted on the approved site plan for the development on file with the Planning Division and referred to as hereto as Exhibit B.
15. A Master Solid Waste Removal Plan (SWRP) for the project. City review and approval in consultation with the City's refuse collection provider shall be required. The SWRP shall identify the location and size of all facilities and provide a written operational strategy/manual to be used by the property management company for the project. The SWRP shall include and/or address the following elements:
- a. Prevent the accumulation of onsite rubbish, trash, or debris in a manner that is inconsistent with the approved SWRP and/or that degrades the appearance of the site and adjacent street frontages.
 - b. All refuse collection facilities shall be designed in accordance with the provisions of AB 341 Mandatory Commercial Recycling and AB 1826 Mandatory Commercial Organics Recycling (MOR) as established by California Department of Resources Recycling and Recovery (CalRecycle). Sufficient facilities must be provided and maintained for the mandatory recycling of all recyclable materials and food waste/organics.

- c. No barrels (or other containers) for waste fats, oils, or grease (FOG) generated by any business shall be stored in refuse collection facilities. All food businesses (e.g., bakeries, restaurants, take-outs, etc.) generating FOG shall be required to utilize a pressurized waste fry-oil removal system as condition of approval for each business. Notation and schematics of the system must be provided in the plans prepared for City review and approval.
 - d. All refuse collection facilities shall be power washed a minimum of two times per month (or more frequently if needed), by property management staff or by means of a hired company qualified to power wash or steam clean all refuse collection facilities and/or equipment. Such activity shall be performed with proper equipment containing a water recovery system or self-contained unit to recycle the wash (waste) water, as approved by the City's NPDES Coordinator or Environmental Inspector. Inspections of refuse collection facilities shall be subject to routine inspection by the City of Montclair.
 - e. Spills and leaks shall be cleaned up immediately using a spill kit and/or appropriate Best Management Practices (BMP) that utilize absorbents or equivalent "dry" methods.
16. The owner/applicant shall agree to the formation of a new Community Facilities District (CFD) pursuant to the terms of Government Code Section 53311, et seq., the territory of which shall include the Project, for the purposes of the payment of maintenance and operation costs associated with the common landscaping, lighting, public park and easements, and other public improvements located within the Project, including a public safety component. The applicant shall consent to the formation of the CFD prior to the recordation of the final map for the Project. The applicant further expressly agrees that failure to form such CFD will result in disapproval of the Project.

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

If, for any reason whatsoever, the Property or portion thereof does not become part of a CFD or if any such CFD that is formed does not provide for the maintenance of the entirety of the improvements within the Property, or any portion thereof, then such improvements shall be maintained by a private property owner, or an adequate alternative reasonably acceptable to the City, to undertake such work. Costs to implement the CFD shall be reimbursed to the City pursuant to a Reimbursement Agreement between the applicant and the City.

17. Prepare a specific layout plan and written strategy for the Station Promenade area between Buildings 3 and 4. Implementation and enforcement of the approved plan shall be the responsibility of the property management company. The plan shall include the following elements:
- a. A site plan for the Station Promenade area to demonstrate an intact, open, and visually attractive space serving the project, rather than a series of unsightly subdivided private, semi-private, and public spaces.
 - i. The use of permanent fences/walls (open or solid) or other such methods designed to create separate private spaces in the Station Promenade shall be prohibited.
 - ii. When required by the Department of Alcoholic Beverage Control (ABC), any separation requirements shall be accomplished by the least obtrusive, but attractive, means possible, as approved by the City and ABC.
 - b. Show the minimum 14-foot wide public easement pathway leading from the Station Street public sidewalk to the access point for the Montclair Transcenter. The public easement pathway shall remain unobstructed at all times and open to public access when the Montclair Transcenter facility is in operation.

- c. Indicate how Flex Units facing into the Station Promenade area will be addressed to ensure that the open appearance and use of the Station Promenade area is maintained.
 - d. Indicate outdoor furniture requirements for seating, planters, tables and chairs, umbrellas, trash receptacles, wayfinding signs, kiosks, and other associated elements. Benches and trash receptacles shall be carefully located to enhance the pedestrian experience without cluttering the Station Promenade area. The property management company shall be responsible for coordinating colors and use of high quality and durable materials.
 - e. Landscape Plan for the Station Promenade area that is visually interesting, low maintenance and drought tolerant. Appropriate plant species should be selected for any given space, preventing plants from becoming overgrown. Hardscape treatment shall be of a high-quality material and enduring style. Stained concrete and surface-colored concrete (other than integral colored concrete) shall not be used.
 - f. An Exterior Lighting Plan designed to enhance the comfort, safety, and character of the Station Promenade area. The following standards shall apply to lighting:
 - i. The minimum hours of full illumination are from at least one hour before sunset to one hour after sunrise. Illumination during overnight hours shall be sufficient to allow for easy surveillance by private security or evening patrols by Police Department personnel.
 - ii. All exterior light sources that illuminate the Station Promenade area must be shielded from direct view, and avoid impacts on nearby residential units.
 - g. Plan for general maintenance of the Station Promenade area and adjacent building frontages. Property owner shall replace any amenities, furnishings, signs, and landscaping within the Station Promenade when appropriate due to wear and tear.
18. Owner must consent, in writing, to record a covenant an Operations & Management Regulatory Agreement – *The Village at Montclair* (hereafter Regulatory Agreement) against the entire property providing for the perpetual maintenance of all buildings and improvements, including roadways, public easements, retaining walls, drainage facilities, and water and sewer systems. The Regulatory Agreement shall be effective during the lifetime of the Project. Property shall thereafter be maintained in accordance with the property maintenance standards contained in the Montclair Municipal Code.

The Regulatory Agreement shall provide for the perpetual maintenance of all buildings and improvements for the subject multifamily residential and mixed-use project ("the Project") developed in the City for rental/lease purposes. The Regulatory Agreement shall be recorded as a condition, covenant, and restriction on the property in perpetuity unless the City Council agrees to the removal of such covenant in the event of a change in land use. The Regulatory Agreement shall address the management, operations, and maintenance of the multifamily residential and mixed-use project and shall become a Covenant that will run with the land.

Costs for development of the Regulatory Agreement shall be reimbursed to the City pursuant to a Reimbursement Agreement between the applicant and the City.

The Regulatory Agreement shall contain, at a minimum, the following requirements:

- a. On-Site Management

The Owner shall be required to retain the services of an accredited property management company ("Management Company") holding a real-estate broker license pursuant to California Business and Professions Code, Section 10131 et. Seq., and with demonstrated experience in leasing, operating, and maintaining a mixed-use development project that contains

residential, commercial, and/or office uses. Any Manager or Management Company retained to act as an agent for the Owner shall obtain the prior written approval of the Executive Director Office Public Safety/Police Chief, which approval shall not be unreasonably withheld or delayed, provided the person assigned is a certified Property Manager or an employee of a certified property Management Company. Any changes of the certified professional management company shall be subject to the prior written approval of the Executive Director Office of Public Safety/Police Chief, which approval shall not be unreasonably withheld.

In exercising his/her approval rights hereunder, the Executive Director Office of Public Safety/Police Chief may require proof of ability and qualifications of the Manager and Management Company based upon (i) prior experience, (ii) assets, and (iii) other factors determined by the Executive Director Office of Public Safety/Police Chief as necessary. Furthermore, upon sixty (60) days prior written demand from City with cause, Owner shall remove and replace a Property Manager and/or Management Company. In any agreement with a Property Manager or Management Company ("Management Agreement"), the Owner shall expressly reserve the right to terminate such agreement upon written demand of City with cause. That notwithstanding, City agrees that a request for removal of a Property Manager or Management Company shall be subject to a thirty (30)-day notice of default and a reasonable opportunity to cure before any such termination is effective.

Under no circumstances shall the property owner take on the property management responsibilities for the project, unless such property owner possesses property management accreditation as provided for in this subsection, has demonstrated experience, and is approved by the Executive Director Office of Public Safety/Police Chief.

Subsequent changes in the Management Company or Manager of the Project shall obtain the prior written approval of the Executive Director Office of Public Safety/Police Chief as so indicated above.

i. Management Obligations-Residential

The Owner shall maintain the legally required presence of an on-site Manager for the residential portion of the project pursuant to California Code of Regulations, Title 25, Section 42. The Management Company shall ensure that tenant application and screening practices are developed and enforced, that all rules and regulations are developed and enforced, and that use of all facilities are managed. The Owner, through the professional property management company, will ensure that the Project is well maintained pursuant to the standards developed in the Regulatory Agreement.

ii. Registration and Management of Rentals

The Owner, with its Management Company, shall develop all rules, documents, and procedures to assure all rental/lease occupancies of residential units are professionally managed including but, not limited to:

- Application(s)
- Crime-Free Addendum and other required addenda to application
- Tenant screening tools including, but not limited to, (1) credit check including unlawful detainer, and (2) criminal background check.

iii. Management Obligations-Commercial/Office

The Owner shall maintain a Manager and licensed Leasing Agent for the commercial/office portion of the Project. The Management Company shall ensure that appropriate lease and screening practices are developed and enforced and that rules and regulations

pertaining to lease of commercial and/or office space and the common area are developed, enforced, and managed. The Leasing Agency shall pursue the lease of Flex Units (Flex Units shown on Exhibit B) to commercial/office users providing services or products in conformance with the NMDSP. The Owner, through the Property Management Company, will ensure that the Project is well managed and maintained pursuant to the standards developed in the Agreement.

iv. Compliance with North Montclair Downtown Specific Plan

Management shall be responsible for screening prospective tenant/lessees of commercial/office lease spaces for compliance with Table 5-2: Allowed Land Use and Permit Requirements as contained in the *North Montclair Downtown Specific Plan* (NMDSP). In addition, Management shall direct all prospective tenants/lessees to obtain approval of a Zoning Use Review Application (ZURA) and a Business License from the City of Montclair.

v. Compliance with Rules

Renters/lessees occupying flex units within the Project shall be subject to all rules and regulations developed by the Management Company. The Management Company shall establish a warning and fine system for violation of the rules and regulations. If renters/lessees of any flex unit violate the rules and regulations, the renter or lessee shall be responsible for payment of such fines for violation of the rules by their tenant(s). The rules established by the Management Company for rental of flex units shall include provisions for eviction of tenants for violations of the rules and regulations of the project.

vi. Alcoholic Beverages/Controlled Substances

Tenant rules shall prevent the consumption of alcoholic beverages in public spaces and public view in the Project unless the area of public view is part of outdoor seating at a dining establishment or an event on private property where consumption of alcoholic beverages has been approved by the City and the State Department of Alcoholic Beverage Control (ABC). All other consumption of controlled substances in public view is prohibited in the Project.

b. Security Requirements

Owner shall provide the following security and security monitoring measures during the term of this Agreement:

- i. Owner shall develop a "Security Plan" acceptable and approved by the Montclair Police Department which, at a minimum, shall include the installation, operation, and maintenance of security cameras throughout the Project (see details in Police Conditions).
- ii. At any time during the term of the Agreement, should the calls for Police service or response at the Project exceed a level reasonably considered normal for projects similar in type and density as determined by the Executive Director Office of Public Safety/Police Chief, during any consecutive two-month period, the Owner shall be required to provide a State-licensed security patrol through a company retained by the Owner.
- iii. The State-licensed security patrol company shall be retained by the Owner, with the prior approval of the Executive Director Office of Public Safety/Police Chief, for a period of time to be determined by the Executive Director Office of Public Safety/Police Chief. The approval of such a State-licensed security company shall not be unreasonably withheld.

c. Balconies, Patios, and Porches

Balconies, patios, and/or porches on residential units approved for use as private usable open space must be kept free from being enclosed or covered by a tenant in any way and must not be used for storage purposes. Storage of materials that detract from the appearance of buildings is prohibited in the above-mentioned locations as well as anywhere that is directly visible to the public.

All rental agreements/leases for the project must include a rule preventing the storage of boxes or materials, placement of indoor furniture, visible exercise equipment, hanging clothing, building of enclosures, the installation of makeshift screening materials, or any other similar item in or on a balcony, patio, or porch.

The exterior of ground floor level Flex Units that are occupied as housing units must keep the exterior of the unit free of stored items, mismatched planters/pots, makeshift fencing materials, and other items that detract from the appearance of buildings and obstruct any path of travel. All furniture (e.g., seating, tables, etc.) shall be specifically designed and intended for outdoor use in colors and materials coordinated and approved by the Management Company.

d. Cable and Satellite Service Equipment

Placement of antennas for radio and television reception may be permitted within a balcony, terrace, deck or patio that is intended for exclusive use of the subject tenant, subject to the following criteria:

- i. For the purpose of this Section, the word "antenna" shall include a single dish antenna, usually in a circular shape with a parabolic curve design constructed of a solid or open mesh surface, not more than two feet (2'-0") in diameter, either surface-mounted or by means of a freestanding tripod that is placed entirely within the permitted areas; and
- ii. Only one (1) antenna per dwelling unit shall be permitted; and
- iii. The method of attachment and or arrangement of said antenna shall be accomplished in the least visually distracting manner as possible.
- iv. No antennas shall be placed, attached, or installed in any common areas of the development including the roof, hallways, common courtyards, walkways, or the exterior walls of the apartment building.
- v. No overhead or external wiring of the antennas shall be permitted.

e. Parking Management

The Agreement shall provide for the following:

- i. A "Parking Management Plan" shall be required for the residential and mixed-use components of the Project. The Parking Management Plan (PMP) shall identify the parking space(s) for every residential unit in the Project. With the exception of an attached garage for the exclusive use of an identified unit, all parking spaces shall be identified with a unique number that shall be stenciled on the pavement and regularly maintained. The PMP shall identify the parking spaces designated for the employees of the commercial/office lease areas. The PMP shall also identify parking designated for public parking.
- ii. Any tandem parking spaces identified in the PMP shall be assigned to the same dwelling unit or flex space. For purposes of the PMP, each tandem space shall count toward fulfillment of the total requirement of parking spaces for the residential portion of the project.
- iii. The PMP must be submitted to the City prior to submittal of a final map. The PMP must be approved by the City Council as a part of

the approval process for the Project. Subsequent changes to the PMP shall have the prior written approval of the City Council.

- iv. The PMP shall stipulate that no utility trailers, commercial or construction vehicle of any length, buses or passenger vans, watercraft, or recreational vehicles shall be permitted to be stored or parked overnight on any private street and/or parking areas within the complex. "Recreational Vehicle" shall mean recreational vehicles, motor homes, campers, utility trailers, watercraft, travel trailer, truck camper, camping trailer, off-road vehicles, land conveyances, vessels, aircraft, boats, trailers, van conversions, customized trucks, and other similar type vehicles that are designed for human habitation for recreational or emergency purposes, or that require a special driver's license (e.g., noncommercial Class A or Class B) to operate.
- v. The PMP shall stipulate that any enclosed garage spaces or covered parking spaces provided shall, at all times, be assigned to units within the Project pursuant to the PMP. Storage within a garage shall be allowed only to the extent the garage includes a dedicated storage cabinet or storage area that does not impede or obstruct direct access to the parking space(s) within the garage.
- vi. Any tandem parking spaces identified in the PMP shall be considered a second parking space assigned to the same dwelling unit or Flex Unit. Tandem spaces shall only be assigned to and utilized for the parking of registered vehicles assigned to the residents of the same unit or occupants of the same Flex Unit. Tandem spaces shall not be assigned and/or rented out to other residents or users.
- vii. The property owner/management company may not introduce, require, stipulate, or incorporate into lease or rental payments a separate fee for any surplus parking that exceeds the minimum threshold for assigned parking based on per-unit parking requirements as specified in the North Montclair Downtown Specific Plan (NMDSP) and the PMP for the project. If parking spaces that exceed the minimum threshold requirement as specified herein are available, the property owner/property management company may apply to the City Council for an amendment to the approved PMP for the project to establish separate monthly fees for each surplus parking space.
- viii. As part of the initial rental application process for a residential or commercial/office space, each potential renter of a unit within the project shall be given written notice by the property management company of the on-site parking and off-site parking conditions and requirements at the complex. All executed rental lease agreements will contain a detailed summary of the PMP as an exhibit and a signed acknowledgement form which records the resident's agreement with the terms of the PMP. In addition, the prospective tenant(s) shall receive an electronic version of the entire PMP, either as an email or other electronic format specified by the renter. The entire PMP shall also be available for review in the office of the on-site management company and available online on the Project's website for residents to view.

f. Maintenance, Operation, Preservation, and Repair of Property

Owner, through its Management Company, shall keep the Project well-maintained (including, without limitation, private streets and drives, all buildings and on-site structures; signage; sidewalks; parking lots; parking structures, exterior building mounted and/or site lighting fixtures; landscaping; open space/recreation areas onsite, dog park areas, storm drain system including all storm water treatment devices associated with the Water Quality Management Plan, fencing; foundations and pools, if any; and other Improvements) and shall operate the Project in a businesslike manner; shall prudently preserve and protect both its own and City's interests in connection with the Project, shall not commit or permit any waste or deterioration of the Project; shall not abandon any portion of the

Property; and shall not otherwise act in such a way as to unreasonably increase the risk of any damage to the Project. Such maintenance shall include, without limitation, the following:

- i. Keeping the exterior surfaces of buildings painted, plastered, or otherwise appropriately treated to be in sound condition; and
- ii. Replacing broken or severely etched windows and other glass surfaces promptly; and
- iii. Keeping the Project free from any accumulation of debris, graffiti, waste materials (including pet waste); and
- iv. Keeping trees, ground cover, shrubs, and other plant materials trimmed in healthy condition, and replacing missing or dead plant materials; and
- v. Maintaining all exterior light fixtures (building mounted and freestanding) in full operating condition. Non-functioning, broken or damaged light fixtures/support structures shall be promptly repaired and/or replaced with the same fixture type as originally approved; and
- vi. Keeping paved surfaces and other hardscape elements clean and in good condition, free of dirt and grime, gum, or grease, potholes, excessive staining or the unsightly accumulation of leaked motor oil/automotive fluids, significant surface cracks, dangerous uplifted walkways, or other conditions which impede paths of travel; and
- vii. No outdoor pay telephones or vending machines (including delivery lockers) shall be installed on any public street, easement, or park. Vending machines may be allowed within buildings or in private outdoor recreation areas when machines are located out of view to the street and are placed with an alcove space that is architecturally integrated into the design of the building, subject to the satisfaction of the Community Development Director.
- viii. Prohibiting auto repairs, car washing, storage of unregistered and/or inoperable vehicles, within parking areas of the Project; and
- ix. Keeping the on-site storm drain system in working order and in good repair at all times including the storm water treatment devices associated with the Water Quality Management Plan; and
- x. Keeping refuse collection facilities (e.g., trash chutes, rooms or enclosures) shall be maintained in a sanitary, orderly, and functional condition at all times. Sanitary shall mean free of scattered trash and food debris, spills or splatter on floors and/or walls, free of odors to the highest degree possible, and free of insects and rodents; and
- xi. Keeping all private streets, drive aisles, and exterior parking areas within the Project free of weeds, debris, trash, graffiti, and potholes. Owner shall be responsible for maintenance and repaving of all private street and drive aisle surfaces; and
- xii. Prohibiting the use of shopping carts for any commercial/office user within the project boundaries; and
- xiii. Maintain each dog park area in a clean and orderly condition at all times to deter odors and maintain sanitary conditions. To assure compliance, each dog park area shall comply with the following minimum standards:
 1. Ground-level dog park areas shall be designed and constructed with well-drained soils and substrates (i.e. engineered soil) to allow for quick percolation of water and urine, and to prevent soil erosion and run off, subject to the review and approval of the Community Development Director

and Water Quality Management Plan (WQMP) Coordinator. The use of natural turf is not recommended.

2. Above-ground level dog park area locations shall be constructed with a solid roof and an appropriately designed surface (e.g., synthetic turf) and drainage system that allows for routine wash-off maintenance and drainage into a properly designed waste water system. Building permits may be required for such systems.
 3. Dog park areas shall be maintained at all times, with any holes filled in, substrates properly maintained, and fences and amenities kept in good condition and functional.
 4. All dog park areas shall be located near a water supply line for drinking fountain (dog and human) and for maintenance purposes.
 5. Each dog park area shall be posted with rules for the dog park area in English and Spanish, in type large enough to be easily read by those entering the park.
 6. Provide adequate disposable bags, or other means of removing feces, and refuse cans for disposal. Trash cans shall be regularly emptied with contents disposed in a proper manner.
- xiv. Implementing and keeping a waste and refuse collection system in good operating order at all times. The Management Company must develop a written policy regarding the method of waste and refuse collection for all tenants and lessees consistent with the approved Solid Waste Removal Plan (SWRP). Each tenant must be informed of the waste and refuse collection system prior to executing a rental agreement or lease. Each tenant must acknowledge their understanding of the waste and refuse collection system in the rental or lease agreement. The Owner may not charge an additional fee related to the type of collection method of waste and refuse. The waste and refuse collection system policy shall be approved by the City.

g. Remedial Actions

In the event the Owner fails to act or perform pursuant to the terms found in the Regulatory Agreement, the City reserves the right to enforce the restrictions imposed by the Regulatory Agreement at the expense of the Owner. The Regulatory Agreement shall make provisions to allow the City enforce the terms of the Regulatory Agreement.

i. Sale or Transfer

Prior to the issuance of any building permit or recordation of the final map (whichever occurs first), the Owner shall record a covenant and agreement against the entire property prohibiting the sale of any individual building within the Project for purposes of rental or lease. The covenant and agreement shall be a part of the Regulatory Agreement required by this Condition and shall be approved by the City Council. It may not be cancelled or amended without City approval.

ii. Compliance with Rules

Renters/Lessees occupying residential units and or Flex Units within the Project shall be subject to all rules and regulations developed by the Management Company. The Management Company shall establish a warning and fine system for violation of the rules and regulations. If residential renters of units violate rules and regulations, the renter or lessee shall be responsible for payment of such fines for violation of the rules. The rules established by the Management Company for rental of residential units and/or

commercial/office space shall include provisions for eviction of tenants for violations of the rules and regulations of the project.

19. The Owner shall consent, in writing, to enter into an agreement to be recorded against the property detailing compliance with the City of Montclair Parkland Dedication Ordinance for the park depicted on approved plans. The proposed Park Land Agreement shall include a requirement for the dedication of a 0.22-acre parcel of land for a public park, a conceptual park design exhibit for that park in compliance with the NMDSP, as well as a description of the proposed park improvements and facilities to be constructed consistent with the Conceptual Landscape and Park Design Plan, and the NMDSP. In addition, the Park Land Agreement shall include a mechanism for determining the amount of credit to be provided to the Owner against in-lieu fees to be paid for the construction of improvements and installation of equipment and/or facilities. Such credit shall be based upon the City's adopted parkland dedication/in-lieu fee schedule. No credit/reimbursement shall be provided in excess of the amount of in-lieu fees that are due to be paid to the City by the Owner. The final construction drawings for the improvements to the neighborhood park on the project site shall be submitted to the Planning Division during the plan check process for review and approval. Construction of the park shall be completed concurrently with construction of the first and second residential/mixed use buildings. No Certificate of Occupancy shall be issued for the second building to be completed unless, and until, a Certificate of Completion and acceptance has been issued for the park.

20. Flex and Commercial Units

General Provisions

- a. The total floor area of Flex (interim residential use of commercial retail spaces) and Commercial Units (perpetual use of spaces as commercial retail, restaurant, office uses pursuant to the provisions of the North Montclair Downtown Specific Plan) as approved for the project shall be a minimum of approximately 24,919 square feet, and shall be inclusive of locations depicted on the "Ground Floor Leasing Plan," dated November 25, 2020 (Exhibit C).
- b. Units designated as Commercial shall be reserved for commercial use in perpetuity after each Commercial unit receives its Certificate of Occupancy.
- c. The use of Flex Units for residential occupancy shall be considered an interim use as part of an overall strategy to achieve full occupancy of designated Flex Unit ground floor areas as permanent commercial uses to support the approved mixed-use development. After a Flex Unit has been converted to a commercial use, it shall be deemed a permanent commercial use and not be reestablished as a residential use, and the Flex Unit designation shall no longer apply.
- d. Each Flex and Commercial Unit shall be built to commercial occupancy standards.
- e. Limit residential tenant use of any Flex Units to short-term (12 month) lease agreements to allow for conversion of Flex Units to commercial/restaurant uses.
- f. Live-work shall be considered a residential use with business activities limited to office or service uses permitted via an approved Home Occupation Permit pursuant to Chapter 11.58 of the Montclair Municipal Code and the provisions of the North Montclair Downtown Specific Plan.
- g. Until full occupancy is achieved, the Developer or Property Owner/management company shall provide the City with an annual vacancy-occupancy progress report for each building. After achieving full occupancy of residential units and commercial space, the Developer or Property Owner/management company and the City may mutually determine an annual vacancy-occupancy report is no longer necessary.

Flex Unit Phased Implementation

h. To assist the developer or property owner/management company in achieving full occupancy of the project with commercial and residential uses per approved plans, the following sequential leasing strategy may be employed as a means to create intact commercial areas for the project:

- **Gateway Focus Area** (Intersection of Arrow Highway at Fremont Avenue at Buildings 1 and 2).

Total Number of Units: 17

- Commercial Unit No.: 1-110, 1-112, 1-116, 1-118, 2-102, 2-103, 2-104, 2-105 (8 Units)
- Flex Unit No: 1-102, 1-104, 1-106, 1-108, 1-120, 1-121, 2-101, 2-113, 2-114 (9 Units)
- Total Floor Area: 17,150 s.f.

- **Station Promenade Focus Area** (Plaza Area leading to Montclair Transcenter at Building 4).

Total Number of Units: 13

- Commercial Unit No.: 4-135, 4-136 (2 Units)
- Flex Unit Nos: 4-101, 4-102, 4-103, 4-104, 4-106, 4-107, 4-108, 4-109, 4-110, 4-137, 4-139 (11 Units)
- Total Floor Area: 7,769 s.f.

i. Flex Units in Buildings 1, 2 and 4 (identified in **Gateway Focus Area** under subsection “h” of this Condition) may, upon application to the City, be converted to, and leased as a temporary residential use, as provided in this Section, for a period of not more than 12 months following the date the lease was entered into for each applicable unit, after such time shall be converted to a commercial use, except as follows:

- i. At the end of the initial 12-month lease period, the developer or property owner/management company, upon application to the City, may request an extension to use a Flex Unit for residential use for additional 12-month periods and the City shall not unreasonably withhold its consent based on lack of interest from nonresidential tenants; and
- ii. Prior to an approval of any additional 12-month extension request, the application for such an extension shall be accompanied by an independent Retail Market Analysis per paragraph “h” completed within the most recent six months preceding application for retention as a residential unit; and
- iii. After the initial 24-month (two 12-month leases) period established for Flex Units in section “i,” the Property Owner/management company may submit a formal application for each additional 12-month extension for each designated Flex Unit within the project for which the extension is requested. Such applications along with supporting documentation regarding marketing and leasing activity as identified in letter “j” of this section, shall be submitted to the Community Development Director for consideration. The decision of the Director may be appealed to the City Manager.

j. Retail Market Analyses shall be prepared by an independent third party consultant jointly approved by the property owner/management company and the City, and be prepared at the property owner's/management company's expense. Such reports shall be conducted within the twelve months preceding any additional extension request for the temporary use of a Flex Unit(s) as a residential or live-work use and every 12 months thereafter; provided, however, the Community Development Director shall have final say in determining that the data in the most recent market analysis correctly represents the then current state of the area's commercial market.

If the Community Development Director determines the data presented in the market analysis is no longer valid, relevant, or properly represents the area's commercial market, the Community Development Director shall require that a new market analysis be conducted and submitted along with any extension request for the temporary use of a Flex Unit(s) as a temporary residential or live-work use.

- i. **Retail Market Analysis defined.** A Retail Market Analysis is a tool for identifying retail market trends within or around a local community. While the analysis focuses specifically on the performance of local retail markets, information on the broader economic trends within the region is critical to understanding current and future changes in the retail markets subject to the analysis.
- ii. The Retail Market Analysis shall analyze and demonstrate the need for additional extensions request based on local retail market trends; consumer demand; vacancy rates; commercial versus residential lease rates; unit conversion costs from commercial/restaurant/office to residential or live-work; unit conversion costs from residential or live-work to commercial/restaurant/office; changes in demographics and population; the age and income distributions of the population; and other relevant data for uses associated with mixed-use and transit-oriented developments that affect the demand for retail/office goods and trends.

**CONDITIONS PRIOR TO THE ISSUANCE OF BUILDING OR GRADING PERMIT
(Condition Nos. 21-141)**

Planning/Administration

21. The final design review process based on building plans shall be completed pursuant to Section 5.1.050.2 of the NMDSP by the Community Development Director in consultation with the City's Reviewing Architect prior to the issuance of building permits. Notwithstanding, certain design review details may require review or field inspection during construction. Costs to conduct architectural review shall be reimbursed to the City pursuant to the Reimbursement Agreement No. 17-33 between the Owner and the City.

No changes to an approved set of plans, including the exterior design and materials/finishes of any building, shall be permitted without the expressed approval of the City prior to any actual changes. At the discretion of the Community Development Director, any request for changes or revisions deemed to be significant may be referred to the City Council for review and approval.

22. Formation of the CFD must be completed (see Condition No. 16).

The Regulatory Agreement (per Condition No. 18) shall be executed the by Owner, and approved by the City Council. Upon City Council approval, the Regulatory Agreement shall be recorded prior to issuance of building permits. As part of the Regulatory Agreement, the PMP shall be adopted by the City Council. The Parkland Agreement shall be executed by the Owner and adopted by the City Council (Condition No. 19).

23. Owner's building plans shall provide that all vehicular and pedestrian access to the parking structure for the project (Owner Parking Structure) shall be gated at all entry points to regulate and prevent unauthorized public access. Vehicular access to the Owner Parking Structure will be limited to tenants, employees and/or guests of tenants living or working in the Project. Owner shall establish rules regarding parking structure pedestrian use and access that will be approved by City staff prior to occupancy.
24. A Solid Waste Removal Plan (SWRP) shall be approved by the City Council.
25. A Construction Phasing Plan identifying the order in which buildings will be erected on the site must be submitted. (Before a Certificate of Occupancy for each building can be issued, the required amount of parking in a sufficient amount of parking spaces to support all completed residential units, Flex Units,

or new commercial uses shall be provided). Since the primary location of parking spaces for this project is contained in the parking structure within Building 4, the parking structure shall be completed pursuant to a Building Permit final and then made available for immediate use. Except for the construction of the parking structure in Building 4, the applicant may determine which building of the project will be the last to be completed.

26. A written report from a qualified acoustical consultant indicating that the project will meet City requirements for exterior and interior noise levels and demonstrate compliance with Mitigation Measures for N2, NOI-1, NOI-2, NOI-3, and NOI-4 as contained in the North Montclair Downtown Specific Plan Amendment Project Supplemental EIR (January 2017) shall be submitted.

All sound attenuation measures (i.e. dual-paned glazing, upgraded insulation, etc.) as identified by the approved acoustical report prepared for the project shall thereafter be incorporated into construction drawings submitted for plan check. Maximum interior noise level of all units shall be no higher than 45 dBA.

27. Owner's plans shall provide that all dwelling units (living room and bedroom) and/or commercial/office spaces shall be pre-wired with phone, cable, and satellite connections.
28. Owner shall obtain approval from the Executive Director of Public Safety/Police Chief (or designee) of a Plan to install video surveillance cameras for each building (including parking structure), and all public spaces within the development. See Police Department conditions of approval for further details.
29. Owner shall prepare a Photometric Plan for each building indicating the location of all exterior light fixtures (area, building, parking lot, etc.) and the overall illumination levels across the site. All proposed exterior lighting shall comply with the following standards:
 - a. Provide a minimum maintained illumination level of one (1) foot-candle across the site.
 - b. All parking lot and other freestanding light fixtures shall incorporate 90-degree cutoff style luminaires and flat lenses so as to direct illumination downward to the surface to be illuminated and away from public rights-of-way surrounding the subject site.
 - c. Maximum total height for freestanding light fixtures shall be limited to 20 feet, inclusive of the height for concrete bases.
 - d. Above-grade concrete bases for lights, menu boards, speakers, vertical clearance bars, etc., shall be finished with colored stucco matching the primary color and finish of stucco on the buildings.
 - e. All exterior wall-mounted lighting fixtures shall be vandal-resistant and of a design, that complements the architecture of the building.
30. The developer shall submit a fence/wall plan for the entire site including both boundary and internal fence/wall locations. The plan shall specifically address existing conditions at each boundary and provide a complementary design for the project as a whole and the design of adjacent buildings. The plan shall include the following elements or details:
 - a. Specify fence/wall design details, materials, and finishes for review and approval by the Community Development Director.
 - b. The north and west property walls shall be designed to produce an attractive and consistent horizontal "top of wall" finished elevation with minimal and evenly spaced steps along the length of the wall, subject to review and approval by the Community Development Director.
 - c. Eliminate or prevent the creation of double wall or fence/wall conditions. The applicant shall be responsible for coordinating with the adjacent property owners regarding the replacement of property line walls, if required.

- d. Enclose the dog park area located on the top of the parking garage to prevent pets from entering vehicular travel areas. The sides of the park which are created by the parking structure shall maintain a guarded height of eight feet by wall, fence, or other means to prevent accidental falls.
31. All utility services provided to the project shall be provided to each lot within the project and placed underground pursuant to Chapter 11.75 -Undergrounding of Utilities - of the Montclair Municipal Code.
32. Indicate the location of any proposed neighborhood mailboxes within the development for review by the Community Development Director. No mailboxes shall be allowed on public sidewalks, or public easements/spaces. The applicant shall also ascertain any requirements for such mailboxes from the United States Postal Service (USPS) and other delivery services. The City acknowledges that proposed locations for neighborhood mailboxes shall be to the satisfaction of the USPS.
33. Owner shall complete and submit a complete Landscape Documentation Package meeting the intent and design criteria of the Montclair Water Efficient Landscaping and Conservation Ordinance (Chapter 11.60 of the Montclair Municipal Code) as amended by State law. The Landscape Documentation Package shall include the following items for City review and approval:
 - a. Detailed Landscape Concept and Irrigation Plan for the entire site including the public park area, and parking area with dog park on Lot 6; and
 - b. A "Water Budget" meeting State Water Conservation requirements; and
 - c. Landscape Construction Drawings (including a grading plan, irrigation plan, and planting plan); and
 - d. Maintenance manual and schedule to be kept on file and used by the property owner/property management company for reference.
 - e. A copy of the approved plan will be kept on file in order to use at a later date to ensure that the plan was implemented as permitted and maintained as required.
34. Every effort shall be made to locate and/or screen all ground or wall-mounted mechanical equipment including, but not limited to, utility meters, air conditioners, vents, and repair equipment within the building or screened in a manner that is compatible with the architectural design of the building to the satisfaction of the Community Development Director and reviewing architect. Wooden lattice or fence-like screens/covers are not appropriate screening materials and shall not be allowed.
35. Owner shall screen all roof-mounted equipment, satellite dish antennas, and other similar apparatus from public view in a manner that is incorporated into the architectural design of each building to the satisfaction of the Community Development Director and reviewing architect.
36. Exposed conduit or electrical lines shall not be allowed on any exterior surfaces of any building, including electrical lines providing power to exterior signs. Electrical switchgear, meters, etc., shall be screened or housed in an appropriately designed enclosure or other manner to the extent allowed by the utilities.
37. No outdoor pay telephones or vending machines shall be permitted within the development boundaries (including public spaces), except that vending machines may be allowed within approved outdoor recreational areas dedicated as such for each building. Vending machines within approved recreation areas shall not be directly visible to the street and be installed in an alcove architecturally integrated with a building to the satisfaction of the Community Development Director.
38. Prior to the installation of any signs on buildings, structure, or other non-public areas and structures within the project site, the applicant shall develop and submit an application for a Master Sign Program for the entire project and obtain Planning Commission for review and approval. The sign program shall address signs proposed for building addressing and identification, future commercial lease tenants, wayfinding, which are placed on non-public areas of the site. All

signs shall be consistent with the sign provisions contained in the NMDSP, including the prohibition on the use of exposed raceways for all building-mounted, except as provided for in the NMDSP, if approved by the Director of Community Development.

39. Obtain approval for any directional and or regulatory signs proposed for installation within the public right-of-way, public spaces or easements from both the Public Works and Community Development Directors.
40. Freestanding electrical transformers and Fire Department double detector check assembly equipment shall be screened with masonry walls compatible with the building architecture and/or landscaping to the satisfaction of the Community Development Director and Fire Marshal. Efforts shall be made to place these elements in locations that are as unobtrusive as possible.

Building

41. Submit four (4) complete sets of plans including the following:
 - a. Site/Plot Plan;
 - b. Floor Plan;
 - c. Reflected Ceiling Plan;
 - d. Electrical Plans including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams;
 - e. Plumbing plans, including isometrics, underground diagrams, water and waste diagram, fixture units, gas piping, and heating and air conditioning;
 - f. Provide an existing plan of the building including all walls to be demolished;
 - g. Waste recycling plan, recycling 65% of all construction debris.
 - h. Landscaping plans including lighting structures, retaining walls, trash enclosures, and other walls and fences.
42. Submit two sets of structural calculations, and two sets energy conservation calculations.
43. Architect's/Engineer's stamp and "wet" signature are required prior to plan check approval.
44. The applicant shall comply with the latest adopted California Building Codes, and other applicable codes, ordinances and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of submitted plans.
45. Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.
46. Separate permits are required for trash enclosures, accessory structures, site lighting, fencing, and/or enclosure walls.
47. Construction activity shall only be permitted from the hours of 7:00 a.m. to 8:00 p.m. daily.
48. Prior to issuance of building permits for a new commercial or industrial development project or major addition, the applicant shall pay development fees at the established rate. Such fees may include but are not limited to a Transportation Development Fee, Permit and Plan Check Fees, and School Fees. Owner shall pay all required school fees directly to the Ontario-Montclair School District and the Chaffey Joint Union High School District. Owner shall provide a copy of the school fees receipt to the Building and Safety Division prior to permits issuance.

49. Payment of all outstanding sewer reimbursement fees as imposed by a district, if any, or any assessments shall be required. Contact Noel Castillo, City Engineer, at 909/625-9441 for fees.
50. Regional Sewerage Supplemental Capital Outlay fees are required in accordance with Section 9.20.440 of the Montclair Municipal Code and the Inland Empire Utilities Agency (IEUA). Contact Noel Castillo, City Engineer, at 909/625-9441 for fees.
51. Upon approval by the City Council of the Parcel Map for the project, the Building Official shall assign address numbers to all buildings. Tenant spaces may be assigned at this time or a later time.
52. Submit detailed plans for all walls, fencing, and gates associated with the project. Any security gates which limit access to buildings shall be equipped with Medeco locks or other acceptable devices to allow access by emergency personnel and utility providers at all times. If access is secured to upper floors within multifamily dwelling unit structures, Medeco locks or other acceptable devices are required. For information contact Robert Hargett at (909) 447-3554.
53. All construction work carried out under the review of the Building Division shall be of good quality. The Building Official shall have the authority to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well fit and of a durable nature. Every construction material in all cases shall not be below standard for the use applied.
54. Provide and clearly indicate on submitted plans disabled-accessible path(s) of travel to the public right-of-way and all required disabled-accessible parking lot signs. Sidewalks, paths-of-travel, and curb cuts shall comply with the requirements of the California Building Code, Title 24. The maximum cross-slope on a sidewalk or path-of-travel shall not exceed two percent (2%). All accessible requirements of the California Building Code shall be followed.
55. Provide and maintain a minimum illumination level of one (1) foot-candle from dusk until dawn every day. At all other hours of darkness, a minimum maintained .25 foot candle of light shall be provided at ground level. A photometric plan shall be provided at time of plan review.
56. Electrical and fire suppression service shall rise within the interior of the building(s). Roof ladders shall also be located entirely inside the building. Conduits and cables shall be located entirely inside the walls
57. Equipment screening shall be provided to completely cover from view any rooftop equipment. The screening shall be completely covered from view from the Montclair Transit Center, Arrow Highway, Birch Street, and Laurel Street.
58. Temporary construction and storage trailers placed on the property shall first obtain approval from the Planning and Building Divisions. Before any trailer is set in its location, obtain all permits from the Building Division. Plans and structural calculations will be required for the tie-down devices. Trailers used for public use (and not used for construction only) are required to meet all accessible requirements for use by persons with disabilities. The trailer will require access to the facility by way of ramps which comply with the California Building Code (CBC) 2019 edition, Chapter 11B, in addition to access to each required use of the trailer.
59. All mechanical devices and their component parts, such as air conditioners, evaporative coolers, exhaust fans, vents, transformers, or similar equipment, whether located on the ground or on the roof of the structure, shall be concealed on all sides from public view in a manner that is compatible with the architectural design of the building and to the satisfaction of the Planning Division. Provide sufficient number of details (i.e. line of sight drawing, building cross-section, etc.) to demonstrate all equipment is obscured from public view.
60. All roof-mounted equipment, satellite dish antennas, and other similar apparatus shall be screened from public view in a manner incorporated into the architectural design of the building to the satisfaction of the Planning Division.

61. Prior to issuance Building Permits, an approved site plan by the Civil Engineer of Record shall be submitted showing accurate property lines and building placement. No building shall span property lines.
62. Prior to the pouring of concrete in any foundation on the project, the applicant or their designee shall provide a pad certification stating that each structure is in accordance with the approved civil plans as to location and grade height.
63. Decorative foam trim shall not be used in areas subject to damage such as entry doors, garage doors, etc. Use of decorative foam shall not be allowed to be used below the second story.
64. All Flex Units identified as potential restaurant locations, shall be provided with a location for a grease interceptor. The underground piping for potential future grease interceptors shall be required to be installed simultaneously with underground plumbing for the buildings.
65. All trash enclosures shall be constructed of a material consistent with the primary type and color of that used on the building. The construction of such trash enclosure(s) shall conform to City standards and shall have a solid roof complementary to the main building. Black-colored concrete shall be used for the trash enclosure floor and its apron.
66. All landscape planting areas shall have 100 percent irrigation coverage by an automatic irrigation system.
67. Landscape maintenance shall be subject to immediate and periodic inspections by the City. The property owner shall be required to remedy any defects in grounds maintenance and replace any trees, shrubs, vines, or groundcover with a similar species, size, and quantity that are lost due to unauthorized removal, disease, windstorm, or other natural disaster as indicated by the City inspector, within two weeks after notification. Inspections shall be based on automatic landscape irrigation schedule, plant maintenance, weed and rubbish control, landscape plan approval, and any other area that is incidental to grounds maintenance.
68. Construction drawings submitted to the Building Division for plan check review shall comply with Montclair Security Ordinance No. 357; including, but not limited to, adherence to the following standards:
 - a. The numerical address of the building shall be displayed in a maximum of two locations on elevations as determined by the Director of Community Development.
 - b. Numerals shall be in a font acceptable to the Director of Community Development, minimum 10 inches in height, minimum 1½ inches in depth, and in a color that adequately contrasts with the background to which they are attached.
 - c. The facility shall be provided with a minimum maintained illumination level of one (1) foot-candle from dusk until termination of business every business day. During all other hours of darkness, a minimum of one-quarter (.25) foot-candles of illumination shall be maintained at grade.
69. Discharge of wastewater into the sanitary sewer system shall conform to Chapter 9.20 of the Montclair Municipal Code.
70. Payment of all outstanding sewer reimbursement fees as imposed by a district, if any, or any assessments shall be required. Contact Noel Castillo, City Engineer, at 909/625-9441 for fees.
71. Regional Sewerage Supplemental Capital Outlay fees are required in accordance with Section 9.20.440 of the Montclair Municipal Code and the Inland Empire Utilities Agency (IEUA). Contact Noel Castillo, City Engineer, at 909/625-9441 for fees.
72. No soil shall be imported or exported to or from the project site from an adjacent building site or from other sources for construction purposes without first obtaining approval from the City Engineer. A plan satisfactory to the City Engineer

shall be prepared showing the proposed haul route within the City. Subject plan shall include provisions for street sweeping and cleanup. Applicant/contractor shall comply with all National Pollution Discharge Elimination System (NPDES) requirements.

73. Underground Service Alert shall be notified 48 hours prior to any excavation at (800) 422-4133.
74. All off-site and on-site trenching and excavation shall conform to CAL-OSHA standards. Excavations that exceed five feet in depth require a CAL-OSHA permit.
75. Prior to commencement of building framing or delivery of any combustible materials to the project site, an all-weather access roadway capable of supporting firefighting apparatus shall be constructed within 150 feet of all structures. An all-weather access is defined as base course A.C. pavement to a minimum depth of 2½ inches and having a minimum width of 20'-0". The 20-foot width shall be maintained free and clear of construction equipment, materials, and debris for the duration of construction. Roadway is subject to Fire Department approval prior to commencement of construction.
76. The applicant/developer shall install approved emergency lighting to provide adequate illumination automatically in the event of any interruption of electrical service.

Water Quality Management Plan (WQMP)

77. Submit two (2) preliminary approved WQMP's for final approval including two CD's with the WQMP and WQMP exhibit.
78. Submit plans for erosion and sediment control. Plans shall include all phases of the construction project, including rough grading, utility and roads installation, and vertical construction. Plans must be approved by the City Public Works Director/City Engineer. Contact Steve Stanton, NPDES Coordinator, at (909) 625-9470 for further information.
79. Prior to receipt of a City grading permit or building permit, Owner must obtain a Water Resources Control Board Construction General permit with a WDID number. A copy of the permit with the WDID number must be provided to the City.
80. Owner must pay Post-Construction Best Management Practice (BMP) inspection fees associated with the approved WQMP at the time of City grading permit issuance. Contact Steve Stanton, NPDES Coordinator, at (909) 625-9470 for further information regarding the permit and fees.
81. Owner shall comply with all requirements of the approved WQMP.

Engineering

82. Subdivider/Owner shall comply with all requirements of the Subdivision Map Act and the Montclair Municipal Code. The owner/applicant shall process any right-of-way dedications, easements or grant deeds required for the development.
83. The tentative map shall expire three years from the date of City Council approval unless extended under Government Code Section 66452.6. The final map shall be filed with the City Engineer and shall comply with the Subdivision Map Act of the State of California and all applicable Ordinances, requirements, and Resolutions of the City of Montclair.
84. Subdivider/Owner shall stub out all necessary utilities for the future parking structure to lot 6 to ensure utilities are accessible for the construction of the parking lot.
85. Parkland dedication to the City and construction of park improvement shall be made pursuant to Condition 18.
86. Payment of transportation-related development impact fees is required. Fees shall be assessed at the rate in effect at the time the fees are paid.

87. Public streets on the tentative tract map shall be dedicated to the City and designed in accordance with the NMDSP, latest amendment.
88. Private streets on the tentative map shall be designed in accordance with the North Montclair Downtown Specific Plan, latest amendment.
89. A sidewalk layout plan incorporating required square scoring pattern for all public and private streets. The sidewalk layout plans shall comply with the following items:
 - a. The sidewalk plan for this project shall utilize Sidewalk Joint Location (NMDSP Area) – Standard Plan No. 114; and
 - b. Coordinate square scoring pattern with curb and gutter control joints; and
 - c. Include sidewalk ramps, driveways, streetlights, and other utility boxes to demonstrate how the square scoring pattern can be implemented to greatest extent possible with only minor to no disruption of said pattern; and
 - d. The proper scoring shall be achieved by creating a narrow tooled joint in the wet cement; and
 - e. Finish quality and workmanship shall be to the satisfaction of the Directors of Public Works and Community Development. Unacceptable work shall be removed and reinstalled in an appropriate and acceptable fashion.
90. Street improvement plans are required for all public and private streets. Construction drawings shall be 24" by 36" with City standard title block.
91. Street names shall be at the discretion of the developer, subject to the approval of the Public Works Director/City Engineer.
92. All streets public and private shall have sidewalks conforming to Americans with Disabilities Act. Public and private streets shall have sidewalks on each side. Widths and scoring patterns shall conform to City Standard 114.
93. Streetlights shall be provided on all public and private streets. The minimum lighting level for all streets shall be to the satisfaction of the City Engineer. Plans shall include point by point foot-candle values arranged in a grid verifying a minimum lighting level of 2 foot-candles throughout every intersection.
94. Streetlights on public streets shall be owned and maintained by Southern California Edison. The style of luminaire and pole shall be as follows:
 - a. Poles–Ameron "Corsican" pole, 20CT12 for interior streets and 20CT15 for arterials.
 - b. Color–Fillmore 12 (black), exposed finish with Amershield (graffiti coating).
 - c. Luminaires–For interior streets King Luminaire K118LR "Washington" luminaire with standard (#1) finial, color "BK" (black); for arterial roadways, KA63 "Coshocton" twin arm, standard black full gloss.
 - d. Fixtures shall be fitted with reflectors or refractors as necessary to control glare and nuisance light spill onto residential units.
95. Monument signs shall not be permitted in the line of sight triangles next to driveway locations (see City STD 110).
96. All pavement damaged by excavation will be replaced with permanent pavement per the City Standard for paving and trench repair STD No. 301. Additionally, a 2 inch pavement cap will be installed for the length of the project from Curb line to center line of Arrow Highway.
97. Replace all existing lifted or cracked curb gutter, damaged utility pull box lids, and sidewalk adjacent to the property. Additionally remove sidewalk that show signs of ponding or is pitting, scaling or spalling. Curb Ramps not in compliance with ADA guidelines will be removed and replaced. Curb Ramp on the south west and south east corner of Arrow Highway at Fremont Avenue will need to be

replaced to meet ADA standards, if not already reconstructed by City's construction of Improvement Plans by KOA for Arrow Highway. Existing driveways need to be removed and replaced with ADA compliant driveways.

98. The Applicant shall provide the design and construction of additional streets lights as required by the City Engineer.
99. All Utilities in the public right of way portion of each street frontage adjacent to the site shall be placed underground. This requirement applies to electrical services (facilities operated at nominal voltages in excess of 20,000 volts not included), transformers and switches, and where technology exists, telephone and cable television facilities as well.
100. The developer shall make payment of Regional Sewerage Capital Outlay fees as specified in the Montclair Municipal Code and by Inland Empire Utilities Agency.
101. Discharge of wastewater into the sewer collection system shall conform to all requirements of the Montclair Municipal Code.
102. Sewers intended to be maintained by the City of Montclair shall be designed and constructed per Public Works Department standards, and shall be located in public streets or easements dedicated to the City for sanitary sewer purposes. Sewers not constructed per Public Works Department standards shall be constructed per California Building Code and City of Montclair Building Division requirements and shall be privately maintained.
103. Sewer improvement plans are required for all sewers, public or private, and shall include both plan and profile views on 24" by 36" construction drawings.
104. Approval of the WQMP is required prior to the preparation of grading and/or other improvement plans. Requirements for the WQMP may be obtained from the City NPDES Coordinator Steve Stanton at 909-625-9470. Requirements of the WQMP may require significant modifications to the approved tentative map. If significant modifications are required, a resubmittal to the Planning Commission and City Council may be required.
105. A grading plan shall be prepared subject to the approval of the City Engineer. An erosion control plan is to be included and considered an integral part of the grading plan. Grading plans shall be designed in accordance with City standards and guidelines, and shall be on 24" by 36" sheets.
106. No soil may be imported or exported to or from the project site from any adjacent building site or from other sources for construction purposes without first obtaining approval from the City Engineer. A plan acceptable to the City Engineer shall be prepared showing proposed haul routes within the City. The plan shall include provisions for street sweeping and cleanup. Contractor(s) shall comply with all National Pollutant Discharge Elimination System (NPDES) requirements.
107. All drainage facilities shall comply with requirements of the approved WQMP.
108. Developer shall annex to an existing Community Facilities District (CFD) or participate in the creation of a new CFD for the maintenance of public streets, street lighting, and parkway improvements; street sweeping; and street tree/park tree trimming all within limits or frontages of development, and including a public safety component.
109. All off site and on site trenching and excavation shall conform to CAL-OSHA standards. Excavations that exceed five feet in depth require a CAL-OSHA permit.
110. Underground Service Alert shall be notified at least 48 hours prior to any excavation. Contact Underground Service Alert at 800-422-4133.

Fire

111. The Fire Prevention Bureau requires three (3) sets of plans be submitted with an application. The following plans shall be submitted for review and approval under separate permits:
 - a. Architectural

- b. Fire Department Access
 - c. Private Underground Fire Line Service
 - d. Fire Sprinkler
 - e. Fire Alarm
 - f. Emergency Radio Communication System
112. Construction shall not begin until submitted plans have been reviewed and approved by Montclair Fire Prevention Bureau and appropriate permits have been issued.
 113. All approved alternate means and methods shall have the approval letter copied onto all architectural, fire department access, fire sprinklers, underground fire service, and fire alarm plans.
 114. This project is required to comply with the current adopted California Fire Code as amended in the Montclair Municipal Code and Montclair Fire Prevention Bureau development standards.
 115. Prior to the issuance of a grading permit a fire department access plan shall be submitted to the City of Montclair, Fire Prevention Bureau for review and approval. The fire department access plan shall comply with the requirements specified by the City of Montclair Guideline for Fire Department Access & Water Requirements for Commercial & Residential Development, and the California Fire Code, Chapter 5.
 116. Prior to the issuance of a grading permit, evidence of sufficient fire flow shall be provided to the Montclair Fire Prevention Bureau.
 117. Fire safety requirements during construction shall comply with California Fire Code Chapter 33.
 118. A fire department access road complying with the CFC, Chapter 5 and the approved fire department access plans shall be installed prior to building construction and maintained for the life of the project. Once completed, the fire department access road shall be maintained unobstructed and in sound condition at all times.
 119. All required fire hydrants shall be installed and operational prior to building construction for fire protection, and shall be made available as soon as combustible material arrives on the site. Construction of the parking structure, foundation, slab, under slab utilities and other non-combustible construction, shall not be subject to this requirement. Once plans are approved, the Building permit may be issued to allow for the non-combustible construction to commence.
 120. All required fire hydrants shall be readily visible and immediately accessible. A clear space of not less than 3-feet shall be maintained at all times.
 121. Prior to construction a temporary address sign shall be posted and clearly visible from the street.
 122. Prior to combustible material being delivered to the site, a site inspection and approval is required from Montclair's Fire Prevention Bureau.
 123. The permanent building addresses shall be provided on all street fronts and either internally or externally lighted during hours of darkness. The address shall be clearly visible from the street fronting the property and comply with California Fire Code Section 505.1 and the Planning Division for size and color.
 124. City of Montclair Fire Prevention Bureau review and approval shall be required for the storage and/or use of hazardous materials as defined by the California Fire Code, for all uses located the project site.

125. Prior to building final, the building shall be provided with a Knox Lock key box located no more than seven feet above the finished surface and near the main entrance door.
126. Fire Department Connections (FDC) shall be located within 50 feet of a fire hydrant.
127. Double Check Detector Assembly shall be painted Rustoleum Hunter Green, satin acrylic finish stock #7944502.
128. An approved automatic fire sprinkler system shall be provided throughout, as defined by the most current edition of NFPA 13.
129. All outdoor detached facilities greater than 200 square feet (including trash enclosures) shall contain fire sprinkler system.
130. Prior to the issuance of a Certificate of Occupancy the building shall be provided with an emergency radio communication enhancement system. The emergency radio communication enhancement system shall meet the requirements of CFC § 510 and all applicable subsection. The system shall be installed and inspected by the Fire Prevention Bureau before the Certificate of Occupancy is issued. The requirement can be waived by Montclair Fire Marshal if the building is evaluated by an Emergency Radio Communication Specialist license by FCC, who certifies the building meets the emergency communications capability as specified by the California Fire Code § 510. The certification shall be in the form of a written report that outlines the analysis used in determining the building meets the emergency communications without an enhancement system.

Police

131. No consumption of alcoholic beverages on any publicly accessible outdoor areas of the property shall be permitted except in approved outdoor dining areas or other event with the express approval of the City and the State Department of Alcoholic Beverage Control. Private, resident-only accessible areas (IE clubhouses, patios, access restricted gated areas, etc.) are exempt.
132. Management will ensure all special events on the premises comply with all applicable City permits, codes, and ordinances, including but not limited to live entertainment permits, yard-sale permits, and noise control ordinances.
133. There shall be no special promotional events held on the property, unless a written request for such is received and approved by the Community Development Director and the Executive Director Office of Public Safety/Police Chief or their designee.
134. The premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking areas, park space, pool area, building entries and other common hallway/building access points.
135. Businesses falling within the regulations of the State Alcoholic Beverage Control Board (ABC) shall not allow any consumption of alcoholic beverages on any property adjacent to the licensed premises under the control of the license.
136. The activity level of any business shall be monitored by the Police Department to establish the level of police services used for the business. Should the level of police services demonstrate that the applicant has not controlled excessive, or unnecessary activity resulting in high use of police services then the business and/or any entitlements (i.e., Conditional Use Permit) shall be reviewed for consideration of further conditions, modifications or revocation.
137. The property owner/property manager shall prepare and submit a security plan for the entire development to be reviewed and approved by the Chief of Police of the Montclair Police Department. The Security Plan shall incorporate:
138. Adequate lighting to illuminate parking areas, public access easements, open space and park locations, pool areas, and at common hallway/building access points so that the appearance and conduct of all persons is easily discernible and monitored; and

- a. Adequate lighting to illuminate parking areas, open space and park locations, public access easements, pool areas, and at common hallway/building access points so that the appearance and conduct of all persons is easily discernible and monitored; and
 - b. A closed circuit video surveillance (CCVS) system meeting the following requirements:
 - i. A minimum amount of cameras shall be placed in a position to monitor all entrances/exits to the community, public access easements, parking areas, public street, and common areas (e.g., park space and pool areas, etc.). Final location and quantity of cameras to be determined in "Security Plan".
 - ii. Cameras shall be capable of no less a resolution than 1920×1080 pixels, otherwise known as 1080p. All cameras shall have IR or low light capability.
 - iii. The CCVS system shall have ample storage capacity to retain camera footage for a period of no less than 90 days. To avoid unintentional lapses in coverage cameras shall not be motion activated. However, to conserve storage space, cameras may use motion sensors to lower the frames-per-second (FPS) during periods when no motion is detected. When motion is detected, cameras shall record no less than 30 frames per second.
139. Alarm systems are encouraged to complement the CCVS system. Current responsible party information shall be on file with the Police Department for appropriate response and notifications.
140. The property owner/property manager shall ensure all special events on the premises comply with all applicable City permits, codes, and ordinances, including but not limited to live entertainment permits, yard-sale permits, and noise control ordinances.
141. The Montclair Police Department may conduct parking enforcement activity on all public right-of-ways, pursuant to the California Vehicle Code. Enforcement of all off-street areas will be the responsibility of the property owner/property manager, as part of an approved Parking Management Plan.

CONDITIONS PRIOR TO ISSUANCE OF THE CERTIFICATE OF OCCUPANCY AND/OR BUILDING PERMIT FINALS (Conditions 142 - 147)

Planning/Administration

142. Required parking spaces shall be provided and made available for use (i.e., Parking Structure in Building 4) pursuant to a Building Permit final, prior to the issuance of a Certificate of Occupancy for any residential or commercial building in the project.
143. A Certificate of Occupancy for the last building as identified in the Construction Phasing Plan (Condition No. 25) shall be contingent upon the completion of all aspects of the project including, but not limited to the:
- a. Completion of all public street improvements; and
 - b. Access improvements leading to the Montclair Transcenter; and
 - c. Public Park improvements—No Certificate of Occupancy shall be issued for a second building unless, and until a Certificate of Completion and acceptance has been issued for the public park; and
 - d. Parking Structure in Building 4; and
 - e. Surface Parking and Dog Park on Lot 6; and
 - f. On-site improvements and landscaping for each building site.

144. To ensure compliance with the conditions of approval, a final inspection is required by the Planning Division upon completion of construction of each building and associated site improvements within the development. The applicant shall contact the City to schedule an appointment for such inspections.

Building

145. Prior to the issuance of a Certificate of Occupancy for each building/structure, the applicant shall:
 - a. Complete all on-and off-site improvements.
 - b. Provide a grading certificate, signed and sealed by the Civil Engineer of Record certifying that all grading has been completed according to the approved plans and all buildings and structures are in the called out location as stated on the plans.
 - c. Complete Fire Department inspection and obtain final approval. Obtain final approval from all departments and the Monte Vista Water District.

Water Quality Management Plan (WQMP)

146. Prior to issuance of a Certificate of Occupancy, the applicant shall:
 - a. Submit to the Engineering Division an electronic copy of the approved WQMP in PDF format.
 - b. Submit to the Engineering Division as-built drawings as it relates to the WQMP.
 - c. Record the WQMP Maintenance Agreement with the County of San Bernardino and provide evidence of said recording to the Engineering Division.
147. Prior to release of the Certificate of Occupancy for the first building of the project, the person or corporation responsible for the preparation of the WQMP shall certify in writing to the NPDES Coordinator that all conditions and requirements of the WQMP have been properly implemented. For projects, developments, or properties intended to be leased or sold, developer/applicant or owner shall also submit evidence to the NPDES Coordinator that lessee or purchaser has been advised in writing of lessee's or purchaser's on-going maintenance responsibilities with respect to the requirements of the WQMP.

ONGOING CONDITIONS (Conditions Nos. 148-153)

General

148. Comply with all conditions stated or referenced in these "Conditions of Approval" that apply as on-going rules, requirements, or conditions.

Planning/Administration

149. Implement all requirements and conditions of, and perform, maintenance activities in conformance with the Regulatory Agreement.
150. Comply with all on-going terms and conditions contained in the Master Solid Waste Removal Plan (SWRP).
151. Pursuant to Section 11.60.240 of the Montclair Municipal Code, all landscaping and irrigation systems shall be maintained in accordance with the approved site and/or landscape plan to ensure water use efficiency.
 - a. Any plant material that does not survive or which was removed or destroyed, shall be replaced upon its demise or removal, with plant material of like type and size as that which was originally approved and installed.
 - b. Plant material shall not be severely pruned such that the natural growth pattern or characteristic form are significantly altered. Trees shall be

pruned to ISA (International Society of Arboriculture) standards and only as necessary to promote healthy growth and for aesthetic purposes (i.e., to enhance the natural form of the tree). Improperly or severely pruned trees, including topping as defined by the Water Conservation Ordinance, which results in the removal of the normal canopy and/or disfigurement of the tree shall be replaced with trees of similar size and maturity as that which was removed or, as required by the Community Development Director.

- c. Dead vegetation shall be promptly replaced with healthy, living plants in accordance with standard seasonal planting practices. The property owner shall also be responsible to keep the landscaped areas reasonably free of weeds, trash, and debris.
- d. Modifications to and/or removal of existing landscaping shall require prior approval by the Planning Division.

Building

- 152. In conformance with the Regulatory Agreement, the applicant and/or property owner shall:
 - a. Maintain the building's signs, lighting, landscaping, and all improvements in good working order at all times.
 - b. Remove any accumulation of trash, weeds, or debris on the property.
 - c. Remove graffiti on any building or associated improvements, and/or within 48 hours upon notification by the City.

Water Quality Management Plan (WQMP)

- 153. The owner shall contract with a qualified firm to inspect and maintain any stormwater treatment devices specified by the approved WQMP, following all WQMP recommendations. It shall be the responsibility of the owner to maintain inspection reports and provide inspection reports to the City upon request. In the event any stormwater treatment device fails due to lack of, or insufficient maintenance and/or inspection, or some other unforeseen circumstance, it shall be the responsibility of the owner to correct the deficiency and restore the stormwater treatment device(s) to its original working condition.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	TAX550
SECTION:	PUBLIC HEARINGS	DEPT.:	CITY MGR.
ITEM NO.:	B	PREPARER:	E. STARR
SUBJECT:	SECOND READING — CONSIDER ADOPTION OF ORDINANCE NO. 20-994 AMENDING SECTION 3.36.050 (TELEPHONE USERS TAX) OF THE MONTCLAIR MUNICIPAL CODE TO PROVIDE TECHNICAL CLARIFICATION IN CONFORMITY WITH EXISTING LAW		

REASON FOR CONSIDERATION: As indicated in **Table 1**, below, Ordinance No. 91-702 (or Chapter 3.36 of Title 3 of the Montclair Municipal Code – the Utility Users Tax, or "UUT") was adopted by the Montclair City Council on August 5, 1991.

Utility Users Taxes are authorized under Section 37100.5 of the Government Code; are levied on the consumption of public utility services; and may be charged as a percentage of the billing for electrical, gas, cable television, water, and telephone service. Montclair does not level the Utility Users Tax on cable television service.

Utility Users Tax rates in California vary from 1 to 11 percent. The State average is 5 percent and Montclair's current rate is 3.89 percent. The Utility Users Tax was first levied on residential and business utility bills rendered on or after October 1, 1991. Montclair annually collects approximately \$2.4 million (pre-COVID-19) in UUT revenue.

Pursuant to the California Supreme Court's decision in *Santa Clara County Local Transportation Authority v. Guardino* upholding the voter approval requirements of Proposition 62, Montclair's Utility Users Tax was approved by voters at the June 2, 1998 Special Municipal Election (appearing on the ballot as "Measure D"), and again at the November 3, 1998 General Municipal Election (appearing on the ballot as "Measure M"), as indicated in **Table 1**. Measure M was put before the voters because of the successful circulation of a petition requiring a second vote on Montclair's Utility Users Tax.

Proposition 62 is a statewide statutory initiative adopted by California voters at the state's November 4, 1986 General Election requiring that all new local taxes be approved by the voters. However, the initiative was originally declared unconstitutional under a series of appellate court challenges. These case decisions include: *City of Westminster v. County of Orange* (1988), *Schopflin v. Dole* (1989), and *City of Woodlake v. Logan* (1991). The appellate courts ruled that Proposition 62 violated Article 11, Sections 9 and 11 of the State Constitution, which prohibit referenda (votes by the people) on local tax measures. The California Supreme Court refused to review these cases, letting stand the appellate court rulings that Proposition 62 was unconstitutional. In September 1995, four years after the *Woodlake* decision, the California Supreme Court, for the first time, reviewed and issued a case decision related to Proposition 62. The decision handed down in *Guardino* held that the voter approval requirements of Proposition 62 are valid. The Court found that the voter approval requirement of Proposition 62 is simply a conditional step necessary to adoption of a local government tax. Subsequent to *Guardino*, the Montclair Utility Users Tax was submitted to voters for approval.

Table 1, below, also demonstrates that at adoption of Ordinance No. 91-702, Montclair's Utility Users Tax rate was set at 5 percent. The City Council subsequently adopted amendments reducing the UUT rate on multiple occasions, including an amendment in

February 2001 when the UUT rate was reduced from 4.63 percent to the current rate of 3.89 percent. Voter approval of the 4.74 percent rate at two separate elections means that the Utility Users Tax rate cannot be increased above the 4.74 percent rate without voter approval.

Finally, **Table 1** indicates that in October 2016, the City Council amended Section 3.36.160 of Chapter 3.36 to incorporate changes for administrative procedures related to the issuance of refunds.

Table 1

Date Approved	Ordinance / Measure	Authorized By	Description of Action
08-05-1991	Ord. 91-702	City Council	Imposed a 5 percent Utility Users Tax (UUT) on electricity, gas, telephone, and water.
11-20-1995	Ord. 95-751	City Council	Adjusted UUT rate from 5 percent to 4.74 percent.
06-02-1998	Measure D	Voters	Setting the UUT rate to 4.74 percent.
11-03-1998	Measure M	Voters	Setting the UUT rate to 4.74 percent.
05-15-2000	Ord. 00-795	City Council	Adjusted UUT rate from 4.74 percent to 4.63 percent.
02-20-2001	Ord. 01-807	City Council	Adjusted UUT rate from 4.63 percent to 3.89 percent.
10-03-2016	Ord. 16-960	City Council	Updated administrative procedures related to refunding of UUT payments due to errors or overpayment.

The City Council is now asked to consider adopting Ordinance No. 20-994 amending Paragraph D of Section 3.36.050 of the Montclair Municipal Code deleting the citation of Section 4251 of the Internal Revenue Code [the Federal Excise Tax or FET] referenced for the administrative convenience of telephone service providers who billed customers on the basis of the FET tax base.

A copy of Ordinance No. 20-994 attached for City Council review and consideration.

BACKGROUND: The City of Montclair adopted a Utility Users Tax ("UUT") ordinance – Chapter 3.36 of the Montclair Municipal Code – in August 1991. Included in the UUT Ordinance is Subsection A of Section 3.36.050 levying a tax (the Telephone Users Tax or TUT) on the amounts paid by every person in the City using intrastate, interstate, and international telephone services by every person in the City using such services.

Subsection D. of Section 3.36.050 provides that *"Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed upon any person for using intrastate, interstate and international telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division [2,]Part 20 of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code [Federal Excise Tax or FET]."* Section 4251 of the Internal Revenue Code (hereafter, the "FET") is not a source of authority for imposition of Montclair's UUT.

On May 25, 2006, the United States Treasury Secretary issued Notice No. 2006-50 (hereafter, the "Rule") stating that the Internal Revenue Service (IRS) would no longer interpret the FET to apply to charges based on time only (as opposed to time and distance), or to charges for certain other bundled services.

In *Gonzalez v. City of Norwalk* (2017), the California Appeals Court held that a change in the federal interpretation of the FET did not retroactively change the meaning of a municipal code incorporation of the statute. Therefore, a subsequent amendment of the municipal ordinance to eliminate reference to the FET was declaratory of existing law and was not a tax increase requiring voter approval under Proposition 218.

In the interest of providing technical clarity that is declarative of the Rule, City staff proposes Ordinance No. 20-994 removing the citation of the FET in Subsection D of Section 3.36.050 of Chapter 3.36 of Title 3 of the Montclair Municipal Code.

Deletion of the FET from Subsection D of Section 3.36.50 the Montclair Municipal Code does not interfere with the City's authority to levy the Utility Users Tax on telephone communication services in a manner that is consistent with how it has been historically applied, levied and imposed.

FISCAL IMPACT: Adoption of Ordinance No. 20-994 imposes no defined impact on the City's General Fund or its collection of the TUT. Deletion of the reference to the FET does not impose a new tax and is not intended to have the effect of costing taxpayers more tax dollars.

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

1. Conduct the second reading of Ordinance No. 20-994 amending Section 3.36.050 (Telephone Users Tax) of the Montclair Municipal Code to provide technical clarification in conformity with existing law; and
2. Adopt Ordinance No. 20-994 amending Section 3.36.050 (Telephone Users Tax) of the Montclair Municipal Code to provide technical clarification in conformity with existing law.

ORDINANCE NO. 20-994

AN ORDINANCE OF THE CITY OF MONTCLAIR
AMENDING MONTCLAIR MUNICIPAL CODE SECTION
3.36.050 (TELEPHONE USERS TAX) TO PROVIDE
TECHNICAL CLARIFICATION IN CONFORMITY WITH
EXISTING LAW

WHEREAS, the City of Montclair has levied a utility users tax on charges for telecommunications service (Telephone Users Tax or TUT) since 1991; and

WHEREAS, since the time of its adoption in 1991, the TUT has referred to section 4251 of the Internal Revenue Code (Federal Excise Tax, hereafter the "FET") for the administrative convenience of telephone service providers who billed customers on the basis of the FET tax base; and

WHEREAS, the FET was not a source of authority for imposition of the City's TUT; and

WHEREAS, on May 25, 2006, the United States Treasury Secretary issued Notice No. 2006-50 (hereafter, the "Rule"), announcing that the Internal Revenue Service (IRS) would no longer interpret the FET to apply to charges based on time only (as opposed to time and distance), or to charges for certain other bundled services; and

WHEREAS, the City will continue to carry out its original intent and long-standing practice of applying the TUT in a manner that is consistent with the federal interpretation of the FET that was in effect before the Rule was issued; and

WHEREAS, the City therefore desires to remove the reference to the FET in Subsection D of Section 3.36.050 of Chapter 3.36 to provide technical clarification that is declarative of existing law; and

WHEREAS, in *Gonzalez v. City of Norwalk* (2017) 17 Cal.App.5th 1295, the court held that a change in the federal interpretation of the FET did not retroactively change the meaning of a municipal code incorporation of that statute; therefore, a subsequent amendment of the ordinance to eliminate reference to the FET was declaratory of existing law and was not a tax "increase" requiring voter approval under Proposition 218.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:

SECTION I. Paragraph D of Section 3.36.050 of Chapter 3.36 of Title 3 of the Montclair Municipal Code is amended to read:

Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed on any person for using intrastate, interstate and international telephone communication services to the extent that the amounts paid for such services are not subject to the tax imposed under Division 2, Part 20 of the California Revenue and Taxation Code.

SECTION II. Declaration. Because the provisions of the Montclair Municipal Code, as amended by this ordinance, do not alter the amount of the City's telephone user tax, do not expand the application of the tax, and are substantially the same as the previous provisions of the Code as they read immediately prior to the adoption of this ordinance, the amendments made by this ordinance shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION III. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION IV. Effective Date. This ordinance shall take effect 30 days after second reading as provided in Government Code section 36937. However, it is declaratory of existing law and makes no substantive change in the tax ordinance for the reasons stated in the recitals to this ordinance.

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

APPROVED AND ADOPTED this XX day of XX, 2020.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 20-994 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2020, and finally passed not less than five (5) days thereafter on the XX day of XX, 2020, by the following vote, to-wit:

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

Andrea M. Phillips
City Clerk

SECOND READING
12/07/2020



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	COV110
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	CITY MGR.
ITEM NO.:	1	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER AUTHORIZING A \$487,588 APPROPRIATION FROM THE ECONOMIC DEVELOPMENT FUND TO BE USED AS A LOCAL MATCH AS PART OF SAN BERNARDINO COUNTY'S CARES ACT CORONAVIRUS RELIEF FUND INFRASTRUCTURE PROGRAM		

REASON FOR CONSIDERATION: On September 29, 2020, the San Bernardino County Board of Supervisors allocated \$25 million of Coronavirus Aid, Relief, and Economic Security (CARES) Act funds to cities and towns for COVID-19 related infrastructure projects, a part of the County's CARES Act Coronavirus Relief Fund Infrastructure Program.

As such, staff is proposing several COVID-19 related infrastructure projects to be partially funded through San Bernardino County's CARES Act Coronavirus Relief Fund Infrastructure Program.

BACKGROUND: The CARES Act, signed into law on March 27, 2020, created the Coronavirus Relief Fund (CRF), which provides a total of \$150 billion in federal fiscal support for state and local governments for the purpose of responding to the Coronavirus Disease 2019 (COVID-19) pandemic. Section 5001(d) of the CARES Act provides the eligible purposes for which CRF allocations may be used.

Specifically, the CARES Act provides that CRF may only be used to fund costs that are (1) necessary expenditures incurred due to the public health emergency with respect to COVID-19; (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for state or local governments; and (3) were incurred during the period that began on March 1, 2020, and ends on December 30, 2020. For purposes of this project, "incurred" means goods and or services received by December 30, 2020.

On September 29, 2020, the San Bernardino County Board of Supervisors allocated \$25 million of Coronavirus Aid, Relief, and Economic Security (CARES) Act funds to cities and towns for COVID-19 related infrastructure projects. All proposed infrastructure projects must meet CARES Act eligibility requirements as determined by guidance provided by the United States Department of Treasury and San Bernardino County. Based off of guidelines created by San Bernardino County, funding received for eligible COVID-19 infrastructure projects requires a one-to-one (\$1:\$1) cash match from the city/town receiving the funds. For example, if a \$100,000 project is proposed, the city/town will be eligible to receive up to a \$50,000 reimbursement from the County.

Based off of CARES Act funding allocations, the City of Montclair is eligible to receive up to \$487,588 for COVID-19 related infrastructure projects from San Bernardino County, as part of their CARES Act Coronavirus Relief Fund Infrastructure Program. If the City of Montclair elects to receive the full amount of available funds, then the total amount of funds for COVID-19 related infrastructure projects available to the City would be

\$975,176. As a reminder, San Bernardino County requires a one-to-one cash match in order to receive funding.

After reviewing guidance from the United States Department of Treasury, as well as those set by San Bernardino County, staff is proposing that the following projects be submitted as part of San Bernardino County's CARES Act Coronavirus Relief Fund Infrastructure Program.

The proposed projects fall into four categories: (1) City of Montclair Media Upgrades; (2) WiFi Service and WiFi System Upgrades; (3) Network Security Protocols for City of Montclair Facilities; and (4) Worker Enhancement Services. **Tables 1, 2, 3, and 4** below highlight the various proposed COVID-19 infrastructure projects based on the four above-mentioned categories, as well as their cost breakdowns:

**Table 1.
City of Montclair Media Upgrades**

City of Montclair Media Upgrades	Cost
Council Chamber Camera Upgrade for Teleconference Meetings	\$13,988
West Lobby Television for City Council Meetings and Special Events for Public Overflow	\$11,785
City Manager Conference Room Upgrade for Social Distance Meetings	\$27,368
Video Upstream Capabilities for Public Access Channel and Social Media Platforms	\$79,000
Audio Visual Capability for Montclair Community Center (Cameras and Microphones to Record/Stream Programming for the Community)	\$35,000
Central Conference Room Audio Visual Equipment	\$14,142
Total	\$181,283

**Table 2.
WiFi Service and WiFi System Upgrades**

WiFi Service and WiFi System Upgrades	Cost
Wireless Mesh Upgrade Ubiquities Wireless Access Points for City Hall Facilities: City Hall, PD, Fire Station Nos. 1 & 2, and City Yard	\$26,000
Wireless Building-to-Building Network for Network Connectivity to the Montclair Transcenter	\$22,000
WiFi Access Points Expansion at Montclair Facilities to Provide Internet and Data Connectivity for Public Use	\$9,000
Wireless Internet Hotspot Coverage for City of Montclair Residents	\$43,000
Total	\$100,000

**Table 3.
Network Security Protocols for City of Montclair Facilities**

Network Security Protocols for City of Montclair Facilities	Cost
Phone System Virtualization and Enhancement - VOIP Mitel Controller for Security and Redundancy	\$8,000
Montclair Police Department Video Server Storage Upgrade for Evidence Retrieval	\$20,000
Station Alerting System for Montclair Fire Station Nos. 1 & 2	\$47,990
Security Cameras for City Parks	\$35,000
Total	110,990

**Table 4.
Worker Enhancement Services**

Worker Enhancement Services	Cost
Mitel MiCollab Telephone Software Upgrade for Remote Workers	\$5,500
Digitizing of Building and Plan Check Submittal and Review	\$75,000
Emergency Notification Messaging Broadcast System	\$30,000
AC/HVAC System for Montclair Police Department	\$130,000
UV Light AC System for COVID Neutralization	\$60,000
Self Cleaning Restrooms at the Transcenter	\$238,000
Digital Kiosk at City Facility	\$35,000
Total	\$573,500

The total cost amount for the proposed COVID-19 related infrastructure projects is \$965,773. Of that amount, the City of Montclair would provide a one-to-one match of \$482,886 and San Bernardino County would provide the remaining \$482,866. The proposed COVID-19 related infrastructure project funds would have to be spent or encumbered prior to December 30, 2020.

Typically, the City of Montclair is required pursuant to Section 20160, et seq., of the California Public Contract, to follow a specified process for the acquisition of construction services for public projects. Section 20168 of the California Public Contract Code does allow the legislative body of a city, in the case of an emergency and by a four-fifths vote, to pass a resolution to forego customary bid procedures when it is determined that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, and/or property by taking any necessary steps to procure equipment, services, and supplies for those purposes.

Given, that several of the proposed COVID-19 related infrastructure projects would fall under Section 20160, et seq., of the California Public Contract, and that the COVID-19 related infrastructure project funds must be spent or encumber by December 30, 2020, staff is recommending that the City follow Section 20168 of the California Public Contract Code in order to circumvent the typical contract bid process outlined in Section 20160, et seq., of the California Public Contract. Section 20168 of the California Public Contract Code allows the legislative body of a city, in the case of an emergency and by a four-fifths vote, to pass a resolution to forego customary bid procedures when it is determined that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, and/or property by taking any necessary steps to procure equipment, services, and supplies for those purposes.

**It should be noted that On Monday, March 16, 2020, the Montclair City Council adopted Resolution No. 20-3263, by a five-zero vote, declaring a local public health emergency in the City of Montclair in relation to the Novel Coronavirus Disease 2019 (COVID-19).*

In declaring a local public health emergency, the City Council invoked Section 6.080.060 of Chapter 6.08 of Title 6 of the Montclair Municipal Code providing that the City Manager, as Director of Emergency Services, is empowered to “obtain vital supplies, equipment, and such other properties found lacking and needed for the protection of life and property and to bind the City for the fair value thereof, and if required immediately, to commandeer the same for public use.”

FISCAL IMPACT: The City Council’s authorization of an appropriation of \$487,588 from the Economic Development Fund would cover the one-to-one cash match required as part of San Bernardino County's CARES Act Coronavirus Relief Fund Infrastructure Program as well as an additional buffer for incidental price increases.

RECOMMENDATION: Staff recommends the City Council authorize a \$487,588 appropriation from Economic Development Fund to cover the one-to-one cash match required as part of San Bernardino County's CARES Act Coronavirus Relief Fund Infrastructure Program.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	DRP520
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	2	PREPARER:	N. CASTILLO
SUBJECT:	CONSIDER LIFTING THE TEMPORARY SUSPENSION OF PARKING RESTRICTIONS ON SCHEDULED STREET SWEEPING DAYS AND RESUME PARKING ENFORCEMENT		

REASON FOR CONSIDERATION: The City Council is requested to consider lifting the temporary suspension of parking restrictions on scheduled street sweeping days and resume parking enforcement.

BACKGROUND: On March 16, 2020, the City Council adopted Resolution No. 20-3263 declaring a local public health emergency exists in the City of Montclair in relation to the COVID-19 pandemic. A component of that resolution is the temporary suspension of restrictions related to on-street parking on scheduled street sweeping days. The suspension of those parking restrictions was largely due to the stay-at-home order issued by California Governor Gavin Newsom, which restricted much of the public's activity except for authorized essential workers and a citizen's need to obtain vital supplies. Although on-street parking restrictions were suspended, Public Works continued providing residents with street sweeping service. However, it has been difficult to sweep the streets in many areas of the City that are heavily parked with vehicles. These areas have accumulated trash and vegetation debris, which has been difficult to clean without parking restrictions during scheduled street sweeping times. Not only is there a concern of the public's health with the accumulation of trash and vegetation debris in the street, but it is likely to become more problematic throughout the fall and winter seasons when rainfall is expected. More vegetation will continue to collect on the streets and then likely be washed into the storm drains with the potential for backups and street flooding during periods of rainfall.

The City of Montclair prides itself on being an attractive, well-maintained community, with safe and clean streets being a hallmark of the community. Montclair's Street Sweeping Program is designed to ensure that the streets are kept safe and clean of debris. The weekly sweeping is in compliance with the National Pollution Discharge Elimination System (NPDES) best practices criteria. Runoff from sprinklers and other outdoor activities result in debris that migrates into the storm drain system. This can pollute the entire downstream watershed, even to the beaches. Additionally, the City is obligated to comply with the mandates of the National Pollution Discharge Elimination System (NPDES). Proper Street sweeping significantly reduces accumulation of trash and debris and prevents it from entering storm drains and the natural watershed. This practice is well-established throughout the nation.

In order to keep the streets clean and prevent debris from reaching our waterways, residents are encouraged to move their vehicles from the street on street sweeping days. This will allow the Street Sweeper to fully clean all areas of the streets and maintain the City's roadways. The City of Montclair prides itself in having established the long-standing practice of weekly street sweeping. Reducing the frequency would not be in line with our reporting to the California State Water Resources Control Board. Any changes could cause the need to obtain a new permit or face additional requirements to

meet the measure established in Order No. R8-2010-0036 (NPDES No. CAS 618036) Area-wide Urban Storm Water Runoff Management Program San Bernardino County MS4 Permit. Additionally, failure to perform the street sweeping at the frequency reported as our best management practices to the State Water Resources Control Board could result in audit findings and fines to the City.

Staff proposes the City Council lift the temporary suspension of parking restrictions on scheduled street sweeping days. The City Street Sweeping schedule is available on the City's website. Parking enforcement would lead the street sweeper to address any violations prior to the sweeper's arrival. Parking enforcement would not occur in that area for cars that park after the street has been swept; therefore, citations would not be issued to vehicles that park after the street sweeping is completed. Residents would be allowed to park on the street once the street sweeping is completed on that street.

As previously reported, parking enforcement began issuing warning citations starting on Monday, November 9, 2020. Additionally, an informational flyer has been disseminated to the public on street-parked cars, and has been posted on the City's social media accounts as we continue our awareness campaign through Monday, December 7, 2020, as directed by City Council at its regular meeting on November 2, 2020.

Pending City Council decision at the scheduled meeting on December 7, 2020, the Police Department will begin issuing official citations for failure to comply with parking restrictions on scheduled street sweeping days beginning Tuesday, December 8, 2020.

FISCAL IMPACT: There would be no fiscal impact as the efforts to sweep the streets and perform parking enforcement are already budgeted in current fiscal year's budget. The failure to perform street sweeping at the frequency reported in our annual reports to the State Water Resources Control Board could result in large fines to the City.

RECOMMENDATION: Staff recommends that the City Council lift the temporary suspension of parking restrictions on scheduled street sweeping days and resume parking enforcement.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	HSV042
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS/HUMAN SERVICES
ITEM NO.:	3	PREPARER:	N. CASTILLO/A. COLUNGA
SUBJECT:	CONSIDER ADOPTION OF THE CITY OF MONTCLAIR ACTIVE TRANSPORTATION PLAN CONSIDER ADOPTION OF THE CITY OF MONTCLAIR SAFE ROUTES TO SCHOOL PLAN		

REASON FOR CONSIDERATION: The City Council is requested to consider adopting the City of Montclair Active Transportation Plan (ATP) and the Safe Routes to School Plan (SRTS). Staff will utilize the plans to guide future infrastructure projects and apply for possible funding opportunities.

Hard copies of the two plans were provided to the City Council with the Council's agenda packets, and digital versions are available in PDF format to download from the City's website at <https://www.cityofmontclair.org/agendas> on the details page of the December 7, 2020 City Council meeting.

BACKGROUND: The City of Montclair successfully obtained planning grants partnering with the Southern California Association of Governments (SCAG) to develop the ATP in 2017 and SRTS in 2016. In 2018, SCAG entered into a professional services agreement with the consulting firm KOA for the purposes of creating the two planning documents for the City. The plans are meant to provide clear and comprehensive frameworks for the new and safer connectivity of non-motorized options throughout the City. Ultimately, the ATP and SRTS will become a part of the Circulation Element of the City of Montclair General Plan.

The studies were conducted over a two-year span in order to better understand the needs of the community, from the Montclair seniors to the children attending Montclair schools. ATP and SRTS are two individual plans; however, they are interlinked when it comes to community engagement and analysis. The Active Transportation Plan is a comprehensive set of strategies to ensure better options for biking, walking, and transit are provided for the community. These Plans include recommendations for prioritizing infrastructure improvements and outline recommendations for new policies, processes, and infrastructure based on public and stakeholder input. This is where the SRTS Plan gets incorporated into the ATP for the City. At the beginning of the process, staff identified four objectives:

- Improve pedestrian and bicycle mobility
- Improve accessibility to destinations
- Improve safety for walking and biking
- Improve public health by promoting alternatives modes of transportation

In addition to the four objectives, the SRTS plan also builds upon the international SRTS movement which strives to make communities safer and more convenient for children and their families to walk or bike to school. The international SRTS movement is supported by the six E's to address infrastructure and non-infrastructure components, which are engagement, equity, education, encouragement, engineering, and evaluation.

Further, the goals of the plan included addressing safety, accessibility, public health, and equity.

A robust community engagement process was put in place, creating a branding strategy and material that allowed the plans to be easily identifiable as well as provided the material in both English and Spanish to be inclusive of the community. Community outreach events and activities are described below:

- Community Events and Workshops: These events engaged more than 250 community members through various activities to gather input on the planning process:
 - Country Fair Jamboree
 - Montclair After-School Program Parent Orientation
 - General Public Meeting
 - SRTS Champions Committee Workshop
- Walking Safety Assessments: Partnering closely with Ontario-Montclair School District and school administrations, the City conducted walking safety assessments to identify and discuss barriers arriving to or departing from a location by foot, bicycle, transit, or other modes of active transportation. Feedback was received from parents, students, teachers, crossing guards, school principals, and other community stakeholders. The following schools were participants in the assessment:
 - Buena Vista Arts-Integrated Elementary and Vernon Middle School
 - Howard Elementary
 - Kingsley Elementary
 - Lehigh Elementary
 - Montclair High School
 - Montera Elementary
 - Monte Vista Elementary
 - Ramona Elementary
 - Montclair Senior Center
 - San Antonio Creek Channel
 - Montclair Transit Center
- Community surveys and virtual engagement collected feedback in English and Spanish and were distributed through the Ontario-Montclair School District School Loop, school websites, City website and social media, and the Montclair After-School Program

An abundance of feedback was received from parents, students, community members, and community partners. This expansive community outreach effort played a critical role in our recommendation phase. As part of the analysis, existing secondary data was examined through the use of GIS maps and other forms of analysis, including demographic characteristics, health and safety data, travel behaviors, and environmental and infrastructure conditions.

After hearing from the community and analyzing all the existing data, the process resulted in recommendations for an active transportation network that addressed local and regional connectivity through infrastructure and non-infrastructure improvements. Additionally, individual school safety plans are included in the recommendations, each of which include data collected about the school, walking safety assessment obser-

vations and comments, and recommended infrastructure improvements. Recommendations for the City include non-infrastructure improvements such as community engagement and activities to educate the community and continue the momentum of this planning process. Through the ATP, factsheets were prepared for the top four corridors with detailed descriptions of the improvements and cost estimates. These factsheets will place the City in competitive advantage when grant opportunities present themselves.

The proposed Active Transportation Plan recommendations include:

1. Identifying opportunities and challenges for implementation of improvements;
2. Identifying recommended improvements to existing city-wide bicycle and pedestrian pathways;
3. Proposing new bikeways, pedestrian walkways, and Suggested Routes to School networks and closing existing gaps;
4. Creating a Bicycle Master Plan;
5. Creating a Pedestrian Master Plan; and
6. Creating a Trails Master Plan.

The City has begun using the ATP and SRTS plans to prepare grant applications in pursuit of funding based on the recommended improvements. The City submitted an ATP Cycle 5 grant application in the sum of \$5 million dollars this past October. The City is hopeful to receive good news in the near future.

FISCAL IMPACT: Approving both the Active Transportation Plan and Safe Routes to School Plan will have no impact on the General Fund. There are no funds currently allocated for the recommendations in either plan.

RECOMMENDATION: Staff recommends that the City Council adopt the City of Montclair Active Transportation Plan and the City of Montclair Safe Routes to School Plan.



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 7, 2020 **FILE I.D.:** HSV105
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** HUMAN SVCS.
ITEM NO.: 4 **PREPARER:** A. COLUNGA

SUBJECT: CONSIDER APPROVING COUNTY-REQUIRED INCREASES TO THE SENIOR NUTRITION PROGRAM ELIGIBLE PARTICIPANTS' SUGGESTED DONATION AMOUNT FROM \$2.00 TO \$2.50 ON JANUARY 1, 2021, AND TO \$3.00 ON JULY 1, 2021

CONSIDER APPROVING AN INCREASE TO THE SENIOR NUTRITION PROGRAM GUEST FEE FROM \$5.50 TO \$6.00 ON JANUARY 1, 2021

REASON FOR CONSIDERATION: The City Council is requested to consider approval of County-required increases to the Senior Nutrition Program's suggested donation and guest fee.

BACKGROUND: In June 2019, City Council approved Agreement No. 19-47 with the San Bernardino County Department of Aging and Adult Services to accept an award to continue to provide a Senior Citizen Nutrition Program for older adults, ages 60 and over.

In mid-August 2020, the Human Services Department drafted an update to the Senior Nutrition program flyer. Consistent with grant contract requirements, a copy of the draft flyer was forwarded to the San Bernardino County's Department of Aging and Adult Services (DAAS) program staff for approval. At that time, DAAS requested that the City revise its literature and signage to reflect a suggested donation/voluntary contribution amount of \$3.00 per meal for eligible senior nutrition program participants. Human Services Department staff expressed its concern about immediately increasing the suggested donation from \$2.00 to \$3.00 since some of the Los Angeles County neighboring cities have managed to keep theirs low (Claremont at \$2.00 and Pomona at \$1.75).

DAAS, however, was insistent that the City make the increase to \$3.00 in order to be consistent with other San Bernardino County providers. DAAS pointed out that, in the last State audit of the program, they received a major finding due to the lack of consistency in suggested donations among their providers. Human Services Department staff was successful in negotiating a phased increase that would likely be more palatable to our seniors. DAAS agreed to allow the City to make an incremental increase from \$2.00 to \$2.50 effective January 2021 and the final increase from \$2.50 to \$3.00 effective July 2021 marking the beginning of next fiscal year. The grant contract requires that despite the suggested amount, no eligible participant will be denied a meal if they are unable to donate; contributions are voluntary and must be kept confidential.

The Human Services Department is now in the process of preparing notifications to include the first incremental increase. While making the increase in the suggested donation amount for eligible participants, Human Services Department staff is recommending making an equal increase in the current guest fee (from \$5.50 to \$6.00). The guest fee was last increased in the spring of 2018 at DAAS' program staff's request following a separate State audit finding.

FISCAL IMPACT: Increases/decreases in donations will directly affect the amount claimed under the DAAS cost reimbursement grant. A decrease in donations will result in an increase in net expenses requiring either that those expenses be absorbed by the existing grant budget or that DAAS provide additional funding. The current program budget has some reserve. Human Services Department staff tracks budgets monthly and will continue operational management. DAAS has already advised that they have additional funding they will provide if needed. The grant contract requires an 11.11% match of federal funds. That amount is currently \$17,776 and has already been met using supervisory full-time staff wages included in the General Fund budget.

RECOMMENDATION: Staff requests that the City Council take the following actions:

1. Approve County-required increases to the Senior Nutrition Program eligible participants' suggested donation amount from \$2.00 to \$2.50 on January 1, 2021, and to \$3.00 on July 1, 2021.
2. Approve an increase to the Senior Nutrition Program guest fee from \$5.50 to \$6.00 on January 1, 2021.



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 7, 2020 **FILE I.D.:** EQS230
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 5 **PREPARER:** N. CASTILLO
SUBJECT: CONSIDER AUTHORIZING THE PURCHASE OF A 2021 SCHWARZE MODEL A7
NATURAL GAS STREET SWEEPER FROM MUNICIPAL MAINTENANCE EQUIPMENT

REASON FOR CONSIDERATION: The City council is requested to consider authorizing the purchase of a 2021 Schwarze Model A7 Compressed Natural Gas (CNG) street sweeper, which will satisfy the California Air Resources Board and Air Quality Management District (AQMD) requirements for both the particulate matter (PM-10) pollution controls and alternative fuel.

BACKGROUND: The city currently owns a 2000 Tymco 600 street sweeper. The sweeper is 20 years old and is in need of major repairs. The sweeper is no longer picking up debris as it was designed to do. The hopper bed and motors are in need of repair, as the holes in the hopper reduce suction, and as a result the suction system does not create a vacuum strong enough to pick up needles and heavy leaves. Additionally, the water spray system does not have adequate pressure. AQMD requirements state that the unit will not be usable in January of 2021. Due to emission rules, it will need to be removed from the City's fleet. AQMD requirements make it necessary to purchase an alternative fuel sweeper. If the sweeper is not purchased, the City will be without a back-up sweeper in January when the new regulations go into effect.

Staff obtained three quotes from manufactures. The selection committee consisted of the City's mechanic, sweeper operators, and the Public Works Director. The table below shows the three quotes obtained from the equipment supply companies.

<i>Company & Product</i>	<i>Quote</i>
Municipal Maintenance Equipment Schwarze Model A7	\$307,502.69
Haaker Equipment Company (Elgin) Crosswind J Sweeper	\$320,210.28
Mar-Co Equipment Company TYMCO 600	\$329,982.66

After inviting all three companies to conduct on-site demonstrations, staff narrowed the selection to the Schwarze Model A7. The committee determined the cost of the Schwarze model along with its ease of use to be the best value for the City. The sweeper is set upon the same cab and chassis as our current sweepers and utilizes the same power units as well. The operators liked the fact that the hopper was able to lift and dump the debris out of the back rather than having to scrape and rake to remove the material saving them time and making it more sanitary for them. The sweeper also has more adjustment on the gutter brooms which will making sweeping more effective. Maintenance and upkeep would not differ from that of our current units.

FISCAL IMPACT: Funding in the amount of \$307,502.69 for a new alternative fuel street sweeper was included in the Fiscal Year 2020-21 Operations Budget, with funds coming from the Air Quality Improvement Trust Fund, Burrtec Pavement Impact Fees, Sewer Operating Fund, CFD2011-1 Paseos Fund, CFD2011-2 Arrow Station Fund, and Equipment Replacement Fund.

RECOMMENDATION: Staff recommends that the City Council authorize the purchase of a 2021 Schwarze Model A7 natural gas street sweeper from Municipal Maintenance Equipment.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	PDT405
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	POLICE
ITEM NO.:	6	PREPARER:	B. KUMANSKI
SUBJECT:	CONSIDER AUTHORIZING A \$1,350 APPROPRIATION FROM THE PROP 30/AB 109 FUND TO PURCHASE TWO MOBILE GPS TRACKING UNITS FROM LIVE VIEW GPS, ASSOCIATED MOUNTING HARDWARE, AND MONTHLY SERVICE MONITORING FEES FOR THE REMAINDER OF THE 2020-21 FISCAL YEAR		

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing a \$1,350 appropriation from the Proposition 30/AB 109 Fund for the purchase of two mobile GPS tracking units from Live View GPS, associated mounting hardware, and monthly service fees for the remainder of the 2020-21 Fiscal Year.

BACKGROUND: The Police Department received funding under Proposition 30 for implementation of Public Safety Realignment efforts. Funding is to be used by frontline law enforcement to implement re-entry programs and/or address crime impacts to communities affected by Realignment.

The Police Department utilizes many technologies to assist with the investigation of crimes and apprehension of suspects. One of these technologies involves the tracking of suspect movements by utilizing GPS technology. These devices can be attached inconspicuously to suspect vehicles utilizing specially designed magnetic protective cases.

The devices have many capabilities, including alerting when the device moves outside a specified area, and when and for how long the device remains at a location. This is especially useful when conducting court-ordered surveillance and developing leads when work, family, friends, and other connected locations are unknown. The Department has experience utilizing this GPS technology, and recently has used the exact same system from Live View GPS on loan from the Upland Police Department to assist with a recent homicide investigation and catalytic converter theft investigation. The devices are simple to use, have sufficient longevity in the field when left for extended periods of time, and provide a proven useful tool for the investigation of crime. The successful utilization of Upland's units reinforced the need to have our own capabilities, and the devices would find ample use. Relatively inexpensive compared to the capabilities they bring, the purchase of two devices would ensure a working unit is always available, even in the event one is down for service or already in use.

FISCAL IMPACT: If authorized by the City Council, funding to cover the purchase of two mobile GPS tracking units from Live View GPS, associated mounting hardware, and monthly service fees for the remainder of the 2020-21 Fiscal Year would result in an appropriation from the Proposition 30/AB 109 Fund (1141) in the amount of \$1,350.

RECOMMENDATION: Staff recommends that the City Council authorize a \$1,350 appropriation from the Proposition 30/AB 109 Fund for the purchase of two mobile GPS tracking units from Live View GPS, associated mounting hardware, and monthly service fees for the remainder of the 2020-21 Fiscal Year.



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 7, 2020 **FILE I.D.:** FIN245
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 7 **PREPARER:** N. CASTILLO

SUBJECT: CONSIDER RECEIVING AND FILING A STATUS REPORT ON EMERGENCY CONTRACTING PROCEDURES RELATED TO HVAC REPLACEMENT AT THE KIDS STATION FACILITY LOCATED AT THE MONTCLAIR TRANSCENTER

CONSIDER DECLARING A TERMINATION OF THE EMERGENCY ACTION AUTHORIZED ON NOVEMBER 16, 2020 RELATED TO HVAC REPLACEMENT AT THE KIDS STATION FACILITY

REASON FOR CONSIDERATION: By City Council action taken at its meeting on November 16, 2020, an emergency was declared for emergency contracting procedures related to the heating, ventilation, and air conditioning (HVAC) replacement at the Kids Station Facility. Under Public Contract Code Section 22050, the governing body shall review the emergency action at its next regularly scheduled meeting and every regularly scheduled meeting thereafter until the action is terminated, to determine, by a fourth-fifths majority vote, that there is a need to continue the action.

BACKGROUND: The HVAC unit at the Kids Station Facility was malfunctioning during the months of September 2020 and October 2020. After replacing the main circuit board, condenser fan motor, and high pressure switch, the unit was still freezing up and cycling off. The dependability of the HVAC unit was an issue for the COVID-19 testing center that was operating from the Kids Station, as the samples required a minimum room temperature, which was not being met during the summer heat waves. It was determined to replace the HVAC unit on an emergency basis by Air-Ex Air Conditioning, Inc.

FISCAL IMPACT: The cost to replace the HVAC unit was \$15,825, and the City Council authorized the cost to be paid from the Contingency Fund at its meeting on November 16, 2020. The City Council's actions to file the status report and terminate the emergency action would have no fiscal impact.

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

1. Receive and file a status report on emergency contracting procedures related to HVAC replacement at the Kids Station Facility.
2. Declare a termination to the emergency action authorized on November 16, 2020 related to HVAC replacement at the Kids Station Facility.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	8	PREPARER:	L. LEW/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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 December 7, 2020, and the Payroll Documentations dated October 25, 2020, and November 8, 2020, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated December 7, 2020, totals \$1,703,128.64; the Payroll Documentation dated October 25, 2020, totals \$583,299.95 gross, with \$397,740.56 net being the total cash disbursement; and the Payroll Documentation dated November 8, 2020, totals \$608,309.47 gross, with \$408,411.95 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

DATE:	DECEMBER 7, 2020	FILE I.D.:	MHA030
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE/MHA
ITEM NO.:	9	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER APPROVAL OF THE MONTCLAIR HOUSING AUTHORITY ANNUAL REPORT PURSUANT TO SECTION 3416.1(F) OF THE HEALTH AND SAFETY CODE (SB 341) FOR FISCAL YEAR 2019-20		

REASON FOR CONSIDERATION: Senate Bill 341 became effective on January 1, 2014. The bill amended Section 34176 of the Health and Safety Code and added Section 34176.1. Health and Safety Code Section 34176 revised redevelopment law related to certain expenditure requirements of Low and Moderate Housing Funds of former redevelopment agencies. In general, Section 34176.1 limited future expenditures of administrative funds used for the monitoring and preservation of affordability covenants, directed that certain funds remaining in the Low and Moderate Income Housing Fund be directed to extremely low income households, and added certain audit and reporting requirements.

The report labeled "SB 341 Compliance Report" is attached for consideration by the City Council and Montclair Housing Authority Commission pursuant to Health and Safety Code Section 34176.1 (f). This report indicates that the financial data applicable to the Montclair Housing Authority will be included in the City of Montclair's annual independent financial audit. That process is currently being completed and that report will be provided to the City Council and Montclair Housing Authority Commission upon its receipt from the independent audit firm of Van Lant & Fankhanel, LLC. The City Council and Montclair Housing Authority Commission are requested to consider approval of the SB 341 Compliance Report.

BACKGROUND: As the City Council and Montclair Housing Authority Commissioners will recall, the California Supreme Court's decision in California Redevelopment Association, et. al. v. Matosantos upheld AB X1 26, The Dissolution Act. The Dissolution Act caused the dissolution of all California redevelopment agencies. On January 12, 2012, the City of Montclair City Council elected to become and serve as the Successor Agency to the City's dissolved redevelopment agency. The City is performing its functions as the Successor Agency to the former Redevelopment Agency under the Dissolution Act to administer the enforceable obligations of the Agency and otherwise unwind the Agency's affairs, all subject to review and approval by the County Oversight Board.

On January 12, 2012, pursuant to Section 34176 of the Dissolution Act, the City Council selected the Montclair Housing Authority to assume all housing assets and functions of the former City of Montclair Redevelopment Agency. Therefore, on February 1, 2012, the Montclair Housing Authority became the "Housing Successor" of the former Redevelopment Agency pursuant to the Dissolution Act. The actions of the Housing Successor are not subject to the review and approval of the County Oversight Board.

As indicated, certain provisions of SB 341 require that the Housing Successor prepare a Compliance Report and have an audit completed. The SB 341 Compliance Report responds to the requirements of Section 34176.1 (f) of the Health and Safety Code. The SB 341 Compliance Report also includes financial data for the Montclair Housing Corporation which operates the properties owned by the Montclair Housing Authority. Primarily, the Report indicates the following:

The Montclair Housing Authority has received approximately \$441,973 during Fiscal Year 2019–20, which came from a contribution of property. The Montclair Housing Corporation received \$34,126 of interest earnings and \$965,462 from rents.

The assets of the Montclair Housing Authority chiefly include real estate composed of the 99 residential units operated by the Montclair Housing Corporation and residual receipts loans.

For Fiscal Year 2019–20, the Montclair Housing Authority had expenditures in the amount of \$441,973 for the acquisition of property. The expenditures shown for the Montclair Housing Corporation include administrative costs by staff, management company costs that include charges for minor repairs and maintenance, major repairs and maintenance and costs for health permits. The excess of revenue for the year is accumulated so that long-term maintenance items can be accomplished in the future.

The report indicates that the carrying value of the housing units owned by the Montclair Housing Authority is \$7.15 million. Approximately \$2.6 million is owed to the Montclair Housing Authority from residual receipts loans to Augusta Homes (loans for rehabilitation of mobile home parks), Neighborhood Partnership Housing Services (loans to home owners for housing rehabilitation), and National Community Renaissance (loans for acquisition and construction of new affordable housing).

The Montclair Housing Authority currently exceeds its Section 33413 inclusionary housing requirements. The income of the Montclair Housing Authority is non-reoccurring. Without a permanent source of revenue, the Montclair Housing Authority will no longer be able to provide additional affordable housing units.

Within the last 10 years, the City of Montclair Redevelopment Agency Low and Moderate Income Housing Fund provided financing for 228 deed restricted affordable rental housing units. Thirty eight percent of the units were for senior housing.

FISCAL IMPACT: Approval of the Annual Report by the City Council and Montclair Housing Authority Commission will create no fiscal impact for the City or Montclair Housing Authority. With no permanent source of the funding, the Montclair Housing Authority has extremely limited resources for the purpose of providing low and moderate housing.

As indicated, the Audit Report will be supplied to the City Council and Montclair Housing Authority Commission upon receipt from Van Lant & Fankhanel, LLC, which should occur prior to January 31, 2021.

RECOMMENDATION: Staff recommends that the City Council and Montclair Housing Authority Commission approve the Montclair Housing Authority Annual Report prepared pursuant to Section 34176.1(f) of the Health and Safety Code (SB 341) for Fiscal Year 2019–20.

Successor Housing Entity – Montclair Housing Authority

Health and Safety Code Section 34176.1 (f) and Section 33080.1 as well as Section 12463.3 of the Government Code shall not apply. Instead, the housing successor shall conduct, and shall provide to its governing body, an independent financial audit of the Low and Moderate Income Housing Asset Fund within six months after the end of each fiscal year, which may be included in the independent financial audit of the host jurisdiction. If the housing successor is a city or county, it shall also include in its report pursuant to Section 65400 of the Government Code and post on its Internet Web site all of the following information for the previous fiscal year. If the housing successor is not a city or county, it shall also provide to its governing body and post on its Internet Web site all of the following information for the previous fiscal year:

Response:

The Montclair Housing Authority's and Montclair Housing Corporation's financial information is part of the annual financial audit report prepared for the City of Montclair and therefore it meets the requirement by being included "in the independent financial audit of the host jurisdiction".

- (1) The amount deposited to the Low and Moderate Income Housing Asset Fund, distinguishing any amounts deposited for items listed on the Recognized Obligation Payment Schedule from other amounts deposited.

Response:

The operations of Low and Moderate Income Housing are separated and reported by two entities. The Montclair Housing Authority (Housing Authority) is the Successor Housing Entity, which under the redevelopment dissolution law took over housing assets from the City of Montclair Redevelopment Agency Low and Moderate Income Housing Funds upon its dissolution. Those housing assets included single and multifamily residential housing units which are operated and maintained by the Montclair Housing Corporation (Housing Corporation) which is a separate 501(c)(3) non-profit California Corporation. The rents and other income from the housing operations belong to the Housing Authority; however, they are granted to the Housing Corporation for use in covering expenses of operating the various housing units. Below is a summary of the deposits of both of these entities for fiscal year 2019-20:

	Housing Authority	Housing Corporation	Total
Deposits for fiscal year 2019-20	\$ 441,973.49	\$ 999,588.80	\$ 1,441,562.29
Deposit detail:			
Grant from Housing Authority - Rental income	\$ -	\$ 965,462.55	\$ 965,462.55
Interest earnings	-	34,126.25	34,126.25
Contribution from other governments	441,973.49	-	441,973.49
	\$ 441,973.49	\$ 999,588.80	\$ 1,441,562.29

None of the deposits above relate to any obligations listed on a Recognized Obligation Payment Schedules.

- (2) A statement of the balance in the fund as of the close of the fiscal year, distinguishing any amounts held for items listed on the Recognized Obligation Payment Schedule from other amounts.

Response:

Since this section does not define what "balance" is required, the fund balances present in the Low and Moderate Income Housing Asset Fund of the Montclair Housing Authority and the fund balance of the Montclair Housing Corporation are presented and detailed into their component amounts. Those balance and amounts are as follows as of June 30, 2020:

	Housing Authority	Housing Corporation	Total
Fund Balance	\$ 9,762,215.91	\$ 2,159,768.74	\$ 11,921,984.65
Components of Fund Balance:			
Nonspendable - Land and Real Estate	\$ 7,158,283.44	\$ -	\$ 7,158,283.44
Nonspendable - Loans Receivable	2,599,461.47	-	2,599,461.47
Restricted for Housing	4,471.00	2,159,768.74	2,164,239.74
	<u>\$ 9,762,215.91</u>	<u>\$ 2,159,768.74</u>	<u>\$ 11,921,984.65</u>

- (3) A description of expenditures from the fund by category, including, but not limited to, expenditures (A) for monitoring and preserving the long-term affordability of units subject to affordability restrictions or covenants entered into by the redevelopment agency or the housing successor and administering the activities described in paragraphs (2) and (3) of subdivision (a), (B) for homeless prevention and rapid rehousing services for the development of housing described in paragraph (2) of subdivision (a), and (C) for the development of housing pursuant to paragraph (3) of subdivision (a).

Response:

Total expenditures for fiscal year 2019-20 by category were as follows:

	Housing Authority	Housing Corporation	Total
Expenditures:			
Administrative costs	\$ -	\$ 301,966.16	\$ 301,966.16
Professional services	-	92.00	92.00
Property acquisition	441,973.49	-	441,973.49
Management service company costs	-	528,452.77	528,452.77
Repairs and maintenance	-	209,017.42	209,017.42
Permits	-	932.00	932.00
Total	<u>\$ 441,973.49</u>	<u>\$ 1,040,460.35</u>	<u>\$ 1,482,433.84</u>

Operations of the multifamily residential units owned by the Montclair Housing Authority (Successor Housing Entity) are done through the Montclair Housing Corporation a separate 501(c)(3) nonprofit corporation. As such, the Montclair Housing Authority has not directly incurred any expenditures for monitoring or administering affordability restrictions or covenants as these are done by the Montclair Housing Corporation as part of administering and preserving those properties. All properties owned by the Housing Authority have 55 year deed restrictions present for low and moderate income housing purposes.

- (4) As described in paragraph (1) of subdivision (a), the statutory value of real property owned by the housing successor, the value of loans and grants receivable, and the sum of these two amounts.

Response:

The statutory values of real property, loans and grants receivable at June 30, 2020 were as follows:

	Housing Authority
Real property	\$ 7,158,283.00
Loans receivable (net of allowance for uncollectible)	2,599,461.47
Total Real Property and Receivables	<u>\$ 9,757,744.47</u>

- (5) A description of any transfers made pursuant to paragraph (2) of subdivision (c) in the previous fiscal year and, if still unencumbered, in earlier fiscal years and a description of and status update on any project for which transferred funds have been or will be expended if that project has not yet been placed in service.

Response:

During Fiscal Year 2019-20 transfers of operating monies in the amount of \$160,000 occurred from the Housing Authority to the Housing Corporation. These monies were to provide resources to further maintain the housing units administered by the Housing Corporation and to assist in providing housing for extremely low-income households.

- (6) A description of any project for which the housing successor receives or holds property tax revenue pursuant to the Recognized Obligation Payment Schedule and the status of that project.

Response:

The Montclair Housing Authority and the Montclair Housing Corporation receive no property tax revenues. Neither of these entities has received nor currently holds any tax revenues pursuant to a Recognized Obligation Payment Schedule.

- (7) For interests in real property acquired by the former redevelopment agency prior to February 1, 2012, a status update on compliance with Section 33334.16. For interests in real property acquired on or after February 1, 2012, a status update on the project.

Response:

Section 33334.16 of the Health and Safety Code generally requires that for each interest in real property acquired by a redevelopment agency with Low to Moderate Income Housing Fund monies, a redevelopment agency must begin the development or rehabilitation of the property within five years from the date of acquisition. In the case of the former City of Montclair Redevelopment Agency, all properties acquired by the former Redevelopment Agency have been (or are in process of being) rehabilitated or sold for new housing development. The narrative below provides an update on the status of the units and/or property owned by the former City of Montclair Redevelopment Agency upon redevelopment agency dissolution in February 2012.

The former City of Montclair Redevelopment Agency was the owner of 98 units of affordable housing. The housing units were purchased and rehabilitated by the former Redevelopment Agency with Low-and Moderate-Income Housing Funds. The 98 units contain 55 year deed restrictions for affordability; approximately 80 percent of the units are deed restricted for very low income families; and over 300 people currently reside in these units.

On April 4, 2011, the Redevelopment Agency Board of Directors and the Montclair Housing Corporation Board of Directors approved the sale of 98 housing units to the Montclair Housing Corporation with the approval of Redevelopment Agency Special Counsel. The properties were sold by the Redevelopment Agency to the Montclair Housing Corporation for approximately \$12 million with the provision that all loan payments would be forgiven as long as the properties remained affordable housing subject to 55-year affordability covenants. The Montclair Housing Corporation was established in June 1994 to maintain and manage certain rental properties that the former Redevelopment Agency purchased and rehabilitated for the purpose of providing affordable housing with Low- and Moderate-Income Housing Funds to meet Health and Safety Code Inclusionary requirements. The City Council acts as the Board of Directors for the Montclair Housing Corporation.

While auditing the former City of Montclair Redevelopment Agency, the State Controller never questioned the validity of the asset transfer to the Montclair Housing Corporation. However, upon issuance of its draft Report in November 2012, the Controller's Office indicated that the housing units transferred to the Montclair Corporation should be returned to the Successor Agency. Successor Agency staff responded to the State Controller's conclusion indicating that the 98 units were existing units of affordable housing containing over 300 tenants. In addition, all the units contain 55 year affordability covenants. The State Controller's staff

verbally communicated to Successor Agency staff saying that the units could be retained by the Montclair Housing Corporation upon adoption of a Resolution affirming such action by the Oversight Board. The Oversight Board approved Resolution No. 13-02 approving the transfer of the housing units to the Montclair Housing Corporation on January 23, 2013. The Final Report issued by the State Controller's Office dated March 6, 2013 indicated the Oversight Board had authorized the property transfer and no further action was necessary.

After receipt and review of Resolution No. 13-02 by the Department of Finance (DOF) a letter was received from DOF on May 15, 2013 disallowing the transfer of the 98 housing units to the Montclair Housing Corporation. The action by DOF indicated no "Meet and Confer" on this action was authorized. The letter from DOF did remand the action back to the Oversight Board for consideration. Successor Agency staff verbally communicated with DOF where it was indicated that the housing assets in question should be placed on the Long Range Property Management Plan. It should be noted that DOF did not question the placement of these 98 housing units as assets on the Housing Asset Transfer list submitted by the Successor Agency and Oversight Board in July 2012. As directed by DOF, staff included the housing units in the first draft of the Long Range Property Management Plan.

After conference with legal counsel, Successor Agency staff submitted Resolution No. 13-10 to the Oversight Board for consideration. This resolution directed the Successor Agency to transfer the 98 units of rental housing to the Montclair Housing Authority (Successor Housing Agency) as housing assets. On September 11, 2013, the Oversight Board adopted Resolution No. 13-10 directing the Successor Agency to transfer the 98 low--and moderate-income housing units to the Montclair Housing Authority. On September 18, 2013, DOF Analyst Hanzhao Meng pulled Resolution No. 13-10 for review.

The Successor Agency to the City of Montclair Redevelopment Agency was finally allowed to delete the 98 units of low-to moderate-income housing (**Housing Assets**) in the Long- Range Property Management Plan that were held by the Montclair Housing Corporation. Per direction from DOF, pursuant to DOF Determination on OB Resolution No. 13-10 dated December 13, 2013, the transfer of the 98 units to the Montclair Housing Authority was approved.

Of the 98 units, the only unit requiring rehabilitation at the time of dissolution was the property at 5444 Palo Verde Street purchased prior to dissolution in 2011. Since its acquisition, this property has undergone extensive rehabilitation to clear trees and overgrown vegetation and to correct a variety of building code violations. The remaining items to be performed on the unit included replacement of broken windows and painting the exterior of the house. The house is currently rented to an income qualifying family.

The Montclair Housing Corporation continues rent these 98 units along with the newly purchased property to income qualifying families. The majority of units are deed restricted for rental to very low income families.

The other property owned by the former Redevelopment Agency upon dissolution was located at 4113 Kingsley Street. The .47-acre property was acquired by the former Redevelopment Agency on January 20, 2009. The purchase price for the property was \$330,000. The property was acquired with Low to Moderate Income Housing Funds. At the time the property was acquired, staff held preliminary discussions with National CORE to determine its interest in considering the site for special needs housing. Development of a Special Needs Housing project was of interest to National CORE. National CORE developed similar projects in the past and has partnered with nonprofit social service providers regarding tenancy and social service needs. The proposed location for the National CORE Special Needs project lies directly east of Vista Del Cielo on the southwest corner of Kingsley Street and Pradera Avenue. This site also serves as an entry corner for the Montclair Meadows Foundation Area and the San Antonio Vista Apartments. On September 8, 2009, the Redevelopment Agency Board of Directors approved an Exclusive Right to Negotiate Agreement between the City of Montclair Redevelopment Agency and National CORE regarding the 4113 Kingsley Street site. Through the Exclusive Right to Negotiate Agreement, the Redevelopment Agency Low and Moderate Income Housing Fund provided National CORE with a predevelopment loan of approximately \$252,000. These funds were used to develop building plans for the property and to gain City entitlements. The project was entitled by the Planning Commission on March 14, 2011.

An Option Agreement regarding purchase of 4113 Kingsley Street was approved by the Redevelopment Agency Board of Directors and National CORE on October 19, 2009. The Option Agreement provided National CORE with the ability to apply for United States Department of Housing and Urban Development (HUD) Section 811 funding to finance the development of affordable housing for developmentally disabled persons. The Option Agreement also committed that the Redevelopment Agency Board of Directors would consider providing National CORE with a residual receipts loan of at least \$1.6 million. National CORE received a commitment for funding from the Section 811 program in 2010. However, National CORE still found itself in need of additional funding for the project and sought to apply for the California 9 Percent Low-Income Housing Tax Credit (LIHTC) program. Therefore, on December 30, 2010, the Option Agreement with National CORE was extended until December 30, 2012.

National CORE was successful at receiving 9 Percent LIHTC and with the HUD Section 811 funding, National CORE was ready to finance the 18-unit Special Needs Housing Project for persons with developmental disabilities for several months. National CORE wrote a letter to the Successor Agency seeking to exercise the option for acquisition of the property. In addition, without an open escrow for the site, National CORE would be in danger of losing its commitment for HUD financing.

A public hearing to consider the Disposition and Development Agreement (DDA) with National CORE regarding the Special Needs Housing Project at 4113 Kingsley Street was set to be considered by the Redevelopment Agency Board of Directors and City Council on July 5, 2011. Unfortunately, Governor Brown signed the redevelopment dissolution legislation, AB 1X 26, on June 27, 2011. Therefore, the Redevelopment Agency Board of Directors and City Council were not able to approve the DDA with National CORE and the 4113 Kingsley Street property returned to its state as an unimproved asset of the redevelopment agency.

With the official dissolution of redevelopment agencies on February 1, 2012, the City of Montclair formed the Montclair Housing Authority to assume responsibility for former redevelopment agency housing assets. The City became the successor agency for former redevelopment agency's nonhousing assets. Successor Agency Special Counsel opined that housing assets should be transferred to the housing successor agency by matter of law so a grant deed was not recorded to commemorate the transfer.

With the adoption of AB 1484 on June 27, 2012, the housing assets of each former redevelopment agency were to be listed on a Housing Asset Transfer form and submitted to the Department of Finance (DOF) for approval. The submittal of the Housing Asset Transfer form to DOF had to be completed by August 1, 2012. The Housing Asset Transfer form for the former City of Montclair Redevelopment Agency included the property located at 4113 Kingsley Street. The Housing Asset Transfer form listed this property as a site to be used for an affordable Special Needs Housing project having a valid Option to Purchase Agreement by National CORE. In addition, the Oversight Board approved the Housing Asset Transfer form on July 25, 2012 and adopted Resolution No. 12-11 approving the transfer of housing assets to the Montclair Housing Authority.

On August 25, 2012, the DOF made the determination that the 4113 Kingsley Street property was not a housing asset. Successor Agency staff submitted a Request to "Meet and Confer" regarding this matter on September 13, 2012. The "Meet and Confer" with DOF was conducted on November 21, 2012. Representatives from National CORE and the Successor Agency staff presented the background regarding the property and discussed the lawsuit that would ensue if DOF maintained its position that 4113 Kingsley Street was not a housing asset. Finally, on December 21, 2012 DOF issued a letter reversing the determination that 4113 Kingsley Street was a nonhousing asset.

The Successor Agency Board of Directors approved the transfer of the 4113 Kingsley Street property to the Montclair Housing Authority with a grant deed on January 22, 2013. The Montclair Housing Authority also approved a Purchase and Sale Agreement to National CORE on January 22, 2013 so that National CORE's grant of HUD 811 financing could be preserved. The Montclair Housing Authority approved a Disposition and Development Agreement with National CORE on February 2, 2013, more fully detailing the terms of the purchase agreement between the Montclair Housing Authority and National CORE. The Montclair Housing Authority was not able to provide the \$1.6 million in assistance previously committed by the Redevelopment

Agency. National CORE took possession of the property in early 2013. The 18-unit project was completed and occupied by spring of 2014. National CORE named the Montclair Special Needs Housing Project "San Emi." Subsequent to financing the San Emi Special Needs Housing Project, HUD discontinued the HUD 811 program. San Emi may be the last HUD project constructed with this funding source.

Adults residing in the San Emi Special Needs Housing project need to have the capacity and ability for independent living. However, these residents have the need for special services. Therefore, the Special Needs Housing project is operated slightly differently than the other National CORE Housing Projects (the San Marino Senior Apartments, the San Antonio Vista Apartment Project, or the Vista Del Cielo Apartment Project). The difference in operation is reflected in social service delivery. While all the other National CORE projects have community, recreational, or educational programs, the San Emi Special Needs Housing project has a social service provider that monitors and follows up on the needs of the resident population.

The nonprofit social service provider for the San Emi Project is United Cerebral Palsy of Los Angeles. United Cerebral Palsy of Los Angeles is experienced in operating special needs housing for the developmentally disabled. This organization currently services 11 independent living apartments and 25 community based homes to help address affordable and accessible housing in Los Angeles, Orange, and Santa Barbara counties. The Montclair Special Needs Housing project is the first project served by United Cerebral Palsy of Los Angeles in San Bernardino County.

- (8) A description of any outstanding obligations pursuant to Section 33413 that remained to transfer to the housing successor on February 1, 2012, of the housing successor's progress in meeting those obligations, and of the housing successor's plans to meet unmet obligations. In addition, the housing successor shall include in the report posted on its Internet Web site the implementation plans of the former redevelopment agency.

Response:

The only obligations which remained to be transferred to the housing successor as of February 1, 2012 pursuant to Section 33413 were those units and property detailed in Question 7 above. As stated, all units and property have been transferred and land at 4113 Kingsley Street has been developed for affordable housing. All units transferred or developed are used to satisfy Section 33413 requirements.

As of February 1, 2012 all of the Redevelopment Agency's 33413 objectives were satisfied and an excess of 56 affordable units were produced.

With the completion of the San Emi Special Needs Housing Project in 2014, the Housing Successor Entity (Housing Authority) currently has 73 units of deed restricted affordable housing in excess of current Section 33413 production requirements. At June 30, 2019, the Housing Authority had \$164,025 in cash.

Implementation Plans shall be posted on the Internet Web site.

- (9) The information required by subparagraph (B) of paragraph (3) of subdivision (a).

Response:

The Housing Authority interprets this requirement as follows:

(B) If the housing successor fails to comply with the extremely low income requirement in any five-year report, then the housing successor shall ensure that at least 50 percent of these remaining funds expended in each fiscal year following the latest fiscal year following the report are expended for the development of rental housing affordable to, and occupied by, households earning 30 percent or less of the area median income until the housing successor demonstrates compliance with the extremely low income requirement in an annual report described in subdivision (f).

Section 34176.1 of the Health and Safety Code became effective January 1, 2014. The Successor Housing Authority, at June 30, 2019, has \$164,025 in cash. This source of income is non-reoccurring. The only additional source of funding for the Montclair Housing Authority is made available through the repayment of

residual receipts loans. Residual receipts loans were made to National CORE and Augusta Homes. Residual receipts income is only derived when income exceeds expenses from maintenance, operations, and payment to creditors in a first position. However, residual receipts loans do not constitute a steady income stream and in the past several years, the recipients of the residual receipts loans have been unable to make payments on the loans because operating expenses have just met or exceeded revenue. Therefore, as indicated in Question 8 above, future project revenue to advance new affordable housing projects will not be forthcoming

To comply with requirements to provide housing for extremely low income, staff will recommend that the Housing Authority Board of Directors transfer the most of the cash balance of in the Housing Authority fund to the Housing Corporation to secure deed restrictions for extremely low income persons for one-or two-units for this income category.

The San Emi Special Needs Housing Project was completed in the 2013-14 fiscal year, 17 units of affordable deed restricted housing were created. Eight of the 17 units (47 percent) are provided to persons or families earning 30 percent or less of the area median income. Presuming the provisions of Section 34176.1 (a)(3)(A) begin on January 1, 2014, the Montclair Housing Authority complies with this Section.

- (10) The percentage of units of deed-restricted rental housing restricted to seniors and assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the previous 10 years in relation to the aggregate number of units of deed-restricted rental housing assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the same time period.

Response:

The following affordable deed restricted rental housing units have been assisted by the City of Montclair Redevelopment Agency or Montclair Housing Authority within the last 10 years:

San Antonio Vista Family Apartments-74 units
San Marino Senior Apartments-84 units
Vista del Cielo Family Apartments-49 units
Montclair Housing Corporation-2 units
San Emi Special Needs Apartments-17 units

The City of Montclair Redevelopment Agency or the Montclair Housing Authority assisted 228 affordable deed restricted rental housing projects in the last 10 years. Eighty four of the 228 rental units or approximately 38 percent of the units were, therefore, deed restricted for use by qualifying senior renters. The percentage of restricted senior units falls below 50 percent of the deed restricted units.

- (11) The amount of any excess surplus, the amount of time that the successor agency has had excess surplus, and the housing successor's plan for eliminating the excess surplus.

Response:

When the City of Montclair Redevelopment Agency was eliminated there was no excess surplus. Because all available amounts, since that point in time, have been distributed to the taxing entities through the Low and Moderate Housing Due Diligence Review and subsequent payment by the Successor Agency, there presently exists no carryover of excess surplus. Because the Montclair Housing Authority (Successor Housing Entity) receives no property taxes, excess surplus provisions do not apply.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	MHA030
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	10	PREPARER:	C. CALDWELL
SUBJECT:	CONSIDER REVIEW AND ACCEPTANCE OF THE MONTCLAIR HOUSING AUTHORITY ANNUAL REPORT FOR FISCAL YEAR 2019-20		

REASON FOR CONSIDERATION: The Montclair Housing Authority (MHA) Commission is required to conduct an annual meeting in December to report the Authority's activities for the preceding fiscal year.

A copy of the MHA Annual Report for Fiscal Year 2019-20 is attached for the MHA Commissioners' consideration.

BACKGROUND: The MHA was created by the City Council on July 18, 2011. The City Council designated itself Commissioners of the MHA and designated certain City officials to serve as officers of the MHA. The City Manager is the Executive Director of the MHA.

The MHA financial statements for the Fiscal Year ending June 30, 2020, are included in the MHA Annual Report for Fiscal Year 2019-20. Total assets for MHA are \$9,762,216. The balance includes the value of the real property owned by the MHA and Residual Loan Receivables. A residual receipt is the repayment of monies borrowed from the former Montclair Redevelopment Agency to carry out a variety of housing programs.

FISCAL IMPACT: There would be no cost associated with the MHA Commissioners' review and acceptance of the Annual Report.

RECOMMENDATION: Staff recommends the Montclair Housing Authority Commissioners review and accept the Montclair Housing Authority Annual Report for Fiscal Year 2019-20.

**Montclair Housing Authority
Annual Report
Fiscal Year 2019-20**

Montclair Housing Authority

Javier John Dutrey, Chair

Carolyn Raft, Vice Chair

Bill Ruh, Commissioner

Tenice Johnson, Commissioner

Corysa Martinez, Commissioner

Officers

Edward C. Starr, Executive Director

Janet L. Kulbeck, Finance Officer

Andrea M. Phillips, Housing Authority Secretary

In accordance with Section 34328 of the Health and Safety Code of the State of California, below are financial statements for the Montclair Housing Authority (Successor Housing Entity for the City of Montclair Redevelopment Agency) for the Fiscal Year Ended June 30, 2020:

Montclair Housing Authority
Balance Sheet
June 30, 2020

Assets	
Cash in Bank	\$ 4,471
Residual Receipt Loan Receivable	2,599,461
Land and Multifamily Housings Units	<u>7,158,283</u>
 Total Assets	 <u><u>\$ 9,762,215</u></u>
Fund Balance	
<u>Fund Balance</u>	
Nonspendable - Unavailable	\$ 2,599,461
Restricted for Housing	<u>7,162,755</u>
 Total Liabilities and Fund Balance	 <u><u>\$ 9,762,216</u></u>

Montclair Housing Authority
Statement of Revenues, Expenditures
and Changes in Fund Balance
For the Year Ended June 30, 2020

<u>Revenues</u>	
Interest	\$ -
Contribution from Other Governments	<u>441,973</u>
 Total Revenues	 <u>441,973</u>
<u>Expenditures</u>	
Transfers Out - Housing Operations/Maintenance	160,000
5072 Moreno Acquisition	<u>441,973</u>
 Total Expenditures	 <u>601,973</u>
 Excess of Revenues Over (Under) Expenditures	 (160,000)
<u>Fund Balances</u>	
Beginning of Fiscal Year	<u>\$ 9,922,216</u>
 End of Fiscal Year	 <u><u>\$ 9,762,216</u></u>



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 7, 2020 **FILE I.D.:** TAX495
SECTION: CONSENT - AGREEMENTS **DEPT.:** CITY MGR.
ITEM NO.: 1 **PREPARER:** M. FUENTES
SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 20-92 WITH HINDERLITER, DE LAMAS & ASSOCIATES (HDL) FOR TRANSACTION TAX AUDIT AND INFORMATION SERVICES

CONSIDER AUTHORIZING CITY MANAGER EDWARD C. STARR TO EXECUTE AGREEMENT NO. 20-92 WITH HDL FOR TRANSACTION TAX AUDIT AND INFORMATION SERVICES

REASON FOR CONSIDERATION: On August 17, 2020, the City Council approved Ordinance No. 20-989 adding Chapter 3.31 to title 3 of the Montclair Municipal Code related to imposing a general transaction and use tax to be administered by the California Department of Tax and Fee Administration (CDTFA) subject to final approval by the Montclair voters at the Tuesday, November 3, 2020 general municipal election.

On Tuesday, November 3, 2020, Montclair voters passed and approved Measure L, Montclair Essential Services Protection Measure, which authorizes a 1.0% transactions and use tax to become effective April 1, 2021.

In order to begin receiving revenues from the transaction and use tax, it is necessary for the City to enter into an agreement with Hinderliter, de Lamas & Associates (HdL) for the collection and administration of the transaction and use tax.

A copy of proposed Agreement No. 20-92 is attached for City Council review and consideration.

BACKGROUND: On October 17, 2005, the former City of Montclair Redevelopment Agency approved Agreement No. 05-139, by and between the City of Montclair Redevelopment Agency and HdL regarding transaction tax audit and information services pertaining to the passage of Measure F — a (1/4%) transaction and use tax.

In order to begin receiving revenues from the transaction and use tax, it is necessary for the City to enter into an agreement with HdL for the collection and administration of the transaction and use tax. Pursuant to proposed Agreement No. 20-92, the scope of services to be provided by HdL include the following:

- HDL shall conduct ongoing reviews to identify and correct unreported transactions and use tax payments and distribution errors thereby generating previously unrealized revenue for the City;
- HDL will initiate, where the probability of an error exists, contact with the appropriate taxpayer management and accounting officials to verify whether current tax receipts accurately reflect the local sales activity;
- HDL shall prepare and submit to the CDTFA all information necessary to correct any allocation errors and deficiencies that are identified, and shall follow-up

with the individual businesses and the CDTFA Administration to ensure that all back quarter payments due the City are recovered;

- HDL shall establish a database containing all applicable CDTFA registration data for each business within the Measure “L” District boundaries holding a seller’s permit account;
- HDL shall provide updated reports each quarter identifying changes in allocation totals by individual businesses, business groups and by categories. Quarterly aberrations due to State audits, fund transfers, and receivables, along with late or double payments, will also be identified;
- HDL shall advise and work with City staff on planning and economic questions related to maximizing revenues, preparation of revenue projections and general information on sales, transactions and use tax questions; and
- HDL shall make available to City the HDL proprietary software program and Measure “L” database containing all applicable registration and quarterly allocation information for city business outlets registered with the CDTFA.

It should be noted that on October 17, 2005, the former City of Montclair Redevelopment Agency approved Agreement No. 05-139, by and between the City of Montclair Redevelopment Agency and HdL regarding transaction tax audit and information services pertaining to the passage of Measure F — a (1/4%) transaction and use tax. Proposed Agreement No. 20-92 would be similar in scope to Agreement No. 05-139, but would apply exclusively to the transaction and use tax passed under Measure L.

Hinderliter de Llamas & Associates (HdL)

HdL has been in operation since 1983 and developed California's first computerized sales tax management program that allows verification of the Department of Tax and Fee Administration's allocation of sales tax revenues to local governments.

HdL is specialized in sales and use tax analysis and has extensive experience identifying and correcting “point of sale” allocation errors, misallocations and other misreported sales transactions that result in recovered sales tax revenues for local governments. Additionally, HdL provides non-confidential quarterly newsletters with economic and sales tax trends by major groups without disclosing confidential information.

HdL currently serves over 400 government agencies in six states and has recovered more than \$1.8 billion in revenue for its clients via its tax auditing services. HdL’s team has extensive economic development, finance and local government experience that allows them to analyze local government's revenues in detail and provide relevant, useful and timely information to support business retention/expansion programs and financial strategies.

HdL offers two primary services: Sales Tax Management Services and Sales Tax Audit Services. Sales tax management services are billed at a monthly fixed rate; however, the sales tax audit services are offered at a percent based rate.

HdL researches errors in coding or calculating of the local sales tax revenue by individual businesses that result in misallocations. Once a misallocation is identified, HdL processes the necessary paperwork with the CDTFA to recover these taxes. If HdL

recovers revenue, it receives a certain percentages of the recovered sales tax revenue for eight consecutive reporting quarters.

FISCAL IMPACT: Measure L, Montclair Essential Services Protection Measure, transactions and use tax will take effect April 1, 2021. Once fully implemented, it is estimated that the transaction and use tax will generate approximately \$7 million, annually, in future years.

CDTFA will begin collecting the transaction and use tax on April 1, 2021 and the City should receive its first advance on the transaction and use tax at the end of June, 2021. The first full quarter's data for the new transaction and use tax will not be available until September, 2021.

Approval of Agreement No. 20-92 between the City of Montclair and HDL, for transaction tax audit and information services would result in an annual cost to the City of \$2,400; however, the total cost for sales tax audit services is unknown, since the fees are based on 25% of the actual transaction and use tax recovered by HdL.

HdL researches errors in coding or calculating of local sales tax revenue by individual businesses that result in misallocations. Once a misallocation is identified, HdL processes the necessary paperwork with the CDTFA to recover these taxes. If HdL recovers revenue for the City, it receives 25% of the recovered sales tax revenue for eight consecutive reporting quarters. This means that the City will retain the remaining 75% during that time, and 100% afterward.

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

1. Approve Agreement No. 20-92 with Hinderliter, de Lamas & Associates for transaction tax audit and information; and
2. Authorize City Manager Edward C. Starr to execute Agreement No. 20-92 with Hinderliter, de Lamas & Associates for transaction tax audit and information.

AGREEMENT FOR TRANSACTIONS TAX AUDIT & INFORMATION SERVICES

This Agreement is made and entered into as of the ____ day of _____, 2020 by and between the CITY OF MONTCLAIR, hereinafter referred to as “CITY” and HINDERLITER, DE LLAMAS AND ASSOCIATES a California Corporation, hereinafter referred to as “CONTRACTOR”.

I. RECITALS

WHEREAS, transactions tax revenues can be increased through a system of continuous monitoring, identification and correction of allocation errors and reporting deficiencies, and

WHEREAS, an effective program of transactions and use tax management can provide for more accurate budget forecasting and financial planning; and

WHEREAS, CITY desires the combination of data entry, report preparation, and data analysis necessary to effectively manage its Measure “L” transactions and use tax base the recovery of revenues either unreported or erroneously allocated to other jurisdictions; and

WHEREAS, CONTRACTOR has the programs, equipment and personnel required to deliver the transactions and use tax related services referenced herein;

THEREFORE, CITY and CONTRACTOR, for the consideration hereinafter described, mutually agree as follows:

II. SERVICES

The CONTRACTOR shall perform the following services:

A. DEFICIENCY/ALLOCATION REVIEWS AND RECOVERY

1. CONTRACTOR shall conduct on-going reviews to identify and correct unreported transactions and use tax payments and distribution errors thereby generating previously unrealized revenue for the CITY. Said reviews shall include:
 - (i) Comparison of county-wide local tax allocations to transactions tax for brick and mortar stores and other cash register-based businesses, where clearly all transactions are conducted on-site within the Measure “L” CITY boundaries, and therefore subject to transactions tax.
 - (ii) Review of any significant one-time use tax allocations to ensure that there is corresponding transaction tax payments for taxpayers with nexus within the CITY boundaries.
 - (iii) Review of state-wide transactions tax allocations and patterns to identify any obvious errors and omissions.
 - (iv) Identification and follow-up with any potentially large purchasers of supplies and equipment (e.g. hospitals, universities, manufacturing plants, agricultural operations, refineries) to ensure that their major vendors are properly reporting corresponding transactions tax payments to the Measure “L” Transactions Tax District.
2. CONTRACTOR will initiate, where the probability of an error exists, contacts with the appropriate taxpayer management and accounting officials to verify

whether current tax receipts accurately reflect the local sales activity. Such contacts will be conducted in a professional and courteous manner so as to enhance CITY's relations with the business community.

3. CONTRACTOR shall prepare and submit to the Department of Tax and Fee Administration all information necessary to correct any allocation errors and deficiencies that are identified, and shall follow-up with the individual businesses and the California Department of Tax and Fee Administration to ensure that all back quarter payments due the CITY are recovered.

B. DATA BASE MANAGEMENT, REPORTS AND STAFF SUPPORT

1. CONTRACTOR shall establish a database containing all applicable Department of Tax and Fee Administration (CDTFA) registration data for each business within the Measure "L" District boundaries holding a seller's permit account. Said database shall also identify the quarterly transactions and use tax allocations under each account for the most current and previous quarters where available.
2. CONTRACTOR shall provide updated reports each quarter identifying changes in allocation totals by individual businesses, business groups and by categories. Quarterly aberrations due to State audits, fund transfers, and receivables, along with late or double payments, will also be identified. Quarterly reconciliation worksheets to assist finance officer with budget forecasting will be included.
3. CONTRACTOR shall advise and work with CITY Staff on planning and economic questions related to maximizing revenues, preparation of revenue projections and general information on sales, transactions and use tax questions.

4. CONTRACTOR shall make available to CITY the HdL proprietary software program and Measure “L” database containing all applicable registration and quarterly allocation information for CITY business outlets registered with the Department of Tax and Fee Administration. The database will be updated quarterly.

III. CONFIDENTIALITY

Section 7056 of the State of California Revenue and Taxation code specifically limits the disclosure of confidential taxpayer information contained in the records of the California Department of Tax and Fee Administration. This section specifies the conditions under which CITY may authorize persons other than CITY officers and employees to examine State Sales, Use and Transactions Tax records.

The following conditions specified in Section 7056 (b), (1) of the State of California Revenue and Taxation Code are hereby made part of this agreement.

- A. CONTRACTOR is authorized by this Agreement to examine sales, use or transactions and use tax records of the Department of Tax and Fee Administration provided to CITY pursuant to contract under the conditions established by the California Revenue and Taxation law.
- B. CONTRACTOR is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information.

- C. CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.

- D. CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after this Agreement has expired. Information obtained by examination of Department of Tax and Fee Administration records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the CITY as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the CONTRACTOR as a person, authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

IV. CONSIDERATION

- A. CONTRACTOR shall be paid **\$200** monthly billed quarterly for the transaction district tax reports that we include with the quarterly sales tax analyses. CONTRACTOR shall be paid **25%** of the initial amount of new transactions or use tax revenue received by the CITY as a result of audit and recovery work performed by CONTRACTOR (hereafter referred to as "audit fees"). New revenue shall not include any amounts determined and verified by CITY or CONTRACTOR to be increment attributable to causes other than CONTRACTOR'S work pursuant to this agreement. In the event that CONTRACTOR is responsible for an increase in the tax reported by businesses already properly making tax payments to the CITY, it shall be CONTRACTOR'S responsibility to separate and support the incremental amount attributable to its efforts prior to the application of the audit fee. Said audit

fees will apply to state fund transfers received for those specific quarters identified as being missing and/or deficient following completion of the audit by CONTRACTOR and confirmation of corrections by the California Department of Tax and Fee Administration but shall not apply prospectively to any future quarter. CONTRACTOR shall provide CITY with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.

CONTRACTOR shall obtain prior approval from CITY for each specific business for which payment of audit fees will be expected. Said approval shall be deemed given when the City Manager or his/her designated representative, signs a Work Authorization form. CITY shall pay audit fees upon CONTRACTOR'S submittal of evidence of State fund transfers and payments to CITY from businesses identified in the audit and approved by the CITY.

- B. Above sum shall constitute full reimbursement to CONTRACTOR for all direct and indirect expenses incurred by CONTRACTOR in performing audits including the salaries of CONTRACTOR'S employees, and travel expenses connected with contacting local and out-of-state businesses and the Department of Tax and Fee Administration Staff.

- C. Extra work beyond the Scope of Services set forth in this agreement shall not be performed by CONTRACTOR or reimbursed or paid for by CITY unless such extra work is specifically authorized in writing by City Manager or his/her designated representative. CONTRACTOR shall be compensated for any additional services in the amounts and in the manner as agreed to by the CITY and CONTRACTOR at the time the CITY's written authorization is given to CONTRACTOR for the performance of said services.

- D. Any invoices not paid in accordance with the Thirty (30) day payment terms, shall accrue monthly interest at a rate equivalent to ten percent (10%) per annum until paid.
- E. CONTRACTOR unilaterally retains the right to divide any recovery bills in excess of \$25,000 over a one (1) year period (Four (4) quarterly billings).
- F. CONTRACTOR shall provide CITY with an itemized quarterly invoice showing all formula calculations and amounts due for the audit fee (including, without limitation, a detailed listing of any corrected misallocations), which shall be paid by CITY no later than 30 days following the invoice date.

VI. CITY MATERIALS AND SUPPORT

CITY shall adopt a resolution in a form acceptable to the California Department of Tax and Fee Administration and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing CONTRACTOR to examine the confidential sales, use, and transactions tax records of CITY. CITY further agrees to continue CONTRACTOR'S authorization to examine the confidential records of the CITY by maintaining CITY'S name on the CITY Resolution until such time as all audit adjustments have been completed by the California Department of Tax and Fee Administration and audit fees due the CONTRACTOR have been paid.

VII. LICENSE, PERMITS, FEES AND ASSESMENTS

CONTRACTOR shall obtain such licenses, permits and approvals (collectively the "Permits") as may be required by law for the performance of the services required by this Agreement. CITY shall assist CONTRACTOR in obtaining such Permits, and

CITY shall absorb all fees, assessments and taxes which are necessary for any Permits required to be issued by CITY.

VIII. TERMINATION

This Agreement may be terminated for convenience by either party by giving 30 days written notice to the other of such termination and specifying the effective date thereof. Upon the presentation of such notice, CONTRACTOR shall continue to work through the date of termination. Upon termination as provided herein, CONTRACTOR shall be paid the value of all tax analysis and reporting work performed less payments previously made by CITY. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to amounts due for any unpaid invoices, and to businesses identified by CONTRACTOR which make tax payments after termination of this Agreement as a result of CONTRACTOR'S work. After CITY receives said tax payments for such businesses, CONTRACTOR shall be paid the audit fees resulting from tax payments made by the business for back quarter reallocations. Compensation for any audit work previously authorized and satisfactorily performed shall be made at the times provided in the preceding section entitled "Consideration."

All documents, data, surveys and reports prepared by CONTRACTOR pursuant to this Agreement shall be considered the property of the CITY and upon payment for services performed by CONTRACTOR, such documents and other identified materials shall be delivered to CITY by CONTRACTOR.

IX. INDEPENDENT CONTRACTOR

CONTRACTOR shall perform the services hereunder as an independent contractor and shall furnish such services in his own manner and method, and under no circumstances

or conditions shall any agent, servant, or employee of CONTRACTOR be considered as an employee of CITY.

X. COOPERATIVE AGREEMENT

It is intended any other public agency (e.g., city, county, district, public authority, public agency, municipality, or other political subdivision of California) located in the state of California shall have an option to procure identical services as set forth in this Agreement. The CITY of Montclair shall incur no responsibility, financial or otherwise, in connection with orders for services issued by another public agency. The participating public agency shall accept sole responsibility for securing services or making payments to the vendor.

XI. NON-ASSIGNMENT

This Agreement is not assignable either in whole or in part by CONTRACTOR without the written consent of CITY.

XII. ATTORNEY'S FEES

In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

XIII. GOVERNING LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement.

XIV. INDEMNIFICATION

With respect to losses, claims, liens, demands and causes of action arising out of the CITY’s use of the results of CONTRACTOR’s services as provided to the City pursuant to this Agreement, CONTRACTOR hereby agrees to protect, defend, indemnify, and hold the CITY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments , penalties, interest, court costs, legal fees, and all other expenses incurred by the CITY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the CITY).

CITY hereby agrees to protect, defend, indemnify, and hold CONTRACTOR free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character arising from CONTRACTOR’s performance or lack of performance under this Agreement including, but not limited to, the amounts of judgments , penalties, interest, court costs, legal fees, and all other expenses incurred by CONTRACTOR arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the CONTRACTOR).

Each party to this Agreement agrees to investigate, handle, respond to, provide defense for, and defend at its sole expense any such claims, demand, or suit for which it has agreed to indemnify the other party pursuant to this paragraph. Each party also agrees to bear all other costs and expenses related to its indemnity obligation, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or the CITY or to enlarge in any way the liability of CONTRACTOR or the CITY but is intended solely to provide for indemnification of each party from liability for damages

or injuries to third persons or property arising from this contract or agreement on the terms set forth in this paragraph.

XV. NOTICE

All notices sent by a party under this Agreement shall be in writing and shall be deemed properly delivered to the other party as of the date of receipt, if received on a business day prior to 3:00 PM local time, or otherwise on the next business day after receipt, provided delivery occurs personally, by courier service, or by U.S. mail to the other party at its address set forth below, or to such other address as either party may, by written notice, designate to the other party. Notices to CONTRACTOR shall be sent to HINDERLITER, de LLAMAS and ASSOCIATES, 120 S State College Blvd., Suite 200, Brea, CA 92821; and notices to CITY shall be sent to CITY OF MONTCLAIR, 5111 Benito Street, Montclair, California 91763.

XVI. ENTIRE AGREEMENT; ETC.

This Agreement expresses the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter. This Agreement may not be amended or modified except in writing signed by each of the parties hereto. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

XVII. COUNTERPARTS; AUTHORITY TO SIGN

This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement. Any signature pages of this Agreement transmitted by facsimile or sent by email in portable document format (PDF) will have the same legal effect as an original executed signature page. Each of the persons signing on behalf of a party hereto represents that he or she has the right and power to execute this Agreement on such party's behalf.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY:
CITY OF MONTCLAIR

Edward C. Starr, City Manager

CONTRACTOR:
HINDERLITER, DE LLAMAS & ASSOCIATES
A California Corporation

Andrew Nickerson, President

APPROVED AS TO FORM:

Diane E. Robbins, City Attorney



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	STA666C
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	2	PREPARER:	N. CASTILLO
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 20-93 WITH SAN BERNARDINO COUNTY FOR THE PHILLIPS BOULEVARD AND OTHER ROADS REHABILITATION PROJECT		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 20-93 with San Bernardino County for the Phillips Boulevard and Other Roads Rehabilitation Project. Agreements with the City require City Council approval.

A copy of proposed Agreement No. 20-93 with San Bernardino County is attached for the City Council's review and consideration.

BACKGROUND: The City and San Bernardino County wish to enter into an agreement for joint participation in a pavement rehabilitation project on Phillips Boulevard and other various roads as depicted in Exhibit A of Agreement No. 20-93. This would be a joint project between the City of Montclair and the County of San Bernardino. Cooperative agreements provide the City to with added value with the economy of scale for larger projects. The project cost is estimated to be \$7,406,250. While the majority of the work is occurring outside of the City limits, the City will benefit from construction unit bid prices that are much lower than if the portion of work within the City limits was bid as a standalone project. The rehabilitation project will repair damaged street pavement. The project will grind and mill the existing pavement and replace with an overlay of new asphalt pavement. The County has agreed to take the lead in the design and construction of the project. The City will be billed by the County for the project. The City's share of the project cost is currently estimated to be \$580,000.

FISCAL IMPACT: The Phillips Boulevard and Other Roads Rehabilitation project will be funded with Senate Bill 1 Road Maintenance and Rehabilitation Account funds.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 20-93 with San Bernardino County for the Phillips Boulevard and Other Roads Rehabilitation Project.



Contract Number

SAP Number

Public Works

Department Contract Representative	Sundaramoorthy (Sri) Srirajan, M.S., P.E., Engineering Manager - Transportation Planning Division
Telephone Number	<u>(909) 387-8167</u>
Contractor	<u>City of Montclair</u>
Contractor Representative	Noel Castillo, P.E., Director of Public Works
Telephone Number	<u>(909) 625-9444</u>
Contract Term	<u>12/7/2020 – 12/31/2026</u>
Original Contract Amount	<u>\$580,000</u>
Amendment Amount	_____
Total Contract Amount	<u>\$580,000</u>
Cost Center	<u>6650002000 34H15067/14H15072</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino (COUNTY) and the City of Montclair (CITY) (COUNTY and CITY are also each referred to herein as "Party" and collectively referred to herein as "Parties") desire to cooperate and jointly participate in the following individual pavement improvement and Americans with Disabilities Act (ADA) curb ramp projects, hereinafter collectively referred to as "PROJECT" for purposes of this Agreement;

1. Francis Avenue and other roads;
2. Phillips Boulevard, from the Los Angeles County Line east to Benson Avenue;

WHEREAS, the road list for each of the individual projects is shown in Exhibit "A";

WHEREAS, the PROJECT is located in the unincorporated area of the COUNTY and the incorporated area of the CITY; and

WHEREAS, California Streets and Highways Code sections 1685 and 1803 authorize CITY to contract with COUNTY for the maintenance, construction or repair of CITY streets and roads, if the legislative body of

CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads; and

WHEREAS, the legislative body of CITY determines that it is necessary for the more efficient maintenance, construction, or repair of its streets and roads to contract with COUNTY for the PROJECT; and

WHEREAS, it is anticipated that COUNTY's share of PROJECT costs will be from COUNTY Gas Tax and Senate Bill 1 Road Maintenance and Rehabilitation Account funds and CITY's share of PROJECT costs will be financed through its local funds; and

WHEREAS, the total PROJECT cost is estimated to be \$7,406,250; and

WHEREAS, COUNTY's share of PROJECT cost is estimated to be \$6,826,250 and the CITY's share of PROJECT cost is estimated to be \$580,000, as more particularly set forth in Exhibit "B", which is attached hereto and incorporated herein by this reference; and

WHEREAS, the above-described costs are proportioned based on the work to be performed in each Party's jurisdiction; and

WHEREAS, COUNTY and CITY desire to set forth the responsibilities and obligations of each as they pertain to such participation, and to the design, construction, and funding of the proposed PROJECT.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 COUNTY AGREES TO:

- 1.1 Act as the Lead Agency in the preliminary engineering, design, survey, California Environmental Quality Act (CEQA) compliance (Public Resources Code section 21000 et seq.), construction, construction engineering, and inspection of the PROJECT.
- 1.2 At its own cost, design and perform all right-of-way acquisition related work inside the unincorporated COUNTY jurisdiction that is determined to be necessary for the PROJECT. Right-of-way acquisition related work includes, but is not limited to, right-of-way document preparation (legal description and plat), appraisal, acquisition, temporary construction easements, utility easements, utility relocations, site clearance activities, plant/tree/fence/wall removal and relocation/replacement, legal negotiations, eminent domain proceedings, property settlements, and all right-of-way capital costs (actual cost of right-of-way).
- 1.3 Provide plans and specifications for the PROJECT for CITY's review and approval pursuant to paragraph 2.1, below.
- 1.4 Construct the PROJECT by contract in accordance with the plans and specifications of COUNTY, which have been reviewed and approved by CITY pursuant to paragraphs 1.3 and 2.1, below.
- 1.5 Arrange for relocation of all utilities which interfere with construction of the PROJECT within the entire PROJECT limits, subject to paragraph 3.9 below.
- 1.6 Obtain a no-cost permit from the CITY for work performed within the CITY's right-of-way.
- 1.7 Advertise, award, and administer the construction of the PROJECT, in accordance with the provisions of the California Public Contract Code applicable to counties.
- 1.8 Require its contractor to maintain and to comply throughout the term of any contract awarded by COUNTY with the insurance requirements described in County Policy Numbers 11-07 and 11-07SP.
- 1.9 Provide adequate inspection of all items of work performed under the construction contract(s) with COUNTY's contractors or subcontractors for the PROJECT and maintain adequate records of inspection and materials testing for review by CITY. COUNTY shall provide copies of any records of inspection and materials testing to CITY within ten (10) days of COUNTY's receipt of written demand from CITY for such records. This shall be included as a PROJECT cost.
- 1.10 After bid opening of each individual project and prior to award of the construction contract, submit to the CITY an invoice for the estimated CITY share of the individual project's construction costs based on the COUNTY/CITY percentage share determined from the bid result.

- 1.11 Upon PROJECT completion, calculate actual COUNTY/CITY PROJECT share percentages based on the final contract work and cost, which shall include any changes made within the COUNTY and/or CITY as provided in this Agreement.
- 1.12 Based on the COUNTY percentage calculated pursuant to paragraph 1.11, pay its share of the actual PROJECT costs. The actual PROJECT costs shall include the cost of PROJECT preliminary engineering, design, survey, CEQA compliance, utility relocation work, construction, construction engineering, inspection and COUNTY overhead costs. COUNTY's share of PROJECT costs is estimated to be \$6,826,250 and shall not exceed \$8,532,813 (25% increase over the COUNTY's PROJECT cost estimate) absent a written amendment to this Agreement pursuant to paragraph 3.17.
- 1.13 Upon PROJECT completion and the capture of all PROJECT expenses, submit to the CITY an itemized accounting of actual PROJECT costs incurred by the COUNTY and, if said costs exceed the amount paid by CITY pursuant to paragraphs 1.10 and 2.4, an invoice for the remainder of the CITY's share of the actual PROJECT costs, up to the amount set forth in Section 2.5 hereof, as provided herein. Said invoice shall set forth all actual PROJECT costs incurred by COUNTY, together with adequate documentation of said expenditures and a copy of the overall CITY/COUNTY percentage share calculation spreadsheet. If the actual PROJECT costs incurred by COUNTY are less than the amount paid by CITY pursuant to paragraphs 1.10 and 2.4, then COUNTY shall refund CITY the difference within thirty (30) days after issuance of the itemized accounting.

2.0 CITY AGREES TO:

- 2.1 Review and approve the plans and specifications of the PROJECT.
- 2.2 At its own cost and not included in this PROJECT cost, perform all right-of-way acquisition related work inside the CITY's jurisdiction that is determined to be necessary for the PROJECT. Right-of-way acquisition related work includes, but is not limited to, right-of-way document preparation (legal description and plat), appraisal, acquisition, temporary construction easements, utility easements, utility relocations, site clearance activities, plant/tree/fence/wall removal and relocation/replacement, legal negotiations, eminent domain proceedings, property settlements, and all right-of-way capital costs (actual cost of right-of-way).
- 2.3 Provide a no-cost permit to the COUNTY for its work in the CITY's right-of-way.
- 2.4 Within thirty (30) days after receipt of the invoice from the COUNTY pursuant to paragraph 1.10 above, pay to the COUNTY the invoiced amount.
- 2.5 Within thirty (30) days after receipt of the itemized accounting and invoice from the COUNTY pursuant to paragraph 1.13 above, pay to the COUNTY the remainder of CITY's share of the actual PROJECT costs based on the CITY percentage calculated pursuant to paragraph 1.10. The PROJECT costs shall include the cost of PROJECT preliminary engineering, design, survey, CEQA compliance, utility relocation work, construction, construction engineering, inspection and COUNTY overhead costs. CITY's share of PROJECT costs is currently estimated to be \$580,000 and shall not exceed \$725,000 (25% increase over the PROJECT cost estimate) absent a written approval from the CITY's designated representative).

3.0 IT IS MUTUALLY AGREED:

- 3.1 Except for activities that are impossible to perform during the construction phase of PROJECT, before, during and after CITY's and COUNTY's acceptance of completed PROJECT, the COUNTY shall be responsible for performing any and all work (including, but not limited to, maintenance) for the COUNTY maintained highways in the PROJECT limits that are within the COUNTY unincorporated area and the CITY shall be responsible for performing any and all work (including, but not limited to, maintenance) for City streets in the PROJECT limits that are in the CITY incorporated area.
- 3.2 COUNTY agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless the CITY and its officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from COUNTY's negligent acts or omissions which arise from COUNTY's performance of its obligations under this Agreement.
- 3.3 CITY agrees to indemnify, defend (with counsel approved by COUNTY) and hold harmless COUNTY and its officers, employees, agents and volunteers from any and all claims, actions,

- losses, damages and/or liability resulting from CITY's negligent acts or omissions which arise from CITY's performance of its obligations under this Agreement.
- 3.4 In the event the COUNTY and/or the CITY is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the COUNTY and/or CITY shall indemnify the other to the extent of its comparative fault.
 - 3.5 In the event of litigation arising from this Agreement, each Party to the 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 3.2, 3.3 and 3.4.
 - 3.6 COUNTY and CITY are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability and Worker's Compensation, and warrant that through their respective programs of self-insurance they have adequate coverage or resources to protect against liabilities arising out of COUNTY and CITY's performance of the terms, conditions or obligations of this Agreement.
 - 3.7 The Parties acknowledge that actual PROJECT costs may ultimately exceed current estimates of PROJECT costs. Any additional PROJECT costs (including, but not limited to, additional PROJECT costs caused by an increase in engineering cost, higher bid prices, change orders, or arising from unforeseen site conditions, including utility relocation (but not from requested additional work by the COUNTY or CITY, which is addressed in paragraph 3.8 below)) over the estimated total of the PROJECT's cost of \$7,406,250 (which is the sum of \$6,826,250 from COUNTY and \$580,000 from CITY) shall be borne by each PARTY based upon where the work is required (i.e. whether the work is required in the COUNTY's or CITY's jurisdiction) up to the amounts set forth in Section 1.12 and 2.5, respectively.
 - 3.8 If either COUNTY or CITY requests additional work that is beyond the scope of the original PROJECT, and not considered by all Parties to be a necessary part of the PROJECT, said work, if approved by both Parties pursuant to paragraph 3.17 will be paid solely by the agency requesting the work.
 - 3.9 In the case wherein one of the Parties owns a utility that needs to be relocated for the PROJECT and that Party does not have prior rights for that utility, it will be the sole responsibility of that Party to relocate the utility at that Party's cost. This shall not be included as a PROJECT cost. In the case that a utility relocation is determined to be a PROJECT cost based on that utility having prior rights, the relocation of the utility will be included as a PROJECT cost for which the COUNTY and CITY will be responsible for funding for work located within their respective boundaries.
 - 3.10 As design progresses, if it is found by COUNTY's Director of Public Works, or the Director's designee, that a cost overrun of over 25% of the estimated total of the PROJECT costs will occur, COUNTY shall provide CITY notice of this fact and COUNTY and CITY shall endeavor to agree upon an alternative course of action, including amending the cost estimates. If, after thirty (30) days of COUNTY notice, an alternative course of action is not mutually agreed upon in writing between the COUNTY and CITY, this Agreement shall be deemed to be terminated by mutual consent.
 - 3.11 COUNTY shall notify CITY of the bids received and the amounts thereof. In the event that either Party intends to cancel this Agreement based upon the bids or amount thereof, said Party shall notify the other Party at a reasonable time prior to the awarding of a contract to construct the PROJECT to avoid any detrimental reliance by either Party, contractor or potential contractor.
 - 3.12 If after opening bids for each individual project, it is found that the responsive and responsible low bid amount is 25% or less over the individual project's construction cost shown in Exhibit B, COUNTY may award the contract.
 - 3.13 If, upon opening of bids, it is found that the responsive and responsible low bid amount is over 25% more than the individual project's construction cost shown in Exhibit B or the Amended Exhibit B pursuant to paragraph 3.10 of the Agreement, COUNTY shall not award the contract unless: 1) COUNTY receives written permission from the CITY's City Engineer or designee, to proceed with the award; and 2) COUNTY's Board of Supervisors approves the award of the construction contract. If the above described conditions are not met, COUNTY and CITY shall endeavor to agree upon an alternative course of action, including re-bidding of the PROJECT. If, after sixty (60) days of the bid opening, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.

- 3.14 In the event that change orders are required during the course of the PROJECT, said change orders must be delivered by fax or email and must be returned within two (2) days. The CITY shall not unreasonably withhold approval of change orders. If a CITY disapproved or modified change order is later found to be a cost of the PROJECT, then the CITY shall be responsible for any costs, awards, judgments or settlements associated with the disapproved or modified change order.
- 3.15 This Agreement may be cancelled upon thirty (30) days advance written notice of either Party, provided however, that neither Party may cancel this Agreement after COUNTY awards a contract to construct the PROJECT. In the event of cancellation as provided herein, including termination pursuant to paragraphs 3.10, 3.11 and 3.13 above, all PROJECT expenses occurred prior to the effective date of cancellation/termination shall be paid by the Parties in the same proportion to their contribution for the PROJECT. The Parties recognize and agree that the provisions governing utility relocation and construction are dependent upon the Parties first satisfying CEQA. As provided in this paragraph, the Agreement may be cancelled with or without cause, before, during and after CEQA review/approval.
- 3.16 Except as provided in paragraphs 3.15 and 3.24, and except for the Parties' operation, maintenance and indemnification obligations contained herein which shall survive termination, this Agreement shall terminate upon completion of the PROJECT and payment of final billing by the CITY for its share of the PROJECT costs or refund by COUNTY pursuant to paragraph 1.13.
- 3.17 This Agreement contains the entire agreement of the Parties with respect to subject matter hereof, and supersedes all prior negotiations, understandings or agreements. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 3.18 This Agreement shall be governed by the laws of the State of California. Any action or proceeding between CITY and COUNTY concerning the interpretation or enforcement of this Agreement, or which arises out of or is in any way connected with this Agreement or the PROJECT, shall be instituted and tried in the appropriate state court, located in the County of San Bernardino, California.
- 3.19 Time is of the essence for each and every provision of this Agreement.
- 3.20 Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed COUNTY work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.
- 3.21 No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- 3.22 If a court of competent jurisdiction declares any portion of this Agreement invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this Agreement is frustrated.
- 3.23 This Agreement may be signed in counterparts, each of which shall constitute an original.
- 3.24 This Agreement will be effective on the date signed and approved by both Parties and shall terminate upon satisfaction of the terms identified in paragraph 3.16 or December 31, 2026 (whichever occurs first).
- 3.25 The Recitals are incorporated into the body of this Agreement.

THIS AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both Parties.

IN WITNESS WHEREOF, the Parties to these presents have hereunto set their hands.

BOARD OF SUPERVISORS

►

Curt Hagman, Chairman, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

City of Montclair

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

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

Name Javier John Dutrey
(Print or type name of person signing contract)

Title Mayor
(Print or Type)

Dated: _____

Address 5111 Benito Street
Montclair, CA 91763

FOR COUNTY USE ONLY

Approved as to Legal Form
►

Suzanne Bryant, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
►

Andy Silao, P.E., Engineering Manager
Date _____

Reviewed/Approved by Department
►

Brendon Biggs, Director
Date _____

EXHIBIT A

ROAD LIST AND ADA CURB RAMP UPDATES FOR COUNTY OF SAN BERNARDINO/CITY OF MONTCLAIR PAVEMENT IMPROVEMENT AND CURB RAMP UPDATES IN THE MONTCLAIR AREA

Project1 Road List [Francis Avenue and other roads]

Road No.	Road Name	Road Book Limits	Road Length County	Road Length City	Total Length
389200020	Grand Avenue	.09M W, Greenwood Way E/Monte Vista Av	0.28	0.03	0.31
389200010	Grand Avenue	.02M E, East End Ave E/Ramona Ave	0.82	0.13	0.95
562500030	Monte Vista Avenue	Phillips Blvd N/Howard Street	0.20	0.20	0.40
685750035	Ramona Avenue	Phillips Blvd N/Grand Ave	0.08	0.07	0.15
711550010	Roswell Avenue	Chino Ave N/ Walnut Ave	0.97	0.00	0.97
711550020	Roswell Avenue	Maxon Pl N/.07M N, Wakefield Ave	0.11	0.00	0.11
711550026	Roswell Avenue	.08M N, Wakefield Ave N/Phillips Blvd	0.88	0.00	0.88
366150010	Francis Avenue	.11M W, East End Av E/.13M E, Telephone Ave	1.63	0.00	1.63
597950033	Norton Avenue	Philadelphia St N .13M	0.06	0.00	0.06
865250010	Walnut Avenue	.10M W, Roswell Ave E/Roswell Ave	0.05	0.00	0.05
164550010	Benson Avenue	Phillips Blvd N/.06M N, Howard St	0.16	0.00	0.16
389200010	Grand Avenue	.02M E, East End Ave E/Ramona Ave	0.82	0.13	0.95
389350010	Grand Avenue	Mission Blvd SH60 N/State St	0.26	0.00	0.26
597950040	Norton Avenue	0.13M S, Francis N/Phillips	0.50	0.00	0.50
708250010	Rose Avenue	Grand W&N/State	0.26	0.00	0.26
711550030	Roswell Avenue	Grand Ave N/Mission Blvd	0.51	0.00	0.51
685750032	Ramona Avenue	.03M N, Philadelphia Av N/Phillips Blvd	0.78	0.00	0.78
Total			8.37	0.56	8.93

Project2 Road List [Phillips Boulevard, from the Los Angeles County Line east to Benson Avenue]

Road No.	Road Name	Road Book Limits	Road Length County	Road Length City	Total Length
652300	Phillips Boulevard	LA County Line E/Benson Ave	1.85	0.66	2.51
Total			1.85	0.66	2.51

EXHIBIT B

**ESTIMATE OF PROJECT COSTS
FOR COUNTY OF SAN BERNARDINO/CITY OF MONTCLAIR
PAVEMENT IMPROVEMENT AND CURB RAMP UPDATES
IN THE MONTCLAIR AREA**

Francis Avenue and other roads	Amount	County Share	City Share
Construction (including contingencies)	\$3,390,000	\$3,205,000	\$185,000
All Other Costs Such as Preliminary Engineering, Design, Environmental Clearance, Construction Engineering, etc.	\$847,500	\$797,500	\$50,000
Project1 subtotal	\$4,237,500	\$4,002,500	\$235,000
Phillips Boulevard			
Phillips Boulevard	Amount	County Share	City Share
Construction (including contingencies)	\$2,535,000	\$2,260,000	\$275,000
All Other Costs Such as Preliminary Engineering, Design, Environmental Clearance, Construction Engineering, etc.	\$633,750	\$563,750	\$70,000
Project2 subtotal	\$3,168,750	\$2,823,750	\$345,000
PROJECT Total	\$7,406,250	\$6,826,250	\$580,000



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	TAX495
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	CITY MGR.
ITEM NO.:	1	PREPARER:	M. FUENTES

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 20-3292 AUTHORIZING CITY MANAGER EDWARD C. STARR TO EXECUTE AGREEMENT NOS. 20-94 AND 20-95 WITH THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION FOR IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX

CONSIDER ADOPTION OF RESOLUTION NO. 20-3293 AUTHORIZING THE EXAMINATION OF SALES AND USE TAX RECORDS PURSUANT TO REVENUE AND TAXATION CODE SECTION 7056

REASON FOR CONSIDERATION: On August 17, 2020, the City Council approved Ordinance No. 20-989 adding Chapter 3.31 to title 3 of the Montclair Municipal Code related to imposing a general transactions and use tax to be administered by the California Department of Tax and Fee Administration (CDTFA) subject to final approval by the Montclair voters at the Tuesday, November 3, 2020 General Municipal Election.

On Tuesday, November 3, 2020, Montclair voters passed and approved Measure L, the Montclair Essential Services Protection Measure, which authorizes a 1.0% transactions and use tax to become effective April 1, 2021.

In order to begin receiving the tax, it is necessary for the City to complete several administrative steps, including entering into agreements with the CDTFA for the collection and administration of the transactions and use tax.

Copies of Resolution Nos. 20-3292 and 20-3293 are attached for City Council review and consideration.

BACKGROUND: On Tuesday, November 3, 2020, Montclair voters approved Measure L, Montclair Essential Services Protection Measure, which authorizes a 1.0% transactions and use tax to become effective April 1, 2021. In order to begin receiving the tax, it is necessary for the City to complete several administrative steps, including entering into agreements with the California Department of Tax and Fee Administration (CDTFA) for the collection and administration of the tax.

The CDTFA administers and collects the transactions and use taxes for all applicable jurisdictions within the state. Accordingly, CDTFA will be responsible to administer and collect the transactions and use tax for the City of Montclair. CDTFA requires that the City of Montclair enter into Agreement No. 20-94, a "Preparatory Agreement" (*Exhibit A* to Resolution No. 20-3292), and Agreement No. 20-95, an "Administration Agreement" (*Exhibit B* to Resolution No. 20-3293), prior to implementation of the transactions and use tax. CDTFA requires that the City Council authorize the agreements and designate/appoint officers authorized to examine CDTFA records pertaining to the transactions and use taxes collected by CDTFA pursuant to the contract.

Resolution No. 20-3292 — Approving Agreement Nos. 20-94 and 20-95 and Authorizing City Manager to Execute

Agreement No. 20-94 — Agreement for Preparation to Administer and Operate City's Transactions and Use Tax

This includes work related to developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the CDTFA's staff and for taxpayers, and any other necessary functions. It should be noted that, as part of this agreement, the CDTFA will notify retailers of the new tax rate that becomes effective April 1, 2021.

The maximum amount of all costs to be paid by the City to the CDTFA for these services shall not exceed \$175,000. However, it is expected that the actual cost will likely be less, because this one-time cost will be allocated among all agencies implementing a new tax rate at the same time as the City.

Agreement No. 20-95 — Agreement for State Administration of City Transactions and Use Taxes

This agreement authorizes the CDTFA to administer and implement the Measure L transactions and use tax on an ongoing basis each year. This includes administrative and operational functions, such as ensuring compliance with the guidelines established in the City's Transactions and Use Tax Ordinance, collecting funds from retailers, reviewing payment submissions for appropriateness, and remitting funds to the City. The annual fee for the CDTFA's cost to administer the City Ordinance will be deducted from the taxes collected for the City.

**It should be noted that the above agreements with CDTFA are standard agreements that have been provided by the CDTFA and cannot be altered as to form.*

Resolution No. 20-3293 – Authorizing the Examination of Sales and Use Tax Records Pursuant to Revenue and Taxation Code Section 7056

This Resolution will authorize certain City officials and the City's sales tax consultant, Hinderliter, de Llamas & Associates, to access confidential sales and use tax data for the purpose of facilitating administration of the tax.

By approving proposed Resolution Nos. 20-3292 and 20-3293 noted above, the City can proceed with the next steps necessary in implementing and collecting revenues for the Measure L, Montclair Essential Services Protection Measure, 1.0% Transactions and Use Tax.

FISCAL IMPACT: Measure L, Montclair Essential Services Protection Measure, Transactions and Use Tax will take effect April 1, 2021. Once fully implemented, it is estimated that the transactions and use tax will generate approximately \$7 million, annually, in future years.

The agreement with CDTFA to perform the necessary preparatory work to implement the tax should cost no more than \$175,000. The actual cost will likely be less, as it will be split amongst the number of agencies that are implementing a tax at the same time. The cost of the invoice will be paid from Measure L revenues received during this fiscal year.

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

1. Adopt Resolution No. 20-3292 authorizing City Manager Edward C. Starr to execute Agreement Nos. 20-94 and 20-95 with the California Department of Tax and Fee Administration for implementation of a local transactions and use tax; and
2. Adopt Resolution No. 20-3293 authorizing the examination of sales and use tax records pursuant to Revenue and Taxation Code Section 7056.

RESOLUTION NO. 20-3292

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, AUTHORIZING CITY MANAGER EDWARD C. STARR TO EXECUTE AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION FOR IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX

WHEREAS, On August 17, 2020, the Montclair City Council approved Ordinance No. 20-989 adding Chapter 3.31 to title 3 of the Montclair Municipal Code related to imposing a general transaction and use tax to be administrated by the California Department of Tax and Fee Administration (CDTFA) subject to final approval by the Montclair voters at the Tuesday, November 3, 2020 general municipal election; and

WHEREAS, on Tuesday, November 3, 2020, Montclair voters passed and approved Measure L, Montclair Essential Services Protection Measure, which authorizes 1.0% transactions and use tax to become effective April 1, 2021; and

WHEREAS, the CDTFA administers and collects the transactions and use taxes for all applicable jurisdictions within the state; and

WHEREAS, the CDTFA will be responsible to administer and collect the transactions and use tax for the City of Montclair; and

WHEREAS, the CDTFA requires that the City of Montclair enter into a "Preparatory Agreement to Administer and Operate the City's Transaction and Use Tax Ordinance" and an "Administration Agreement" prior to implementation of said taxes; and

WHEREAS, the CDTFA requires that the City Council authorize the above-mentioned Agreements.

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

SECTION 1. The "Preparatory Agreement" attached as Exhibit A, and the "Administrative Agreement", attached as Exhibit B, are hereby approved and the City Manager is hereby authorized to execute each agreement.

APPROVED AND ADOPTED this XX day of XX, 2020.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 20-3292 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 M. Phillips
City Clerk

**AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE
CITY'S TRANSACTIONS AND USE TAX ORDINANCE**

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the City of Montclair, hereinafter called *City*, and the CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, hereinafter called *Department*, do agree as follows:

1. The Department agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the City and whose ordinance has been adopted by the City.

2. City agrees to pay to the Department at the times and in the amounts hereinafter specified all of the Department's costs for preparatory work necessary to administer the City's transactions and use tax ordinance. The Department's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Department's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Department. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the City.

4. Any dispute as to the amount of preparatory costs incurred by the Department shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Department shall be billed by the Department periodically, with the final billing within a reasonable time after the operative date of the ordinance. City shall pay to the Department the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

6. The amount to be paid by City for the Department's preparatory costs shall not exceed one hundred seventy-five thousand dollars (\$175,000) (Revenue and Taxation Code Section 7272.)

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Department shall be addressed to:

California Department of Tax and Fee Administration
P.O. Box 942879 MIC: 27
Sacramento, California 94279-0027

Attention: Administrator
Local Revenue Branch

Communications and notices to be sent to City shall be addressed to:

City of Montclair,
5111 Benito St.
Montclair, California, 91763

Attention: City Manager
Edward C. Starr

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Department has received all payments due from City under the terms of this agreement.

CITY OF MONTCLAIR

CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION

By _____

(Signature)

By _____

Administrator
Local Revenue Branch

Edward C. Starr

(Typed Name)

City Manager

(Title)

(Rev. 11/17)

**AGREEMENT FOR STATE ADMINISTRATION
OF CITY TRANSACTIONS AND USE TAXES**

The City Council of the City of Montclair has adopted, and the voters of the City of Montclair (hereafter called "City" or "District") have approved by the required majority vote, the City of Montclair Transactions and Use Tax Ordinance (hereafter called "Ordinance"), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the California State Department of Tax and Fee Administration, (hereinafter called the "Department") and the City do agree as follows:

**ARTICLE I
DEFINITIONS**

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7285.9, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No. 20-989, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

**ARTICLE II
ADMINISTRATION AND COLLECTION
OF CITY TAXES**

A. Administration. The Department and City agree that the Department shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

B. Other Applicable Laws. City agrees that all provisions of law applicable to the administration and operation of the Department Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Department pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

C. Transmittal of money.

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by City's self-imposed limits or by final judgment of any court of the State of California holding that City's ordinance is invalid or void, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the City designated and authorized by the City. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

D. Rules. The Department shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City Ordinance and the distribution of the district taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Department shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.

F. Security. The Department agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of City for district taxes owing to it as its interest appears. The Department shall not be required to change the terms of any security now held by it, and City shall not participate in any security now held by the Department.

G. Records of the Department.

When requested by resolution of the legislative body of the City under section 7056 of the Revenue and Taxation Code, the Department agrees to permit authorized personnel of the City to examine the records of the Department, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the City, pertaining to the ascertainment of transactions and use taxes collected for the City. Information obtained by the City from examination of the Department's records shall be used by the City only for purposes related to the collection of transactions and use taxes by the Department pursuant to this Agreement.

H. Annexation. City agrees that the Department shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Department. The notice shall include the name of the county or counties annexed to the extended City boundary. In the event the City shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the City showing the area annexed and the location address of the property nearest to the extended City boundary on each side of every street or road crossing the boundary.

ARTICLE III

ALLOCATION OF TAX

A. Allocation. In the administration of the Department's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Department, to all districts with which the Department has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Department, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

B. Vehicles, Vessels, and Aircraft. For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Department in determining the place of use.

ARTICLE IV

COMPENSATION

The City agrees to pay to the Department as the State's cost of administering the City Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Department for the City.

ARTICLE V

MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Communications and notices to be sent to the Department shall be addressed to:

California State Department of Tax and Fee Administration
P.O. Box 942879
Sacramento, California 94279-0027

Attention: Administrator
Local Revenue Branch

Communications and notices to be sent to the City shall be addressed to:

City of Montclair,
5111 Benito St.
Montclair, California, 91763

Attention: City Manager
Edward C. Starr

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on December 7, 2020. This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Department completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. City shall give the Department written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

ARTICLE VI**ADMINISTRATION OF TAXES IF THE
ORDINANCE IS CHALLENGED AS BEING INVALID****A. Impoundment of funds.**

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the City shall transmit to the Department the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

B. Costs of administration. Should a final judgment be entered in any court of the State of California, holding that City's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Department may retain all payments made by City to Department to prepare to administer the City Ordinance.

2. City will pay to Department and allow Department to retain Department's cost of administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

3. City will pay to Department or to the State of California the amount of any taxes plus interest and penalties, if any, that Department or the State of California may be required to rebate or refund to taxpayers.

4. City will pay to Department its costs for rebating or refunding such taxes, interest, or penalties. Department's costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Department's staff for use in making these rebates or refunds and any other costs incurred by Department which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Department's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Department. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by City.

6. Any dispute as to the amount of costs incurred by Department in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Department in connection with such refunds shall be billed by Department on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Department shall bill City on or before the 25th of each month for all costs incurred by Department for the preceding calendar month. City shall pay to Department the amount of such costs on or before the last day of the succeeding month and shall pay to Department the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Department costs incurred in making those refunds.

CITY OF MONTCLAIR

CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION

By _____
(Signature)

By _____
Administrator
Local Revenue Branch

Edward C. Starr
(Typed Name)

City Manager
(Title)

RESOLUTION NO. 20-3293

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, AUTHORIZING THE EXAMINATION OF SALES AND USE TAX RECORDS PURSUANT TO REVENUE AND TAXATION CODE SECTION 7056

WHEREAS, subsection (b) of section 7056 of the California Revenue and Taxation Code ("Section 7056(b)"), provides that the State Board of Equalization ("Board"), when requested by resolution of the legislative body of any county, city and county, city, or district, shall permit any duly authorized officer or employee of the county, city and county, city, or district, or other person designated by that resolution, to examine all of the sales or transactions and use tax records of the Board pertaining to the sales or transactions and use taxes collected by the Board for said public entity pursuant to contract entered into between the Board and the public entity under the Bradley-Burns Uniform Local Sales and Use Tax Law or the Transactions and Use Tax Law; and

WHEREAS, Section 7056(b) provides that the resolution shall certify that any person designated by the resolution, other than an officer or employee, meets all of the following conditions: (1) has an existing contract with the public entity to examine the sales and use tax records pertaining to the public entity; (2) is required by that contract to disclose information contained in, or derived from, those sale or transactions and use tax records only to an officer or employee of the public entity who is authorized by the resolution to examine the information; (3) is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and (4) is prohibited by that contract from retaining the information contained in, or derived from, those sales or transactions and use tax records, after that contract has expired; and

WHEREAS, the City desires to designate certain officers, employees, and other persons as authorized to examine all sales or transactions and use tax records of the Board, now the California Department of Tax and Fee Administration (Department), pertaining to sales and transactions and use taxes collected by the Board or the Department for the City; and

WHEREAS, the City has entered into an agreement for sales, use and transactions tax audit and information services with Hinderliter, de Llamas an Associates (HdL), and desires to designate HdL as authorized to examine all sales or transactions and use tax records of the Board or the Department pertaining to sales or transactions and use taxes collected by the Board or the Department for the City.

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

SECTION 1. The City Council hereby designates the following officers and employees of the City as authorized to examine all sales or transactions and use tax records of the Board, the Department, or such other state agency as may be responsible for collecting sales or transactions and use taxes for the City, pertaining to sales or transactions and use taxes collected by the Board, the Department, or such other state agency as may be responsible for collecting sales or transactions and use taxes for the City:

- (a) City Manager
- (b) Deputy City Manager
- (c) Senior Management Analyst
- (d) Finance Director
- (e) Finance Manager
- (f) Economic Development Coordinator

SECTION 2. The City Council hereby authorizes the City Manager or his or her designee to designate additional officers or employees in writing with authorization to examine sales or transactions and use tax records as necessary

SECTION 3. The City Council hereby designates the following contractor to examine sales or transactions and use tax records of the Board, the Department, or such other state agency as may be responsible for collecting sales or transactions and use taxes for the City pertaining to sales or transactions and use taxes collected by the

Board, the Department, or such other state agency as may be responsible for collecting sales or transactions and use taxes for the City:

(a) Hinderliter, de Llamas and Associates.

SECTION 4. The City Council hereby certifies that Hinderliter, de Llamas and Associates:

(a) has an existing contract with the City to examine sales and use tax records pertaining to the City;

(b) is required by that contract to disclose information contained in, or derived from, those sale or transactions and use tax records only to an officer or employee of the City who is authorized by resolution to examine the information;

(c) is prohibited by the contract from performing consulting services for a retailer during the term of that contract; and

(d) is prohibited by the contract from retaining the information contained in, or derived from, those sales or transactions and use tax records, after the contract has expired.

SECTION 5. The information obtained by examination of Board or Department or state agency records shall be used only for purposes relating to the collection of City sales or transactions and use taxes by the Board, the Department, or such other state agency as may be responsible for collecting sales or transactions and use taxes for the City pursuant to a contract between the City and the Board, the Department, or other state agency or for purposes related to other governmental functions of the City.

SECTION 6. This Resolution shall supersede all prior resolutions of the City Council of the City of Montclair adopted pursuant to subsection (b) of section 7056 of the Revenue and Taxation Code.

APPROVED AND ADOPTED this XX day of XX, 2020.

ATTEST:

Mayor

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 20-3293 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 M. Phillips
City Clerk



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 7, 2020 **FILE I.D.:** CVC060
SECTION: CONSENT - RESOLUTIONS **DEPT.:** PUBLIC WORKS
ITEM NO.: 2 **PREPARER:** N. CASTILLO
SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 20-3295 DECLARING THE NEED FOR EMERGENCY CONTRACTING PROCEDURES FOR AIR CONDITIONING EQUIPMENT AT THE POLICE FACILITY

CONSIDER AUTHORIZING A \$128,220 APPROPRIATION FROM THE EQUIPMENT REPLACEMENT FUND, INCLUDING A \$10,000 CONTINGENCY, FOR AIR CONDITIONING EQUIPMENT REPLACEMENT AT THE POLICE FACILITY

REASON FOR CONSIDERATION: The City Council is requested to make the necessary findings to declare the need for emergency contracting procedures for replacement of a heating, ventilation, and air conditioning (HVAC) unit at the Police Facility. Under Public Contract Code Section 22050, a fourth-fifth majority vote is required. The City Council is also requested to approve an appropriation of \$128,220 from the Equipment Replacement Fund for the HVAC replacement.

A copy of proposed Resolution No. 20-3295 is attached for the City Council's review and consideration.

BACKGROUND: For the past twelve years, since the Police Facility opened in 2008, one of the two HVAC units at the Police Facility has experienced numerous mechanical and electrical issues. Over the years, the unit has had compressor failures and, despite replacement of the compressors, has continued to fail on a regular basis. The causes of the compressor failures were not always known; the failures seemed to be of different types. One of the two units was eventually replaced in 2018. Due to the most recent failure occurring a few weeks ago, and the fact that staff and the contractor were starting to see additional issues similar to what was occurring with the unit replaced in 2018, it was determined the older unit needs replacement as well.

As was done in 2018, a manufacturer's representative was called out on various occasions to try to identify the issue. Our in-house staff along with our contractor have done much jury-rigging to keep the unit operational during this summer. The various electrical and compressor issues are accumulating an exorbitant amount in maintenance and replacement costs. Since the maintenance is costly and the solutions are not long-lasting, it is recommended the unit be replaced. Replacing the unit ensures there are no lingering issues that are yet unknown and could cause additional operational concerns for this essential facility. As there is currently no functional HVAC unit in the south wing of the Police Facility and this particular replacement unit has a ten-week lead time, it is important to get the unit ordered as soon as possible.

Considering that the Police Facility is a 24/7 operation, staff is recommending emergency contracting procedures to hire Air-Ex Air Conditioning, Inc. to complete this work.

FISCAL IMPACT: The proposal for the work is estimated at \$118,200. An additional \$10,000 is requested as a contingency should other unforeseen issues arise during the unit replacement. The City Equipment Replacement Fund would be used to pay for the unit replacement, and half of the total cost is anticipated to be reimbursed by funds received from the San Bernardino County CARES Act Infrastructure Fund.

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

1. Adopt Resolution No. 20-3295 declaring the need for emergency contracting procedures for air conditioning equipment replacement at the Police Facility.
2. Authorize a \$128,200 appropriation from the Equipment Replacement Fund, including a \$10,000 contingency, for air conditioning replacement at the Police Facility.

RESOLUTION NO. 20-3295

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR DECLARING THE NEED FOR EMERGENCY CONTRACTING PROCEDURES AND AUTHORIZING AIR CONDITIONER REPLACEMENT AT THE MONTCLAIR POLICE FACILITY

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

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

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

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

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

WHEREAS, recent and numerous air conditioner failures have caused the south wing of the Montclair Police Facility to be without proper ventilation and air conditioning; and

WHEREAS, it is impractical to leave the entire south wing of the Montclair Police Facility without proper ventilation and air conditioning for extended periods of time while bid documents are prepared and advertised in accordance with Section 20160, et seq., of the California Public Contract Code; and

WHEREAS, said air conditioner can most effectively be replaced by contracting with one or more air conditioner contractors for the required services.

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

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

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

APPROVED AND ADOPTED this XX day of XX, 2020.

ATTEST:

Mayor

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 20-3295 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 M. Phillips
City Clerk

Andrea M. Phillips
City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 7, 2020	FILE I.D.:	FPP150
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	3	PREPARER:	A. PHILLIPS
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 20-3296 ADOPTING THE CITY'S CONFLICT OF INTEREST CODE, AS AMENDED, PURSUANT TO THE POLITICAL REFORM ACT		

REASON FOR CONSIDERATION: The City Council is the designated code-reviewing body for the City's Conflict of Interest Code. It is necessary to review the Conflict of Interest Code on a biennial basis, which includes the filing of a Local Agency Biennial Notice and amending the Code to update the list of designated employees who are required to file Statements of Economic Interests and to incorporate any other necessary changes.

A copy of proposed Resolution No. 20-3296 adopting the City's Conflict of Interest code, as amended, pursuant to the Political Reform Act is attached for the City Council's review and consideration.

BACKGROUND: Pursuant to the Political Reform Act of 1974 (Government Code §8100, et seq.), all public agencies are required to adopt a Conflict of Interest Code. A Conflict of Interest Code designates positions required to annually file A Fair Political Practices Commission (FPPC) Statement of Economic Interests (commonly known as the "Form 700"), and assigns disclosure categories specifying the types of interests to be reported. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests that may create conflicts of interest.

The City of Montclair Conflict of Interest Code, first adopted on October 4, 1976, contains the requirement that all City Council Members, Planning Commissioners, City Manager, City Attorney, and designated employees responsible for managing public investments annually file Statements of Economic Interests. In addition, the Code requires that there be a listing of designated employees who, by job title, "make or participate in the making of governmental decisions which may have a foreseeable material effect on financial interests."

At its meeting on June 15, 2020, the City Council adopted Resolution No. 20-3272 directing staff to perform a review the City's Conflict of Interest Code and submit the 2020 Local Agency Biennial Notice to the City Council once the review has been completed and no later than October 1, 2020. On September 21, 2020, the City Council received and filed the Biennial Notice and directed staff to promulgate the necessary amendments. Staff is now submitting to the City Council the proposed amendments to the Conflict of Interest Code for adoption.

A minor amendment is proposed for Section 8(E) of the Code's terms to reflect an increase in the reportable gift limit for Calendar Years 2020 (\$500), 2021 (\$520), and 2022 (\$520), per FPPC updated gift regulations.

Recommended changes to “Exhibit A – City of Montclair Designated Employees” as a result of vacated or defunded positions, departmental reorganizations, reassessment of position responsibilities, and position title changes over the prior two years, are as follows:

Position Additions (Disclosure Categories):

- Assistant Public Works Superintendent (2,3,4)
- Building Maintenance Supervisor (2,3,4)
- Deputy City Manager (1,2,3,4)
- Deputy Director of Community and Economic Development (1,2,3,4)
- Engineering Division Manager (2,3,4)
- Environmental Compliance Coordinator (2,3,4)
- Finance Manager (1,2,3,4)
- Fire Marshal (1,2,3,4)
- Information Relations Officer (2,3,4)
- NPDES Coordinator (1,2,3,4)
- NPDES Environmental Compliance Inspector (1,2,3,4)
- Senior Building Inspector (1,2,3,4)

Position Deletions:

- Assistant Director of Housing/Planning Manager (Vacated)
- City Planner/Planning Manager (Vacated)
- Facilities and Grounds Superintendent (Vacated)
- Fire Captain (Reassessment of duties, position no longer classified as Management)
- Senior Citizens Supervisor (Vacated)

Removal of Disclosure Category 1 (Real Property) from the following positions:

- Administrative Analyst
- Benefits Coordinator
- City Clerk
- Director of Administrative Services and Human Resources
- Director of Human Services
- Information Technology Manager
- Police Services Supervisor
- Project Manager
- Public Safety/Administrative Services Supervisor
- Public Works Superintendent
- Senior Management Analyst

No amendments are proposed for “Exhibit B – Disclosure Categories.”

The City Council’s adoption of Resolution No. 20-3296 would update the City of Montclair’s Conflict of Interest Code, superseding all prior versions of the Code.

FISCAL IMPACT: There would be no fiscal impact associated with the City Council’s adoption of Resolution No. 20-3296 adopting the City's Conflict of Interest Code, as amended, pursuant to the Political Reform Act.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 20-3296 adopting the City's Conflict of Interest Code, as amended, pursuant to the Political Reform Act.

RESOLUTION NO. 20-3296

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR, CALIFORNIA, ADOPTING A CONFLICT OF INTEREST CODE AND SUPERSEDING PRIOR RESOLUTIONS WITH RESPECT TO THE CONFLICT OF INTEREST CODE

WHEREAS, the Political Reform Act of 1974 (Government Code §8100 et seq.) requires cities to adopt a Conflict of Interest Code; and

WHEREAS, the City of Montclair first adopted a Conflict of Interest Code on October 4, 1976; and

WHEREAS, the Conflict of Interest Code must be reviewed every two years and amended when circumstances change; and

WHEREAS, the City Council is the Code Reviewing Body for the City of Montclair; and

WHEREAS, on June 15, 2020, the City Council adopted Resolution No. 20-3272 directing staff to review the City's Conflict of Interest Code and submit the 2020 Local Agency Biennial Notice; and

WHEREAS, on September 21, 2020, the City Council received and filed the 2020 Local Agency Biennial Notice and directed staff to promulgate the necessary amendments to the City's Conflict of Interest Code; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair adopts the Conflict of Interest Code of the City of Montclair, along with attached Exhibits A and B, a copy of which is attached hereto and incorporated herein.

BE IT FURTHER RESOLVED that nothing in this Resolution supersedes the independent applicability of Government Code §87200.

BE IT FURTHER RESOLVED that all previous Resolutions and Council Actions adopting or amending the City's Conflict of Interest Code, designated positions, or disclosure categories are hereby superseded.

APPROVED AND ADOPTED this XX day of XX, 2020.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 20-3296 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 M. Phillips
City Clerk

CONFLICT OF INTEREST CODE FOR CITY OF MONTCLAIR

The Political Reform Act, Government Code Sections 81000, *et seq.*, requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Code of Regs Section 18730, which contains the terms of a standard Conflict of Interest Code that can be incorporated by reference and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Adm. Code of Regs Section 18730 and any amendments thereto duly adopted by the Fair Political Practices Commission are hereby incorporated by reference and, along with the attached Appendices in which officials and employees are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the City of Montclair.

Pursuant to Section 4(A) of the standard Code, designated employees, listed on Exhibit A, shall file Statements of Economic Interests with the City Clerk. These Statements shall be retained by the City Clerk.

The City Clerk shall make and retain copies of the Statements of City Council Members, City Administrator, City Attorney, and Planning Commissioners and forward the original of these Statements to the filing officer of the Fair Political Practices Commission.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Administrative Code)

18730. Provisions of Conflict of Interest Codes

(a) Incorporation by reference of the terms of this regulation, along with the designation of employees and the formulation of disclosure categories in the Exhibits referred to below constitute the adoption and promulgation of a Conflict of Interest Code within the meaning of Government Code Section 87300 or the amendment of a Conflict of Interest Code within the meaning of Government Code Section 87306 if the terms of this regulation are substituted for terms of a Conflict of Interest Code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of Article 2 of Chapter 7 of the Political Reform Act, Government Code Sections 81000, *et seq.* The requirements of a Conflict of Interest Code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code Section 87100 and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a Conflict of Interest Code amended or adopted and promulgated pursuant to this regulation are as follows:

Section 1. Definitions

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs Sections 18100, *et seq.*) and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code.

Section 2. Designated Employees

The persons holding positions listed in Exhibit A are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

Section 3. Disclosure Categories

This Code does not establish any disclosure obligation for those designated employees who are also specified in Government Code Section 87200 if they are designated in this Code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to Article 2 of Chapter 7 of the Political Reform Act, Government Code Sections 87200, *et seq.* Such persons are governed by this Code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in Exhibit B specify which kinds of financial interests are reportable. Such a designated employee shall disclose in his or her Statement of Economic Interests those financial interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the financial interests set forth in a designated employee's disclosure categories are the kinds of financial interests which he or she foreseeably can affect materially through the conduct of his or her office.

Section 4. Statements of Economic Interests: Place of Filing

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body as provided by the code reviewing body in the agency's Conflict of Interest Code.

Section 5. Statements of Economic Interests: Time of Filing

(A) Initial Statements. All designated employees employed by the City of Montclair on the effective date of this Code, as originally adopted, promulgated, and approved by the code reviewing body, shall file Statements within 30 days after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an initial Statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this Code shall file Statements within 30 days after assuming the designated positions.

(C) Annual Statements. All designated employees shall file Statements no later than April 1 of each year.

(D) Leaving Office Statements. All persons who leave designated positions shall file Statements within 30 days after leaving office.

Section 6. Contents of and Period Covered by Statements of Economic Interests

(A) Contents of Initial Statements. Initial Statements shall disclose any reportable investments, interests in real property, and business positions held on the effective date of the Code. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the effective date of the Code.

(B) Contents of Assuming Office Statements. Assuming Office Statements shall disclose any reportable investments, interests in real property, and business positions held on the date you assumed the office. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the date you assumed the office or position.

(C) Contents of Annual Statements. Annual Statements shall disclose any reportable investments, interests in real property, business positions held, and income (including loans, gifts, and travel payments) received during the period covered by the Statement.

(D) Contents of Leaving Office Statements. Leaving Office Statements shall disclose reportable investments, interests in real property, business positions held, and income (including loans, gifts, and travel payments) received during the period covered by the Statement.

Section 7. Manner of Reporting

Statements of Economic Interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the City Clerk and shall contain the following information:

(A) Investments and Real Property Disclosure. When an investment or an interest in real property is required to be reported, the Statement shall contain the following:

1. A statement of the nature of the investment or interest.
2. The name of the business entity in which each investment is held and a general description of the business activity in which the business entity is engaged.
3. The address or other precise location of real property.
4. A statement whether the fair market value of the property exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

(B) Personal Income Disclosure. When personal income is required to be reported, the statement shall contain:

1. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value or fifty dollars (\$50) or more in value if the income was a gift and a general description of the business activity, if any, of each source.
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), or greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000).
3. A description of the consideration, if any, for which the income was received.
4. In the case of a gift, the name, address, and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received.
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported, the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity.

2. The name of every person from whom the business entity received payments if the filer's pro rata share of the gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management; a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

- (E) Acquisition or Disposal During Reporting Period.

In the case of an Annual or Leaving Office Statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the Statement, the Statement shall contain the date of acquisition or disposal.

Section 8. Disqualification

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediately family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by, or promised to the designated employee within twelve (12) months prior to the time the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating:

1. five hundred (\$500) or more in value during Calendar Year 2020; or
2. five hundred twenty dollars (\$520) or more in value during Calendar Years 2021 and 2022;

provided to, received by, or promised to the designated employee within twelve (12) months prior to the time the decision is made.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this Section.

Section 9. Manner of Disqualification

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act must be accompanied by disclosure of the disqualifying interest.

Section 10. Assistance of the Commission and Counsel

Any designated employee who is unsure of his or her duties under this Code may request assistance from the Fair Political Practices Commission pursuant to Government Code Section 83114 or from the attorney for his or her agency, provided that nothing in this Section requires the attorney for the agency to issue any formal or informal opinion.

Section 11. Violations

This Code has the force and effect of law. Designated employees violating any provision of this Code are subject to the administrative, criminal, and civil sanctions provided in the Political Reform Act, Government Code Sections 81000 – 91015. In addition, a decision in relation to which a violation of the disqualification provisions of this Code or of Government Code Section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code Section 91003.

Endnotes

1. Designated employees who are required to file Statements of Economic Interests under any other agency's Conflict of Interest Code, or under Article 2 for a different jurisdiction, may expand their Statement of Economic Interests to cover reportable interests in both jurisdictions and file copies of this expanded Statement with both entities in lieu of filing separate and distinct Statements, provided that each copy of such expanded Statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code Section 81004.
2. See Government Code Section 81010 and 2 Cal. Code of Regs Section 18115 for the duties of filing officers and persons in agencies who make and retain copies of Statements and forward the originals to the filing officer.
3. For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.
4. Investments and interests in real property which have a fair market value of less than two thousand dollars (\$2,000) are not investments and interests in real property within the meaning of the Political Reform Act; however, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse, and dependent children own, in the aggregate, a direct, indirect, or beneficial interest of 10 percent or greater.
5. A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local, or federal government agency.
6. Income of a business entity is reportable if the direct, indirect, or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.
7. The FPPC has developed a smartphone app to help filers keep track of the gifts received in a calendar year. Visit the FPPC website at <http://www.fppc.ca.gov/Form700/gift-tracking-app.html> for more information.

EXHIBIT A
CITY OF MONTCLAIR DESIGNATED EMPLOYEES

The persons in the following positions are deemed to be "Designated Employees" within the meaning of Government Code Section 72109 and Section 2 of this Conflict of Interest Code. These persons shall file appropriate disclosure statements pursuant to this Code:

<i>Position</i>	<i>Disclosure Categories</i>
Accounting Specialist (Business License)	1,2,3,4
Administrative Analyst	2,3,4
Assistant Public Works Superintendent	2,3,4
Associate Planner	1,2,3,4
Battalion Chief	1,2,3,4
Benefits Coordinator	2,3,4
Building Inspector	1,2,3,4
Building Maintenance Supervisor	2,3,4
Building Official/Code Enforcement Manager	1,2,3,4
City Clerk	2,3,4
Code Enforcement Officer	1,2,3,4
Code Enforcement Supervisor	1,2,3,4
Deputy City Attorney	1,2,3,4
Deputy City Manager	1,2,3,4
Deputy Director of Community and Economic Development	1,2,3,4
Deputy Fire Chief	1,2,3,4
Deputy Fire Marshal	1,2,3,4
Director of Administrative Services and Human Resources	2,3,4
Director of Community Development	1,2,3,4
Director of Finance	1,2,3,4
Director of Human Services	2,3,4
Director of Public Works/City Engineer	1,2,3,4
Economic Development Coordinator/Housing Associate	1,2,3,4
Engineering Division Manager	2,3,4
Environmental Compliance Coordinator	2,3,4
Executive Director, Office of Public Safety/Police Chief	1,2,3,4
Finance Manager	1,2,3,4
Fire Chief	1,2,3,4
Fire Marshal	1,2,3,4
Information Relations Officer	2,3,4
Information Technology Manager	2,3,4
Plans Examiner	1,2,3,4
NPDES Coordinator	1,2,3,4
NPDES Environmental Compliance Inspector	1,2,3,4
Police Captain	1,2,3,4
Police Chief	1,2,3,4
Police Lieutenant	1,2,3,4
Police Services Supervisor	2,3,4
Project Manager	2,3,4
Public Safety/Administrative Services Supervisor	2,3,4
Public Works Inspector	1,2,3,4
Public Works Superintendent	2,3,4
Senior Building Inspector	1,2,3,4
Senior Code Enforcement Officer	1,2,3,4
Senior Management Analyst	2,3,4

**EXHIBIT B
DISCLOSURE CATEGORIES**

- Category 1** Relates to a reportable interest in investments and real property as defined in Sections 7(A) and 7(E) of this Code.
- Category 2** Relates to a reportable interest in sources of income and gifts as defined in Section 7(B) of this Code.
- Category 3** Relates to a reportable interest in sources of income of a business entity as defined in Section 7(C) of this Code.
- Category 4** Relates to a reportable interest in sources of income of each business entity in which a position of management is held, as defined in Section 7(D) of this Code.