CITY OF ONTARIO

Regular City Council/Housing Authority/Ontario Public Financing Authority Meeting
APRIL 15, 2025

City Hall
303 East B Street, Ontario, CA 91764

MAYOR PAUL S. LEON • MAYOR PRO TEM ALAN D. WAPNER
COUNCIL MEMBERS JIM W. BOWMAN, DEBRA PORADA AND DAISY MACIAS

CITY CLERK SHEILA MAUTZ • TREASURER JAMES R. MILHISER
CITY MANAGER SCOTT OCHOA • CITY ATTORNEY RUBEN DURAN

WELCOME TO A MEETING OF THE ONTARIO CITY COUNCIL

All documents for public review are on file with the Records Management/City Clerk's Department located at 303 East B Street, Ontario, CA 91764.

Anyone wishing to speak in person during public comment or on a particular item will be required to fill out a blue slip. Blue slips must be turned in prior to public comment beginning or before an agenda item is taken up. The Clerk will not accept blue slips after that time. To comment by email, submit your comments no later than 4:00 p.m. on the day of the meeting by emailing your name, agenda item you are commenting on and your comments to publiccomments@ontarioca.gov. All comments received by the deadline will be forwarded to the City Council for consideration before action is taken on the matter and will be entered into the record.

Speakers will be alerted when they have 1 minute remaining and when their time is up. Speakers are then to return to their seats and no further comments will be permitted.

In accordance with State Law, remarks during public comment are to be limited to subjects within Council's jurisdiction. Remarks on other agenda items will be limited to those items.

Remarks from those seated or standing in the back of the chamber will not permitted. All those wishing to speak including Council and Staff need to be recognized by the Chair before speaking.

ACCOMMODATIONS

If you need special assistance or accommodations to participate in this meeting, please contact the City Clerk's office at 909-395-2009. Notification of 48 hours prior to the meeting will help the City make reasonable arrangements. Equipment for the hearing impaired is available in the Records Management Office.

ORDER OF BUSINESS

The regular City Council and Housing Authority and Ontario Public Financing Authority meeting begins with Closed Session and Closed Session Comment at 6:00 p.m., Public Comment at 6:30 p.m. immediately followed by the Regular Meeting and Public Hearings. No agenda item will be introduced for consideration after 10:00 p.m. except by majority vote of the City Council.

CALL TO ORDER *(OPEN SESSION)*

ROLL CALL

Wapner, Bowman, Porada, Macias, Mayor/Chairman Leon

INFORMATION RELATIVE TO POSSIBLE CONFLICT OF INTEREST

Agenda item contractors, subcontractors and agents may require member abstentions due to conflict of interests and financial interests. Council Member abstentions shall be stated under this item for recordation on the appropriate item.

CLOSED SESSION PUBLIC COMMENT

The Closed Session Public Comment portion of the Council/Housing Authority meeting is limited to matters appearing on the Closed Session. Additional opportunities for further Public Comment will be given during and at the end of the meeting.

CLOSED SESSION

GC 54956.9 (e)(5), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION:
Significant exposure to litigation; a copy of the documented threat is available in the office of the City Clerk.

ATTACHMENT: 20250415 Closed Session

PLEDGE OF ALLEGIANCE

Mayor pro Tem Wapner

INVOCATION

Pastor Richard Hernandez, The Church of God

REPORT ON CLOSED SESSION

City Attorney

SPECIAL CEREMONIES

SOUTHERN CALIFORNIA EDISON SCHOLARSHIP AWARD PRESENTATION TO LEONARDO CASTRO

ONTARIO POLICE DEPARTMENT PRESENTATION

PUBLIC COMMENTS 6:30 P.M.

The Public Comment portion of the Council/Housing Authority/Ontario Public Financing Authority meeting is limited to 30 minutes. An opportunity for further Public Comment may be given at the end of the meeting. Under provisions of the Brown Act, Council is prohibited from taking action on oral requests.

To comment by email, submit your comments by email no later than 4:00 p.m. on the day of the meeting by emailing your name, agenda item you are commenting on and your comment to publiccomments@ontarioca.gov. All Comments received by the deadline will be forwarded to the City Council for consideration before action is taken on the matter and entered into the record. As previously noted -- if you wish to address the Council, fill out one of the blue slips at the rear of the chambers and give it to the City Clerk.

AGENDA REVIEW/ANNOUNCEMENTS

The City Manager will go over all updated materials and correspondence received after the Agenda was distributed to ensure Council Members have received them. He will also make any necessary recommendations regarding Agenda modifications or announcements regarding Agenda items to be considered.

CONSENT CALENDAR

All matters listed under CONSENT CALENDAR will be enacted by one motion in the form listed below – there will be no separate discussion on these items prior to the time Council votes on them, unless a member of the Council requests a specific item be removed from the Consent Calendar for a separate vote.

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of March 18, 2025, and approving same as on file in the Records Management Department.

ATTACHMENT: 20250318 Meeting Minutes (Not Official Until Approved)

2. BILLS & PAYROLL

Bills March 7, 2025 through March 27, 2025, and Payroll February 23, 2025 through March 8, 2025.

3. ONTARIO BUSINESS ASSISTANCE LOAN PROGRAM GUIDELINES AND APPLICATION

That the City Council approve the adoption of the Ontario Business Assistance Loan Program Guidelines; and authorize the City Manager, or his designee, to make any necessary adjustments and execute all necessary documents to implement the loan program.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A BUSINESS ASSISTANCE LOAN PROGRAM.

ATTACHMENT: Resolution Approving Business Assistance Loan Agreement 01^RESO^RM

ATTACHMENT: Business Assistance Loan Program Guidelines [Final] EXH A^02

ATTACHMENT: City of Ontario - Business Assistance Loan Program Agreement EXH B^03

4. AMENDMENT TO THE DOWNTOWN ONTARIO RESTAURANT AND BREWERY EQUIPMENT REBATE PROGRAM

That the City Council approve the amendment to the Downtown Ontario Restaurant and Brewery Equipment Program; and authorize the City Manager and/or his designee to execute any documents related to this program.

ATTACHMENT: 20250218 Downtown Equipment Rebate Program Loan Agmt^02.docx

ATTACHMENT: 20250401_Amended Downtown Equipment Rebate Program^01.pdf

5. AUTHORIZE THE PURCHASE OF CHARGEPOINT ELECTRIC VEHICLE CHARGERS FOR THE CITY HALL PARKING STRUCTURE WITH BODEV, INC.

That the City Council take the following actions:

A. Authorize a cooperative purchase agreement for D&C22-012 City Hall Parking Structure with BodEV, Inc., of La Habra, California, for the purchase of ChargePoint electric vehicle (EV) chargers for the City Hall Parking Structure in the amount of $559,482 plus a contingency amount of $56,000 for a for a total contract amount not-to-exceed $615,482 consistent with the terms and conditions of the Sourcewell Contract Number 032124-ELV; and

B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to agreements, assessments,

easements, reduction of retention accounts, contracts amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

ATTACHMENT: Goods and Services Agreement- BodEV, Inc.pdf

6. **APPROVAL OF VARIOUS PROFESSIONAL SERVICES AGREEMENTS TO PROVIDE SPECIAL TAX CONSULTING AND ADMINISTRATIVE SERVICES, COMMUNITY FACILITIES DISTRICT FORMATION AND BOND COUNSEL SERVICES, APPRAISAL AND HOUSING MARKET ECONOMIST SERVICES**

That the City Council approve and authorize the City Manager or designee to execute the various Professional Services Agreements for special tax consulting, community facilities district formations and costs associated with bond issuances. Proposed agreements are with Goodwin Consulting Group of Sacramento, California; Willdan Financial Services of Temecula, California; Orrick, Herrington & Sutcliffe, LLP of Los Angeles, California; Empire Economics, Inc. of Capistrano Beach, California; and Kitty Siino and Associates of Tustin, California.

ATTACHMENT: Special Tax Consultant^01 Goodwin Agreement.pdf
ATTACHMENT: Special District Consultant^02 Willdan Agreement.pdf
ATTACHMENT: CFD Formation and Bond Counsel^03 Orrick, Herrington, and Sutcliffe Agreement
ATTACHMENT: Housing Market Economist^04 Empire Agreement.pdf
ATTACHMENT: Appraisal^05 Kitty Agreement.pdf

7. **AN AMENDMENT TO THE CONSTRUCTION CONTRACT WITH G.M. SAGER CONSTRUCTION INC. FOR ON-CALL AND EMERGENCY UTILITY TRENCH PAVING SERVICES**

That the City Council approve and authorize the City Manager, or designee, to execute Amendment No. 2 to the On-Call Services Contract with G.M. Sager Construction Inc., of Pomona, California, for On-Call and Emergency Utility Trench Paving services for a revised total not-to-exceed aggregate amount of $2,035,170 and a term from September 6, 2022 through June 30, 2026.

ATTACHMENT: MAS with GM Sager Amendment No. 2^02.pdf

8. **APPROVAL OF A SOLE SOURCE PURCHASE TO PROVIDE A CUSTOM DESIGNED DRONE SHOW FOR TWO ANNUAL EVENTS**

That the City Council approve Grizzly Entertainment, LLC of Palm Springs, CA as the sole source vendor to provide a custom designed drone show for the annual Independence Day and Holiday Tree Lighting celebrations.

ATTACHMENT: Grizzly Contract CITY OF ONTARIO - 04JUL25.pdf
ATTACHMENT: Grizzly Entertainment Quote for Holiday Tree Lighting Dec 2025.pdf

9. **A RESOLUTION FOR PLACEMENT OF SPECIAL ASSESSMENTS ON THE SAN BERNARDINO COUNTY TAX ROLLS**

That the City Council adopt a Resolution for recovery of fees and costs incurred in abating property and dangerous building violations, as well as administrative citations and civil

penalties associated with property maintenance violations and placing assessments on the San Bernardino County Tax Rolls.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A REPORT REQUESTING THE PLACEMENT OF SPECIAL ASSESSMENTS ON PROPERTY TAX BILLS FOR CIVIL PENALTIES OR RECOVERY OF COSTS INCURRED FOR ABATEMENT OF VIOLATIONS OF CITY CODES AND ORDINANCES.

ATTACHMENT: 20250415 Comm Imp Special Assessments for County Tax Rolls 01^RESO^RM.docx
ATTACHMENT: 20250415_Special Assessments^02 - Exhibit A.pdf
ATTACHMENT: 20250415_Special Assessments^02 - Exhibit B.pdf
ATTACHMENT: 20250415_Special Assessments^02 - Exhibit C.pdf

10. A GOODS AND EQUIPMENT PURCHASE AGREEMENT WITH DE NORA WATER TECHNOLOGIES, LLC FOR THE PURCHASE OF WATER DISINFECTION EQUIPMENT AND AN AMENDMENT TO THE GOODS AND EQUIPMENT PURCHASE AGREEMENT WITH D&H WATER SYSTEMS FOR THE PURCHASE OF REPLACEMENT PARTS FOR GROUNDWATER WELL MAINTENANCE

The City Council take the following actions:

A. Authorize the City Manager, or designee, to execute a Goods and Equipment Purchase Agreement with De Nora Water Technologies, LLC (De Nora) of Sugar Land, Texas, for the purchase of water disinfection equipment and replacement parts for a total not-to-exceed amount of $1,416,076.
B. Authorize the City Manager, or designee, to execute Amendment No. 1 to the Goods and Equipment Purchase Agreement with D&H Water Systems of Oceanside, California, to amend the Agreement by $274,849 for a revised total not-to-exceed amount of $310,005.

ATTACHMENT: 20250415 GAE with De Nora^01 AGMT.pdf
ATTACHMENT: 20250415 GAE with D&H Amendment 1^02 AGMT.pdf

11. ADOPT A RESOLUTION AUTHORIZING SIGNATURE AUTHORITY FOR PROJECT AGREEMENTS AND DOCUMENTS FOR THE EUCLID RECYCLED WATER PROJECT AND WELL 50 TREATMENT FACILITY WITH THE UNITED STATES ARMY CORPS OF ENGINEERS

That the City Council adopt a Resolution authorizing the City Manager, or his designee, to negotiate and execute all related project documents, including applications, agreements, project certifications and project-related documents with the United States Army Corps of Engineers (USACE), to design and construct the Euclid Avenue Recycled Water Project and the Well 50 Ion Exchange Treatment Facility.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND SIGN PROJECT PARTNERSHIP AGREEMENTS FOR THE EUCLID RECYCLED WATER PROJECT AND WELL 50 TREATMENT FACILITY WITH THE UNITED STATES ARMY CORPS OF ENGINEERS.

ATTACHMENT: 20250415 Signing Authority Resolution 01^RESO^RM

12. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 73 (WILDFLOWER ACRES)

That the City Council consider and adopt an Ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 73 (Wildflower Acres).

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN THE CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 73 (WILDFLOWER ACRES).

ATTACHMENT: CFD 73 Wildflower Acres Ordinance 01^ORD^RM

13. AUTHORIZE A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH PHILBIN CONSTRUCTION COMPANY FOR THE DEBRIS REMOVAL AND FINE GRADING FOR ONTARIO'S GRAND PARK PHASE 1 PROJECT

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute Change Order No. 2 to the Construction Contract with Philbin Construction Company, of Laguna Niguel, California for the debris removal and fine grading of Ontario's Grand Park Phase 1 in the amount of $11,990,790 for a total contract amount of $17,420,243 plus a contingency of $2,409,507 to address any unforeseen issues that may arise during the demolition for a total not-to-exceed contract amount of $19,829,750; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but is not limited to agreements, assessments, easements, lot line adjustments, reduction of retention accounts, contracts and contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

ATTACHMENT: Change Order No. 2- Philbin Construction Co..pdf

14. AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH SOUTHERN TIRE MART, LLC. FOR TIRE REPAIR, RETREADING, AND OTHER TIRE RELATED ITEMS

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 1 to the Goods and Services Agreement with Southern Tire Mart, LLC., of Columbia, Mississippi, for tire repair, retreading, and other tire related items in the amount of $1,040,000, bringing the new total not-to-exceed contract amount to $1,190,000. Additionally, authorize the option to extend the Agreement for up to three (3) additional one-year terms.

ATTACHMENT: Southern Tire Mart, LLC_Amendment No.1.pdf

15. A CONSTRUCTION CONTRACT WITH LEONIDA BUILDERS FOR THE DOWNTOWN BOLLARDS INSTALLATION PROJECT

That the City Council authorize the City Manager or his designee to execute a Construction Contract with Leonida Builders, of Santa Clarita, California, for the Downtown Bollards Installation Project for a contract amount of $294,500 plus a 10% contingency of $29,450 for a total contract amount not-to-exceed $323,950.

ATTACHMENT: Construction Contract- Leonida Builders.pdf

16. AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH FREDERICK FISHER PARTNERS, ARCHITECTS FOR THE NORTH WING GALLERY, WELCOME DESK, AND ELECTRICAL INFRASTRUCTURE UPGRADE FOR THE ONTARIO MUSEUM OF HISTORY AND ART

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute Amendment No. 1 to the Design Services Agreement with Frederick Fisher Partners, Architects, of Los Angeles, California, to provide on-call design services for the North Wing Gallery, welcome desk, and electrical infrastructure upgrade for the Ontario Museum of History and Art (OMHA) in the amount of $186,709 for a total not-to-exceed contract amount of $436,709; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but is not limited to agreements, assessments, easements, reduction of retention accounts, contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

ATTACHMENT: Amendment No. 1- Frederick Fisher Partners.pdf

17. A CONSTRUCTION CONTRACT WITH KRESSA, LLC. FOR THE HOMER BRIGGS PARK CONCESSION RENOVATION PROJECT

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute a Construction Contract with Kressa, LLC, of West Covina, California, for the Homer Briggs Park Concession Renovation Project in the amount of $174,150 plus a 10% contingency of $17,415 to address any unforeseen issues that may arise during the construction for a total not-to-exceed contract amount of $191,565; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but is not limited to agreements, assessments, easements, reduction of retention accounts, contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

ATTACHMENT: Construction Contract- Kressa, LLC.pdf

18. A GOODS AND EQUIPMENT PURCHASE AGREEMENT WITH MCLAUGHLIN WASTE EQUIPMENT, INC. FOR COMMERCIAL BIN PARTS

That the City Council authorize the City Manager, or his designee, to execute a Goods and

Equipment Purchase Agreement with McLaughlin Waste Equipment, Inc., of Canyon Country, California, for the purchase of commercial bin parts for a total contract amount not-to-exceed $1,000,000 for up to five (5) years.

ATTACHMENT: Goods and Equipment Purchase Agreement- McLaughlin Waste Equipment, Inc..pdf

19. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH PHOENIX GROUP INFORMATION SYSTEMS REFERENCE PROCESSING SERVICES FOR POLICE PARKING CITATIONS, FIRE AND COMMUNITY IMPROVEMENT ADMINISTRATIVE CITATIONS, AND FALSE ALARM PROGRAM

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement for citation services with Phoenix Group Information Systems, based in Santa Ana, California. This amendment will extend the optional two additional one-year terms and increase the authorized contract amount by $250,000, resulting in a total not-to-exceed contract amount of $1,000,000.

ATTACHMENT: 002 Amendment No. 1 Phoenix Group 2025 Exhibit A.pdf

20. A DEVELOPMENT AGREEMENT (FILE NO. PDA23-005) BETWEEN THE CITY OF ONTARIO AND DIVERSIFIED PACIFIC DEVELOPMENT GROUP, LLC IN CONJUNCTION WITH THE EMPIRE GROVES SPECIFIC PLAN (FILE NO. PSP23-001)

That the City Council consider and adopt:

A. An Ordinance for a Development Agreement (File No. PDA23-005) between the City of Ontario and Diversified Pacific Development Group, LLC to establish terms and conditions for the associated Development Plan (File No. PDEV23-039);
B. An Ordinance for the Empire Grove Specific Plan (File No. PSP23-001) to establish the Land Use District, development standards, guidelines, and infrastructure improvements.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA23-005, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND DIVERSIFIED PACIFIC DEVELOPMENT GROUP, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH A DEVELOPMENT PLAN (FILE NO. PDEV23-039), FOR A 10.43 ACRE PROPERTY LOCATED ON THE SOUTHEAST CORNER OF GUASTI ROAD AND HOLT BOULEVARD WITHIN THE PROPOSED PA1 (HOSPITALITY MIXED-USE) DISTRICT OF THE EMPIRE GROVES SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 110-322-33.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSP23-001, A SPECIFIC PLAN (EMPIRE GROVES) TO ESTABLISH THE LAND USE DISTRICT, DEVELOPMENT STANDARDS, GUIDELINES, AND INFRASTRUCTURE IMPROVEMENTS FOR THE DEVELOPMENT OF UP TO 600,000 SQUARE FEET OF HOSPITALITY AND COMMERCIAL LAND USES ON 10.43-ACRES OF LAND LOCATED ON THE SOUTHEAST CORNER OF GUASTI ROAD AND HOLT BOULEVARD AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 110-322-33.

ATTACHMENT: 20250415 File No. PDA23-005 PSP23-001 EmpireGrovesSP DA 03^ORD^RM
ATTACHMENT: 20250415 File No. PDA23-005_PSP23-001_Empire Groves SP^04 DA Final.pdf
ATTACHMENT: 20250415 File No. PDA23-005 PSP23-001 EmpireGrovesSP 05^ORD^RM
ATTACHMENT: 20250415 File No. PDA23-005_PSP23-001_EmpireGrovesSP ^06 Attach A SP Final.pdf

21. AUTHORIZATION TO ESTABLISH AND IMPLEMENT A REDEMPTION PROGRAM FOR UNUSED NEW MODEL COLONY DEVELOPMMMENT IMPACT FEE (DIF) CERTIFICATES IN ACCORDANCE WITH UNDERLYING AGREEMENTS AND APPLICABLE LAW

That the City Council, by minute action, authorize the City Manager or his designee(s) to establish and implement an administrative program under which unused and/or unredeemed DIF certificates for public infrastructure built to support the development in the Ontario Ranch area may be redeemed by bona fide certificate holders in amounts supported by verified documentary evidence and applicable requirements of law and contract.

PUBLIC HEARINGS

Pursuant to Government Code Section 65009, if you challenge the City's zoning, planning or any other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the public hearing. Affidavits of posting compliance, for all items below, are on file with the Records Management Department.

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22. A PUBLIC HEARING TO CONSIDER A PLANNED UNIT DEVELOPMENT (FILE NO. PUD24-002) FOR A DEVELOPMENT PLAN TO CONSTRUCT 144-UNIT MULTIPLE-FAMILY RESIDENTIAL APARTMENT COMPLEX

That the City Council introduce and waive further reading of an Ordinance Approving a Planned Unit Development, File No. PUD24-002, establishing development standards and guidelines to facilitate the development of a 144-unit residential apartment project.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PUD24-002, A PLANNED UNIT DEVELOPMENT TO CREATE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES FOR A DEVELOPMENT PLAN TO CONSTRUCT 144-UNIT MULTIPLE-FAMILY RESIDENTIAL APARTMENT COMPLEX ON APPROXIMATELY 5.73 ACRES OF LAND LOCATED NEAR THE NORTHEAST CORNER OF EAST HOLT BOULEVARD AND ALLYN AVENUE WITHIN THE MU-6 (EAST HOLT MIXED USE) ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1048-481-06, 1048-481-07, 1048-481-08, 1048-481-28, 1048-481-29

ATTACHMENT: File No. PUD24-002^01 PC Back-up.pdf
ATTACHMENT: File No. PUD24-002 PUD 02^ORD^RM
ATTACHMENT: File No. PUD24-002^03 PUD Document.pdf

23. RESOLUTIONS AUTHORIZING THE ISSUANCE OF LEASE REVENUE BONDS, SERIES 2025A AND RELATED MATTERS

Hold public hearing and that the City Council and the Ontario Public Financing Authority take the following actions:

A. City Council consider and adopt a Resolution authorizing the execution and delivery of a Ground Lease, Lease Agreement, Indenture, Bond Purchase Agreement and Continuing Disclosure Certificate in connection with the issuance and sale of the Lease Revenue Bonds, Series 2025A, by the Ontario Public Financing Authority in an aggregate principal amount not to exceed $250 million and authorizing the distribution of an Official Statement in connection with the offering and sale of the Bonds and authorizing the execution and delivery of necessary documents in connection therewith.
B. Ontario Public Financing Authority consider and adopt a Resolution authorizing the execution and delivery of a Ground Lease, Lease Agreement, Indenture, Bond Purchase Agreement and Assignment Agreement in connection with the issuance of its Lease Revenue Bonds, Series 2025A, in an aggregate principal amount of not to exceed $250 million and authorizing the distribution of an Official Statement in connection with the offering and sale of the Bonds and authorizing the execution and delivery of necessary documents in connection therewith.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE, LEASE AGREEMENT, INDENTURE, BOND PURCHASE AGREEMENT AND CONTINUING DISCLOSURE CERTIFICATE IN CONNECTION WITH THE ISSUANCE OF ONTARIO PUBLIC FINANCING AUTHORITY 2025A LEASE REVENUE BONDS, APPROVING THE ISSUANCE OF SUCH BONDS IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $250,000,000, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION WITH THE OFFERING AND SALE OF SUCH BONDS AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS.

A RESOLUTION OF THE ONTARIO PUBLIC FINANCING AUTHORITY, OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY BY THE AUTHORITY OF A GROUND LEASE, LEASE AGREEMENT, INDENTURE, BOND PURCHASE AGREEMENT AND ASSIGNMENT AGREEMENT IN CONNECTION WITH THE ISSUANCE OF ONTARIO PUBLIC FINANCING AUTHORITY 2025A LEASE REVENUE BONDS, AUTHORIZING THE ISSUANCE OF SUCH BONDS IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $250,000,000, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION WITH THE OFFERING AND SALE OF SUCH BONDS AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS.

ATTACHMENT: 2025 Lease Revenue Bonds Approval to Issue Bonds CITY 01^RESO^RM
ATTACHMENT: 2025 Lease Revenue Bonds Approval to Issue Bonds OPFA 02^RESO^RM
ATTACHMENT: 2025 Lease Revenue Bonds^03 Ground Lease.pdf
ATTACHMENT: 2025 Lease Rev Bonds^04 Lease Agreement.pdf

ATTACHMENT: 2025 Lease Revenue Bonds^05 Indenture.pdf
ATTACHMENT: 2025 Lease Rev Bonds^06 Bond Purchase Agreement.pdf
ATTACHMENT: 2025 Lease Rev Bonds^07 Assignment Agreement.pdf
ATTACHMENT: 2025 Lease Revenue Bonds^08 Continuing Disclosure Certificate.pdf
ATTACHMENT: 2025 Lease Revenue Bonds^09 Preliminary Official Statement.pdf

24. APPROVAL OF RESOLUTIONS FOR SALE OF PROPERTY AT 100 BLOCK OF NORTH EUCLID AVENUE FROM ONTARIO HOUSING AUTHORITY TO CITY OF ONTARIO

That the Ontario Housing Authority and the City Council take the following actions:

A. Adopt a Resolution declaring certain Ontario Housing Authority-owned real property at 100 Block of North Euclid Avenue (APN's 1048-553-01,1048-553-05 Through 1048-553-15) to be exempt surplus land; approve the transfer of real property at 100 Block North Euclid Avenue (APN's 1048-553-01,1048-553-05 Through 1048-553-15) from the Ontario Housing Authority to the City of Ontario; and declare the conveyance of the property exempt from environmental review under the California Environmental Quality Act pursuant to CEQA Guidelines Section 15312.
B. Adopt a Resolution approving and accepting the transfer of real property at 100 Block North Euclid Avenue (APN's 1048-553-01,1048-553-05 Through 1048-553-15) from the Ontario Housing Authority to the City of Ontario.

A RESOLUTION OF THE GOVERNING BOARD OF THE ONTARIO HOUSING AUTHORITY, OF THE CITY OF ONTARIO, CALIFORNIA, PURSUANT TO GOVERNMENT CODE SECTION 54221 DECLARING THAT CERTAIN REAL PROPERTY (100 BLOCK NORTH EUCLID AVENUE) IS EXEMPT SURPLUS LAND AND APPROVING THE CONVEYANCE OF 100 BLOCK NORTH EUCLID AVENUE (APNS: 1048 553-01, 1048-553-05 THROUGH 1048-553-15) FROM THE ONTARIO HOUSING AUTHORITY TO THE CITY OF ONTARIO AND FINDING SUCH ACTION / DECLARATION IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SECTION 15312 OF THE CEQA GUIDELINES.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE CONVEYANCE OF 100 BLOCK NORTH EUCLID AVENUE (APNS: 1048-553-01, 1048-553-05 THROUGH 1048 553-15) FROM THE ONTARIO HOUSING AUTHORITY TO THE CITY OF ONTARIO AND APPROPRIATING FUNDS THEREFORE.

ATTACHMENT: A_Block_-Housing_Authority_Conveyance_to_the_City_RESO_1.docx
ATTACHMENT: A_Block_City_Accepting_Conveyance_from_OHA_RESO_2.docx
ATTACHMENT: Exhibit A-Block OHA Parcels Map^3
ATTACHMENT: 20250415 Ontario Housing Authority Loan Amortization Schedule^04

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

25. RENEWAL OF THE GREATER ONTARIO TOURISM MARKETING DISTRICT

That the City Council take testimony and accept public comment that will result in a public

hearing on May 20, 2025, on the renewal of the Greater Ontario Tourism Marketing District (GOTMD) and the levy of assessments on lodging businesses, including short-term rentals, located within the boundaries of the GOTMD.

ATTACHMENT: The Management District Plan - Attachment 1

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

BOARD AND COMMISSION APPOINTMENTS

Mayor Leon
Mayor pro Tem Wapner
Council Member Bowman
Council Member Porada
Council Member Macias

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // *(GC 54957.1)*
April 15, 2025

ROLL CALL: Wapner _, Bowman _, Porada _, Macias _, Mayor / Chairman Leon _.

STAFF: City Manager / Executive Director __, City Attorney __

In attendance: Wapner _, Bowman _, Porada _, Macias _, Mayor / Chairman Leon _.

- GC 54956.9 (e)(5), CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION:
  Significant exposure to litigation; a copy of the documented threat is available in the office of the City Clerk.

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

Reported by:

_____
City Attorney / City Manager / Executive Director

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
MARCH 18, 2025
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and Housing Authority were held on Tuesday, March 4, 2025 at Ontario City Hall, 303 E. B Street Ontario, California.

OPEN MEETING CALLED TO ORDER

Mayor Leon called the joint meetings to order at 6:00 p.m.

ROLL CALL

PRESENT:	Mayor/Chairman:	Paul S. Leon
	Mayor pro Tem/Vice Chair:	Alan D. Wapner
	Council/Authority Members:	Jim W. Bowman, Debra Porada, and Daisy Macias
ABSENT:	Council/Authority Members:	None

Also present were City Manager / Executive Director Scott Ochoa, Assistant City Attorney/Legal Counsel Ryan Guiboa, and City Clerk / Secretary Sheila Mautz.

INFORMATION RELATIVE TO POSSIBLE CONFLICTS OF INTEREST

There were no conflicts of interest announced.

CLOSED SESSION

Mayor Leon inquired whether persons were present who wished to speak to the Closed Session items. Hearing no one, Assistant City Attorney Guiboa announced the matters for discussion as listed on the agenda and recessed to Closed Session at 6:01 p.m. for discussion of the following:

GC 54956.9(d)(1), CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
City of Ontario, et al. v. Inland Empire Utilities Agency, Orange County Superior Court Case No. 30-2023-01344236-CU-WM-CJC

GC 54956.9(d)(1), CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
City of Ontario, et al. v. Inland Empire Utilities Agency, Los Angeles Superior Court Case No. 24STCP02321

OPEN MEETING CALLED TO ORDER

Mayor Leon reconvened the meetings at 6:39 p.m. for the regular session.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Porada.

INVOCATION

Invocation was led by Pastor Richard Hernandez from The Church of God.

REPORT ON CLOSED SESSION

Assistant City Attorney Guiboa announced there was no reportable action.

PUBLIC COMMENT

Assistant City Clerk Isbell announced that there were two written comments:
Lori Masonis, seeking more information regarding Item No. 16.
Esmeralda Garcia-Orosco, seeking more information regarding Item No. 10.

Mayor Leon called upon the first speaker:
Ruben Jaime, spoke regarding homelessness.
Kizzee, spoke regarding homelessness.
Ally Medina, spoke regarding homelessness.
Tina Silva, spoke in opposition to hotel development.
Chris Robles, spoke in opposition to hotel development.
Perry Meade, spoke in opposition to hotel development.
Karen May, spoke in opposition to hotel development
Robert Quezada, spoke regarding homelessness.
Avraham Coutin, spoke on international politics.

Mayor Leon recessed the meetings at 7:03 p.m. and reconvened at 7:05 p.m.

Alfredo Crespo, spoke regarding homelessness.
Jordan Sissa, spoke in opposition to hotel development.
Monica Ibarra, spoke regarding homelessness.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa announced the need to pull Public Hearing Item No. 21 from the agenda.

CONSENT CALENDAR

Public Comment:

Mayor Leon called upon the speaker:
Chris Robles, spoke in opposition to Items No. 4, 9, 10, and 15.

MOTION: Moved by Council Member Bowman, seconded by Council Member Porada and carried by a unanimous vote 5-0, to approve the Consent Calendar as presented.

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of February 18, 2025, and cancelled special meeting/study session of February 20, 2025, and approving same as on file in the Records Management Department.

2. BILLS & PAYROLL

Approved bills February 14, 2025 through February 27, 2025, in the amount of $47,234,641.25, and Payroll January 26, 2025 through February 8, 2025 in the amount of $5,584,183.66.

3. A DEVELOPMENT IMPACT FEE CREDIT AGREEMENT (FILE NO. PDIF24-001) BETWEEN THE CITY OF ONTARIO AND AG EHC II (LEN) CA 3, L.P. FOR FACILITY CONSTRUCTION ASSOCIATED WITH TRACT MAP 20536 (FILE NO. PMTT22-021), LOCATED 875 FEET SOUTH OF THE INTERSECTION OF RIVERSIDE DRIVE AND ARCHIBALD AVENUE, WITHIN THE COUNTRYSIDE SPECIFIC PLAN

The City Council authorized the City Manager to execute the Development Impact Fee Credit Agreement (File No. PDIF24-001) between the City of Ontario and AG EHC II (LEN) CA 3, L.P., for facility construction associated with Tract Map 20536 (File No. PMTT22-021), located 875 feet south of the intersection of Riverside Drive and Archibald Avenue, within the Countryside Specific Plan, and authorize the City Manager to execute the Agreement.

4. FY 2024-25 MID-YEAR BUDGET UPDATE

The City Council took the following actions:

A. Approved the budget adjustments and recommendations as presented in the Fiscal Year 2024-25 Mid-Year Budget Update Report (Exhibit A);
B. Considered and adopted a Resolution making a declaration of intent to issue tax-exempt obligations; and
C. Approved the updated Purchasing Policies and Procedures Manual

RESOLUTION NO. 2025-006 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, REGARDING ITS INTENTION TO ISSUE TAX-EXEMPT OBLIGATIONS.

5. A CONSTRUCTION CONTRACT WITH C.I. SERVICES, INC. FOR THE ARMSTRONG COMMUNITY CENTER ROOF REPLACEMENT PROJECT

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Construction Contract No. D&C22-014 with C.I. Services, Inc., of Mission Viejo, California, for the Armstrong Community Center Roof Replacement Project in the amount of $681,200 and authorize a 10% contingency of $68,120 for a total not-to-exceed contract amount of $749,320; and
B. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

6. AN AMENDMENT TO A MAINTENANCE SERVICES AGREEMENT WITH BAY ALARM COMPANY FOR BURGLARY ALARM SERVICES

The City Council approved and authorized the City Manager, or his designee, to execute Amendment No. 11 to the Maintenance Services Agreement with Bay Alarm Company, of Concord, California, for a total not-to-exceed amount of $1,530,547, for the alarm system upgrade, and a term to June 30, 2025.

7. AMENDMENTS TO THE DESIGN SERVICES AGREEMENT WITH HMC ARCHITECTS FOR THE ONTARIO WELLNESS CAMPUS PROJECT AND THE ONTARIO ARENA PLAZA PROJECT

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute Amendment No. 1 to the Design Services Agreement with HMC Architects, of Ontario, California, to provide On-Call Architectural, Space Planning, and Engineering Design Services for the D&C24-017 Ontario Wellness Campus Project in the amount of $5,377,587 for a total not-to-exceed contract amount of $5,577,587, and
B. Authorized the City Manager, or his designee, to execute Amendment No. 2 to the Design Services Agreement with HMC Architects, of Ontario, California, to provide On-Call Architectural, Space Planning, and Engineering Design Services for the Ontario Arena Plaza Project in the amount of $1,098,740 for a total not-to-exceed contract amount of $6,676,327; and
C. Authorized the City Manager or his designee, to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts and filing a notice of completion at the conclusion of all construction related activities.

8. AUTHORIZE THE PURCHASE AND INSTALLATION OF CHARGEPOINT ELECTRIC VEHICLE CHARGERS WITH BODEV, INC. FOR THE PROFESSIONAL BASEBALL STADIUM, PROFESSIONAL BASEBALL STADIUM PARKING STRUCTURE, AND THE ONTARIO SPORTS EMPIRE

The City Council took the following actions:

A. Authorized a cooperative purchase agreement for D&C23-011 Professional Baseball Stadium with BodEV, Inc., of La Habra, California, for the purchase and installation of ChargePoint electric vehicle (EV) chargers for the Professional Baseball Stadium, Professional Stadium Parking Structure, and the Ontario Sports Empire in the amount of $1,189,758 plus a contingency amount of $119,000 for a total contract amount not-to-exceed $1,308,758 consistent with the terms and conditions of the Sourcewell Contract Number 042221-CPI; and
B. Authorized the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to agreements, assessments, easements, reduction of retention accounts, contracts amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

9. A CONSTRUCTION CONTRACT WITH TFN ARCHITECTURAL SIGNAGE, INC. FOR SIGNAGE AT THE ONTARIO PROFESSIONAL BASEBALL STADIUM

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute a Construction Contract with TFN Architectural Signage, Inc., of Placentia, California, to provide signage for Bid No. 1878 - D&C23-011 – Professional Baseball Stadium (Rebid of BC20) in the amount of $1,816,695 and authorize a contingency of $363,339 for a total not-to-exceed contract amount of $2,180,034; and
B. Authorized the City Manager or his designee to execute all documents required for the completion of the project including, but not limited to, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

10. AWARD A CONSTRUCTION CONTRACT TO MCCARTHY BUILDING COMPANIES, INC. FOR DESIGN-BUILD CONSTRUCTION SERVICES FOR THE VINEYARD PARKING STRUCTURE PROJECT

The City Council took the following actions:

A. Authorized the City Manager, or his designee, to execute a Construction Contract with McCarthy Building Companies, Inc., of Newport Beach, California, to provide design-build construction services for the Vineyard Parking Structure in the amount of $24,990,042 and authorize a contingency of $3,748,506 for a total not-to-exceed contract amount of $28,738,548;

B. Authorized the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to agreements, assessments, easements, lot line adjustments, reduction of retention accounts, contracts and contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

11. AUTHORIZE A SOLE SOURCE PURCHASE WITH FIRE APPARATUS SOLUTIONS FOR TWO (2) NEW KME FIRE PUMPERS

The City Council authorized the sole source purchase and delivery of two (2) new KME K180 Fire Pumpers from Fire Apparatus Solutions of Rialto, California, in the amount of $1,996,979 plus a 5% contingency in the amount of $99,849 for a total not-to-exceed amount of $2,096,828.

12. A MAINTENANCE SERVICES AGREEMENT WITH HYDROLOGICS, INC. FOR ON-CALL ZERO DISCHARGE FLUSHING SERVICES

The City Council approved and authorized the City Manager, or designee, to execute a one-year Maintenance Services Agreement with Hydrologics, Inc., of Bosque Farms, New Mexico, for On-Call Zero Discharge Flushing Services in the amount of $600,000 from March 18, 2025 to March 17, 2026, with the option to extend the Agreement for up to four successive one-year periods for a total not-to-exceed amount of $3,000,000.

13. A DESIGN SERVICES AGREEMENT WITH TRIAD CONSULTING AND SYSTEM DESIGN GROUP LLC FOR SITE SECURITY IMPROVEMENTS

The City Council approved and authorized the City Manager, or designee, to execute a Design Services Agreement with Triad Consulting & Systems Design Group LLC, of Corona, California for design and bid support services for Site Security Improvements for a total amount of $935,904, plus a 15% contingency of $140,386, for a total not-to-exceed amount of $1,076,290, and a term from March 18, 2025 to September 18, 2028.

14. AN ORDINANCE AMENDING CHAPTERS 8B AND 8C OF TITLE 6 OF THE ONTARIO MUNICIPAL CODE RELATED TO WATER SERVICES AND RECYCLED WATER, AND ESTABLISHING CHAPTERS 8D AND 8E TO TITLE 6 OF THE ONTARIO MUNICIPAL CODE RELATED TO POTABLE WATER FACILITIES AND CROSS-CONNECTION CONTROL

The City Council adopted an Ordinance amending Chapters 8B and 8C of Title 6 of the Ontario Municipal Code related to water services and recycled water, and establishing Chapters 8D and 8E to Title 6 of the Ontario Municipal Code related to potable water facilities and cross-connection control. Introduction and first reading took place at a regular meeting on March 4, 2024.

ORDINANCE NO. 3297 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING, REORGANIZING, AND RECODIFYING CHAPTER 8B OF TITLE 6 OF THE ONTARIO MUNICIPAL CODE PERTAINING TO WATER SERVICES, AMENDING AND RECODIFYING CHAPTER 8C OF TITLE 6 OF THE ONTARIO MUNICIPAL CODE PERTAINING TO RECYCLED WATER USE, ENACTING CHAPTER 8D OF TITLE 6 OF THE ONTARIO MUNICIPAL CODE PERTAINING TO POTABLE WATER FACILITIES, AND ENACTING CHAPTER 8E OF TITLE 6 OF THE ONTARIO MUNICIPAL CODE PERTAINING TO CROSS-CONNECTION CONTROL AND FINDING THE ACTION EXEMPT FROM CEQA.

15. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH WINDSONG PRODUCTIONS, LLC. FOR VIDEO PRODUCTION SERVICES

The City Council authorized the City Manager, or his designee, to execute Amendment No. 4 to the Professional Services Agreement with Windsong Productions, LLC., of Fresno, California, for video production services in the amount of $619,544 for a total not-to-exceed amount of $1,727,380 and to extend the term of the agreement to June 30, 2026.

16. A RESOLUTION OF INTENTION TO RENEW THE GREATER ONTARIO TOURISM MARKETING DISTRICT

That the City Council adopt a Resolution of Intention to renew the existing Greater Ontario Tourism Marketing Plan.

RESOLUTION NO. 2025-007 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, DECLARING ITS INTENTION TO RENEW THE GREATER ONTARIO TOURISM MARKETING DISTRICT (GOTMD) AND FIXING THE TIME AND PLACE OF A PUBLIC MEETING AND A PUBLIC HEARING THEREON AND GIVING NOTICE THEREOF.

PUBLIC HEARINGS

17. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO. PDCA24-001, TO IMPLEMENT OBJECTIVE DEVELOPMENT AND DESIGN STANDARDS

The City Council introduced and waived further reading of the Ordinance Approving File No. PDCA24-001, a Development Code Amendment, amending the Reference document section of the City's Development Code, to implement Objective Development and Design Standards for multiple-family and mixed-use residential development.

ORDINANCE NO. 3298 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO PDCA24-001, A DEVELOPMENT CODE AMENDMENT AMENDING THE REFERENCE DOCUMENT SECTION OF THE CITY'S DEVELOPMENT CODE, TO

IMPLEMENT OBJECTIVE DEVELOPMENT AND DESIGN STANDARDS FOR MULTIPLE-FAMILY AND MIXED-USE RESIDENTIAL DEVELOPMENT AND MAKING FINDINGS IN SUPPORT THEREOF.

Notice of public hearing was duly given. Affidavits of compliance are on file. There were no written communications.

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item. Hearing no one, Mayor Leon closed the public hearing and opened the item for Council discussion.

MOTION: Moved by Council Member Porada, seconded by Council Member Bowman and carried by a unanimous vote 5-0, to introduce Ordinance No. 3298.

18. A PUBLIC HEARING TO CONSIDER AN ORDINANCE APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO. PDCA24-004, REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS

The City Council opened the public hearing, receive public testimony, close the public hearing, and by motion:

A. Find that the adoption of the proposed Ordinance is statutorily exempt from review under the California Environmental Quality Act ("CEQA") under Public Resources Code section 21080.17; and
B. Consider and adopt an Ordinance upholding the recommendation of the Planning Commission approving the Development Code Amendment (File No. PDCA24-004), pursuant to the facts and reasons contained in the staff report and Ordinance.

ORDINANCE NO. 3299 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A DEVELOPMENT CODE AMENDMENT, FILE NO. PDCA24-004, AMENDING DIVISION 5.03 & SUPPLEMENTAL LAND USE REGULATIONS, SECTION 5.03.010 OF THE CITY'S DEVELOPMENT CODE RELATING TO ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS IN THE CITY, AND FINDING THE ACTION TO BE STATUTORILY EXEMPT FROM CEQA UNDER PUBLIC RESOURCES CODE § 21080.17, AND MAKING FINDINGS IN SUPPORT THEREOF.

Notice of public hearing was duly given. Affidavits of compliance are on file. There were no written communications.

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item. Hearing no one, Mayor Leon closed the public hearing and opened the item for Council discussion.

MOTION: Moved by Council Member Bowman, seconded by Council Member Macias and carried by a unanimous vote 5-0, to introduce Ordinance No. 3299.

19. A PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA22-004) BETWEEN THE CITY OF ONTARIO AND ROSEVILLE INVESTMENTS, LLC AND AMERICAN SUPERIOR LAND, LLC.

The City Council introduced and waived further reading of an Ordinance Approving a Development Agreement (File No. PDA22-004) between the City of Ontario and Roseville Investments, LLC and American Superior Land, LLC.

ORDINANCE NO. 3300 (FIRST READING) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FILE NO. PDA22-004, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND, ROSEVILLE INVESTMENTS, LLC AND AMERICAN SUPERIOR LAND, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE TRACT MAP 20526 (FILE NO. PMTT22-012), LOCATED AT THE SOUTHEAST CORNER OF HAVEN AVENUE AND RIVERSIDE DRIVE, WITHIN PLANNING AREAS 1A, 1B, AND 1C OF THE RICH-HAVEN SPECIFIC PLAN (FILE NO. PSP05-004). (APNS: 0218-161-11, 0218-161-04, 0218-161-05, AND 0218-161-10).

Notice of public hearing was duly given. Affidavits of compliance are on file. There were no written communications.

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item. Hearing no one, Mayor Leon closed the public hearing and opened the item for Council discussion.

MOTION: Moved by Council Member Bowman, seconded by Council Member Porada and carried by a unanimous vote 5-0, to introduce Ordinance No. 3300.

20. A PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE AVENUE SPECIFIC PLAN, FILE NO. PSPA22-005

The City Council considered and adopted:

A. Resolution approving the use of an Addendum to The Ontario Plan 2050 Supplemental Environmental Impact Report (TOP 2050 SEIR);
B. Resolution approving File No. PSPA22-005, an Amendment to the Avenue Specific Plan to: 1) modify the land use designation of Planning Area 4 and apply density modifications to Planning Areas 1B, 2A, 3B, and 5 for consistency with the Ontario Plan 2050 land use plan; 2) apply general modifications throughout the document for clarity; and 3) make exhibit and text updates throughout the document to support the project, for land located at the northwest corner of Archibald Avenue and Ontario Ranch Road.

RESOLUTION NO. 2025-008 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN ADDENDUM TO THE ONTARIO PLAN 2050 SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT,

PURSUANT TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, FOR FILE NO. PSPA22-005.

RESOLUTION NO. 2025-009 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSPA22-005, AN AMENDMENT TO THE AVENUE SPECIFIC PLAN TO: 1) MODIFY THE LAND USE DESIGNATION OF PLANNING AREA 4 AND APPLY DENSITY MODIFICATIONS TO PLANNING AREAS 1B, 2A, 3B, AND 5 FOR CONSISTENCY WITH THE ONTARIO PLAN 2050 LAND USE PLAN; 2) APPLY GENERAL MODIFICATIONS THROUGHOUT THE DOCUMENT FOR CLARITY; AND, 3) MAKE EXHIBIT AND TEXT UPDATES THROUGHOUT THE DOCUMENT TO SUPPORT THE PROJECT, FOR LAND LOCATED AT THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND ONTARIO RANCH ROAD, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 0218-191-04; 0218-191-14; 0218-191-15; 0218-191-16; 0218-191-05; 0218-191-22; 0218-191-20.

Notice of public hearing was duly given. Affidavits of compliance are on file. There were no written communications.

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item. Hearing no one, Mayor Leon closed the public hearing and opened the item for Council discussion.

MOTION: Moved by Council Member Porada, seconded by Council Member Bowman and carried by a unanimous vote 5-0, to adopt Resolution Nos. 2025-008 and 2025-009.

21. A PUBLIC HEARING TO CONSIDER AN ADDENDUM TO THE ONTARIO PLAN 2050 SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT; TWO ORDINANCES APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA23-005) BETWEEN THE CITY OF ONTARIO AND DIVERSIFIED PACIFIC DEVELOPMENT GROUP, LLC IN CONJUNCTION WITH THE EMPIRE GROVES SPECIFIC PLAN (FILE NO. PSP23-001); AND A RESOLUTION FOR A DEVELOPMENT PLAN (FILE NO. PDEV23-039)

This is item was pulled from the agenda.

22. A CONSOLIDATED PUBLIC HEARING TO CONSIDER ADOPTION OF A RESOLUTION APPROVING THE DIF NEXUS REPORT UPDATE AND MODIFY DEVELOPMENT IMPACT FEES

The City Council considered and adopted a Resolution to approve the City's Development Impact Fees (DIF) 2024 Nexus Report Update and modify the DIF fees.

RESOLUTION NO. 2025-010 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING THE DEVELOPMENT IMPACT FEE CALCULATION AND NEXUS UPDATE REPORT AND ADOPTING AN UPDATED AND MODIFIED DEVELOPMENT IMPACT FEE SCHEDULE.

Notice of public hearing was duly given. Affidavits of compliance are on file. There were no written communications.

Mayor Leon opened the public hearing and inquired if anyone was interested in speaking to the item. Hearing no one, Mayor Leon closed the public hearing and opened the item for Council discussion.

MOTION: Moved by Council Member Bowman, seconded by Council Member Porada and carried by a unanimous vote 5-0, to adopt Resolution No. 2025-010.

STAFF MATTERS

City Manager Ochoa made no announcements.

COUNCIL MATTERS

Council Member Macias inquired about improvements at Jay Littleton Ball Park.

Council Member Bowman made no comments.

Mayor pro Tem Wapner spoke on rectal cancer awareness.

Council Member Porada stated the City is working hard to resolve homelessness issues.

Mayor Leon discussed the need for various community amenities.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 7:44 p.m., and announced the next regular meeting was scheduled for April 1, 2025.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Economic Development Prepared By: Peter Pallesen Department: Prepared By: Peter Pallesen Staff Member Presenting: Jennifer McLain Hiramoto, Economic Development Director Reviewed By: Charity Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: ONTARIO BUSINESS ASSISTANCE LOAN PROGRAM GUIDELINES AND APPLICATION

RECOMMENDATION: That the City Council approve the adoption of the Ontario Business Assistance Loan Program Guidelines; and authorize the City Manager, or his designee, to make any necessary adjustments and execute all necessary documents to implement the loan program.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The Ontario Business Assistance Loan Program will consist of forgivable loans of up to $150,000 to eligible business owners within the program area. If approved, budget requests will be submitted to City Council for approval, as needed.

BACKGROUND & ANALYSIS: To encourage the continued development of Downtown Ontario and to incentivize tenants to fill vacant, sometimes historic, commercial space with unique and successful food and beverage operations, the City has developed a program to attract non-franchise independent restaurant and bar operators to a designated area of Downtown Ontario, as described in the program guidelines. These operations will help develop Downtown Ontario to a thriving 18-hour, regional attraction. While there are many prospective restauranteurs interested in opening a brick-and-mortar location in Downtown, a leading impediment is the high cost to outfit buildings with the required tenant improvements needed for grease traps, ventilation and other kitchen equipment, patios, and more. Market rate prices to outfit restaurants and bars is roughly $75 per square foot.

The City has developed a Program that can help solve for that problem, and lead to the attraction of more quality food and beverage businesses in Downtown. Through this program, the City may in its sole and complete discretion, enter into a "Business Assistance Loan Agreement" ("Loan

Agreement") for loans of up to $150,000 to business owners who provide evidence of leases, or are the property owner, within the Program area. The Loan Agreement, secured by a promissory note, will be written down 20 percent each year the business remains open and in good standing with the City. After five years, the loan will be forgiven, and the promissory note removed. Should the recipient not stay in their location for the full 5-years, the amount remaining will be owed to the City of Ontario. If unable to pay the remaining loan balance, any fixtures funded by the loan such as restaurant/kitchen equipment and/or furniture may be used to write down the remaining loan amount. At the time of default and termination of the agreement, said fixtures will be assessed for their fair market value and will become property of the City to utilize at their discretion.

In order to proceed with the implementation of this Program, guidelines need to be adopted. The guidelines contain the details of the eligibility requirements, amount of and type of financial assistance offered, eligible costs, application, and procurement and award processes. While this program is written with the intent on supporting Downtown businesses, the guidelines allow for the expansion of the geographic area as funds become available. Staff recommends that the City Council adopt both the Business Assistance Loan Program guidelines and Loan Agreement to further the goal of revitalizing Downtown Ontario and creating a destination for the community.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A BUSINESS ASSISTANCE LOAN PROGRAM

WHEREAS, the City Council of the City of Ontario (the "City") recognizes the vital role that businesses play in the economic health and vibrancy of the City; and

WHEREAS, the City Council has determined that support and growth of existing businesses and attraction of new businesses is a key priority to aid economic development within the City; and

WHEREAS, start-up costs are a necessary investment for businesses to remain competitive, attract customers, and enhance their operations, but can represent a significant financial burden, particularly for small or medium-sized enterprises; and

WHEREAS, an inability to access affordable financing and/or start-up costs can be a barrier to business profitability, potentially leading to business closures, blight, or relocations outside the City; and

WHEREAS, investment in physical spaces enhances aesthetic appeal of commercial areas, improves customer experience of residents and visitors to the City, and creates an overall more attractive environment; and

WHEREAS, the City seeks to establish the Business Assistance Loan Program (the "Program") to provide financial assistance to eligible businesses for start-up costs, including but not limited to restaurant equipment, furniture and fixtures, and applicable City permits and fees; and

WHEREAS, the Program is intended to enhance the economic vitality of the City by supporting local and regional operators classified as restaurants, cafes, bars/lounge, and similar food and beverage establishments located within Downtown Ontario; and

WHEREAS, the Program is intended to aid in the City's economic development goals by creating and retaining jobs within the City, increasing property values and tax revenues, revitalize commercial corridors and neighborhoods, encourage new and innovative businesses within the Downtown area contributing to the culture of the City of Ontario, and improve the overall business climate and quality of life in the City; and

WHEREAS, the City Council finds that providing financial assistance for start-up costs constitutes a valid public purpose by promoting the above stated objectives; and

WHEREAS, the Program offers qualifying applicants forgivable loans covering eligible costs at a rate not to exceed $75 per square foot of business operating space,

not to exceed One Hundred Fifty Thousand Dollars ($150,000) for eligible start-up costs, with loan forgiveness structured over a five-year period, contingent upon the applicant maintaining the improvements through the end of the five (5) year term; and

WHEREAS, the City has prepared a Business Assistance Loan Program Guidelines (the "Guidelines," shown in Exhibit A, attached and incorporated herein) and Form of Loan Agreement (the "Agreement," shown in Exhibit B, attached and incorporated herein) outlining the terms and conditions for participation in the Program, including loan eligibility, project approval requirements, maintenance obligations, and repayment terms in the event of noncompliance; and

WHEREAS, all legal prerequisites to the adoption of this resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE CITY OF ONTARIO AS FOLLOWS:

SECTION 1. All recitals are true, correct, and incorporated herein.

SECTION 2. The City Council hereby approves the Business Assistance Loan Program Guidelines and Form of Loan Agreement, attached hereto as Exhibits A and B, and authorizes implementation of the Business Assistance Loan Program in accordance with the Guidelines.

SECTION 3. The Economic Development Agency shall be responsible for administration of the Program, including revisions to the Guidelines. The Economic Development Agency is empowered to adopt application procedures, loan terms, and evaluation criteria, and other administrative procedures in accordance with the purposes of the Business Assistance Loan Program and in consultation with the City Attorney's Office.

SECTION 4. The Economic Development Agency shall evaluate all applications based on the Guidelines and make recommendations to the City Council. The City Council shall have the final authority to approve or deny loan applications and loan agreements.

SECTION 5. The City Clerk shall certify to the adoption of this Resolution and cause it to be recorded in the official records of the City.

SECTION 6. This Resolution shall take effect upon adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of April, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 15, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held April 15, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

BUSINESS ASSISTANCE LOAN PROGRAM GUIDELINES

(Attached Behind This Page)

EXHIBIT B

BUSINESS ASSISTANCE LOAN PROGRAM LOAN AGREEMENT

(Attached Behind This Page)

BUSINESS ASSISTANCE LOAN PROGRAM GUIDELINES

SECTION I- OVERVIEW OF PROGRAM

Purpose, Goals, and Objective of Program

a. The City of Ontario, in its continuing effort to support the revitalization of the Historic Downtown Area (**Downtown**), established the Ontario Business Assistance Loan Program (**Program**). The Program is a forgivable loan (**Loan**) program that will be offered to qualifying food and beverage operators that are opening within Downtown. The Program will offer funding to local and regional operators to help fund certain eligible start-up costs related to their business.

b. The goals of the Program align with the City's ongoing effort to develop the culture of innovation and entrepreneurship with the business community. The goals of the Program include to:

- Facilitate commercial revitalization;
- Stimulate private investment and customer patronage;
- Generate consumer opportunities by further substantiating the fragile nature of the Downtown area with new businesses being supported by this program;
- Encourage new and innovative businesses within the Downtown area, contributing to the culture of the City of Ontario; and
- Increase tax revenues by incentivizing attractive businesses to locate within the City.

c. The objective of the Program is to support the revitalization of Downtown by assisting new local and regional food and beverage operators with start-up costs funding opportunities otherwise unavailable.

Source of Program Funds

a. The funding for this program will be allocated from the City's General Fund.

Program Funds

a. As stipulated in the Loan Agreement, Loan is secured by a promissory note,

where twenty (20) percent of the Loan amount is written down at the end of each year that the business remains open over a five-year term.

b. Upon completion of year five, and if the borrower has complied with all terms of the Loan Agreement, the Loan will be forgiven, and the borrower will receive written confirmation that the loan is fully forgiven and the loan discharged.

c. Loan amount shall not exceed one hundred fifty thousand dollars ($150,000).

d. Total Loan amount shall be calculated upon approval of application.

e. Loan covers eligible costs at a rate not to exceed seventy-five dollars ($75.00) per square foot of business operating space.

f. Business operating space includes leased or owned interior space and exterior outdoor patios and/or balconies.

g. Eligible uses of funds to cover start-up costs include, but are not limited to, restaurant equipment, furniture and fixtures, City building permits and fees, and sewer connection fees through Inland Empire Utilities Agency (IEUA).

h. Final disbursement of Loan funds will be issued upon receiving a Notice of Completion.

SECTION II- PROGRAM REQUIREMENTS

Program Background

a. The City developed a Program to attract and incentivize local and regional food and beverage operators to occupy vacant spaces along Downtown. To receive disbursement of Program funds, applicant must meet and abide by the following Program Requirements.

Program Application

a. Applicant must submit a completed Program Application (**Appendix A**).

b. Applicant must submit as part of the Program Application a written statement detailing proposed use of funds and improvements to be made.

c. Incomplete applications will be returned to applicant with a statement noting that the reason that the application is incomplete.

Qualifying Properties

a. Only commercial properties located within the Downtown (**Appendix B**) that have Euclid Avenue-facing buildings between Emporia Street to G Street (100-200 blocks of South Euclid Avenue and 100-600 blocks of North Euclid Avenue) are eligible to apply.

b. The City, at its sole discretion, has the ability to amend the Program boundaries if a need can be demonstrated.

Property Status

a. Applicant must not be in default of a lease agreement, regulatory requirement of any governmental entity, or any other agreement or requirement with other private or public entities as to the proposed space and proposed space cannot be the subject of any legal dispute.

b. Applicant must have an active lease or be the property owner of proposed space for the entire five (5) year Loan term. Applicant must provide the City evidence of its right to possession of the proposed space to the satisfaction of the City.

c. Applicant must maintain property in accordance with City codes and standards.

d. Applicant agrees to remedy any City code violations within 30-days of issuance of Notice of Violation.

Business Operations

a. Applicant must be a local or regional food and beverage business with at least one current location and no more than seven locations in the United States or abroad.

b. Applicant must be a business that is classified as a restaurant, café, bar/lounge, or other similar food and beverage business.

c. Applicant must maintain a satisfactory health grade with the San Bernardino County Health Department for the duration of the Loan term.

d. Applicant must obtain and maintain a valid City of Ontario Business License.

e. Applicant must provide a written statement describing its business and how it aligns with the City's vision to enhance food and beverage options for residents and visitors.

f. Applicant must provide business marketing plan including links to any websites, social media platforms, etc.

SECTION III- PROGRAM FUNDS

Reservation of Program Funds

a. After the applicant has been approved for the Program, a Reservation of Funds Letter (**Appendix C**) will be issued for the approved Loan amount. This letter will reserve the approved Loan amount for ninety (90) days.

b. If the applicant fails to submit a Request for Approval of Start-Up Costs (**Appendix D**) within ninety (90) days, the reservation of Program funds may be cancelled.

c. If unforeseen conditions are delaying the applicant's ability to submit a Request for Approval, the applicant should contact the Economic Development Agency (EDA) immediately to discuss options to preserve the reservation of Program funds. One (1) extension of time up to ninety (90) days may be granted based upon a demonstration of hardship beyond the applicant's control and a good faith effort on part of the applicant to overcome such hardship.

Eligible Program Funds

a. Eligible uses of funds to cover start-up costs include, but are not limited to, restaurant equipment, furniture and fixtures, City building permits and fees, and sewer connection fees through Inland Empire Utilities Agency (IEUA).

b. Applicant is responsible for ongoing required renewals, maintenance, repairs, and/or malfunctions or damages caused by approved uses of funds to cover start-up costs for the entire five (5) year term. City will not be held responsible for any items mentioned above.

c. Applicant must request City review and approval of desired start-up costs

from the EDA to determine eligibility prior to any expenditure.

d. Ineligible costs include, but are not limited to, operating costs such as utilities, business overhead, rent or mortgage payments, payroll expenses, or third-party agency fees such as Health Department, ABC license, etc., with the exception of sewer connection fees through IEUA.

e. Program funds are not allowed to be used for any installation or labor costs associated with construction or business start-up costs and are strictly reserved for eligible fees and physical equipment, furniture, fixtures, or material for work completed prior to the issuance of the Notice of Completion (**Appendix E**).

Release of Program Funds

a. Applicant agrees to provide the City with itemized invoices or receipts for all approved eligible start-up costs prior to the release of funds.

b. After the applicant notifies the City that all work has been completed, an inspection will be conducted by the EDA at a reasonable time during working hours (Monday – Friday, 8:00 am – 6:00 pm). The City will authorize the release of Program funds to the applicant for approved start-up cost if and only if the City determines in its sole and reasonable discretion that the inspection reveals the funds were used as indicated in the application and as shown in the invoices or receipts submitted to the City.

c. Applicant agrees that should they default on the Loan Agreement prior to the end of the five- year term, any unpaid Loan amount shall be paid in full, with no interest, within 2 years of the date of default, unless another date is agreed upon in the City's reasonable discretion and consistent with the purposes of these Guidelines. Any fixtures funded by the Loan such as restaurant/kitchen equipment and/or furniture may be used to write down the remaining Loan amount. At the time of termination, said fixtures will be assessed at fair market value and will become property of the City to utilize at its discretion.

d. Program funds will be disbursed as specified in the Loan Agreement entered into between the City and applicant.

Section IV- AMENDMENTS & DISCLOSURES

Amendments

a. Amendments to the Program Guidelines may be made from time to time by the City. Authority shall be granted to the City Manager or his/her designee to grant reasonable waivers or make reasonable amendments to these Guidelines, apart from Federal guidelines and regulations, consistent with the purposes of this Program.

Disclosures

a. City at its own discretion has the right to make modifications on the business classifications, geographic locations, and any other requirements of these Guidelines.

b. Program is on a first-come, first-served basis, and only as funds become available.

APPENDIX A

ONTARIO BUSINESS ASSISTANCE LOAN PROGRAM APPLICATION

BUSINESS INFORMATION

Business Name:
Proposed Business Address:
Select One: *(Attach copy of Lease or Deed of Trust)* ☐ Lease ☐ Own
Assessor Parcel Number(s):
Total Square Footage of Business Operating Space:
Business Type: *(Select One)* ☐ Restaurant ☐ Cafe ☐ Bar/Lounge ☐ Other (*specify):* _____
Other Business Locations: *(Provide both number of additional locations and respective address)* Number of additional locations: _____ Additional location addresses: _____ _____ _____
PROPOSED BUSINESS PROJECTIONS Estimated Annual Gross Sales: $_____ Amount of Personal investment: $_____

Amount of Investment by Landlord: $_____
Provide a written statement describing the business and how it aligns with the City's vision to enhance food and beverage options for residents and visitors. This statement may be written and provided as a separate document.
Provide a written statement describing the business' marketing plan. This statement may be written and provided as a separate document.
Provide a written statement, including cost estimates, detailing the proposed use of funds. This statement may be written and provided as a separate document.

APPLICANT CONTACT INFORMATION

Name:
Mailing Address:
City, State, ZIP Code:
Phone #:
E-mail:
Business Social Media Accounts: Instagram: Facebook: TikTok: X: Other:

PROPERTY OWNER OR AGENT CONTACT INFORMATION

**Fill out if property is leased and not owned personally by applicant*

Name:
Phone:
E-mail:

AGREEMENT OF APPLICANT

By signing this application, you are certifying that all the information provided is true and accurate to the best of your knowledge. You are also certifying and acknowledging that submitting this application does not automatically guarantee a reservation of funds.

_____ _____

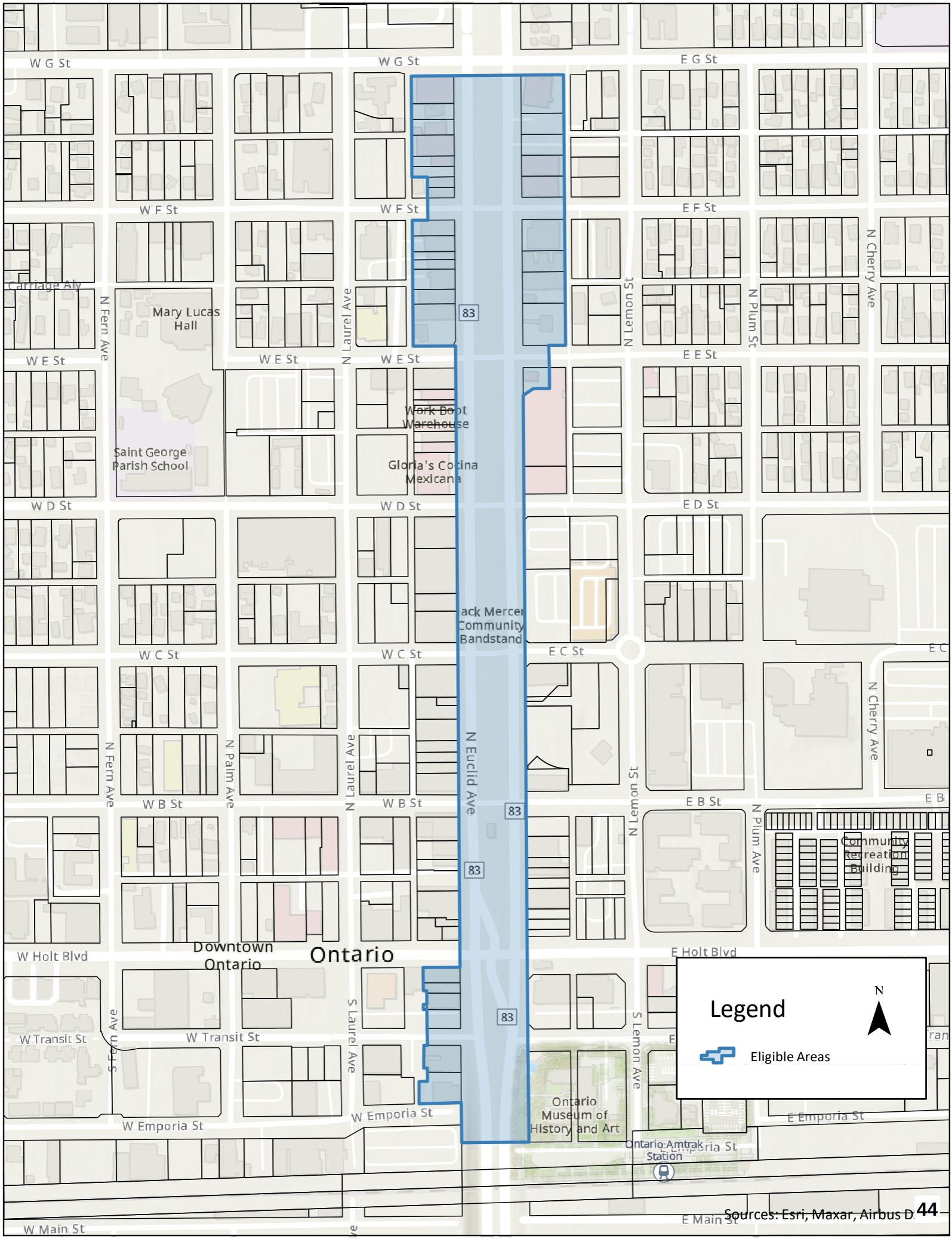
Signature Date

_____

Printed Name

APPENDIX B:

Boundary Map (see attached)


W G St
W F St
E F St
W E St
E E St
W D St
E D St
W C St
E C St
W B St
E B St
E Holt Blvd
W Holt Blvd
W Transit St
W Emporia St
E Emporia St
W Main St
E Main St
N Fern Ave
N Laurel Ave
N Lemon St
N Plum St
N Cherry Ave
N Palm Ave
N Euclid Ave
S Laurel Ave
S Lemon Ave
S Palm Ave
Carriage Aly
Mary Lucas Hall
Saint George Parish School
Work Boot Warehouse
Gloria's Cocina Mexicana
Jack Mercer Community Bandstand
Community Recreation Building
Downtown Ontario
Ontario
Ontario Museum of History and Art
Ontario Amtrak Station
83
Legend
Eligible Areas
N
Sources: Esri, Maxar, Airbus D

APPENDIX C:

Reservation of Funds Letter (see attached)

ONTARIO BUSINESS ASSISTANCE LOAN PROGRAM
Reservation of Funds Letter

[DATE]

[Business Name]
[Applicant Name]
[Business Address]

Dear [Applicant Name],

Congratulations! You have been selected to participate in the **Business Assistance Loan Program** (**Program**). The City is pleased to inform you that program funds in the amount of **$**_____ have been reserved for your proposed business improvements.

In accordance with **Program Guidelines**, within **ninety (90) days** from the date of this letter, you are required to submit a written **Request for Approval of Start-Up Costs** form. This form is included in the **Program Guidelines** and must be completed in full. Additionally, you must provide supporting documentation, including vendor and supplier quotes, estimates, and any other relevant materials detailing the costs of each line item specified in your request form.

If unforeseen conditions arise that may delay your ability to submit the **Request for Approval of Start-Up Costs** form within the required timeframe, please contact the **Economic Development Agency (EDA)** immediately to discuss possible options for preserving your reserved program funds. Under certain circumstances, a single extension of time, up to **ninety (90) days**, may be granted. To qualify for an extension, you must demonstrate a hardship beyond your control and show a good faith effort to overcome such hardship.

Failure to submit the required **Request for Approval of Start-Up Costs** form, along with supporting documentation, or to request an extension within the allowable timeframe, may result in the forfeiture of your reserved Program funds.

If you have any questions or need assistance, please do not hesitate to contact Peter Pallesen at (909) 395-2333.

We look forward to supporting your business through this program.

Sincerely,

Peter Pallesen
City of Ontario, Economic Development Agency
P: (909) 395-2333
E: PPallesen@ontarioca.gov

SAMPLE

APPENDIX D:

Request for Approval of Start-Up Costs (see attached)

ONTARIO BUSINESS ASSISTANCE LOAN PROGRAM
REQUEST FOR APPROVAL OF START-UP COSTS

Business Information

- **Business Name:** _____
- **Business Address:** _____
- **Loan Number:** _____

Description(s) of requested start-up cost(s)

***All requested start-up costs must include a formal quote or estimate from vendor, supplier, or online merchant.**

Description of Start-Up Cost	Estimated Price	Notes

Number of Items:_____ **Total Estimated Cost: $xxx,xxx**

Signature

Business Owner: _____ Date: _____

Printed Name: _____

For Internal Use Only:

- **Final Approval Date:** _____

Program Administrator Contact Information:
Name: _____
Phone: _____
Email: _____

APPENDIX E:

Notice of Completion (see attached)

ONTARIO BUSINESS ASSISTANCE LOAN PROGRAM
NOTICE OF COMPLETION

Business Information

- **Business Name:** _____
- **Business Address:** _____
- **Loan Number:** _____

Inspection Information

- **Date of Final Building Inspection:** _____
- **Building Permit Number(s):** _____
- **Health Department Permit Number(s):** _____

Program-Funded Improvements

Description of Improvement	Completed (Yes/No)	Notes

Certification of Completion

I certify that all improvements funded by the Business Assistance Loan Program have been properly installed, inspected, and approved by the appropriate regulatory agencies.

Signatures:

- **Building Inspector:** _____ Date: _____
- **Program Administrator:** _____ Date: _____
- **Business Owner:** _____ Date: _____

For Internal Use Only:

- **Final Approval Date:** _____

Program Administrator Contact Information:
Name: _____
Phone: _____
Email: _____

FORM OF LOAN AGREEMENT

CITY OF ONTARIO
BUSINESS ASSISTANCE LOAN PROGRAM AGREEMENT

THIS AGREEMENT, entered into this _____day of _____, _____, between the City of Ontario, California (the "City" or "Lender") and the following designated Owner and/or Lessee ("Borrower"):

Owner Name: _____

Lessee's Name: _____

Name of Business: _____

Business Tax ID #: _____

Address of Property to be improved: _____

RECITALS:

WHEREAS, the City of Ontario has established the Business Assistance Loan Program (the "Program") as detailed in the Business Assistance Loan Program Guidelines, on file with the City Clerk of the City of Ontario (the "Guidelines"), incorporated herein by reference; and

WHEREAS, said Program is administered by the City with the advice of the City Council for the purpose of assisting with eligible start-up costs such as restaurant equipment, furniture and fixtures, City building permits and fees, and sewer connection fees through the Inland Empire Utilities Agency ("IEUA"); and

WHEREAS, pursuant to the Program, the City has agreed to loan qualifying Borrowers for the cost of eligible uses of funds to commercial establishments up to a maximum of One Hundred Fifty Thousand Dollars ($150,000) per Borrower in the form of a forgivable, no-interest loan whereby the balance of the loan shall be reduced by 20% each year the Borrower remains open over a five (5) year term; and

WHEREAS, the Borrower's property is located within the Program Area, and the Borrower desires to participate in the Program pursuant to the terms and provisions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements obtained herein, the City and the Borrower do hereby agree as follows:

SECTION 1

a. All Recitals above are true, correct, and incorporated herein.

b. Under this Agreement, the City provides Borrower as loan for certain Program-eligible property start-up costs ("Eligible Costs"), as provided in Borrower's loan application, attached hereto and incorporated herein as Exhibit "A". The total amount of the loan to Borrower under this Agreement shall be $__,____,___ (_____ Dollars). The loan shall cover eligible costs at a rate not to exceed $75 per square foot of business operating space, including approved private outdoor patios. Thereafter, the loan balance shall be reduced by 20% each year the Borrower maintains the improvements in accordance with the Program. If the improvements are maintained for five (5) years from and after the date of completion and approval of the Eligible Costs by the City, and the Borrower is not in default of this Agreement, the loan shall be forgiven as paid in full, and the City shall provide written confirmation that the loan has been discharged.

c. Borrower agrees that they are responsible for all ongoing required renewals of permits/licenses, maintenance, repairs, and/or malfunctions or damages caused by approved uses of funds to cover start-up costs for the entire five (5) year term. City will not be held responsible for items mentioned above.

d. Borrower agrees to hold a satisfactory standing with both City codes and regulations as well as any and all applicable third-party regulatory and governing agencies, including, but not limited to, the San Bernardino County Health Department, Department of Alcoholic Beverage Control, or California State Board of Equalization. Should Borrower fail to maintain a satisfactory standing and/or become out of compliance with any regulatory or governing agency, the City may issue a thirty (30) day written notice to the Borrower to correct the deficiencies indicated in City's notice. If the Borrower fails to correct the stated deficiencies within thirty (30) days of the notice, the City will have the right to demand repayment of the then outstanding loan amount.

e. All work on Eligible Costs must be completed within one-hundred eighty (180) days from the date of approval of Request of Approval of Start-Up Costs, unless an extension is granted in the reasonable discretion of the City. Upon completion of the Eligible Costs, the Borrower shall submit to the City proof of payment and invoices or receipts showing the actual full cost.

f. Loan disbursements shall occur as follows: upon submission to the City of itemized invoices or receipts for approved eligible start-up costs. Final invoice or receipt shall require a Notice of Completion.

   i. Borrower agrees to provide the City with itemized invoices or receipts for all Eligible Costs prior to any disbursement of funds.

   ii. After the Borrower notifies the City that all work to install Eligible Costs has been completed, an inspection will be conducted by the City at a reasonable time during working hours (Monday – Friday, 8 am – 6 pm). The City will authorize the release of Program funds to the Borrower for Eligible Costs if and only if the City determines in its sole and reasonable discretion that the inspection reveals all funds were used as indicated in the application and as shown on the invoices or receipts submitted to the City.

g. Ineligible costs include operating costs, such as other utilities, business overhead, rent, or mortgage payments; payroll expenses; third-party agency fees, except Inland Empire Utilities Agency, including but not limited to Health Department and Alcohol Beverage Control license fees; and any installation or labor costs associated with construction or business start-up, unless otherwise provided in this Agreement.

h. Disbursement of the loan funds for Eligible Costs is contingent on Borrower's use of the funds as indicated in Borrower's project application, shown in Exhibit "A". City may refuse to disburse funds if it finds, in its reasonable discretion, that Borrower has not used the funds as indicated in Borrower's project application.

i. The Borrower must operate a business classified as a restaurant, café, bar/lounge, or other similar food and beverage business; have at least one existing store/location and no more than seven (7) locations in the United States or abroad; proposes to locate within Downtown Ontario; provide financial statements demonstrating capacity and success in operating said business; submit a written statement describing the business and how it aligns with the City's vision to enhance food and beverage options for residents and visitors; have an active lease or be the property owner of the proposed business location; submit a business marketing plan, including links to any websites, social media platforms, etc.; be able to demonstrate or provide drawings of proposed tenant improvements, along with cost estimates; and obtain a valid City of Ontario Business License.

j. The Borrower agrees to provide the City with invoices for all eligible costs prior to the disbursement of funds; maintain property in accordance with City codes and standards and to remedy any City code violations within thirty (30) days of issuance of notice of violation; provide the City with financial statements, such as profit and loss statements, every quarter until the end of the five-year term; maintain a satisfactory health grade with the San Bernardino County Health Department for

the duration of the loan term; and maintain a valid City of Ontario Business License for the duration of the loan term.

SECTION 2

All payments for Eligible Costs must be approved in writing by the City. Following approval, the Borrower shall contract for the Eligible Costs and shall commence and obtain all such Eligible Improvements within one-hundred eighty (180) days from the date of such approval. The Borrower may request a ninety (90) day extension provided there is a demonstrated hardship as determined in the sole and reasonable discretion of the City.

SECTION 3

The City shall periodically inspect that Eligible Costs have been obtained in compliance with this Agreement. Such inspections shall not replace any required permit inspection by City building inspectors. All work that is not in conformance with the approved plans, design drawings, and specifications provided in Borrower's application shall be immediately remedied by the Borrower, and deficient or improper work shall be replaced and made to comply with the approved plans, design drawings, and specifications and the terms of this Agreement.

SECTION 4

If the Borrower fails to complete the Eligible Costs in conformity with the approved plans, design drawings, and specifications and the terms of this Agreement, and the Borrower fails to cure such default following ninety (90) days of written notice from the City by certified mail to the address listed above, the City will not be obligated to disburse any additional funds under this Agreement and such failure to cure on part of Borrower shall be treated as a default of this loan.

SECTION 5

This Agreement shall be binding upon the City and upon the Borrower and its successors, to said property for a period of five (5) years from and after the date of completion and approval of the start-up costs provided herein unless otherwise agreed upon by the parties in writing. It shall be the responsibility of the Borrower to inform subsequent owners and lessees of the provisions of this Agreement.

SECTION 6

The Borrower agrees to maintain ongoing required renewals, maintenance, repairs, and/or malfunctions or damages caused by approved uses of funds to cover start-up costs for the entire five (5) year term at his/her sole expense during this Agreement unless otherwise agreed upon by the parties in writing. In the event that the Borrower fails to maintain the start-up costs and/or becomes out of compliance with City code or any applicable regulatory or governing agency, the City may issue a thirty (30) day written notice to the Borrower to correct the deficiencies indicated in City's notice. If the Borrower fails to correct the stated deficiencies within thirty (30) days of the notice, the City will have the right to demand repayment of the then outstanding loan amount.

SECTION 7

The Borrower agrees to comply with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal laws, pertaining to the development and use of the property and construction of the improvements, as well as operations conducted on the property. The Borrower agrees that the City shall not be liable for, and covenants and agrees to indemnify and hold harmless the City and its officials, officers, employees, and agents from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or relating to noncompliance with all municipal, county, state and federal laws. The Borrower agrees that it will require any contractor to comply with all Borrower local, state and federal laws, and will incorporate these laws in any written agreement between the Borrower and any and all contractors.

SECTION 8

a. No officials, officers, employees, or agents of the City shall be personally liable to the Participant, or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Borrower or successor or on any obligation under the terms of this Agreement.

b. Should the Borrower default on this Agreement prior to the end of the five (5) year term, and following any applicable cure period, the remaining unpaid loan amount shall become immediately payable and any fixtures funded by the loan, such as restaurant/kitchen equipment and/or furniture, may be used to offset the remaining loan amount. Such fixtures will be assessed for their fair market value and, upon agreement, become property of the City for utilization at its sole discretion. The Borrower shall pay the amount in full, with no interest, within two years of the date of default. The date of default is the last date on which Borrower has an opportunity to cure a default and fails to do so, as provided in a written notice of default sent by the City to the Borrower via certified mail to the address listed above.

c. Pursuant to, and in accordance with, all terms and provisions of this Agreement, for value received, Borrower hereby pledges and grants to the City a continuing general lien on, and security interest in, any fixtures funded by the loan, such as restaurant/kitchen equipment and/or furniture, in order to secure the payment owed

to the City as described above, evidenced by this Agreement and the promissory note (the "Promissory Note"), attached hereto as Exhibit "B" and incorporated by reference. The City's security interest shall continually exist until the loan has been paid in full or forgiven by the City.

SECTION 9

The Borrower releases the City from, and covenants and agrees that the City shall not be liable for, and covenants and agrees to indemnify and hold harmless the City and its officials, officers, employees, and agents from and against any and all losses, claims, damages, liabilities, or expenses, of every conceivable kind, character and nature whatsoever arising out of or, arising from or relating to the use of the loan funds. The Borrower further covenants and agrees to pay for or reimburse the City and its officials, officers, employees, and agents for any and all costs, reasonable attorney's fees, liabilities, or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, or cause of action related to the Borrower's participation in the Program. The City shall have the right to select legal counsel and to approve any settlement in connection with such losses, claims, damages, liabilities, or causes of action related to the Borrower's participation in the Program. The provisions of this section shall survive the completion of said improvements.

SECTION 10

Nothing herein is intended to limit, restrict, or prohibit the Borrower from undertaking any other work in or about the subject premises, which is unrelated to the improvement provided for in this Agreement.

SECTION 11

If there is any conflict between the Guidelines and this Agreement, this Agreement shall control.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date first appearing above.

BORROWER (the "Borrower"):

{Entity Name, entity type}

By

_____

Name of Authorized Representative:
Title:

CITY OF ONTARIO (the "Lender")

_____
Scott Ochoa, its City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT “A”

Borrower Application

EXHIBIT "B"

FORM OF PROMISSORY NOTE

APPLICANT NAME

Loan Number ####

PROMISSORY NOTE

${up to $150,000}.00 Month/Day, 202_

FOR VALUE RECEIVED, the undersigned (individually and collectively, "Borrower"), hereby promise(s) to pay to the order of CITY OF ONTARIO ("Lender") the principal sum of _____ Dollars and No Cents (${Dollar Amount}.00) as specified in the Business Assistance Loan Program Agreement between Borrower and Lender dated as of the date hereof (the "Business Assistance Loan Program Agreement"). Principal is payable to Lender at the times specified in the Business Assistance Loan Agreement. All payments shall be made to Lender in lawful money of the United States of America at {ADDRESS}, or such other place as Lender directs, in same day funds. Each capitalized term used in this note that is defined in the Business Assistance Loan Program Agreement will have the meaning specified in the Business Assistance Loan Program Agreement. This note is referred to in, and is subject to the terms and conditions of the Business Assistance Loan Program Agreement.

Borrower has signed this note effective as of the day and year first written above.

BORROWER

{ENTITY NAME}

By: _____
{AUTHORIZED REPRESENTATIVE}
{TITLE}

{ENTITY NAME}

By: _____
{AUTHORIZED REPRESENTATIVE}
{TITLE}

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Economic Development Prepared By: Peter Pallesen Department: Prepared By: Peter Pallesen Staff Member Presenting: Jennifer McLain Hiramoto, Economic Development Director Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: AMENDMENT TO THE DOWNTOWN ONTARIO RESTAURANT AND BREWERY EQUIPMENT REBATE PROGRAM

RECOMMENDATION: That the City Council approve the amendment to the Downtown Ontario Restaurant and Brewery Equipment Program; and authorize the City Manager and/or his designee to execute any documents related to this program.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes $60,000 in appropriations to fund this program.

BACKGROUND & ANALYSIS: To encourage the continued development of Downtown Ontario and to incentivize tenants to fill vacant commercial space with sustainable business, the City has developed a program to attract non-franchise and non-chain independent restaurants, wineries, craft breweries and/or distilleries to a designated area of Downtown Ontario.

The proposed amendment to the program allows the City in its sole and complete discretion to enter into a "Restaurant/Brewery Rebate Program Loan Agreement" (Attachment A) for loans of up to $20,000 to business owners who provide evidence of leases within the Program area for which they have made qualifying purchases of certain capital equipment. Currently, this program allows for loans of up to $10,000 to qualified applicants. Through this amendment, the City will increase the total allotment to $20,000 in an effort to provide a stronger incentive package for prospective restaurateurs, breweries, and wineries looking to locate in Downtown Ontario. To date, the program has seen great success in supporting new and existing business owners including Mule Car Smokehouse, Mestiza Coffeehouse, and Strum Brewery to name a few. The amendment does not alter the existing program boundaries of Downtown Ontario, as detailed in the guidelines, but does provide the City Manager and/or his designee, at their sole discretion, to adjust those boundaries based upon the fluid priority of Economic Development.

The balance of the loan will be reduced by 20% each year if the Borrower has remained in business at the qualifying location. If the Business remains at the qualifying location for five years, the loan shall be cancelled, and the promissory note returned to the Borrower as paid in full. Should a recipient not stay in their location for the full 5 years, the amount remaining will be owed to the City of Ontario. Economic Development Agency staff will review all applications to ensure equipment is a qualified purchase, but may include purchase of commercial freezers, range, fermenters, walk-in cooler.

In order to proceed with the implementation of the program, the amended program guidelines need to be adopted. The program guidelines contain the details of the eligibility requirements, amount and type of financial assistance offered, eligible improvements, application, and procurement and award processes. Staff recommends that the City Council adopt the Downtown Ontario Equipment Rebate Program Guidelines, to further the goal of revitalizing downtown and creating a destination for the community.

RESTAURANT/BREWERY REBATE PROGRAM

LOAN AGREEMENT

This AGREEMENT is made and entered into this __ day of (month), (year) (the "Effective Date") by the CITY OF ONTARIO through its Economic Development Agency ("City" or "Lender"), and _____ (or "Borrower") and the Party or Parties, on the terms and conditions set out below.

RECITALS

A. To encourage the continued development of Downtown Ontario and to help fill vacant commercial space with sustainable business, the City has developed a program to attract small local restaurants and craft breweries, distilleries or wineries to a designated area of Downtown Ontario within the boundaries extending to G Street on the North, Holt Boulevard to the South, Palm Avenue to the West and Plum Avenue to the East (the "Restaurant/Brewery Rebate Program" or "Program"); and

B. The City may in its sole and complete discretion make loans of up to $20,000 to business owners who provide evidence of leases within the Program area for which they have made qualifying purchases of certain capital equipment when such new businesses meet the applicable terms and conditions of the Program, including but not limited to, square footage and an administrative use permit ("AUP"); and

C. Borrower has obtained an AUP and has provided evidence of a lease within the qualifying location as well as of the purchase of a _____ in the amount of and has applied for the loan within one year of that purchase; and

D. After review, the City has verified and determined that Borrower is eligible for such a loan.

Now, therefore, the Parties agree as follows:

1. Recitals: The Recitals set out above are true and correct.

2. Loan. Lender loans to Borrower and Borrower borrows from Lender, on the terms and conditions set out here, the total amount of $_____. The loan proceeds may be used for any business purpose related to borrower's business within the Program area

(a) The loan will be paid to Borrower in a lump sum upon execution of this Loan Agreement.

(b) The term of the loan is for a maximum of five (5) years commencing on the date of execution of this Loan Agreement.

(c) The loan will not bear interest.

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(d) For each fiscal year after Effective Date of agreement (i.e. the first such year being July 1, 2020 through June 30, 2021), the balance of the loan shall be reduced by 20% if the Borrower has remained in business at the qualifying location. If the Borrower remains in business at the qualifying location for five (5) years from Effective Date, the loan shall be cancelled and the promissory note returned to the Borrower as paid in full.

3. Default. Borrowers shall be considered in default under (a), (b) or (c), as follows:

(a) In the event that the Borrower does not remain in business at the qualifying location at any time during the five (5) year period, the balance of the loan then owed shall be accelerated and due and payable in full, without interest to the City 30 calendar days from the date of closure or relocation of the business. In the event the loan is not paid within that 30-day time period, the balance shall bear simple interest at the rate of 10% per annum. Thereafter, any payment shall be applied first to interest and then to principal.

(b) The loan shall be considered in default and the balance due accelerated and due and payable within 30 calendar days in the event that the Borrower's ABC license is suspended or cancelled or the AUP is suspended or cancelled. In event that the loan is not paid within that 30-day time period, the balance shall bear simple interest at the rate of 10% per annum. Thereafter, any payment shall be applied first to interest and then to principal.

(c) Lender assigns the loan, the lease or sells or transfers the business.

(d) Borrower must notify Lender immediately in writing in the event that either (a) or (b) above occurs or applies.

(e) In the event of a default, Lender may pursue any legal remedy available to it to secure payment of any and all monies owed by Borrower. Nothing herein shall preclude Lender from waiving any breach or breaches which, in the sole judgment of Lender, are not substantial or do not affect the repayment of the loan herein prescribed. The remedies provided by this paragraph are cumulative and in addition to and independent of any other remedies given Lender by law.

4. Additional Terms and Conditions:

(a) Borrower shall indemnify, hold harmless, and defend (with counsel of City's choosing) Lender, its officers, officials, agents, volunteers and employees, from and against any and all claims, demands, damages, causes of action, costs, fines, expenses, liability or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of or pertaining to, the acquisition, development, operation or maintenance of the property described herein except for liability arising out of the sole negligence or willful misconduct of the Lender, its officers, officials, agents, volunteers or employees. In the event the City or its officers, officials, agents, volunteers or employees are named as co-defendant(s) in any court proceeding related to the business, the Borrower shall notify all affected parties of such fact and shall represent the Parties in such legal action unless the Parties undertake to represent themselves as co-defendant(s) in such legal action, in which event an individual Party shall bear its own litigation costs, expenses and attorney's fees.

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(b) No delay or failure of City in the exercise of any right or remedy hereunder shall affect any such right or remedy and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof, and no action taken or omitted by City shall be deemed a waiver of any such right or remedy.

(c) Borrower waives demand, protest, presentment, notice of nonpayment, notice of protest, notice of dishonor, and diligence in bringing suit against any party and does hereby consent that time of payment of all or any part of said amount may be extended from time to time by the Lender hereof without notice.

(d) Borrower is responsible for any and all costs of collection of the loan amount, plus interest, including but not limited to any court costs and attorneys' fees.

(e) Any notice to the Borrower shall be given by personally delivering or mailing such notice by first-class mail, postage prepaid, addressed to the Borrower at the address set out below, or to such other address as the Borrower may designate by written notice to the Lender. Any notice to the Lender shall be given by mailing such notice by personal delivery or mailing such notice first class mail, postage prepaid, addressed to Lender at the address set out below. Notice shall be deemed received upon personal delivery or three (3) days after deposit in the U.S. Mail.

Borrower: _____
_____
_____

Lender: City of Ontario
303 E. "B" Street
Ontario, CA 91764

In witness whereof, the Parties signing below and authorized to do so have executed this Agreement as of the date(s) set forth below.

Borrower:	Lender:
_____	_____
By:	By: City of Ontario
_____	_____
Date	Date

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Downtown Ontario Equipment Rebate Program

To encourage the continued development of Downtown Ontario and to help fill vacant commercial space with sustainable business, the City has developed a program to attract small local independent, full-service restaurants or wineries and craft breweries or distilleries to the City. The boundaries of this program will be adjustable at City discretion, based upon the fluid priorities of Economic Development.

1. Program Details:
   - The City may in its sole and complete discretion make loans of up to $20,000 to business owners who provide evidence of leases within the current Program area for which they have made qualifying purchases of certain capital equipment.
   - The balance of the loan shall be reduced by 20% each year that the Borrower has remained in business at the qualifying location. If the Borrower remains in business at the qualifying location for five
     (5) years, the loan shall be canceled, and the promissory note returned to the Borrower as paid in full. Should a recipient not stay in their location for the full 5 years, the amount remaining will be owed to the City of Ontario.
   - Eligible equipment purchase must be necessary to the operation of the business. Examples of qualified equipment are provided as part of the application packet. Economic Development Agency staff will review all applications to ensure equipment is a qualified purchase.

2. Qualifications and Requirements:
   - Must have lease agreement equal to or greater than 5 years.
   - Business must be under 10,000 square feet.
   - Must be an approved business in the City of Ontario with current business license and applicable permits for location. This includes obtaining any necessary permits for instillation of equipment.
   - Applicants must be a fall into current industry definitions for Craft Brewery, Craft Distillery, or be a qualified Independent Full-Service Restaurant or Winery.

3. Application Process:
   - Complete the Restaurant/Brewery Equipment Purchase Program Application. Total cost of equipment purchases, and receipts will be included as part of application.
   - Provide proof of 5 year or longer lease agreement.
   - Provide description of equipment use for operation of business and proof of installation at location.
   - Economic Development Agency Staff will review each application for accuracy and to ensure all eligibility requirements are met.
   - Funding is subject to availability and will be paid to business upon approval of application and confirmation of receipts detailing purchases, including inspection and verification of installation of equipment by City Staff.

Downtown Ontario Equipment Rebate Program

Map of Program Boundary



Examples of Qualified Commercial Equipment with Estimated Prices:

- Beer Keg Shelf – $300–$500
- Cookers (Distilling) – $1,000–$5,000
- Crowler Machine – $2,500–$4,000
- Deep Fryer – $1,200–$3,500
- Dishwasher – $2,000–$5,000
- Draft Faucet – $200–$500
- Faucet Draft Tower – $1,500–$3,000
- Fermenter – $3,000–$10,000
- Freezer (Chest/Upright/Walk-In) – $1,000–$8,000
- Grill – $1,500–$6,000
- Nitro Faucet – $250–$600
- Oven – $2,000–$6,000
- Power Pack (Cooling System) – $3,000–$7,000
- Range – $2,000–$6,500
- Reach-In Cooler – $2,500–$7,000
- Refrigerator – $1,500–$6,000
- Sink – $300–$1,000
- Steam Table – $1,000–$2,500
- Still – $2,500–$10,000
- Walk-In Cooler – $6,000–$15,000
- Wine Racks – $500–$1,500
- Wine Refrigerator – $1,000–$3,000

Downtown Ontario Equipment Rebate Program

APPLICATION SUBMITTAL CHECK LIST

- ☐ Completed Application
- ☐ Proof of 5 year or longer lease agreement
- ☐ Total Cost and Receipts for Equipment being requested for rebate
- ☐ Proof of Installation of equipment (City reserves right to inspect)
- ☐ Business must have current Business License and all associated permits for operation (City Staff will verify for accuracy)

Submit all applications to the City of Ontario Economic Development Agency, Attention: Equipment Rebate Program, 303 E. B Street Ontario, CA 91764.

Any questions that may arise or any needs of assistance please reach out to Peter Pallesen, Economic Development Coordinator: PPallesen@OntarioCA.gov & (909 395-2333)

Downtown Ontario Equipment Rebate Program

APPLICATION FOR EQUIPMENT REBATE PROGRAM

Date: ___/___/____

APPLICANT NAME:	
Name of Business: _____ Contact Person (if different from applicant): _____ Email: _____ Phone: _____ Square Footage of Business: _____	
Current Business Address:	
Application being submitted for: ☐ Craft Brewery ☐ Craft Distillery ☐ Independent Full-Service Restaurant ☐ Independent Winery	
Please Describe Equipment Being Purchased (attach additional pages if needed):	
Describe Equipment's critical use in operation of the business (attach additional pages if needed):	
Amount requested (maximum request $20,000)	
Signature of Applicant	Date

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Daniel P Beers Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: AUTHORIZE THE PURCHASE OF CHARGEPOINT ELECTRIC VEHICLE CHARGERS FOR THE CITY HALL PARKING STRUCTURE WITH BODEV, INC.

RECOMMENDATION: That the City Council take the following actions:

A. Authorize a cooperative purchase agreement for D&C22-012 City Hall Parking Structure with BodEV, Inc., of La Habra, California, for the purchase of ChargePoint electric vehicle (EV) chargers for the City Hall Parking Structure in the amount of $559,482 plus a contingency amount of $56,000 for a for a total contract amount not-to-exceed $615,482 consistent with the terms and conditions of the Sourcewell Contract Number 032124-ELV; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project including, but not limited to agreements, assessments, easements, reduction of retention accounts, contracts amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The proposed Construction Contract with BodEV, Inc. is in the amount of $559,482 plus a contingency amount of $56,000 for a total not-to-exceed contract amount of $615,482. If approved, appropriations in the Air Quality Improvement Fund and Capital Projects Fund will be requested at future quarterly budget updates to the City Council for approval as needed.

BACKGROUND & ANALYSIS: On April 4, 2023, the City Council authorized a Construction Contract with McCarthy Building Companies, Inc. to provide design-build construction services for the City Hall Parking Structure. Per the California Green Building Code, new non-residential facilities with over 201 parking spaces must make 20% of the total number of parking spaces EV capable and 25% of those parking spaces ready for use on day one. If approved, BodEV, Inc. will supply 19 Dual Port EV chargers and 6 Single Port EV Chargers for a total of 25 EV Chargers that will be ready and operable for use as of day one for the City Hall Parking Structure.

The City Hall Parking Structure is scheduled to become operational by Summer of 2025.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
GOODS & SERVICES AGREEMENT

This Agreement is made and entered into as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and **BodEV, Inc.**, a Corporation with its principal place of business at **2581 Union Ave, La Habra, CA 90631** ("Vendor"). City and Vendor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

A. Vendor desires to perform and assume responsibility for the provision of certain services and goods required by the City on the terms and conditions set forth in this Agreement. Vendor represents that it is experienced in providing similar services and goods to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California and that is familiar with and understands the needs of City.

B. City desires to engage Vendor to sell to City the materials and/or equipment and/or render such services as more particularly described in this Agreement.

TERMS

1. SCOPE OF SERVICES.

1.1 General Scope of Services. Vendor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the **EV Chargers for the City Hall Parking Structure** ("Services") which are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

1.2 Goods. Vendor agrees to sell to City and City agrees to purchase the materials and/or equipment ("Goods") as specified and per the specifications attached hereto and

incorporated herein as Exhibit "A." Unless specifically stated otherwise, the Goods shall be new and unused and of the current production year.

2. TERM.

2.1 The term of this Agreement shall be from **April 15, 2025,** to **October 31, 2025**, unless earlier terminated as provided herein. Vendor shall provide all Goods and complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the work.

3. FEES AND PAYMENTS.

3.1 Compensation. Vendor shall receive compensation, including authorized reimbursements, for all Goods provided and Services rendered under this Agreement at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Five Hundred Fifty-Nine Thousand Four Hundred Eighty-Two Dollars ($559,482**) without written approval of City's Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Payment of Compensation. Vendor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Vendor and Goods provided. The statement shall describe the amount of Services and Goods provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all non-disputed and approved charges thereon.

3.3 Reimbursement for Expenses. Vendor shall not be reimbursed for any expenses unless authorized in writing by City.

3.4 Extra Work. At any time during the term of this Agreement, City may request that Vendor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Goods and Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Vendor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.5 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Vendor shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Vendor in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Vendor is not entitled: (1) Vendor shall immediately notify the City and the financial institution; (2) Vendor shall not withdraw any of the funds which were erroneously deposited or to which Vendor is not entitled; and (3) Vendor authorizes both the City and financial institution to

take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Vendor is not entitled.

4. RESPONSIBILITIES OF VENDOR.

4.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Vendor or under its supervision. Vendor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Vendor on an independent contractor basis and not as an employee. Vendor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Vendor shall also not be employees of City and shall at all times be under Vendor's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Vendor or any of Vendor's officers, employees or agents, except as set forth in this Agreement. Vendor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of providing Goods and Services under this Agreement and as required by law. Vendor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

4.2 Schedule of Services.

4.2.1 Vendor shall perform the Services and provide Goods expeditiously, within the term of this Agreement, and in accordance with the Schedule of Goods and Services set forth in Exhibit "B" attached hereto and incorporated herein by reference ("Performance time"). Upon request of City, Vendor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Goods and Services. Vendor agrees that if the Goods are not provided and/or the Services are not completed within the Performance Time, it is understood, acknowledged and agreed that the City will suffer damage.

4.2.2 Neither City nor Vendor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Vendor and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this Section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Agreement.

4.2.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Vendor to any additional compensation.

Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

4.3 Conformance to Applicable Requirements. All work prepared by Vendor shall be subject to the approval of City.

4.4 Acceptance. The Goods shall be received subject to City's inspection and right of rejection. The Goods shall not be considered accepted until inspection, testing and/or use of the Goods is found to be in accordance with the City's specifications. Final inspection of the Goods shall be at the location specified herein, unless otherwise agreed in writing. If the Goods are found at any time to be defective in material or workmanship, or otherwise not in conformance with specifications, City shall have the right, in addition to any other rights which it may have under warranties or otherwise, to reject such Goods in whole or in part. Rejected Goods shall be held at Vendor's risk for a reasonable time thereafter and shall be returned or disposed of at Vendor's expense. No rejected Goods shall be replaced by Vendor without written instruction or authorization from City.

4.5 Coordination of Services. Vendor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

4.6 Standard of Care; Performance of Employees. Vendor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Vendor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Vendor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Vendor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Vendor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Vendor's failure to comply with the standard of care provided for herein. Any employee of the Vendor or its sub-Vendors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Services, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed by the Vendor and shall not be re-employed to perform any of the Services provided under this Agreement.

4.7 Warranty. In addition to all warranties which may be provided by law, Vendor warrants that the Goods delivered hereunder shall, (a) be free from defect of material or workmanship and conform strictly to the specifications, drawings, or sample specified or furnished; (b) conform to drawings, plans, specifications, samples or other descriptions furnished, specified, accepted or approved by City; and (c) be merchantable and fit for the purposes intended. The warranty shall be for a period of one (1) year, or such longer period as provided by a manufacturer's warranty or as agreed to by Vendor and City, from the date of final written acceptance of the Goods by City. This warranty shall survive any inspection, delivery, acceptance, or payment by City of the Goods. Vendor, at its own expense, shall repair or replace, at the option of City, any defective Goods within two (2) business days after receipt of notice from City or within four (4) hours in case of emergency, as determined by City. Vendor also warrants

that the Goods are free and clear of all liens and encumbrances whatsoever, that Vendor is conveying good and marketable title to same, and that Vendor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Vendor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

4.8 Reserved.

4.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Vendor may be required to do, or respecting the size of any payment to Vendor during the performance of this Contract, Vendor shall continue to perform the Work while said dispute is decided by the City. If Vendor disputes the City's decision, Vendor shall have such remedies as may be provided by law.

4.10 Laws and Regulations; Employee/Labor Certifications. Vendor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting its performance under this Agreement, including all Cal/OSHA requirements, and shall give all notices required by law. Vendor shall be liable for all violations of such laws and regulations in connection with this Agreement. If the Vendor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Vendor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Vendor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

4.10.1 Employment Eligibility; Vendor. By executing this Agreement, Vendor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Vendor. Vendor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Vendor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Vendor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Vendor's compliance with the requirements provided for in Section 4.10 or any of its sub-sections.

4.10.2 Employment Eligibility; Subcontractors, and Consultants. To the same extent and under the same conditions as Vendor, Vendor shall require all of its subcontractors, and consultants performing any work relating to this Agreement to make the same verifications and comply with all requirements and restrictions provided for herein.

4.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Vendor verifies that they are a duly authorized officer of Vendor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Vendor or its subcontractors, or consultants to meet any of the requirements provided for in Sections 4.10.1 or 4.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Vendor under Section 4.10.2); or (3) failure to immediately remove from this contract any person found not to be in compliance with such requirements.

4.10.4 Labor Certification. By its signature hereunder, Vendor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

4.10.5 Equal Opportunity Employment. Vendor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Vendor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

4.10.6 Air Quality. Vendor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Vendor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Vendor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Vendor, its subcontractors, or others for whom Vendor is responsible under its indemnity obligations provided for in this Agreement.

4.10.7 Water Quality.

4.10.7.1 Management and Compliance. To the extent applicable, Vendor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency, the State Water Resources Control Board and the Santa Ana Regional Water Quality Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

4.10.7.2 Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Vendor or City to penalties, fines, or additional regulatory requirements. Vendor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Vendor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole negligence or willful misconduct of the City, its officials, officers, agents, employees or authorized volunteers.

4.10.7.3 Training. In addition to any other standard of care requirements set forth in this Agreement, Vendor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Vendor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Vendor with a list of training programs that meet the requirements of this paragraph.

5. PROJECT MANAGEMENT

5.1 City's Representative. The City hereby designates Daniel Beers, Design & Construction Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Vendor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

5.2 Vendor's Representative. Vendor hereby designates Brendan O'Donnell, Project Manager or his or her designee, to act as its representative for the performance of this Agreement ("Vendor's Representative"). Vendor's Representative shall have full authority to represent and act on behalf of the Vendor for all purposes under this Agreement. The Vendor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all work required under this Agreement.

6. INSURANCE.

6.1 Time for Compliance. Vendor shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Vendor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Section.

6.2 Minimum Requirements. Vendor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Vendor, its agents, representatives, employees or subcontractors. Vendor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

6.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

6.2.2 Minimum Limits of Insurance. Vendor shall maintain limits no less than: (1) *General Liability:* $2,000,000 MINIMUM per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* $2,000,000 MINIMUM per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of $1,000,000 MINIMUM per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

6.2.3 Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Vendor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Vendor or the City may withhold amounts sufficient to pay premium from Vendor payments. In the alternative, the City may suspend or terminate this Agreement.

6.2.4 Additional Insured. The City of Ontario, its directors, officials, officers, employees, agents, and volunteers shall be named as additional insureds on Vendor's and its subcontractors' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

6.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Vendor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

6.3.1 General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Ontario, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Vendor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled underlying

coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance, deductible, or self-insurance shall be called upon to protect it as a named insured. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 6.2.2, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 6.3.1.

6.3.2 Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Vendor's scheduled underlying coverage. Any insurance, deductible, or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Vendor's insurance and shall not be called upon to contribute with it in any way. Policy shall contain or be endorsed to contain such provisions. Notwithstanding the minimum limits set forth in Section 6.2.2, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 6.3.2.

6.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Vendor.

6.3.4 All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds.

6.4 Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. All policies shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against City, its officials, officers, employees, agents, and volunteers, or any other

additional insureds, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

6.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Vendor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Vendor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

6.6 Subcontractor Insurance Requirements. Vendor shall not allow any subcontractors to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Vendor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Vendor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

6.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

6.8 Verification of Coverage. Vendor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

6.9 Reporting of Claims. Vendor shall report to the City, in addition to Vendor's insurer, any and all insurance claims submitted by Vendor in connection with the Services under this Agreement.

7. INDEMNIFICATION.

7.1 Scope of Indemnity. To the fullest extent permitted by law, Vendor shall defend, indemnify and hold the City, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Vendor, its officials, officers, employees, subcontractors, consultants or agents arising out of or in connection with the Services, the Goods or this Agreement, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Vendor's indemnity obligation shall not apply to such loss or damage which is caused by the sole negligence or willful misconduct of the City.

7.2 Additional Indemnity Obligations. Vendor shall defend, with counsel of City's choosing and at Vendor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and volunteers. In addition, Vendor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and volunteers as part of any such claim, suit, action or other proceeding. Vendor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Vendor shall reimburse City and its officials, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Vendor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and volunteers.

8. CALIFORNIA LABOR CODE

8.1 Prevailing Wages. Vendor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, If the total compensation is $1,000 or more, Vendor agrees to fully comply with such Prevailing Wage Laws. City shall provide Vendor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Vendor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Vendor's principal place of business and at the project site. Vendor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Vendor shall therefore comply with such Labor Code sections to the fullest extent required by law.

8.2 Registration. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Vendor and all subcontractors must be registered with the Department of Industrial Relations. Vendor shall maintain registration for the duration of this Agreement and require the same of any subcontractor. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

8.3 Compliance Monitoring. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Vendor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Vendor or any subcontractor that affect Vendor's performance of Services, including any delay, shall be Vendor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Vendor caused delay and shall not be compensable by the City. Vendor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim

or liability arising out of stop orders issued by the Department of Industrial Relations against Vendor or any subcontractor.

9. SAFETY.

Vendor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its services, the Vendor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

10. ACCOUNTING RECORDS.

Vendor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Vendor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Vendor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

11. TERMINATION OF AGREEMENT.

11.1 Grounds for Termination. City may, by written notice to Vendor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Vendor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Vendor shall be compensated only for those Services and Goods which have been adequately rendered to City, and Vendor shall be entitled to no further compensation. If terminated for cause because the Vendor refused or failed to deliver the Goods, the City may obtain Goods by whatever method it may deem expedient. If City's cost of obtaining the Goods, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Goods, Vendor will be liable for and will pay the difference to City. Vendor may not terminate this Agreement except for cause. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

11.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Vendor to provide all finished or unfinished documents and data and other information of any kind prepared by Vendor in connection with the performance of the Services under this Agreement. Vendor shall be required to provide such document and other information within fifteen (15) days of the request.

11.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, goods and services similar to those terminated.

12. GENERAL PROVISIONS.

12.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Vendor:
BodEV, Inc.
2581 Union Ave
La Habra, CA 90631
Attn: Brendan O'Donnell

City:
City of Ontario
303 East "B" Street
Ontario, CA 91764-4196
Attn: Dan Beers, Principal Construction Project Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

12.2 Subcontracting. Vendor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

12.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Vendor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Vendor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Vendor shall be barred from bringing and maintaining a valid lawsuit against the City.

12.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

12.5 City's Right to Employ Other Vendors. City reserves right to employ other Vendors in connection with the Goods and Services provided under this Agreement.

12.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

12.7 Assignment or Transfer. Vendor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates

or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

12.8 Construction; References; Captions. 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 calendar days and not work days. All references to Vendor include all personnel, employees, agents, and subcontractors of Vendor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. 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.

12.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

12.10 Waiver. 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.

12.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 12.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

12.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

12.13 Prohibited Interests. Vendor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Vendor, to solicit or secure this Agreement. Further, Vendor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Vendor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Vendor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

12.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

12.15 Authority to Enter Agreement. Vendor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

12.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

12.17 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE FOR GOODS & SERVICES AGREEMENT
BETWEEN THE CITY OF ONTARIO
AND BODEV, INC.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Tito Haes
Executive Director Public Works

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
Assistant City Clerk

BodEV, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

EXHIBIT "A"

SCOPE OF SERVICES

BodEV Inc.

Address: 2581 Union Ave, La Habra, CA 90631
Phone: (949) 521-3386
email: Brendan@BodEV.com

Your partner in EV installs & charging solutions

Sourcewell Awarded Contract
Contract #032824-ELV

QUOTE

Quote No.	022725-1
Rev.	D
Date:	3/31/25
Expiry	4/30/25

Valid through: July 9th, 2028

TO:

Contact Name:	Dan Beers	Title	Design & Construction - Principal Project Manager
Customer Name:	City of Ontario	Project Name:	Master List
Customer Phone:	909-395-2806	Project Address:	1333 S Bon View Ave
Customer Emial:	dbeers@ontarioca.gov	Site City & State:	Ontario CA 91761
Type of Scope:	Chargers+Mgmt+Install		

FOR PURCHASE OF PRODUCTS AND SERVICES USING SOURCEWELL CONTRACT 032824-ELV

TERMS: NET30 FROM SHIPMENT

Project Description/Overview:

1st floor:

- 5 Level 3 chargers
- 4 Dual port Level 2 Chargers
- 1 Single port Level 2 Charger

2nd, 3rd and 4th floors:

- 5 Dual Port Level 2 Chargers

Part No.	Product Description	QTY	LIST	CONTRACT	TOTAL
MU38FP5C	AC FS Full Set Dual Pedetal (dual port + 18 ft cable + front post + CMS-6ft + POS)	19	$7,450	$6,746	$128,174
MU19FP5C	AC FS Full Set Single Pedestal (single port + 18 ft cable + front post + CMS-6ft + PC	1	$5,180	$4,690	$4,690
BODEV-005	5 YEAR O&M + AmpUp Networking Plus - Dual Port	19	$7,197	$5,850	$111,150
BODEV-002	5 YEAR O&M + AmpUp Networking Plus - Single Port	1	$5,813	$4,725	$4,725
Installation 1	Installation (including Commissioning and Activation)	20		$1,283	$25,660
UF120A4001	MaxiCharger 120kW DC Fast (Boost cable)	3	$51,150	$46,316	$138,948
POSA	Nayax POS	3	$1,100	$996	$2,988
DFCMSA	DCFC Cable Management System	3	$3,000	$2,717	$8,151
BODEV-005	5 YEAR O&M + AmpUp Networking Plus - Dual Port	3	$7,197	$5,850	$17,550
Installation 2	Installation (including Commissioning and Activation)	3		$29,815	$89,445
Discount	Marketing and Promotional Discount	1		($3,271)	($3,271)

Additional Notes:

TOTAL		$528,210.00
Freight		$6,800.00
Tax	8.75%	$24,472.00
Quote Total		$559,482.00

Sourcewell Member No: 33482

Subject to Terms and Conditions of Sourcewell Contract 032824-ELV

Sourcewell Contract 032824-ELV can be found here: https://www.sourcewell-mn.gov/cooperative-purchasing/032824-elv

X _____ Authorized Signatory

_____ Title

_____ DATE

EXHIBIT "B"

SCHEDULE OF SERVICES

APRIL 15, 2025 TO OCTOBER 31, 2025

EXHIBIT "C"

COMPENSATION

NTE AMOUNT OF $559,482

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Cruz Torres Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Claudia Hernandez, Matthew Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: **APPROVAL OF VARIOUS PROFESSIONAL SERVICES AGREEMENTS TO PROVIDE SPECIAL TAX CONSULTING AND ADMINISTRATIVE SERVICES, COMMUNITY FACILITIES DISTRICT FORMATION AND BOND COUNSEL SERVICES, APPRAISAL AND HOUSING MARKET ECONOMIST SERVICES**

RECOMMENDATION: That the City Council approve and authorize the City Manager or designee to execute the various Professional Services Agreements for special tax consulting, community facilities district formations and costs associated with bond issuances. Proposed agreements are with Goodwin Consulting Group of Sacramento, California; Willdan Financial Services of Temecula, California; Orrick, Herrington & Sutcliffe, LLP of Los Angeles, California; Empire Economics, Inc. of Capistrano Beach, California; and Kitty Siino and Associates of Tustin, California.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch
Operate in a Businesslike Manner

FISCAL IMPACT: There is no fiscal impact to the General Fund with the proposed Professional Services Agreements. Special tax consulting services, community facilities district formations and costs associated with bond issuances will be funded with special tax revenues, developer deposits, or bond proceeds. Agreements will be for a term of three years, with an optional renewal period of two additional years. The three-year collective compensation for the proposed agreements is a not-to-exceed amount of $2,546,000. At the City's discretion to exercise the two additional years, the not-to-exceed amount is $4,538,830.

BACKGROUND & ANALYSIS: The City administers the following Parkway Maintenance Districts and Street Lighting Maintenance Districts located within Old Model Colony providing landscaping and street lighting maintenance services:

- Parkway Maintenance District No. 1 (includes 6 maintenance areas)
- Parkway Maintenance District No. 2 (includes 6 maintenance areas)

- Parkway Maintenance District No. 3 (includes 15 maintenance areas in zone 1 and 3 maintenance areas in zone 2)
- Parkway Maintenance District No. 4 (includes 6 maintenance areas)
- Street Lighting Maintenance District No. 1 (includes 2 zones)
- Street Lighting Maintenance District No. 2 (includes 12 maintenance areas)

In addition, Staff is responsible for the administration of sixty community facilities districts mostly located in Ontario Ranch. The administration of special districts involves managing operations, finances, services and compliance, requiring specialized expertise provided by consultants.

Furthermore, with the expected continued growth in Ontario Ranch and potential projects in the Old Model Colony the City will need to continue community facilities district formations, bond financing, and other related services to fund municipal services and public infrastructure. Therefore, it is recommended that the City secure the services of experienced consultants specializing in these areas.

In December 2024, the City solicited three requests for proposals for Special Tax Consulting and Administrative Services; Community Facilities District Formation and Bond Counsel Services; and Appraisal and Housing Market Economist Services. The City received a total of thirteen proposals and Staff evaluated each proposal based on experience, staff qualifications, high quality of past performance with the City, and competitiveness of fees. Staff has selected and recommends awarding the following professional services agreements:

Special Tax Consulting and Administrative Services
- Community Facilities District Formation - Goodwin Consulting Group of Sacramento, CA
- Maintenance Districts - Willdan Financial Services, of Temecula, CA

Community Facilities District Formation and Bond Counsel Services
- Orrick, Herrington & Sutcliffe, LLP of Los Angeles, CA

Housing Market Economist Services
- Empire Economics, Inc. of Capistrano Beach, CA

Real Estate Appraisal Services
- Kitty Siino and Associates, of Tustin, CA

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SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and Goodwin Consulting Group, a Corporation, with its principal place of business at 655 University Avenue, Suite 200, Sacramento, CA 95825 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Special Tax Consulting and Administrative Services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the Special Tax Consulting and Administrative Services, Contract No. 1872 project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Special Tax Consulting and Administrative Services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from April 1, 2025, to March 31, 2028, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than 2 additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed one million two hundred thousand dollars ($1,200,000.00) without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "B" of this Agreement.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.2.5 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "A" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Armen Harkalyan, Executive Director of Finance.

3.3.5 City's Representative. The City hereby designates Claudia Hernandez, Departmental Administrator, or her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates Dave Freudenberger, or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the

satisfactory coordination of all portions of the Services under this Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibit "A" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such

authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

3.3.11.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than $2,000,000 per occurrence and no less than $4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than $2,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

(D) Professional Liability Errors & Omissions Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than $2,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the

work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): 1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

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

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations

otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or

"maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Consultants. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903

(2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only utilize its employees to provide the Services. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Consultant shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Consultant to use a Subcontractor, Consultant shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:	Goodwin Consulting Services 655 University Avenue, Suite 200 Sacramento, CA 95825 ATTN: Dave Freudenberger
City:	City of Ontario 303 East "B" Street Ontario, CA 91764 ATTN: Claudia Hernandez, Departmental Administrator

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish

where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.7.4.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use

City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.4.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. 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 calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. 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.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. 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.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.7.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.7.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND GOODWIN CONSULTING GROUP, INC.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

GOODWIN CONSULTING GROUP, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED

EXHIBIT "A"
SCOPE OF SERVICES

Consultant Responsibilities

The Consultant shall provide the following Special Tax Consulting and Administrative Services and other related services at the City's request.

CFD FORMATION AND BOND ISSUANCE

CFD Analysis

1. For a facilities CFD (or a combo services + facilities CFD), Consultant shall prepare an Effective Tax Rate (ETR) analysis to determine the facilities special tax rates. This task shall include reviewing the price point study and working with the price point consultant to identify additional price points that may be needed, separating detached and attached products (where appropriate) and creating multiple tax zones (where applicable), accounting for ad valorem and other annual burdens (including the City's services CFD special tax rates), incorporating HOA dues and accounting for HOA waivers (where applicable), and following the City's maximum ETR guidelines with and without HOA dues.
2. The analysis shall determine the per-acre and back-up facilities special tax rates.
3. Consultant shall include a bond sizing estimate in the analysis, considering variables such as the total annual facilities special tax revenue, special tax/debt service escalator, debt service coverage ratio, annual administration costs, interest rate, capitalized interest, reserve fund, and issuance costs.
4. Consultant shall estimate the CFD public facilities amount for each of the three prepayment periods identified in the Rate and Method of Apportionment of Special Tax (RMA) (see below), based on the City's 100-year facilities special tax program.

Rate and Method of Apportionment of Special Tax (RMA)

1. Consultant shall prepare the RMA to serve as the official special tax formula for the CFD.
2. The RMA shall provide details and directions on how the special tax should be levied in future years to ensure adequate revenues are available to timely repay debt service on bonded indebtedness issued by the CFD or to cover annual services costs.
3. The RMA shall consider the City's 100-year facilities special tax program requirements, among other things, prepayment language that accounts for three different prepayment periods or to cover annual services costs.
4. The RMA shall consider the City's commitment to its ETR guidelines requiring the original price point study to be updated prior to the issuance of bonds, a modification certificate (included as an exhibit to the RMA) must be completed and executed if any facilities special tax rates need to reduced, and those reduced tax rates must be reflected in an amended Notice of Special Tax Lien that gets recorded with County Recorder.

Boundary Map

1. Consultant shall prepare the official boundary map for the CFD in a format that is acceptable to the City and the San Bernardino County Recorder's Office.
2. The map shall identify the CFD boundaries, show current parcel lot lines, list the APNs, add sheets to focus on individual tax zones (if applicable), and include a vicinity map.

Other CFD Formation Documents

1. Consultant shall prepare, review, and contribute to the Resolution of Intention (ROI), Resolution of Formation (ROF), Notice of Special Tax Lien, and other documents required in the CFD formation proceedings, including the CFD Hearing Report, appropriations limit, and maximum bond authorization.
2. The CFD Hearing Report shall comply with Government Code Section 53321.5.
3. The CFD Hearing Report shall include the recorded CFD boundary map.
4. The CFD Hearing Report shall be tailored to the type of CFD (services, facilities, or combo services + facilities). For facilities CFDs, the Report shall include a list and a total of the Tier 1 estimated construction costs by segment, park improvement/in-lieu park fee amounts, and Tier 2 estimated facilities costs.

Inventory of Parcels, Acreage, and Ownership

1. In preparation for bond issuance, Consultant shall review the appraisal, final maps, land use plans, building permit data, recorded deeds, and other documents to confirm the development status and track changes in ownership and parcel configuration that occur prior to release of the Official Statement for the bonds.
2. Consultant shall then compile the information needed to provide a status report regarding property diversification, the allocation of the maximum special tax obligation, parcel by parcel value-to-lien ratios, and other data needed to prepare tables in the Official Statement.

Revenue Projections and Credit Tables

1. Consultant shall prepare special tax projections for the Finance Team to size bond issues for the CFD.
2. Consultant shall prepare all critical credit tables in the Official Statement that disclose the primary CFD information considered by potential bond investors.

Review and Coordination

1. Consultant shall review and contribute to other documents required as part of the bond issuance process, participate in document review meetings, due diligence calls and calls with potential investors, and other coordination among the financing team as part of preparing for, and marketing of, the bond issuance.
2. Consultant shall execute the Certificate of Special Tax Consultant to confirm the adequacy of special tax revenues.

Meeting Attendance

1. Consultant shall meet with City staff and private stakeholders to compile data, confirm assumptions, present results, provide input and ideas, and discuss the CFD structure, components, and financing.
2. Consultant shall attend City Council and other meetings, as requested.

CFD ADMINISTRATION

Background Research

1. Consultant shall gather the required information pursuant to the RMA to construct/maintain a database used to calculate the annual special tax levy for each CFD.

2. Consultant shall conduct map and parcel research, perform building permit analysis and tracking, categorize each parcel into the appropriate special tax classification pursuant to the RMA, and prepare and/or manage the database.

Special Tax Levy

Consultant shall work with City staff, its budgets, and other information to identify the maximum special tax rates and calculate the actual special tax levy for each taxable parcel in each CFD based on application of the RMAs.

Annual Special Tax Enrollment

1. Consultant shall compile a list of parcels for each CFD that is subject to the special tax levy, format it in compliance with County requirements, and submit the levy for inclusion on property tax bills on or before August 10 (or other specified date).
2. Consultant shall work with the County to correct any County data or processing inconsistencies.

Annual Administration Report

Consultant shall prepare, at the right time, for each CFD an annual CFD administration report that contains the results of the parcel research, the methodology and findings of the financial analysis, the special tax levies, and pertinent information required by SB 165, AB 1483, AB 1666, and other applicable Government Code sections.

Answer Inquiries from Various Parties

Consultant shall respond, typically within 24 hours, to questions from property owners, realtors, title companies, appraisers, and other parties regarding the special tax and other CFD related issues.

Prepayment Calculations

Consultant shall provide property owners with estimates of the amount required to pay off or pay down the special tax lien on their property, based on the prepayment formula in each RMA.

Bond Redemption Administration

GCG will work with the bond trustee to ensure that prepayment checks are processed properly and that the correct bond amount is redeemed at each interest payment date.

Delinquent Special Tax Reporting

Consultant shall monitor the County tax collection summaries and report on delinquent parcels and corresponding delinquent CFD taxes. If needed, shall prepare and mail reminder/demand letters to property owners with delinquent special taxes.

Coordination of Foreclosure Activities

1. Consultant shall assist the City in complying with provisions in the bond indenture regarding actions to be taken in the event of a foreclosure on a property due to tax delinquency.
2. Consultant shall coordinate with City staff and legal counsel to identify those parcels to initiate any judicial foreclosure.

Disclosure Regulations Compliance and Parcel Tax Reporting

1. Consultant shall provide and/or post all information, reports, and filings required to comply with federal (SEC) and state (CDIAC) continuing disclosure requirements for the City's bonded CFDs.
2. Consultant shall prepare parcel tax reporting information pursuant to AB 2109 for all CFDs.

Arbitrage Rebate Calculations

Consultant shall prepare annual and five-year arbitrage rebate calculations, and determine the amount, if any, that must be rebated to the federal government at each five-year interval.

FIRST-YEAR SCHEDULE

The following is a tentative first-year schedule (subject to updates as needed). Milestones are highlighted in bold and italic.

CFD Formation

1. Review CFD application, maps, etc.; Zoom meeting to kick-off formation
2. Review price point study; Zoom meeting to discuss
3. Prepare first draft of boundary map, CFD analysis, and RMA (Deliverable)
4. Review draft ROI documents
5. Zoom meeting to discuss map, analysis, RMA, and ROI docs
6. Distribute revised map, analysis, and RMA, as needed
7. Zoom meeting to discuss final docs ahead of ROI docketing date
8. Distribute first draft of CFD Hearing Report
9. ***Council meeting to adopt ROI, etc.***
10. Review draft ROF documents
11. Zoom meeting to discuss CFD Hearing Report and ROF documents
12. Distribute revised CFD Hearing Report
13. Zoom meeting to discuss final docs ahead of ROF docketing date
14. ***Council public hearing to adopt ROF, etc.***

Bond Issuance

1. Review ROF materials; Zoom meeting to kick-off bond issuance
2. Review price point review study and appraisal; Zoom meeting to discuss
3. Rerun CFD analysis and prepare RMA Certificate of Modification, as needed
4. Review bond sizing and prepare first draft of credit tables
5. Review draft Preliminary Official Statement (POS), Bond Purchase Agreement (BPA), and other bond docs; Zoom meeting to discuss
6. Review draft due diligence questions and revised bond/legal docs
7. Due diligence call/Zoom meeting to review updated POS, etc.
8. Review draft investor presentation, etc.
9. Council Meeting to approve financing documents and authorize bond sale
10. Pricing; prepare final credit tables for Official Statement (OS); closing

CFD Administration

1. Coordinate with staff on status of development
2. Review building permit issuances, final map recordation, other changes to development for the upcoming levy, etc.
3. Coordinate with staff on preliminary special tax requirements

4. Review parcel changes
5. Prepare special tax levies and administration reports in advance of City Council meeting
6. Update levies and reports based on finalized roll from the County
7. Submit special tax levies to the County for placement on the County Tax Roll
8. Prepare required disclosure/State reports
9. Review delinquencies annually, and additionally as requested
10. Respond to special tax questions from property owners

EXHIBIT "B"
COMPENSATION

FEES

The Consultant's fee schedule includes three components: 1) CFD formation; 2) bond issuance; and 3) CFD administration. The fees for each component are as follows:

CFD Formation

The not-to-exceed budget for services and expenses associated with CFD formation is $20,000, against which the Consultant shall bill on an hourly basis. If the formation can be completed for less than the total budget, only the hours expended and expenses incurred shall be billed.

Monthly invoices shall be presented to the City and shall provide details of services rendered and expenses incurred.

Consultant shall use the following hourly rate schedule when submitting monthly invoices for services, including services defined as "Extra Work."

The CFD formation budget and hourly rates shall be effective through June 30, 2026, at which time they may be adjusted to reflect cost of living or other inflationary changes, subject to City approval.

HOURLY RATES

Managing Principal	$360 / hour
Senior Principal	$350 / hour
Principal	$310 / hour
Senior Vice President	$295 / hour
Vice President	$275 / hour
Senior Associate	$250 / hour
Associate	$230 / hour
Analyst	$215 / hour
Research Assistant	$95 / hour

Bond Issuance

The not-to-exceed fixed fee for bond issuance is $40,000. This flat fee shall be paid with bond proceeds wired to the Consultant at the bond's closing time. This fee shall be effective through June 30, 2026, at which time it may be adjusted to reflect cost of living or other inflationary changes, subject to City approval.

CFD Administration

The not-to-exceed fixed fees for CFD administration are based on the schedule provided below, which accounts for different types of CFDs.

CFD Types	Levy & Related Services	CDIAC, SCOE, & Cont. Discl. Reporting	Delinquency Reporting	Arbitrage Reporting	Total
Services Only	$3,050	$320	$110	$0	$3,480
Facilities Only - No Bonds	$3,050	$320	$110	$0	$3,480
Facilities Only - With Bonds	$4,300	$2,120	$110	$530	$7,060
Combo (Services + Facilities) - No Bonds	$4,700	$320	$110	$0	$5,130
Combo (Services + Facilities) - With Bonds	$4,900	$2,120	$110	$530	$7,660

These fixed fees shall be billed in two semi-annual equal installments, and only the services identified in the above table applicable to each individual CFD shall be included in the fixed fee billings. For example, CFD 53 is a Facilities Only – With Bonds CFD Type; if arbitrage reporting services are not required or requested for this CFD, the total fixed fee would be $6,530 ($7,060 (total) less $530 (arbitrage reporting amount) = $6,530); therefore, the two semi-annual installments would be $3,265/each ($6,530 divided by 2).

These CFD administration fees shall be effective through June 30, 2026, at which time they may be adjusted to reflect cost of living or other inflationary changes, subject to City approval.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and Willdan Financial Services, a Corporation with its principal place of business at 27368 Via Industria, Suite 200, Temecula, CA 92590 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Special Tax Consulting and Administrative Services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the Special Tax Consulting and Administrative Services, Contact No. 1872 project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Special Tax Consulting and Administrative Services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from April 1, 2025 to March 31, 2028, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion to renew this Agreement automatically for no more than 2 additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed sixty-six thousand dollars ($66,000.00) without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "B" of this Agreement.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.2.5 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the

City all funds erroneously deposited or to which Consultant is not entitled.

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "A" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Armen Harkalyan, Executive Director of Finance.

3.3.5 City's Representative. The City hereby designates Claudia Hernandez, Departmental Administrator or her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates Gladys Ceballos, Vice President/Director, or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill

and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibit "A" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such

authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

3.3.11.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than $2,000,000 per occurrence and no less than $4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than $2,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with

limits of not less than $2,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other

insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

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

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations,

Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall

not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Consultants. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only utilize its employees to provide the Services. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Consultant shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Consultant to use a Subcontractor, Consultant shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Willdan Financial Services
27368 Via Industria, Suite 200
Temecula, CA 92590
ATTN: Gladys Ceballos, Vice President/Director

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
ATTN: Claudia Hernandez, Departmental Administrator

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days

following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.7.4.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to

any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.4.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. 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 calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. 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.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. 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.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.7.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of

City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.7.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND WILLDAN FINANCIAL SERVICES

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

WILLDAN FINANCIAL SERVICES

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED

EXHIBIT "A"
SCOPE AND SCHEDULE OF SERVICES

Method to Accomplish the Work

Landscaping and Lighting Districts

Outlined below are the tasks necessary to annually administer the City's eight Landscaping and Lighting Districts (LLDs). Willdan is able to assist with annexations as needed and at the City's request.

1. Meet with City staff to discuss topics which may impact the Districts, including increased expenses or revenue limitations. Reach agreement to a levy timeline for key dates and timeframes for pertinent tasks throughout the year.
2. Calculate the current maximum assessment rates and resulting revenue projections. Provide Budget templates showing projected District revenues and cost recovery data in order to commence the budget process.
3. Review the district budgets provided by the City, and coordinate with City staff to assist with accurate cost recovery accounting. Assist City staff with incorporating the expected maintenance costs into the district budget to achieve maximum cost-to-benefit equity.
4. Prepare and maintain a parcel database using the parcel information from the current County Assessor's data and information. Willdan will purchase the County Assessor's secured roll data and will enhance the database through parcel research and information provided by the City.
5. Review District methodology. Consider pertinent topics from earlier discussions.
6. Prepare (in accordance with the Landscaping and Lighting Act of 1972, and Proposition 218) an annual Engineer's Report for each of the City's 1972 Act Districts and provide for review and approval by the City Council. Each report will include the following:
   - A brief history of the district and changes to the district structure and modifications to the zones;
   - Description of the zones, boundaries and improvements within the district;
   - Proposed improvements and associated benefits assessed within the district;
   - The method of spread;
   - Budget estimates of costs for maintenance of improvements;
   - A listing of parcels within the district, and their proposed assessment amounts;
   - Boundary diagrams/assessment diagram and/or related maps that define the boundaries of the district; and
   - Certification that a registered professional engineer has reviewed the Engineer's Report.
7. Prepare resolutions. The City acknowledges that the City Attorney will review all resolutions for form and content before they are presented to Council.
8. Be available to attend up to one-in-person meetings annually, if the City wishes for Willdan to attend additional in-person meetings, the fee is $750 per meeting. Virtual meetings are not limited by this scope of services.
9. Calculate the assessment rates and apportion the annual assessment of each parcel pursuant to the Engineer's Report.
10. Provide assessments for each parcel by Assessor's Parcel Number to the County Auditor/Controller's Office in the media, format, and configuration required by the County for placement on the annual property tax roll.
11. Provide the City with an applied levy summary comparing budget amounts to the actual applied levy amounts of each District/Zone and an analysis of variances, if any.

12. Act as primary contact, at the discretion of the City, to answer property owner questions regarding their special assessments, general Assessment District information, noticing procedures, and tax bills. Our toll-free telephone number will be included on tax bills for property owners to call with questions.

Client Responsibilities – Maintenance District Administration

To efficiently administer the City's Landscaping and Lighting Maintenance Districts, Willdan will rely on assistance from the City in obtaining the information listed below for each District/Zone.

- The budget for the current fiscal year;
- A five year CIP Budget, as needed;
- Fund Balances; and
- List of new improvements within each.

Delinquency Management

To assure that the City complies with its foreclosure covenants to bondholders for each district, Willdan will provide the following delinquency monitoring services.

1. Monitor delinquent tax bill payments around January and May of each year.
2. Provide delinquency reports to the City around February and May of each year.
3. Send, after receiving authorization from the City, a delinquency reminder letter after the first tax bill installment becomes delinquent.
4. Send, following authorization from the City, a thirty-day (30) delinquency demand letter after the second tax bill installment becomes delinquent. Each demand letter will include a brochure providing answers to commonly asked questions regarding delinquencies.
5. Cause the removal of the delinquent installments of special taxes for each delinquent tax year(s) from the County tax roll after receiving authorization from the City. Such removal will comply with SB 1471.
6. Send a final twenty-one (21)-day delinquency foreclosure letter to each delinquent property owner after receiving authorization from the City and confirmation from the County for the removal of the delinquent special taxes. Foreclosure letters shall contain a brochure providing answers to frequently asked questions regarding delinquencies and judicial foreclosures.
7. Send, after receiving authorization from the City, those parcels whose special taxes continue to remain delinquent after twenty-one (21) days from mailing of the foreclosure letters, to the foreclosure attorney to collect the delinquent taxes and all applicable penalties, interest, fees, and other costs that have been authorized through the City-retained foreclosure counsel.
8. Provide, throughout the entire delinquency monitoring/foreclosure process, a toll-free telephone number to field inquiries from staff, parcel owners, lenders, and other interested parties concerning annual installments and delinquencies.
9. Assist foreclosure counsel to initiate and prosecute judicial foreclosure proceedings in compliance with bond foreclosure covenants concerning those parcels sent to foreclosure.
10. Provide, upon request, payoff quotes for stripped delinquent installments for all interested parties. Fees for this service are paid by the requesting party and may be charged to a credit card; there is no charge to the City.

Subsequent Foreclosure Services

Once the delinquent taxes have been forwarded to judicial foreclosure counsel, Willdan will provide the following services, upon request.

- Prepare and forward a detailed report of the parcels to be foreclosed to foreclosure counsel.
- Provide foreclosure counsel with the necessary resolutions and other documents to proceed with the judicial foreclosure process.
- Keep the City and foreclosure counsel apprised of special situations arising of which we become aware; such as, bankruptcies of parcel owners, tax foreclosure sales, deed of trust "trustee" foreclosure sales, and so forth.
- Provide foreclosure counsel with "subsequent year" delinquency information consisting of any installments/years that become delinquent on parcels already in foreclosure.
- Generally, respond to inquiries from City staff and foreclosure counsel regarding the status of a foreclosure action and other pertinent, relevant information.

EXHIBIT "B"
COMPENSATION

Fee Proposal

SPECIAL DISTRICT ADMINISTRATION SERVICES

The following annual fees for Special District Administration Services reflect application of the identified scope. Fees include levy related services and Engineer's Report preparation. Denoted fees are per district. Upon contractual approval, the City may choose to allocate the ***total annual fee of $22,000*** below to each of the districts/services in another acceptable manner. As the work progresses, these fees are payable on a percentage of completion on a monthly basis. This fee is not subject to increase.

Streetlight Maintenance District Administration (Includes Land-Based Disclosures)	
District	**Fee**
SLMD 1	$5,000
SLMD 2	$3,500

Parkway Maintenance District Administration (Includes Land-Based Disclosures)	
District	**Fee**
OPMAD 1	$2,500
OPMAD 2	$2,500
OPMAD 3	$2,500
OPMAD 4	$2,500

Additional Districts

When additional districts are added, fees shall be negotiated with City at that time.

DELINQUENCY MONITORING & SUBSEQUENT FORECLOSURE SERVICES

As the service is rendered, the following fees are invoiced. They are ultimately paid by, or on behalf of, the delinquent property owners.

Services	Fees
Fees Ultimately Reimbursed to the City Recoverable Through Special Tax Levy	
Delinquency Reminder Letter (1)	$ 15
Delinquency Demand Letter (1)	45
Fees Ultimately Reimbursed to the City by Delinquent Property Owner	
Foreclosure Letter (per parcel) (1)	$ 65
Effect Removal from Tax Roll and Record Subsequent Notice of Satisfaction (2)	125
Prepare and Monitor Payment Plan (per parcel)	200
Subsequent Foreclosure Services	150
Fees Paid Directly to Willdan by Requestor	
Delinquency Demand Payoff (3)	$ 50
Zero Demand (2)	50

(1) Postage will be charged as a direct expense.

(2) This fee complies with Section 8833 of the California Streets and Highways Code and/or Section 53356.2 of the California Government Code, which requires recording of a Notice of Intent to Remove Delinquent Special Assessments and/or Special Taxes from the County tax roll. It DOES NOT include the County tax roll removal charge, or similar fee, if any.
This fee is waived for the property owner (except for escrow purposes) or for the Client.

REIMBURSABLE EXPENSES

Willdan will be reimbursed for out-of-pocket expenses. Examples of reimbursable expenses include, but are not limited to:

- Postage;
- Travel expenses;
- Mileage (current federal prevailing rate);
- Maps; Electronic data furnished from the County and/or other applicable resources;
- Construction cost periodicals; and
- Copying (currently 6¢ per copy).

Any additional expense for reports or from outside services will be billed to the City, plus a fifteen -percent mark-up. Charges for meeting and consulting with counsel, the City, or other parties regarding services not listed in the scope of work will be at our then current hourly rates (refer to rate schedule on the following page).

In the event that a third party requests any documents, Willdan may, in accordance with the applicable rate schedule, charge such third party for providing said documents.

HOURLY RATES

Additional authorized services will be billed at Willdan's then-current hourly consulting rates. Our current hourly rates are presented below.

Willdan Financial Services Hourly Rate Schedule	
Position	**Hourly Rate**
Group Director	$250
Principal Engineer	$238
Assistant Director / Principal Consultant	$210
Senior Project Manager	$165
Project Manager / Program Director	$145
Senior Project Analyst	$130
Senior Analyst	$120
Analyst	$100
Assistant Analyst	$75

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and Orrick, Herrington & Sutcliffe LLP, a Limited Liability Partnership, with its principal place of business at 355 South Grand Avenue, Suite 2700, Los Angeles, CA 90071 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Community Facilities District Formation and Bond Counsel Services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the Community Facilities District Formation and Bond Counsel Services, Contract No. 1873 project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Community Facilities District Formation and Bond Counsel Services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from April 1, 2025, to March 31, 2028, unless earlier terminated as provided herein. The City shall have the unilateral option, all its sole discretion, to renew this Agreement automatically for no more than 2 additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed nine hundred fifty thousand dollars $950,000.00 without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "B" of this Agreement.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.2.5 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement is as follows: Armen Harkalyan, Executive Director of Finance.

3.3.5 City's Representative. The City hereby designates Claudia Hernandez, Departmental Administrator or her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates Greg Harrington, Partner or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this

Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibit "A" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any

other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

3.3.11.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than $2,000,000 per occurrence and no less than $4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than $2,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than $2,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect

the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees,

agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

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

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations,

Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall

not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Consultants. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only utilize its employees to provide the Services. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Consultant shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Consultant to use a Subcontractor, Consultant shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Orrick, Herrington and Sutcliffe LLP
355 South Grand Avenue, Suite 2700
Los Angeles, CA 90071
ATTN: Greg Harrington, Partner

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
ATTN: Scott Ochoa, City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days

following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.7.4.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to

any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.4.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. 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 calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. 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.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. 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.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.7.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of

City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.7.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND Orrick, Herrington & Sutcliffe LLP

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

Orrick, Herrington & Sutcliffe LLP

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

EXHIBIT "A"
SCOPE AND SCHEDULE OF SERVICES
CFD Formation Milestones and Tasks

1. Consultation with representatives of the City, including the City Attorney, the City's financial advisor, the special tax consultant, the market absorption consultant, the property owner or owners and its or their counsel and consultants, and others, concerning the formation of such CFD.
2. Prior to formation of such CFD, preparation of a deposit and reimbursement agreement to be entered to by the City and one or more of the owners of property to be included within the boundaries of such CFD providing for the deposit of funds to provide for the costs of the formation proceedings for such CFD, as contemplated by the Mello-Roos Community Facilities Act of 1982.
3. Preparation or review of all legal proceedings necessary to form such CFD and authorize the levy of a special tax therein and the incurrence of bonded indebtedness thereby, including preparation of necessary resolutions, ordinances, ballots and notices, and preparation of all other proceedings incidental to or in connection with such authorization, including examination of appropriate contracts or commitments of the City and the CFD.
4. Preparation of an acquisition and funding agreement to be entered to by the City and one or more of the owners of property to be included within the boundaries of such CFD, or the developer of such property, providing for the construction of certain of the major backbone infrastructure by such owner, owners or developer, as applicable, the acquisition thereof by the City and the payment to such owner, owners or developer, as applicable, of the purchase price of such major backbone infrastructure from the proceeds of bonds of such CFD or the special tax levied by such CFD.
5. Attendance at working group meetings and participation in conference calls as the City may request, and assistance to the City staff in preparation of such explanations or presentations to the City Council of the City as such staff may request.
6. Such other legal services as may be incidental to the foregoing.

CFD Bond Issuance Milestones and Tasks

1. Consultation with representatives of the City, including the City Attorney, the City's financial advisor, the special tax consultant, the market absorption consultant, the appraiser, disclosure counsel, the underwriter, underwriter's counsel, the property owner or owners and its or their counsel and consultants, and others, concerning the proposed financing and its timing, terms and structure, and including the rendering of legal advice with respect to the proceedings deemed necessary or desirable to comply with all requirements of law preliminary to the authorization, issuance and sale of such bonds.
2. Preparation or review of all legal proceedings incidental to or in connection with the authorization, issuance and sale of such bonds.
3. Preparation of documents to be adopted or entered into by such CFD required for the issuance of such bonds, including preparation of the authorizing resolution and the indenture providing for the issuance of such bonds (the "Major Legal Documents").
4. Preparation of the continuing disclosure agreement to be entered into by such CFD in connection with the issuance of such bonds.
5. Preparation of summaries of the Major Legal Documents included in the official statement for such bonds.

6. Attendance at such City Council meetings or working group meetings and participation in such conference calls as the City may request, and assistance to the City staff in preparation of such explanations or presentations to the City Council as such staff may request.
7. Preparation of final closing papers to be executed by such CFD required to effect delivery of such bonds (including the tax certificate) and coordination of the closing.
8. Rendering of Orrick's customary final legal opinion on the validity of such bonds and the tax-exempt status of interest thereon.
9. Such other legal services as may be incidental to the foregoing.

EXHIBIT "B"
COMPENSATION

CFD formation services - flat fee of $30,000
There are often substantial variations in the time and effort required to prepare and implement CFD formation proceedings. Such variations can result from differing time frames, complexities, issues to be resolved, document review and preparation requirements and participant experience and familiarity. The uniform flat fee structure allows formation costs to be allocated across Ontario Ranch CFDs, so that any one CFD, and its taxpayers, are not burdened with excess costs. Over the course of providing formation services for the multitude of CFDs formed for the City's CFD financings program, we have found that such flat fee has effectively averaged the costs for those CFDs that require a greater amount of time and effort and those that require a lesser amount of time and effort.

CFD bond issue, a fee based on the percentage of the principal amount of bonds issued and sold, as follows (with a minimum fee of $60,000):

(a) Two percent (2%) of the first $3,000,000 principal amount of bonds; plus
(b) One-half percent (0.5%) of the next $2,000,000 principal amount of bonds; plus
(c) One-tenth percent (0.1%) of the principal amount of bonds in excess of $5,000,000.

In addition to such fee, a flat amount of $1,000 for such issue of bonds to cover costs and expenses (direct and indirect) incurred in connection with such bond counsel services.
The proposed percentage fee structure allows bond counsel costs of issuance to be allocated proportionately among CFDs, so that CFDs with relatively smaller bond issuances.

Standard hourly rates are market rates for legal services related to larger litigation, corporate mergers, acquisitions and initial public offerings, energy and infrastructure finance and banking finance matters. Such rates are not configured for municipal finance matters such as CFD formations and bond issuances. Therefore, for ad hoc legal services and additional work related to a CFD or CFD bonds requested by the City that involve the preparation or review of additional documents or documentation or revisions or amendments to existing agreements or documentation, Orrick be paid a fee in such amount as the City and Orrick may mutually agree to be appropriate.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and Empire Economics, a Corporation, with its principal place of business at 35505 Camino Capistrano, Suite 200, Capistrano Beach, CA 92624 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Housing Market Economist services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the Housing Market Economist Services, Contract No. 1874 project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Housing Market Economist consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from April 1, 2025 to March 31, 2028, unless earlier terminated as provided herein. The City shall have the unilateral option,

at its sole discretion, to renew this Agreement automatically for no more than 2 additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed one hundred eighty thousand dollars ($180,000.00) without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "B" of this Agreement.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.2.5 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "A" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Armen Harkalyan, Executive Director of Finance.

3.3.5 City's Representative. The City hereby designates Claudia Hernandez, Departmental Administrator, or her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates Joseph T. Janczyk, President & Secretary, or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibit "A" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made

to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may seek damages from Consultant for delay in completing the Services caused by Consultant's

failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance

3.3.11.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than $2,000,000 per occurrence and no less than $4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than $2,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than $2,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on

a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

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

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations

otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or

"maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Consultants. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903

(2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only utilize its employees to provide the Services. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Consultant shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Consultant to use a Subcontractor, Consultant shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:	Empire Economics, Inc. 35505 Camino Capistrano, Suite 200 Capistrano Beach, CA 92624 ATTN: Joseph T. Janczyk, Ph.D.
City:	City of Ontario 303 East "B" Street Ontario, CA 91764 ATTN: Claudia Hernandez, Departmental Administrator

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish

where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.7.4.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use

City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.4.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. 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 calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. 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.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. 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.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.7.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.7.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND EMPIRE ECONOMICS, INC.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

EMPIRE ECONOMICS, INC.

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED

EXHIBIT "A"
SCOPE OF SERVICES

Consultant Responsibilities

Housing Market Economist

ADMINISTRATION

1. Attend working meetings and conference calls with City staff, consultants, underwriters, bond counsel, appraiser and other financial team members to discuss related financing issues.
2. Provide market research and analysis such as the Price Point Study as well as the Market Absorption Study in a timely manner. Present a synopsis of the highlights to the Financing Team, then collaborate with various team members for integration of the data into their respective analysis, such as the Special Tax Consultant.

PRICE POINT STUDY

1. Provide a comprehensive Price Point Study with the determination of current and future price points to be used by the Special Tax Consultant prior to the formation of the district and prior to the sale of bonds.
2. Perform a competitive market analysis of the proposed prices/values for the residential and/or business retail products within the CFD.
3. Perform a systemic analysis of the following factors: Request and then analyze the following information from the developer: Product type, expected prices, and sizes of living area.
4. Identify comparable active projects and compile information on them including base prices as well as incentives due to builder discounts and/or mortgage rate buy-downs.
5. Provide comparison of the forthcoming projects in the CFD market comparable projects. Establish a statistical best correlation trend line between their total net housing prices (after discounts along with the present value of the special tax lien) (Vertical axis on graph) versus their square footages of living area (Horizontal axis on graph).
6. Provide a comprehensive statistical analysis of the proposed prices for the projects in the CFD. Compare the developer's total housing prices to the market comparable total housing prices for each of the relevant sizes of living area for which products are expected to be offered and identify differences.
7. Recommend current price points for setting Special Taxes for the District. For projects/plans that have developer prices which are above the market comparable trendline, they are reduced to the trend line to be consistent with current competitive market conditions. Empire's recommended Price Points are then utilized by the Special Tax Consultant and other factors to determine the tax levels for the forthcoming projects/plans that conform to the City's policy of a maximum tax burden for homeowners.

MARKET ABSORPTION STUDY

1. Provide market studies for newly formed CFDs on an individual property basis.
2. Identify the expected product mix and proposed project summary.
3. Provide a definition of the competitive market area, economic and demographic overview, historical market data, and active and sold-out residential project overview.
4. Provide an absorption schedule for the proposed development.
5. Analyze the sensitivity of residential absorption to changes in mortgage rates.
6. Identify potential risk factors that may adversely impact the process and/or market absorption.

FUTURE PRICE POINT STUDY

Perform Price Point Review Study prior to the issuance of bonds that compare the future price points to the original price points as a safeguard to ensure that the level of special taxes that were set originally established conform to the City's maximum tax burden for homeowners.

- Perform analysis of the relevant housing market such as potential changes in housing prices for new homes in the market area.
- Analyze expected housing market demand-supply conditions in the market area.
- Recommend price adjustment factors during the relevant period.

EXHIBIT "B"
COMPENSATION

FEES

Fee Schedule for Housing Market Economist Services
Shall be based upon the costs of providing services that are appropriate for Municipal Bond Financing, as follows:

1. Current Price Point Study (PDF Format) - Used to set Current Special Taxes
2. Price Point Study Review (PDF Format) - Ensure that Total Tax Burden not exceed Ontario's policies.
3. Market Absorption Study for Official Statement (PDF Format)
4. Discussion of Conclusions with Relevant Professionals
    a. City of Ontario Staff as well as City Council Meetings
    b. Prices/Absorption/Risk Factors for the Municipal Advisor
    c. Prices/Absorption with Special Tax Analyst
    d. Absorption Schedules with Appraiser
    e. Absorption with Underwriter to Facilitate Marketing Bonds
5. Certification to Use the Market Absorption Study and/or Summary for Bond Offering
6. Protect Issuer from Potential Market Absorption Study Liability (Meets Insurance and Indemnification Requirements)
7. Promptly Respond to Queries from Prospective Bond Purchasers

Fee Schedule for Consulting Services
The consulting fees for Price Point Original (formation) as well as Price Point Review studies (prior to bond sale) and Market Absorption Studies (time of bond sale) shall be based upon the characteristics of the CFDs.

Price Point Study: Fees vary depending upon the combination of the following factors:

a. Number of product types: attached, detached condo and traditional detached
b. Number of Zones in a CFD: Each Zone has its own tax classes
c. New Product Type: Transition from traditional detached to detached condo and some 3- story configurations
d. Upper/lower bound tax classes.
e. Number of Interim Special Tax Classes to cover shifts in square footage is over time Market Comparables not available in Ontario Ranch

Price Point studies and Price Point Review studies performed on the following prior projects in Ontario Ranch with varying characteristics were used to determine the fee schedule for each CFD Zone since each has its own tax schedule.

Category #1: CFD (Single Tax Zone) with one product type, Active Comparables in Ontario Ranch. Not to exceed consulting fee: $6,500 (Example: CFD No. 55)

Category #2: CFD (Two Tax Zones) with two product types: attached, detached condo and/or traditional detached. Not to exceed consulting fee: $7,500 (Example CFD No. 63)

Category #3: CFD (Three Zones) with three product types or new product types not in Ontario Ranch Not to exceed consulting fee: $9,500; (Example CFD No. 56)

Price Point Review Study (prior to bond sale)
Based upon the City's policies, this study requires consideration of the validated market prices based upon homes that have actually closed escrow in the project, rather than current sales prices for homes that may not close escrow for 4 to 6 months in the future.

Category #1: Not to exceed consulting fee: $5,000 (Single Zone)
Category #2: Not to exceed consulting fee: $6,000 (Two Zones)
Category #3: Not to exceed consulting fee: $7,500 (Three Zones or New Product Type)

Market Absorption Study
Fees vary depending upon the combination of the following factors: Development status of the project, proportion of homes that have closed escrows.

Category #1: CFD more than 50% of the homes that have closed their escrows.
Not to exceed consulting fee: $8,500
Category #2: CFD less than 25% of the homes have closed their escrows.
Not to exceed consulting fee: $16,000

Time Required To Complete The Studies
Note: The times required for the various types of studies, as set-forth below, represented the typical amount of time required for performing the studies; if necessary, this may be reduced.
CFD Prior to Formation: New CFD Current Price Point Study.....four-five weeks
CFD Prior to Bond Sale: New CFD Price Point Review Study . . . . . three-four weeks
Market Absorption Study at Bond Sale: (If necessary, depending upon number of homes occupied)....four- five weeks.

Estimated Aggregate Annual Consulting Fees – Typical Year, Historically
The aggregate annual level of consulting fees is challenging to estimate due to the cycles associated with the economy and real estate markets. **Utilizing an estimated four to five CFDs for formations and another four to five CFDs for bond sale in a particular year, the consulting fees would amount to about $60,000/avg**; however, in a strong housing year, may approach $100,000.

Updates Of Price Point / Market Absorption Studies
Specifically, such Updates typically occur because some four-six months have passed from the date of the original Study, often due to the project experiencing delays in entering the marketplace, and/or revisions in the product characteristics, due to developer modifications as a result of changes in the marketplace. With regards to such Updates, Empire shall provide the City with a written Scope of Services and consulting fee, and then, prior to performing the proposed research, receive authorization from the City to proceed with the Update.

Hourly Fees for Supplemental Research

- Senior Consultant $325/hour
- Associate Consultant $175/hour
- Assistant Consultant $100/hour
- Administrative $50/hour

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City") and Kitty Siino & Associates, a Corporation, with its principal place of business at 115 E. 2nd Street, Suite 100, Tustin CA 92780 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Appraisal Services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional services for the Appraisal Services, Contract No. 1874 project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Appraisal Services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from April 1, 2025 to March

31, 2028, unless earlier terminated as provided herein. The city shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than 2 additional one-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Compensation.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed one hundred fifty thousand dollars ($150,000.00) without written approval of the City Council or City Manager, as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein. Payment shall not constitute acceptance of any Services completed by Consultant. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "B" of this Agreement.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.2.5 Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Consultant shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Consultant in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Consultant is not entitled: (1) Consultant shall immediately notify the City and the financial institution; (2) Consultant shall not withdraw any of the funds which were erroneously deposited or to which Consultant is not entitled; and (3) Consultant authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Consultant is not entitled.

3.3 Responsibilities of Consultant.

3.3.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any personnel performing the Services on behalf of Consultant shall not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultants officers, employees or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3.2 Schedule of Services. Consultant shall perform the Services in a prompt and timely manner and in accordance with the Schedule of Services set forth in Exhibit "A" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services expeditiously. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.3.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.3.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: Armen Harkalyan, Executive Director of Finance.

3.3.5 City's Representative. The City hereby designates Claudia Hernandez, Departmental Administrator, or her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.3.6 Consultant's Representative. Consultant hereby designates Kitty Siino, President, or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.3.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Period of Performance.

3.3.9.1 Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibit "A" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Performance Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage.

3.3.9.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

3.3.9.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made

to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.10 Laws and Regulations; Employee/Labor Certification.

3.3.10.1 Compliance with Laws. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause.

3.3.10.2 Employment Eligibility; Consultant. Consultant certifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time and shall require all subconsultants and sub-subconsultants to comply with the same. Consultant certifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement.

3.3.10.3 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.3.10.4 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.3.10.5 Water Quality Management and Compliance. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges. City may

seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in this Section, or any other relevant water quality law, regulation, or policy.

3.3.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

3.3.11 Insurance.

3.3.11.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.3.11.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than $2,000,000 per occurrence and no less than $4,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than $2,000,000 combined limit for each occurrence.

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

(D) Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than $2,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on

a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

3.3.11.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the City to add the following provisions to the insurance policies:

(A) Commercial General Liability: (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Consultant shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) Automobile Liability: (1) Additional Insured: The City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Vendor or for which the Vendor is responsible. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(C) Professional Liability (Errors & Omissions): (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) This insurance shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and include a provision establishing the insurer's duty to defend.

(D) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers.

3.3.11.4 Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the City, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.3.11.5 Waiver of Subrogation. All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.3.11.6 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the City and shall protect the City, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.3.11.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the City, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

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

3.3.11.9 Enforcement of Agreement Provisions (non estoppel). Consultant acknowledges and agrees that actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligation on the City nor does it waive any rights hereunder.

3.3.11.10 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

3.3.11.11 Additional Insurance Provisions

(A) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(B) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(C) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(D) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(E) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(F) Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.3.11.12 Insurance for Subconsultants. Consultant shall include all subconsultants engaged in any work for Consultant relating to this Agreement as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City, its officials, officers, employees, agents, and volunteers as additional insureds to the subconsultant's policies. All policies of Commercial General Liability insurance provided by Consultant's subconsultants performing work relating to this Agreement shall be endorsed to name the City, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Consultant shall not allow any subconsultant to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subconsultant's compliance with all insurance requirements under this Agreement, to the extent applicable. The Consultant shall provide satisfactory evidence of compliance with this section upon request of the City.

3.4 Labor Code Requirements.

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per

diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over $25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over $15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants.

3.4.3 Compliance Monitoring. This Project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Consultant or any subconsultant.

3.4.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6 Indemnification.

3.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.7 General Provisions.

3.7.1 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.7.2 Independent Contractors and Subcontracting.

3.7.2.1 Use of Consultants. Consultant is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Consultant is in compliance with the California Labor Code, Consultant shall only utilize its employees to provide the Services. Consultant may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the City as set forth in Section 3.7.2.2 below. Consultant represents and warrants that all personnel who perform the Services on Consultant's behalf are Consultant's employees, and that Consultant complies with all applicable laws, rules and regulations governing its

employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

3.7.2.2 Prior Approval Required. Consultant shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of City. In the event that City authorizes Consultant to use a Subcontractor, Consultant shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the City's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Kitty Siino & Associates, Inc.
115 E. 2nd Street, Suite 100
Tustin, CA 92780
ATTN: Kitty Siino, President

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
ATTN: Claudia Hernandez, Departmental Administrator

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Ownership of Materials and Confidentiality.

3.7.4.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a

minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.7.4.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.7.4.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.7.4.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.7.4.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.7.4.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel

determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the release notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of an objection notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.7.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.6 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements.

3.7.7 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.7.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.7.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.12 Assignment or Transfer. Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such

consent shall be void and without legal effect and shall constitute grounds for termination. Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.7.13 Construction; References; Captions. 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 calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. 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.

3.7.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.15 Waiver. 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.

3.7.16 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.7.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.7.19 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of

which shall constitute an original.

3.7.21 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

SIGNATURES ON NEXT PAGE

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND KITTY SIINO & ASSOCIATES

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

KITTY SIINO & ASSOCIATES

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED

EXHIBIT "A"
SCOPE AND SCHEDULE OF SERVICES

Consultant Responsibilities

Consultant shall perform the following CFD Appraisal Services:

1. At the beginning of the appraisal for special district financing, obtain the necessary information on the property via interviews with the property owner/developer: tract maps, title reports, soils and environmental reports, costs of development, sales information and other relevant information. Further, work with the engineer to obtain information on the Assessment District or Community Facility District, including the rate and method of apportionment, information on the improvements to be financed via the bond sale, the engineer's report and the formation documents to fully understand the proposed special district and how it affects the value of the subject property.
2. Update the Finance Team during the valuation process meetings and conference calls on the appraisal status.
3. Complete the required steps of the appraisal process:
    a. Compile demographic information and relate that data to the subject property to perform a feasibility/demand analysis.
    b. Gather and analyze information on the subject marketplace.
    c. Perform inspections of the property, interview property owner representatives, review title reports, soils reports and environmental reports.
    d. Determine the highest and best use for the property, searching the area for comparable sales and interviewing representatives from each.
    e. Review sales brochures and sales information on the subject property.
    f. Review developer sales within the project.
    g. Review the multiple listing service for re-sale history within the project.
4. Analyze the comparables to determine any differences in special assessments.
5. Use the information gathered in the appraisal process to determine a value for the subject.
6. At times there are slight differences in the square footage of the various plans between what the builders have marketed and what the building permit states. The building permit square footage is used by the Special Tax Consultant to set the Rate and Method; however, the marketed square footage is what the appraisal uses as it replicates the current market. If needed, the differences shall be analyzed and reconciled throughout the appraisal process. The Consultant shall personally inspect the subject property in order to ascertain the condition of each lot as of the date of value of the appraisal, and use this information throughout the appraisal process and then utilized for the various categories identified by the Special Tax Consultant for the value to lien tables in the Official Statement.
7. Once the appraisal is complete, send an electronic draft to the Finance Team for comments and discussion purposes.
8. Once all comments are received, the final appraisal is completed, and the final document shall be prepared to be included in the Official Statement.
9. After the Official Statement is published, any questions relating to the appraisal by potential bond buyers shall be addressed promptly.
10. Consultant shall work with the Finance Team to ensure the appraisal is completed promptly within the 90-day window so a supplement to the appraisal will not be needed.
11. Respond to all questions promptly throughout the appraisal process.

EXHIBIT "B"
COMPENSATION

Fees shall vary depending on the number of builders, products, and/or plans that are included in the project. Below are examples based on product type:

Product Type	Proposal Fee*
One Neighborhood	$18,500.00
Two Neighborhood	$21,500.00
Three Neighborhood	$24,500.00
Four Neighborhood	$27,500.00

Notes:

1. Each neighborhood increases the fee by $3,000.

2 - Average appraisal has been for one community with three neighborhoods.

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Andy Marquez Staff Member Presenting: Scott Burton, Utilities General Manager Reviewed By: Dennice Raygoza, Albert G Gastelum, Michael Sigsbee Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 7

SUBJECT: **AN AMENDMENT TO THE CONSTRUCTION CONTRACT WITH G.M. SAGER CONSTRUCTION INC. FOR ON-CALL AND EMERGENCY UTILITY TRENCH PAVING SERVICES**

RECOMMENDATION: That the City Council approve and authorize the City Manager, or designee, to execute Amendment No. 2 to the On-Call Services Contract with G.M. Sager Construction Inc., of Pomona, California, for On-Call and Emergency Utility Trench Paving services for a revised total not-to-exceed aggregate amount of $2,035,170 and a term from September 6, 2022 through June 30, 2026.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Fiscal Year 2024-25 Budget includes appropriations from the Water and Sewer Operating Fund for these on-call services. Additional appropriations will be included in the respective fiscal year. There is no impact to the General Fund.

Proposed Amendment No. 2 will increase the existing Contract amount by $211,600 for a total revised Contract aggregate amount of not-to-exceed $2,035,170. Actual expenses will be based on actual work performed.

BACKGROUND & ANALYSIS: The Contract for repair and repaving of utility trenches throughout the City is essential for maintaining safe and functional roadways following planned and emergency water and sewer repairs. Due to increases in the size of necessary repairs associated with utility trench site requirements, the overall cost of trench repairs has increased. Added costs include additional traffic control measures and the depth of a trench. A funding adjustment to effectively continue providing current and anticipated services is required.

This Contract provides for the repair and repaving of utility trenches at various locations

throughout the City on an as-needed basis. The work performed under this Contract consists of trench repairs associated with work performed by Staff on water main and residential services, sewer mains, and various water facilities. Trench repairs are coordinated with the Contractor following utility work to minimize disruption within the public right-of-way.

In June 2022, the City solicited bids for On-Call and Emergency Utility Trench Paving, and six bids were received through the City's electronic bid management system in response to Bid No. 1541, OMUC Contract No. UT-1068. City Council approved the Contract on September 6, 2022.

Staff recommends approval of Amendment No. 2 to the On-Call Services Contract with G.M. Sager Construction Inc. as they have performed this type of work in the past, including the previous annual contract, and is familiar with the City's requirements and has the ability to perform the work in a timely manner.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 2
TO THE ON-CALL SERVICES
FOR UTILITY TRENCH PAVING AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
G.M. SAGER CONSTRUCTION CO, INC.

1. Parties and Date.

This Amendment No. 2 ("Amendment No. 2") is made and entered into as of this ____ day of _____, 2025 by and between the City of Ontario ("City") **and G.M. Sager Construction Co, Inc**. ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1. Agreement. The Parties entered into an agreement entitled "**On-Call Services for Utility Trench Paving**" dated September 6, 2022 ("Original Agreement"), which is incorporated herein by reference. The Parties entered into Amendment No. 1 dated February 7, 2023 ("Amendment No. 1"), which is incorporated herein by reference. Amendment No. 1 added additional services for the Ontario Municipal Services Center Temporary Modular Purchase, and increased the total not-to-exceed ("NTE") amount by One Hundred Twenty Eight Thousand, Fifty Eight and 0/100 Dollars ($128,058) to One Million, Eight Hundred Twenty-Three Thousand, Five Hundred Seventy and 0/100 Dollars ($1,823,570).

2.2. Amendment Purpose. The Parties desire to amend the Existing Agreement to increase the NTE amount by **Two Hundred Eleven Thousand, Six Hundred and 0/100 Dollars ($211,600)** to accommodate Work required by the City through June 30th, 2026.

2.3. Existing Agreement. This Amendment No. 2, is authorized pursuant to Article 3 of the agreement.

3. Terms.

3.1 Amendment. Article 3 of the agreement is hereby amended in its entirety to read as follows:

> ***ARTICLE 3. CONTRACT PRICE.*** *The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the not to exceed sum of* ***Two Million, Thirty-Five Thousand, One Hundred Seventy and 0/100 Dollars ($2,035,170),*** *hereinafter the Contract Price. Payment shall be made as set forth in the General Conditions. The maximum compensation for the Work to be provided pursuant to each Task Order shall be set forth in the relevant Task Order.*

3.2. Continuing Effect of Agreement. Except as amended by this Amendment No. 2, all other provisions of the Existing Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 2. From and after the date of this Amendment No. 2, whenever the term "Agreement" appears in the Existing Agreement, it shall mean the Existing Agreement as amended by this Amendment No. 2.

3.3. Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 2.

3.4. Severability. If any portion of this Amendment No. 2 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5. Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON THE FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 2 TO THE ON-CALL SERVICES FOR UTILITY TRENCH PAVING AGREEMENT BETWEEN THE CITY OF ONTARIO AND G.M. SAGER CONSTRUCTION CO, INC.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 2 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

G.M. SAGER CONSTRUCTION CO, INC.

[If Corporation, TWO SIGNATURES, President, OR Vice President AND Secretary OR Treasurer REQUIRED]

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Community Life & Culture Prepared By: Danielle Guevara Department: Prepared By: Danielle Guevara Staff Member Presenting: Helen McAlary, Executive Director Community Life and Culture Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 8

SUBJECT: APPROVAL OF A SOLE SOURCE PURCHASE TO PROVIDE A CUSTOM DESIGNED DRONE SHOW FOR TWO ANNUAL EVENTS

RECOMMENDATION: That the City Council approve Grizzly Entertainment, LLC of Palm Springs, CA as the sole source vendor to provide a custom designed drone show for the annual Independence Day and Holiday Tree Lighting celebrations.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: The Fiscal Year 2024-25 Operating Budget includes appropriations in the General Fund related to the production of the Independence Day and Holiday Tree Lighting shows. The approval of a sole source vendor to provide a custom designed drone show for the annual Independence Day and Holiday Tree Lighting celebrations does not commit the City to any specific level of future expenditures with this vendor. Future expenditures for the vendor will not exceed the Recreation & Community Services Department's operating budget established by the City Council.

BACKGROUND & ANALYSIS: The Recreation & Community Services Department hosts free annual celebrations for Independence Day and the Holiday Tree Lighting, bringing the community together to celebrate. These events feature several entertainment elements, including a 10-minute drone show and attract over 25,000 spectators each year. The drone operator is responsible for providing all pre-production services, music production and choreography, FAA licensing, and a specialized crew. Due to the high level of expertise required, strict safety regulations, and the City's insurance compliance standards, including FAA insurance, only a limited number of vendors in the region can provide this service.

Ontario Municipal Code Section 2-6.23(b) and 2-6.23(c) authorizes the Purchasing Officer to make

purchases without following the standard purchasing procedures whenever (1) the goods can be obtained from only one source, and/or (2) a breakdown in machinery, equipment, or an essential services which requires immediate purchase of supplies and equipment to protect public health, safety, and welfare generates circumstances that a competitive bid would thus be undesirable, impractical, or impossible.

Grizzly Entertainment has successfully completed five events with the City since October 2023. These events include the Trunk or Treat Event in both October 2023 and 2024, the Holiday Tree Lighting Event in December 2023 and 2024, and the Fireworks Spectacular Event in July 2024.

Staff recommends the approval of this vendor as a Sole Source based on their specialized services and previous experience providing services for the City of Ontario.

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GRIZZLY
ENTERTAINMENT

sUAS Service Agreement

This Small Unmanned Aerial System Service Agreement (“sUAS Agreement”) is entered into this Feb 12, 2025 (the “Effective Date”), by and between **Grizzly Entertainment LLC ("GRZ")**, of 1135 Passage Street, Palm Springs, CA 92262 and CITY OF ONTARIO ("COO"), of 1265 S Palmetto Avenue, Ontario, CA 91762 ("Customer") (collectively referred to as the “Parties”).

WHEREAS **GRZ** provides photography, videography, and data collection services (“sUAS Services”) using unmanned aerial vehicles (“UAVs”), also known as “drones”.

WHEREAS **GRZ** will provide sUAS Services and license or provide rights in its copyright protected photographs, video and/or data to Customer under the terms set forth in this Agreement.

WHEREAS **GRZ** provides sUAS Services and operates under FAA Part 107 Regulations, COAs, waivers and permissions issued by the FAA and/or Section 44807 Exemptions, as required.

WHEREAS **GRZ** is insured for liability and property damage coverage for its sUAS Services.

WHEREAS Customer wishes to hire **GRZ** to provide sUAS Services and license or transfer rights to certain photographs, video and/or data from GRZ as provided herein.

THEREFORE, in consideration of the mutual agreements hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending legally to be bound hereby, agree as follows:

1 sUAS Services

GRZ will perform the following Services for Customer at Westwind Park:

a. Provide drones to perform a drone light show. (UP TO 500 drones)
b. Provide a sample of animations for pre-approval.
c. Provide pilots and animators to operate the show.
d. FAA Regulatory Compliance & Reporting.

Copyright Protected, Grizzly Entertainment (2024).

Zoho Sign Document ID: 4AC8C85E5-9SXX47TIHYRCXAPPLDSAZ1LROPOD7KOV_CW2-RCIVZG

e. Any location changes must be approved by GRZ prior to agreement completion.
f. Other: N/A

2 Fee

Customer will pay **GRZ** a flat fee of **SIXTY THOUSAND ($ 60,000.00)** ("Flat Fee") for the sUAS Services and all other services contemplated under the Agreement which includes, operating the UAV, and all other costs or fees associated with licensing, copyright etc.

2.1 Animation Design and Lighting Changes

No animation changes can be made 7 days prior to the show.
If, however, a change is required for:

a. 1 formation change: GRZ will need to be notified 8 working days prior to the show. The Cost per formation change would be $1000.
b. Every other additional formation, an additional 5 working days notification would be required. The Cost per formation change would be $1000.

2.2 Other Fees

-

3 sUAS Service Deliverables

GRZ will license the following item as set forth in the Copyright Agreement set forth in Addendum A, to COO as part of its sUAS Services:

A. Sample animation for approval before proceeding with the final animation.
B. One Drone Show with maximum 8 animations for the duration of 10-12 minutes maximum.
C. Other: N/A

4 sUAS Service Dates

Customer understands that there are variables, some outside GRZ's control, which affect GRZ's ability to fly on any given date and time at any given flight location. These variables include, but are not limited to, compliance with FAA regulations, conditions, and limitations, third party permissions, weather conditions and safety issues.

Copyright Protected, Grizzly Entertainment (2024).

Zoho Sign Document ID: 4AC8C85E5-9SXX47TIHYRCXAPPLDSAZ1LROPOD7KOV_CW2-RCIVZG

A. Subject to these variables, the Parties will in good faith work together to meet the following timelines:
   i. the UAV flight related activities will take place on or about Jul 4, 2025
   ii. sUAS Deliverables will be provided to Customer before or about Jul 3, 2025.

B. Customer will provide right-of-entry on the flight locations(s) for **GRZ** its agents, representatives, employees, and subcontractors, necessary to perform the sUAS Services. **GRZ** will obtain all other required permissions to provide the Services. In case of non-performance of the show through the fault of the Customer, its responsibility will be limited to re-scheduling for another jointly available date and all direct damages caused to the Customer.

5 Payment Terms

5.1 Customer will pay as follows:

A. A deposit is in the amount of THIRTY THOUSAND ($ 30,000.00) is due upon execution of the Agreement. Remaining balance 3 days prior the Show execution.
B. The sUAS Service Fee is included as part of the Flat Fee.
C. The Copyright License Fee is included as part of the Flat Fee. In case of non-payment or change of plans by the Customer, no show will be held, and the **GRZ** will not have any responsibility for its cancellation.

5.2 Other Payment terms:

A. 50% payment will be applied If cancellation occurs 60 days before the show.
B. 100% payment will be applied If cancellation occurs 30 days before the show.
C. If the show is booked in less than 30 days, then 100% payment will be applied.
D. In case of a cancellation due to weather or any other reason, then **GRZ** will reschedule the show at a convenient day and time for both parties. The customer will then undertake the cost of travel, accommodation, and local transportation expenses of **GRZ**

6 FAA Compliance & Insurance

GRZ warrants that it has obtained all required FAA approvals for the sUAS Services and maintains general liability insurance for bodily injury and property damage with an aggregate limit of Two Million Dollars ($2,000,000.00) per occurrence. GRZ will provide Customer upon the execution of the Agreement with certificates of insurance evidencing a policy endorsement naming CITY OF ONTARIO as an additional insured under the policy. GRZ agrees to hold

Copyright Protected, Grizzly Entertainment (2024).

Zoho Sign Document ID: 4AC8C85E5-9SXX47TIHYRCXAPPLDSAZ1LROPOD7KOV_CW2-RCIVZG

Customer harmless from any loss, damage, injury, or liability, including wrongful death, in law or in equity, from negligent acts by GRZ, its employees, agents, and/or its representatives that are within the limits and coverage of said insurance and paid from the policy, and to hold Customer harmless from any third party claims against Customer alleging intellectual property infringement for the use of the Copyright protected Works. In addition to the general liability insurance requirements specified herein, the party shall also maintain Aviation and/or Drone Liability Insurance in the amount of $1,000,000 per occurrence.

7 Intellectual Property

GRZ owns any and all right, title and interest in and to, without exception and broadly defined, Copyright Protected Works (as herein defined), including, without limitation, all rights under copyright law worldwide and all right to exploit the Copyright Protected Works before, after or during the term of any License to Customer and for any purpose and regardless of the exclusivity of Customer's license and otherwise subject only to the Terms. Works is defined to include all images, videos, graphics, data, and data output, digital or otherwise, including, without limitation, maps, photographs, and videos created and/or generated by GRZ through, or related to, the use of Unmanned Aerial Systems as part of the sUAS Services and/or Deliverables.

8 Term

The Term of this Agreement shall be the Term set forth in Copyright Agreement set forth in Addendum A.

9 sUAS Service Warranty/Limitations

GRZ will perform sUAS Services with that level of care and skill ordinarily exercised by other UAS professionals practicing in the same discipline(s), contemporaneously under the same circumstances and in the same locality as Customer's project. GRZ represents and warrants that all content created for or used to create the Copyright Protected Works, including but not limited to text, source code, images, photographs, videos, or designs, will not violate the rights of third parties, including without limitation intellectual property rights and rights of publicity or privacy. No other warranties, express or implied, or fitness for a particular purpose are made with respect to this Agreement or the sUAS Services, Deliverables or License provided hereunder.

Copyright Protected, Grizzly Entertainment (2024).

Zoho Sign Document ID: 4AC8C85E5-9SXX47TIHYRCXAPPLDSAZ1LROPOD7KOV_CW2-RCIVZG

GRIZZLY
ENTERTAINMENT

10 Integration and Modifications

GRZ hereby incorporates Addendum A into this Agreement. This Agreement constitutes the entire agreement between the parties. The parties further acknowledge that this Agreement supersedes all other proposals, agreements, and/or communications, oral or written between the Parties. No modifications of the Terms and/or Proposal are valid, unless the same is made in a written document executed by both parties.

11 Governing Law, Venue & Personal Jurisdiction

GRZ and Customer consent to the jurisdiction of the State and/or Federal Courts located in Riverside County, California for the resolution of any and all disputes between the parties arising out of this Drone Services Agreement and agree that venue will be proper and convenient in Riverside County, California, and that neither party shall challenge venue in Riverside County, California. The validity and construction of the Drone Services Agreement, and the rights and duties of the parties thereunder, will be governed in accordance with the laws of the State of California.

This agreement has been signed by the parties.

Grizzly Entertainment LLC	CITY OF ONTARIO
Full Name: Themis Violaris	Full Name:
Title: CEO	Title:
Date:	Date:
Signature:	Signature:

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Zoho Sign Document ID: 4AC8C85E5-9SXX47TIHYRCXAPPLDSAZ1LROPOD7KOV_CW2-RCIVZG

GRIZZLY
ENTERTAINMENT

Addendum A: Copyright Agreement

12 Incorporation by Reference

This Copyright Agreement is an Addendum to the Agreement.

13 The Copyright Protected Works

Customer agrees that the Copyrighted Works, whether registered or unregistered, are defined to include:

1. All photographs and video taken by GRZ as part of the sUAS Services or Deliverables, whether raw, edited, unedited, reproduced, copied, modified or sampled by GRZ, Customer or any third party.
2. All data in whatever form, obtained as part of the sUAS Services or Deliverables including data that is input, output, copied, manipulated, incorporated, edited, reproduced or analyzed into or by any third-party software.

14 Type of License

Subject to the Terms and this Copyright Agreement, GRZ grants to Customer a license to use the Copyright Works provided by GRZ.

14.1 Non-Exclusive

Customer shall have non-exclusive rights in the Copyright Works during the Term of this Agreement

15 Assignment

15.1 Non-assignable

Customer may not assign it rights and/or obligations under the Agreement to another party

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without the prior written consent of GRZ which consent shall not be unreasonably withheld.

16 Scope of Use

This license allows Customer to the following rights related to the Copyright Works ("Rights"), and subject to all other License provisions herein:

1. **Reproduce the Copyright Works.**
2. **Distribute copies of the Copyright Works.**
3. **Display the Copyright Works.**
4. **Non-commercial use only**

17 Territory

The licensed territory wherein the Customer may exercise Rights is limited to the following:

1. **United States of America**

18 Sublicense

GRZ grants to Customer the right to sublicense licensed Rights to a third party. If the agreement is sub-licensable, Customer agrees as part of any sub-license to require the licensee to abide by all the terms of this Agreement.

19 Expressly Prohibited Uses by Customer

1. Use that violates the rights of third parties or violates any applicable local, national, state, provincial, and/or international laws, treaties, and regulations.
2. Claim any proprietary rights of any sort in all or any portion of the Copyright Works or alter or remove any copyright or proprietary noticed contained in or in the Copyright Protected Works.
3. Use all or any portion of the Copyright Works that could be considered offensive, threatening, pornographic, defamatory, or unlawful.

20 Enforcement of Intellectual Property Rights

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GRIZZLY
ENTERTAINMENT

GRZ reserves the exclusive right, but not the obligation, to enforce all copyrights against infringers at its own cost and to its exclusive benefit.

21 Term & Termination

Subject to the Terms mentioned above and this Agreement, the Copyright License granted to Customer by GRZ shall be in effect for/until the date below, and all such licenses or sublicenses that may have been granted by Customer are terminated unless expressly renewed or extended in writing:

1. Perpetual and indefinite.

22 Force Majeure

GRZ will not be liable in case of bad weather, force majeure, other restrictive measures or other reasons outside its responsibility and control, which will make the performance of the show impossible. In this case the show will be rescheduled for a commonly available date.

23 Other

-

Copyright Protected, Grizzly Entertainment (2024).



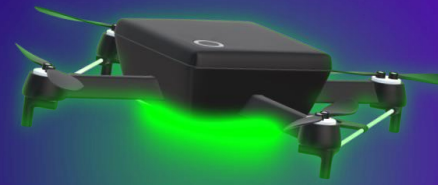
Proposal for the City of Ontario

GRIZZLY DRONE LIGHT SHOWS

Company Name:	City of Ontario
Attn:	Jose Coria
City/Country:	Ontario, CA
Ref. No.:	072GRZ2025
Date:	March 20th, 2025
Prepared & Singed by:	Theofanis C. - CMO

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What we offer



SPECTACULAR

Creativity, Innovation, and state-of-the-art technology create a one-of-a-kind experience.

EXPERIENTIAL

Engage with the audience for a different channel of communication and experience

ENVIRONMENTALLY FRIENDLY

Electrically powered

No emission

No noise



STORYTELLING

Let your audience experience your story with an unforgettable and unique way

ARCHITECTING

Sky is the limit on creating your story or message with colorful logos, text, shapes and 3D designs

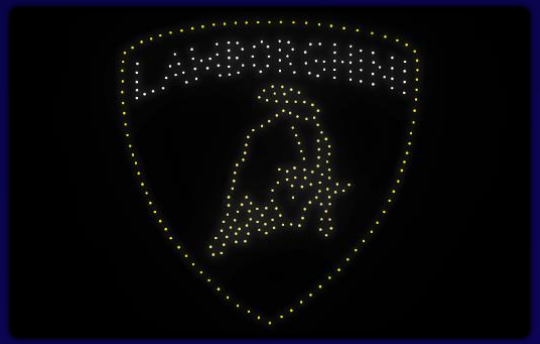
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Ideas

Ideas and visions can get real in the night sky with the help of our professional team of designers.

logo / text





music synchronization





3D designs





combined with lasers & projections





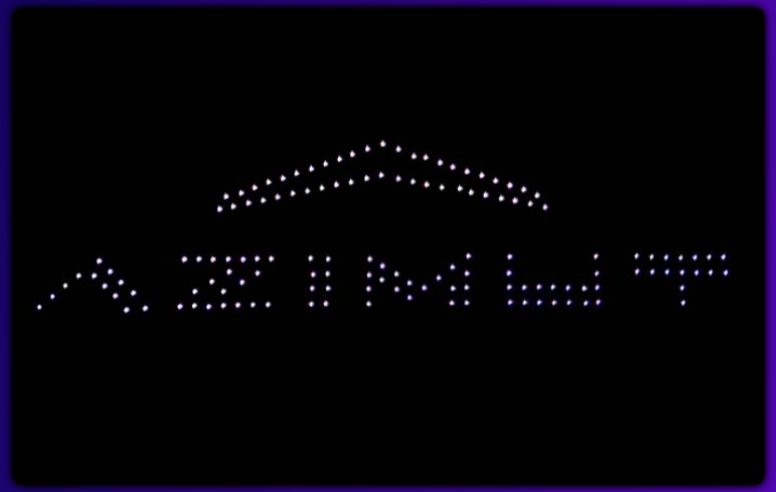
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Previous Projects

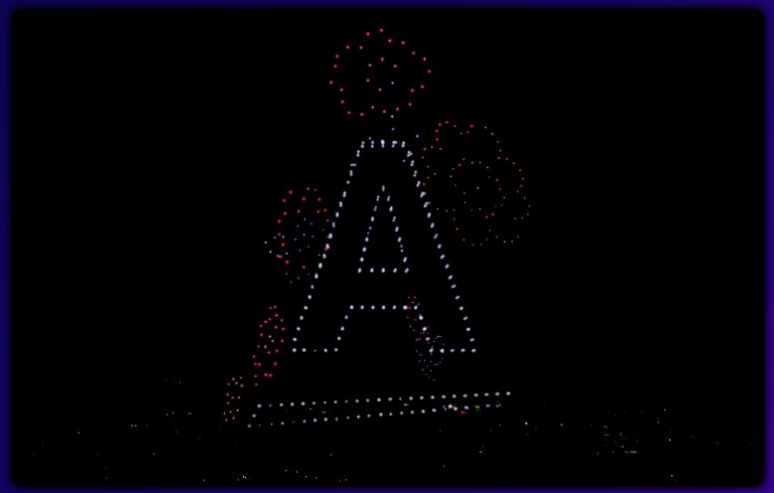
With over 200 breathtaking drone shows, we can create unforgettable experiences tailored to your vision.











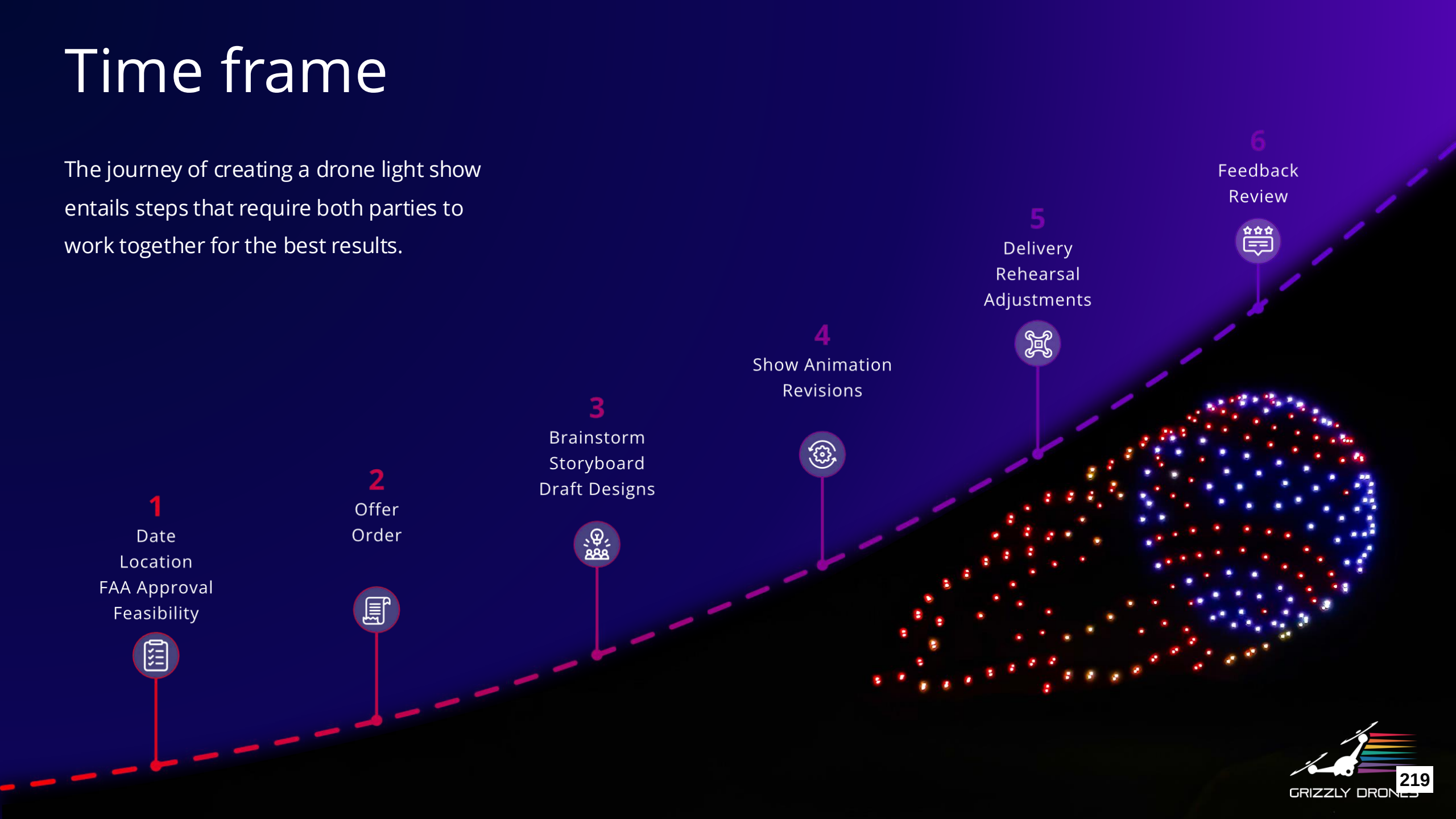


View more projects

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Time frame

The journey of creating a drone light show entails steps that require both parties to work together for the best results.



Important factors



Lead Time

2-4 weeks, depending on location, permits and animation size.

Authorization

The approval of FAA is mandatory and local permits might be required.

Site Survey

Ideal surfaces are solid flat and stable

Secure Zone

Safety Parameters
Security Guards
Local Police
Fire Department
We will help you with this!

Weather

Up to 6 m/s wind speed during the show and no precipitation

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Drone number comparison

Ideas and visions can get real in the night sky with the help of our professional team of designers.

SPECTACULAR



Up To 100 Drones

EXTRAORDINARY



Up To 300 Drones

UNFORGETTABLE



Up To 600 Drones

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Bigger in the sky



x50

times bigger

400ft

above in the sky



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Drone Show Charges

December 6, 2025

City of Ontario – Happy Holidays

Package	Unit Price	Number of Shows	Amount
Up to 500 Drones	$48,000	1	$48,000.00

Terms & Conditions

Our pricing includes custom programming and animation, drones, and insurance.

Local permits and licenses are managed/handled with the assistance of the customer.

VAT or Sales Taxes are not included on the above prices.

Payment Terms for Shows - 1st Payment - 50% on Contract Signing, 2nd Payment - 50% three days before the Show

Other Important Points

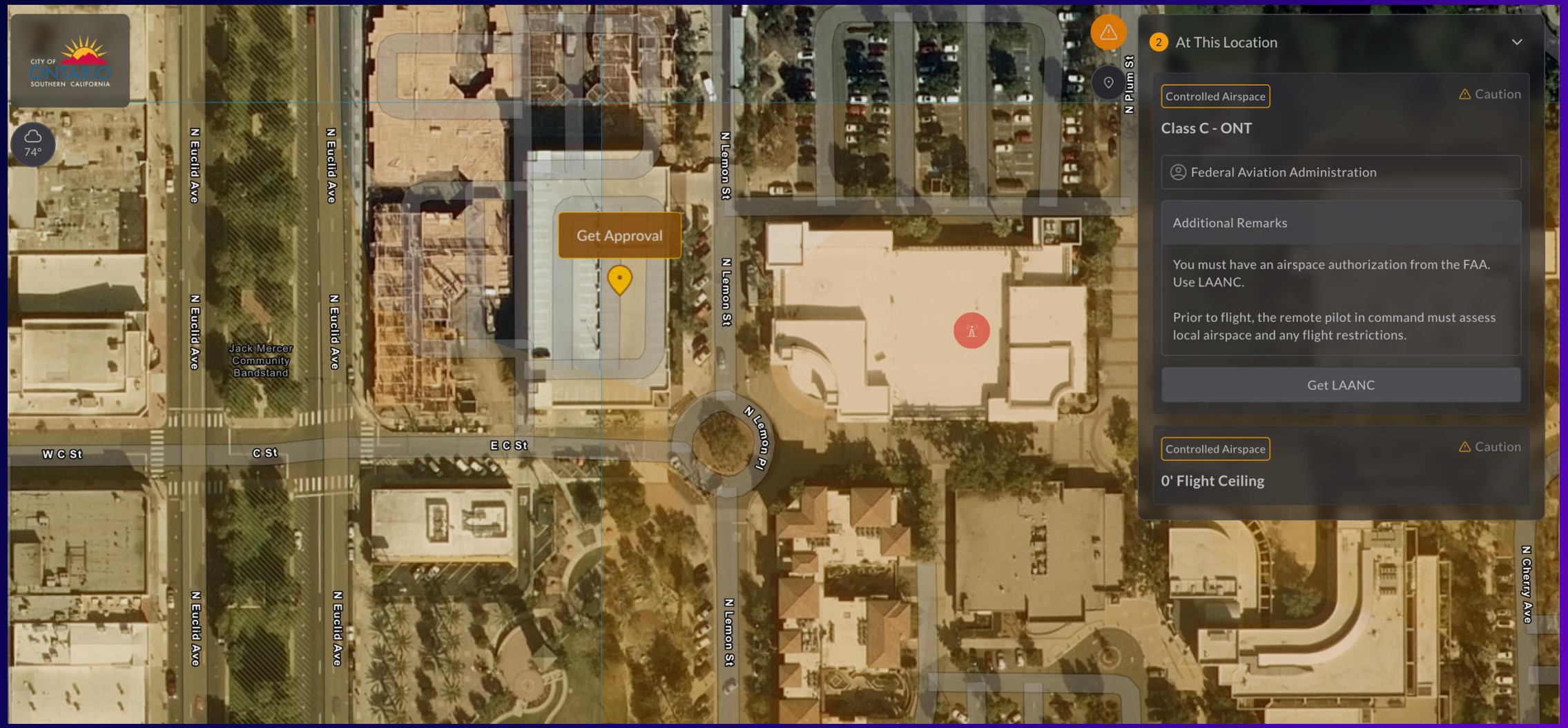
Integration with other external systems, (Lights, Sounds, etc.), has to be communicated, agreed and tested prior the official Show.

A separate Sales Agreement will be signed Between Grizzly & Customer.

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Clearance to fly status

Ontario Town Square, 224 N Euclid Ave, Ontario, CA 91762



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Insurance – Waiver/License

Moonrock
Drone Insurance

Warnford Court
29 Throgmorton Street
London
EC2N 2AT
Tel: 0800 852 7757
Email: info@moonrockinsurance.com
Web: www.moonrockinsurance.com

CERTIFICATE OF LIABILITY INSURANCE

We, the undersigned, hereby certify that the following described insurance is in force at this date, underwritten by Apollo Insurance:

Name of Insured: GRIZZLY ENTERTAINMENT LLC

Address: 1235 PASSAGE STREET, PALM SPRINGS, 92262
CA, USA

Period of Insurance: From: 00.01 on 18/08/2024
To: 23:59 on 17/08/2025

Limit of Indemnity: Public Liability USD 2,000,000

Territorial Limits: Worldwide (as per Moonrock Wording)

Unique Market
Reference Number: B184024YPC0030111

We write to confirm the Moonrock insurance policy, underwritten by Apollo Insurance, meets the minimum requirements of EC785/2004 for third party liability including war and terrorism risks. We certify that to the best of our belief as Insurers of or Insurance Brokers to the Permission holder/Exemption holder or applicant, the above particulars, in so far as they relate to the insurance policies held, are correct.

The policy is subject to the insuring agreements, exclusions, conditions and declarations contained therein.

The above is accurate at the date of signature. Should the above mentioned contract of insurance be cancelled, assigned or changed during the above Policy period in such manner as to affect this document, no obligation to inform the holder of this document is accepted by the undersigned or by the Insurers.

Signed:

simon ritterband

Simon Ritterband - Managing Director

Dated: 01/08/2024

Moonrock, Moonrock Insurance Solutions and Moonrock Drone Insurance are trading names of IFR Drones Ltd which is authorised and regulated by the Financial Conduct Authority (FCA) under firm reference number 979916.

IFR Drones Ltd is registered in England and Wales company registration number 09426291 Registered address 27a Maxwell Road, Northwood, HA6 2XY.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

CERTIFICATE OF WAIVER

ISSUED TO

Grizzly Entertainment, LLC
Responsible Person: Iacovos Maifoshis
Waiver Number: 107W-2022-00730

ADDRESS–

1135 Passage St
Palm Springs, CA 92262

This certificate is issued for the operations specifically described hereinafter. No person shall conduct any operation pursuant to the authority of this certificate except in accordance with the provisions contained in this certificate.

OPERATIONS AUTHORIZED

Small unmanned aircraft system (sUAS) operations at night and during civil twilight without anti-collision lights meeting the requirements of § 107.29(a)(2) & (b); Acting as a remote pilot in command (PIC) or visual observer (VO) in the operation of more than one small unmanned aircraft (sUA) at the same time.

LIST OF WAIVED REGULATIONS BY SECTION AND TITLE

14 CFR §§ 107.29(a)(2) & (b)—Anti-collision light requirement for operations at night and during periods of civil twilight, and
107.35—Operation of multiple small unmanned aircraft systems

STANDARD PROVISIONS

1. A copy of the application made for this certificate shall be attached to and become a part hereof.
2. This certificate shall be presented for inspection upon the request of any authorized representative of the Administrator of the Federal Aviation Administration, or of any State or municipal official charged with the duty of enforcing local laws or regulations.
3. The holder of this certificate shall be responsible for the strict observance of the terms and provisions contained herein.
4. This certificate is nontransferable.

NOTE—This certificate constitutes a waiver of those Federal rules or regulations specifically referred to above. It does not constitute a waiver of any State law or local ordinance.

SPECIAL PROVISIONS

Special Provisions Nos. 1 to 30, inclusive, are set forth on the attached pages.

This Certificate of Waiver is effective from June 29, 2022, to April 30, 2025, and is subject to cancellation at any time upon notice by the Administrator or an authorized representative.

BY DIRECTION OF THE ADMINISTRATOR

DEREK W HUFTY
Digitally signed by DEREK W HUFTY
Date: 2022.07.05 09:33:28 -04'00'

General Aviation and Commercial Division, AFS–800

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Van Nuys, CA 91406
+1 929-428-0773

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+357 25 870001

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1 Fragon St, Thessaloniki, 54626, Greece
+357 99 543166

sales@grizzlyglobal.net

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CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Community Improvement Prepared By: Angel Hamilton Staff Member Presenting: Rudy Zeledon, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: A RESOLUTION FOR PLACEMENT OF SPECIAL ASSESSMENTS ON THE SAN BERNARDINO COUNTY TAX ROLLS

RECOMMENDATION: That the City Council adopt a Resolution for recovery of fees and costs incurred in abating property and dangerous building violations, as well as administrative citations and civil penalties associated with property maintenance violations and placing assessments on the San Bernardino County Tax Rolls.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The levy of special assessments will result in the recovery of $37,122.36 in costs that the City has expended for inspection or abatement of property violations, as well as the collection of $12,740.00 associated with civil penalties and/or fines for continued violations, for a total of $49,862.36 related to 92 parcels. When received, these reimbursements will be deposited into the General Fund. The special assessment revenue is included in the Fiscal Year 2024-25 Budget.

BACKGROUND & ANALYSIS: The City has established administrative citations and fines for property maintenance violations and fees and penalties associated with the Systematic Health and Safety Inspection Program, Abandoned and Distressed Property Program, and Weed and Refuse Abatement Program. These costs, fines, fees, and penalties are recovered through placement of special tax assessments upon the properties. The placement of special assessments and collection of revenue is done under Ordinance 3046, Property Appearance (Title 5, Chapter 22 of the Ontario Municipal Code); Chapter 9 of the Uniform Code for the Abatement of Dangerous Buildings; and Ordinance 2920 for civil penalties for continued violations of the Ontario Municipal Code and fines associated with administrative citations (Title 1, Chapters 2 and 5 of the Ontario Municipal Code).
The City and County currently have a contractual agreement regarding the implementation of special assessments; however, a Resolution authorizing the placement of the specific assessments is required. During this assessment cycle, the Community Improvement Department has billed property owners for: the abatement of violations; the issuance of fines associated with administrative citation; the issuance of fees and penalties associated with the Systematic Health

and Safety Inspection Program; the issuance of registration fees and civil penalties associated with the Abandoned and Distressed Property Program; the issuance of notice and re-inspection fees; and, civil penalties for the Weed and Refuse Abatement Program on 186 parcels. Of these, there are remaining amounts due on 92 parcels. Attached are itemized accounts that include: 1) costs associated with inspection or abatement as shown in Exhibit A of the Resolution; 2) civil penalties and/or fines for continued violations as shown in Exhibit B of the Resolution; and 3) total amounts per parcel as shown in Exhibit C of the Resolution. All affected property owners were given notice of the imposition of special assessments via certified mail as provided in Ontario Municipal Code Section 1-4.05(a) and have either not requested an appeal or have exhausted the appellate procedure in Ontario Municipal Code Section 1-4.05(b).

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ADOPTING A REPORT REQUESTING THE PLACEMENT OF SPECIAL ASSESSMENTS ON PROPERTY TAX BILLS FOR CIVIL PENALTIES OR RECOVERY OF COSTS INCURRED FOR ABATEMENT OF VIOLATIONS OF CITY CODES AND ORDINANCES.

WHEREAS, Ordinance No. 3046, Property Appearance (Title 5, Chapter 22, of the Ontario Municipal Code) and Chapter 9 of the Uniform Code for the Abatement of Dangerous Buildings provide for the abatement of property nuisances by repair, rehabilitation, demolition or removal; and

WHEREAS, under Resolution 94-112, Resolution ORA-499, and the Cooperation and Reimbursement Agreement entered into on the 15th day of November, 1994, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made a one-time advance to the City of One Hundred Fifty Thousand Dollars ($150,000) to repair or abate dangerous buildings and properties throughout the City; and

WHEREAS, under a first amendment to the Cooperation and Reimbursement Agreement entered into on the 16th day of July 1996, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made an additional advance to the City of One Hundred Thousand Dollars ($100,000) to continue to repair or abate dangerous buildings and properties throughout the City; and

WHEREAS, under Resolution 94-113, Resolution ORA-500, and the Cooperation and Reimbursement Agreement entered into on the 15th day of November 1994, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made a one-time advance to the City of Thirty Thousand Dollars ($30,000) to repair or abate dangerous buildings and properties in the 6th and Grove area; and

WHEREAS, under Resolution 94-12, Resolution ORA-464, and the Cooperation and Reimbursement Agreement entered into on the 22nd day of February 1994, by the City of Ontario and the Ontario Redevelopment Agency, the Ontario Redevelopment Agency made a one-time advance to the City of One Hundred Fifty Thousand Dollars ($150,000) to repair or demolish dangerous buildings throughout the City; and

WHEREAS, Ordinance No. 2894, Systematic Health and Safety Inspection Program (Title 8, Chapter 17, of the Ontario Municipal Code), provides for the collection of unpaid service fees, plus any penalties and accrued interest by Special Assessment; and

WHEREAS, Ordinance No. 2920, provides for the assessment of civil penalties for continued violations of the Ontario Municipal Code (Title 1, Chapter 2 of the Ontario Municipal Code), and for fines associated with administrative citations to be collected by Special Assessment (Title 1, Chapter 5 of the Ontario Municipal Code), and establishes a uniform procedure before imposing such Special Assessments (Title 1, Chapter 4 of the Ontario Municipal Code); and

WHEREAS, the above said ordinances, resolutions and agreements provide for recovery of costs incurred in the abatement of violations by means of a Special Assessment placed on the tax rolls; and

WHEREAS, the City has incurred costs involved in the abatement of violations under the Ontario Municipal Code and Uniform Code for the Abatement of Dangerous Buildings, issuing Notices of Violation, and administering the Systematic Health and Safety Program and wishes to recover said costs; and

WHEREAS, the owners of all parcels listed in Exhibit A, B, and C were given notice of imposition of such Special Assessment as provided in Ontario Municipal Code Section 1-4.05(a), and either have not requested an appeal, or have exhausted the appellate procedure provided in Ontario Municipal Code Section 1-4.05(b); and

WHEREAS, the City has an executed contract with the San Bernardino County Board of Supervisors for collection of said assessments;

NOW, THEREFORE, BE IT RESOLVED that the City Council:

1. Confirmed the costs associated with inspection or abatement on the properties as set forth in the report in Exhibit A; and

2. Confirmed the civil penalties and/or fines for continued violations on the properties as set forth in the report in Exhibit B; and

3. Confirmed that Exhibit C contains the total amount assessed for both confirmed costs and confirmed civil penalties and/or fines for each of the properties; and

4. Found and determined that the report, and Exhibits contained therein are true and accurate; and

5. Adopts the above said report and finds that the costs of inspection or abatement on the properties listed are the costs set forth in Exhibit A, the civil penalties and/or fines for continued violations are the penalties and/or fines as set forth in Exhibit B, and the same are hereby charged and placed as special assessments upon the respective properties; and

6. Directs Exhibit C shall be sent to the Auditor-Controller of San Bernardino County and shall be collected on the County tax roll.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of April, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 15, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held April 15, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit A - Costs Associated with Inspection or Abatement

Parcel Number	Address	Amount Due
0108-303-21	1383 E BONNIE BRAE ST, Ontario, CA 91764	541.00
0108-443-07	1376 E LA DENEY DR, Ontario, CA 91764	91.00
0108-523-07	1305 N LASSEN AV, Ontario, CA 91764	91.00
0108-551-61	0 E COMMON AREA, Ontario, CA 91764	91.00
0110-061-18	1329 E HOLT BL, Ontario, CA 91761	77.54
0110-111-01	1614 E HOLT BL, Building:1, Unit:105, Ontario, CA 91761	91.00
0110-161-19	903 N CALAVERAS AV, Ontario, CA 91764	3,667.35
0110-322-32	2200 E HOLT BL, Ontario, CA 91761	147.00
0110-343-04	1778 E FOURTH ST, Ontario, CA 91764	62.03
0113-491-75	2078 E FRANCIS ST, Building:1, Ontario, CA 91761	91.00
0210-182-60	0 N HAVEN AV, Ontario, CA 91764	1,842.50
0211-351-04	3100 E CEDAR ST, Unit:3, Ontario, CA 91761	91.00
0216-441-13	2713 S MILDRED PL, Ontario, CA 91761	91.00
0218-151-40	13350 S HAVEN AV, Ontario, CA 91761	91.00
0218-161-11	0 S MILL CK, Ontario, CA 91761	91.00
0218-272-29	3372 S PRIMROSE DR, Ontario, CA 91761	91.00
0218-545-03	3322 S NEWTON AV, Ontario, CA 91761	91.00
0218-714-12	3104 E LAVENDER DR, Ontario, CA 91762	91.00
0218-801-63	3707 S PALOMINO PL, Ontario, CA 91761	91.00
0218-911-01	2943 E THOROUGHBRED ST, Ontario, CA 91761	187.00
0238-051-33	0 E ONTARIO MILLS PW, Ontario, CA 91764	91.00
0238-051-40	5400 E ONTARIO MILLS PW, Building:1, Unit:400, Ontario, CA 91764	848.56
0238-152-25	2060 S WINEVILLE AV, Building:1, Unit:A, Ontario, CA 91761	91.00
1010-093-16	1435 W J ST, Ontario, CA 91762	1,085.75
1010-521-09	1141 W D ST, Unit:A, Ontario, CA 91762	62.03
1010-543-24	1265 W STONERIDGE CT, Unit:1, Ontario, CA 91762	187.94
1014-091-45	1315 S JASMINE PL, Ontario, CA 91762	1,227.00
1047-542-02	1106 N EUCLID AV, Ontario, CA 91764	91.00
1048-081-38	609 E PLAZA SERENA ST, Ontario, CA 91764	4,701.00
1048-362-04	515 N LEMON AV, Ontario, CA 91764	107.00
1048-491-42	951 E ELMA ST, Ontario, CA 91761	327.00
1048-566-05	317 N EUCLID AV, Building:1, Unit:A, Ontario, CA 91762	1,407.69
1048-566-07	106 W C ST, Building:1, Ontario, CA 91762	1,250.10
1048-566-07	303 N EUCLID AV, Building:1, Ontario, CA 91762	367.00
1048-566-07	307 N EUCLID AV, Building:1, Ontario, CA 91762	91.00
1049-101-34	767 E EMPORIA ST, Ontario, CA 91761	62.03
1049-101-40	900 E HOLT BL, Ontario, CA 91761	2,767.55
1049-111-06	235 S CAMPUS AV, Unit:A, Ontario, CA 91761	148.00
1049-111-07	807 E STATE ST, Building:1, Ontario, CA 91761	148.00
1049-201-07	439 S CAMPUS AV, Ontario, CA 91761	148.00
1049-232-20	560 E PARK ST, Ontario, CA 91761	91.00

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit A - Costs Associated with Inspection or Abatement

Parcel Number	Address	Amount Due
1049-303-29	601 S CYPRESS AV, Ontario, CA 91762	334.00
1049-392-04	1030 S GROVE AV, Ontario, CA 91761	239.00
1049-392-05	1044 S GROVE AV, Ontario, CA 91761	148.00
1049-392-06	1050 S GROVE AV, Ontario, CA 91761	148.00
1049-451-20	1009 S CAMPUS AV, Ontario, CA 91761	2,613.39
1050-071-31	266 E DE ANZA CI, Ontario, CA 91761	2,823.25
1050-262-16	236 E LOCUST ST, Ontario, CA 91761	1,196.40
1050-624-15	2115 S SAN ANTONIO AV, Ontario, CA 91762	2,622.08
1051-041-14	2245 S SAN ANTONIO AV, Ontario, CA 91762	91.00
1051-081-03	310 E PHILADELPHIA ST, Building:1, Unit:9, Ontario, CA 91761	1,519.14
1051-121-61	2226 S PHOENIX AV, Ontario, CA 91761	62.03
1051-171-42	2410 S GROVE AV, Building:1, Ontario, CA 91761	1,403.30
1051-561-73	2842 S PARKSIDE AV, Ontario, CA 91761	327.00
1073-281-28	2717 E MURDOCK LN, Ontario, CA 91762	167.00
1073-361-29	4882 S JORDAN AV, Building:, Unit:, Ontario, CA 91762	91.00
1083-142-45	3202 E CLEAR LAKE RD, Ontario, CA 91761	91.00
1083-371-33	3572 E BIG CREEK RD, Ontario, CA 91761	91.00
1083-482-14	3932 E MERCED RIVER RD, Ontario, CA 91761	148.70
		37,122.36

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit B - Civil Penalties and/or Fines for Continued Violations

Parcel Number	Address	Amount Due
0108-551-61	0 E COMMON AREA, Ontario, CA 91764	120.00
0110-061-25	1241 E HOLT BL, Building:1, Ontario, CA 91761	170.00
0110-311-51	853 N QVC WY, Ontario, CA 91764	220.00
0113-285-08	2401 S VINEYARD AV, Building:1, Unit:B, Ontario, CA 91761	640.00
0113-415-22	1829 E ELM ST, Ontario, CA 91761	170.00
0113-621-02	1510 E CEDAR ST, Ontario, CA 91761	520.00
0210-211-43	735 N MILLIKEN AV, Unit:E, Ontario, CA 91764	120.00
0210-501-31	4155 E INLAND EMPIRE BL, Ontario, CA 91764	120.00
0210-551-50	3200 E GUASTI RD, Unit:100, Ontario, CA 91743	120.00
0216-281-02	2845 S WALKER AV, Ontario, CA 91761	420.00
0216-291-03	1539 E MERION ST, Ontario, CA 91761	220.00
0216-381-49	2616 S MILDRED PL, Ontario, CA 91761	320.00
0216-441-13	2713 S MILDRED PL, Ontario, CA 91761	220.00
0216-441-60	2737 S GROVE AV, Ontario, CA 91761	520.00
0218-094-32	3660 PECKHAM PASEO E, Unit:5, Ontario, CA 91761	340.00
0218-131-37	13610 S ARCHIBALD AV, Ontario, CA 91761	420.00
0218-151-40	13350 S HAVEN AV, Ontario, CA 91761	340.00
0218-273-41	3365 S PRIMROSE DR, Ontario, CA 91761	120.00
0218-462-74	3937 S OAKVILLE AV, Ontario, CA 91761	340.00
0218-714-12	3104 E LAVENDER DR, Ontario, CA 91762	120.00
0218-881-35	3238 S CENTURION PL, Ontario, CA 91761	320.00
1010-462-03	442 N MOUNTAIN AV, Building:1, Ontario, CA 91762	120.00
1047-372-15	652 E BONNIE BRAE CT, Ontario, CA 91764	20.00
1048-305-10	756 N CYPRESS AV, Ontario, CA 91762	120.00
1048-361-08	121 E F ST, Building:1, Ontario, CA 91764	120.00
1048-393-02	516 E E ST, Ontario, CA 91764	170.00
1048-432-42	441 N HOLMES AV, Ontario, CA 91764	520.00
1048-573-04	121 N FERN AV, Unit:1, Ontario, CA 91762	20.00
1049-111-06	235 S CAMPUS AV, Unit:A, Ontario, CA 91761	500.00
1049-111-07	807 E STATE ST, Building:1, Ontario, CA 91761	500.00
1049-201-07	439 S CAMPUS AV, Ontario, CA 91761	500.00
1049-231-05	520 E STATE ST, Ontario, CA 91761	320.00
1049-392-04	1030 S GROVE AV, Ontario, CA 91761	500.00
1049-392-05	1044 S GROVE AV, Ontario, CA 91761	500.00
1049-392-06	1050 S GROVE AV, Ontario, CA 91761	500.00
1050-081-03	1437 S EUCLID AV, Ontario, CA 91761	120.00
1050-361-16	1940 S FERN AV, Ontario, CA 91762	220.00
1050-623-03	2020 S VINE AV, Ontario, CA 91762	170.00
1051-011-92	2220 S HOLLY PL, Ontario, CA 91762	120.00
1051-041-13	2241 S SAN ANTONIO AV, Ontario, CA 91762	120.00
1051-041-14	2245 S SAN ANTONIO AV, Ontario, CA 91762	520.00

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit B - Civil Penalties and/or Fines for Continued Violations

Parcel Number	Address	Amount Due
1053-601-02	14455 S EUCLID AV, Ontario, CA 91710	220.00
1073-292-30	4706 S KENT WY, Ontario, CA 91762	340.00
1073-311-08	4561 S ANNISTON AV, Building:, Unit:, Ontario, CA 91762	120.00
1073-361-29	4882 S JORDAN AV, Building:, Unit:, Ontario, CA 91762	120.00
1083-051-33	2832 S CANTERBURY TR, Ontario, CA 91761	120.00
1083-331-08	2585 S ROCK SPRINGS PL, Ontario, CA 91761	120.00
1083-371-33	3572 E BIG CREEK RD, Ontario, CA 91761	120.00
		12,740.00

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit C - Total Amounts per Parcel

Parcel Number	Address	Amount Due
0108-303-21	1383 E BONNIE BRAE ST, Ontario, CA 91764	541.00
0108-443-07	1376 E LA DENEY DR, Ontario, CA 91764	91.00
0108-523-07	1305 N LASSEN AV, Ontario, CA 91764	91.00
0108-551-61	0 E COMMON AREA, Ontario, CA 91764	211.00
0110-061-18	1329 E HOLT BL, Ontario, CA 91761	77.54
0110-061-25	1241 E HOLT BL, Building:1, Ontario, CA 91761	170.00
0110-111-01	1614 E HOLT BL, Building:1, Unit:105, Ontario, CA 91761	91.00
0110-161-19	903 N CALAVERAS AV, Ontario, CA 91764	3,667.35
0110-311-51	853 N QVC WY, Ontario, CA 91764	220.00
0110-322-32	2200 E HOLT BL, Ontario, CA 91761	147.00
0110-343-04	1778 E FOURTH ST, Ontario, CA 91764	62.03
0113-285-08	2401 S VINEYARD AV, Building:1, Unit:B, Ontario, CA 91761	640.00
0113-415-22	1829 E ELM ST, Ontario, CA 91761	170.00
0113-491-75	2078 E FRANCIS ST, Building:1, Ontario, CA 91761	91.00
0113-621-02	1510 E CEDAR ST, Ontario, CA 91761	520.00
0210-182-60	0 N HAVEN AV, Ontario, CA 91764	1,842.50
0210-211-43	735 N MILLIKEN AV, Unit:E, Ontario, CA 91764	120.00
0210-501-31	4155 E INLAND EMPIRE BL, Ontario, CA 91764	120.00
0210-551-50	3200 E GUASTI RD, Unit:100, Ontario, CA 91743	120.00
0211-351-04	3100 E CEDAR ST, Unit:3, Ontario, CA 91761	91.00
0216-281-02	2845 S WALKER AV, Ontario, CA 91761	420.00
0216-291-03	1539 E MERION ST, Ontario, CA 91761	220.00
0216-381-49	2616 S MILDRED PL, Ontario, CA 91761	320.00
0216-441-13	2713 S MILDRED PL, Ontario, CA 91761	311.00
0216-441-60	2737 S GROVE AV, Ontario, CA 91761	520.00
0218-094-32	3660 PECKHAM PASEO E, Unit:5, Ontario, CA 91761	340.00
0218-131-37	13610 S ARCHIBALD AV, Ontario, CA 91761	420.00
0218-151-40	13350 S HAVEN AV, Ontario, CA 91761	431.00
0218-161-11	0 S MILL CK, Ontario, CA 91761	91.00
0218-272-29	3372 S PRIMROSE DR, Ontario, CA 91761	91.00
0218-273-41	3365 S PRIMROSE DR, Ontario, CA 91761	120.00
0218-462-74	3937 S OAKVILLE AV, Ontario, CA 91761	340.00
0218-545-03	3322 S NEWTON AV, Ontario, CA 91761	91.00
0218-714-12	3104 E LAVENDER DR, Ontario, CA 91762	211.00
0218-801-63	3707 S PALOMINO PL, Ontario, CA 91761	91.00
0218-881-35	3238 S CENTURION PL, Ontario, CA 91761	320.00
0218-911-01	2943 E THOROUGHBRED ST, Ontario, CA 91761	187.00
0238-051-33	0 E ONTARIO MILLS PW, Ontario, CA 91764	91.00
0238-051-40	5400 E ONTARIO MILLS PW, Building:1, Unit:400, Ontario, CA 91764	848.56
0238-152-25	2060 S WINEVILLE AV, Building:1, Unit:A, Ontario, CA 91761	91.00
1010-093-16	1435 W J ST, Ontario, CA 91762	1,085.75

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit C - Total Amounts per Parcel

Parcel Number	Address	Amount Due
1010-462-03	442 N MOUNTAIN AV, Building:1, Ontario, CA 91762	120.00
1010-521-09	1141 W D ST, Unit:A, Ontario, CA 91762	62.03
1010-543-24	1265 W STONERIDGE CT, Unit:1, Ontario, CA 91762	187.94
1014-091-45	1315 S JASMINE PL, Ontario, CA 91762	1,227.00
1047-372-15	652 E BONNIE BRAE CT, Ontario, CA 91764	20.00
1047-542-02	1106 N EUCLID AV, Ontario, CA 91764	91.00
1048-081-38	609 E PLAZA SERENA ST, Ontario, CA 91764	4,701.00
1048-305-10	756 N CYPRESS AV, Ontario, CA 91762	120.00
1048-361-08	121 E F ST, Building:1, Ontario, CA 91764	120.00
1048-362-04	515 N LEMON AV, Ontario, CA 91764	107.00
1048-393-02	516 E E ST, Ontario, CA 91764	170.00
1048-432-42	441 N HOLMES AV, Ontario, CA 91764	520.00
1048-491-42	951 E ELMA ST, Ontario, CA 91761	327.00
1048-566-05	317 N EUCLID AV, Building:1, Unit:A, Ontario, CA 91762	1,407.69
1048-566-07	106 W C ST, Building:1, Ontario, CA 91762	1,250.10
1048-566-07	303 N EUCLID AV, Building:1, Ontario, CA 91762	367.00
1048-566-07	307 N EUCLID AV, Building:1, Ontario, CA 91762	91.00
1048-573-04	121 N FERN AV, Unit:1, Ontario, CA 91762	20.00
1049-101-34	767 E EMPORIA ST, Ontario, CA 91761	62.03
1049-101-40	900 E HOLT BL, Ontario, CA 91761	2,767.55
1049-111-06	235 S CAMPUS AV, Unit:A, Ontario, CA 91761	648.00
1049-111-07	807 E STATE ST, Building:1, Ontario, CA 91761	648.00
1049-201-07	439 S CAMPUS AV, Ontario, CA 91761	648.00
1049-231-05	520 E STATE ST, Ontario, CA 91761	320.00
1049-232-20	560 E PARK ST, Ontario, CA 91761	91.00
1049-303-29	601 S CYPRESS AV, Ontario, CA 91762	334.00
1049-392-04	1030 S GROVE AV, Ontario, CA 91761	739.00
1049-392-05	1044 S GROVE AV, Ontario, CA 91761	648.00
1049-392-06	1050 S GROVE AV, Ontario, CA 91761	648.00
1049-451-20	1009 S CAMPUS AV, Ontario, CA 91761	2,613.39
1050-071-31	266 E DE ANZA CI, Ontario, CA 91761	2,823.25
1050-081-03	1437 S EUCLID AV, Ontario, CA 91761	120.00
1050-262-16	236 E LOCUST ST, Ontario, CA 91761	1,196.40
1050-361-16	1940 S FERN AV, Ontario, CA 91762	220.00
1050-623-03	2020 S VINE AV, Ontario, CA 91762	170.00
1050-624-15	2115 S SAN ANTONIO AV, Ontario, CA 91762	2,622.08
1051-011-92	2220 S HOLLY PL, Ontario, CA 91762	120.00
1051-041-13	2241 S SAN ANTONIO AV, Ontario, CA 91762	120.00
1051-041-14	2245 S SAN ANTONIO AV, Ontario, CA 91762	611.00
1051-081-03	310 E PHILADELPHIA ST, Building:1, Unit:9, Ontario, CA 91761	1,519.14
1051-121-61	2226 S PHOENIX AV, Ontario, CA 91761	62.03

City of Ontario
Community Improvement Department
2025/2026 Tax Roll Year Special Assessments
Exhibit C - Total Amounts per Parcel

Parcel Number	Address	Amount Due
1051-171-42	2410 S GROVE AV, Building:1, Ontario, CA 91761	1,403.30
1051-561-73	2842 S PARKSIDE AV, Ontario, CA 91761	327.00
1053-601-02	14455 S EUCLID AV, Ontario, CA 91710	220.00
1073-281-28	2717 E MURDOCK LN, Ontario, CA 91762	167.00
1073-292-30	4706 S KENT WY, Ontario, CA 91762	340.00
1073-311-08	4561 S ANNISTON AV, Building:, Unit:, Ontario, CA 91762	120.00
1073-361-29	4882 S JORDAN AV, Building:, Unit:, Ontario, CA 91762	211.00
1083-051-33	2832 S CANTERBURY TR, Ontario, CA 91761	120.00
1083-142-45	3202 E CLEAR LAKE RD, Ontario, CA 91761	91.00
1083-331-08	2585 S ROCK SPRINGS PL, Ontario, CA 91761	120.00
1083-371-33	3572 E BIG CREEK RD, Ontario, CA 91761	211.00
1083-482-14	3932 E MERCED RIVER RD, Ontario, CA 91761	148.70
92		**49,862.36**

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Dennis Mejia Staff Member Presenting: Scott Burton, Utilities General Manager Reviewed By: Dennice Raygoza, Albert G Gastelum, Michael Sigsbee Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 10

SUBJECT: **A GOODS AND EQUIPMENT PURCHASE AGREEMENT WITH DE NORA WATER TECHNOLOGIES, LLC FOR THE PURCHASE OF WATER DISINFECTION EQUIPMENT AND AN AMENDMENT TO THE GOODS AND EQUIPMENT PURCHASE AGREEMENT WITH D&H WATER SYSTEMS FOR THE PURCHASE OF REPLACEMENT PARTS FOR GROUNDWATER WELL MAINTENANCE**

RECOMMENDATION: The City Council take the following actions:

A. Authorize the City Manager, or designee, to execute a Goods and Equipment Purchase Agreement with De Nora Water Technologies, LLC (De Nora) of Sugar Land, Texas, for the purchase of water disinfection equipment and replacement parts for a total not-to-exceed amount of $1,416,076.
B. Authorize the City Manager, or designee, to execute Amendment No. 1 to the Goods and Equipment Purchase Agreement with D&H Water Systems of Oceanside, California, to amend the Agreement by $274,849 for a revised total not-to-exceed amount of $310,005.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Operate in a Businesslike Manner
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The proposed Agreement with De Nora is for a total not-to-exceed amount of $1,416,076. The proposed Amendment No. 1 with D&H Water Systems increases the Agreement amount by $274,849 for a revised total not-to-exceed amount of $310,005. The total cost for the recommended action is $1,690,925.

The Fiscal Year 2024-2025 Capital Improvements Program Budget includes appropriations from the Water Capital Fund for the purchase of water disinfection equipment and replacement parts for groundwater well projects. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: The City operates a total of nineteen active groundwater production wells. Water produced from these wells requires onsite disinfection before being introduced into the City's water distribution system for customer use. The City utilizes onsite sodium hypochlorite generator (OSCG) units from De Nora (formerly "Miox") to generate a chlorine disinfection solution. This solution is then introduced into the water using a Prominent brand injection pump system (distributed by D&H Water Systems) at all production wells.

At six of the active groundwater production well sites, the water disinfection equipment has reached its maximum useful life and requires replacement. To ensure safe and reliable operations while streamlining the maintenance process, the City will purchase the replacement water disinfection equipment and spare parts. Installation will either be completed by Staff and/or a proposed future construction contract. This proactive measure ensures operational reliability and preparedness for emergency situations by mitigating supply chain delay issues.

To enhance operational efficiency and reduce maintenance complexity, Staff has standardized the water disinfection equipment used at active well sites. This approach has established a cost-effective routine maintenance program and supports a consistent operation and maintenance training program for City Staff, ensuring they can efficiently manage and maintain the equipment.

Per Section 2-6.23 (b) and (c) of the Ontario Municipal Code, non-competitive sole-source purchases are permitted when only one procurement source exists, or when competitive bidding would be impractical, unavailing, or would not produce an advantage. While there is one other alternative OSCG system on the market, this system is completely incompatible with the existing equipment already in use at the well sites. De Nora is the exclusive distributor in California for their OSCG equipment. D&H Water Systems is the exclusive distributor in California for the injection pump system manufactured by ProMinent. On July 17, 2024, the City entered into a sole source Goods and Equipment Agreement with D&H Water Systems to provide replacement parts for groundwater well maintenance; the contract value was for $35,156. Given these factors, the City has determined that a sole source procurement approach is the most practical and cost-effective solution.

Staff have reviewed pricing and recommend the sole source awards to De Nora Water Technologies, LLC and D&H Water Systems.

CITY OF ONTARIO
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SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
GOODS AND EQUIPMENT PURCHASE AGREEMENT

This Goods and Equipment Purchase Agreement ("Agreement") is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City"), and De Nora Water Technologies, LLC, a Pennsylvania limited liability company with its principal place of business at 3000 Advance Ln, Colmar, Pennsylvania 18915 ("Supplier"). City and Supplier are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

Section 1. DEFINITIONS.

A. "Goods" means all machinery, equipment, supplies, items, parts, materials, labor or other services, including design, engineering and installation services, provided by Supplier as specified in Exhibit "A," attached hereto and incorporated herein by reference.

B. "Delivery Date(s)" means that date or dates upon which the Goods is to be delivered to City, ready for approval, testing and/or use as specified in Exhibit "B."

Section 2. MATERIALS AND WORKMANSHIP.

When Exhibit "A" specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without City's written approval. Machinery, equipment or material installed in the Goods without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit "A" as equal to any particular standard, City will decide the question of equality. When requested by City, Supplier will furnish City with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Goods. Material samples will be submitted at City's request.

Section 3. INSPECTIONS AND TESTS.

City shall have the right to inspect and/or test the Goods prior to acceptance. If upon inspection or testing the Goods or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or

specifications contained in Exhibit "A," then without prejudice to any other rights or remedies, City may reject the Goods or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City's right to reject nonconforming goods, irrespective of City's failure to notify Supplier of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

Section 4. WARRANTY.

A. Supplier warrants that the Goods will be of merchantable quality and free from defects in design, engineering, material, and workmanship for a period of twelve (12) months from startup, or eighteen (18) months from delivery (whichever occurs earlier), or such longer period as provided by a manufacturer's warranty or as agreed to by Supplier and City,. Supplier further warrants that any services provided in connection with the Goods will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

B. Supplier further warrants that all machinery, equipment, or process included in the Goods will meet the performance requirements and specifications specified in Exhibit "A" and shall be fit for the purpose stated in the Agreement. City's inspection, testing, approval, or acceptance of any such machinery, equipment, or process will not relieve Supplier of its obligations under this Section 4.B.

C. For any breach of the warranties contained in Section 4.A and Section 4.B, Supplier will, immediately after receiving notice from City, at the option of City, and at Supplier's own expense and without cost to City:

1. Repair the defective Goods;

2. Replace the defective Goods with conforming Goods, F.O.B. Destination to City's plant, office or other location of City where the Goods was originally performed or delivered; or

3. Repay to City the purchase price of the defective Goods, City to return the defective goods at Supplier's sole cost and expense.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair, and replacement of the defective Goods, and reinstallation of new Goods. All such defective Goods that is so remedied will be similarly warranted as stated above. In addition, Supplier will repair or replace other items of the Goods which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

D. Supplier also warrants that the Goods is free and clear of all liens and encumbrances whatsoever, that Supplier has a good and marketable title to same, and that Supplier owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Supplier agrees to indemnify, defend, and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

E. In the event of a breach by Supplier of its obligations under this Section 4, City will not be limited to the remedies set forth in this Section 4, but will have all the rights and remedies

permitted by applicable law, including without limitation, all of the rights and remedies afforded to City under the California Commercial Code.

Section 5. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "A," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of City. No extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. The total price shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Goods furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

Section 6. CHANGES.

City, at any time, by a written order, and without notice to any surety, may make changes in the Goods, including but not limited to, City's requirements and specifications. If such changes affect the cost of the Goods or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between City and Supplier and such change will be authorized by a change order document signed by City and accepted by Supplier.

Section 7. PAYMENTS.

A. Terms of payment, are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable Progress Milestones. Final payment shall be made by City after Supplier has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of Goods.

B. If Progress Milestones have been specified in Exhibit "B," then payments for the Goods will be made as the requirements of such Progress Milestones are met. Progress payments for the Goods will be made by City upon proper application by Supplier during the progress of the Goods and according to the terms of payment as specified in Exhibit "B." Supplier's progress billing invoice will include progress payments due for the original scope of work and changes. Each "Item for Payment" shown in Exhibit "B" and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Exhibit "B" or a change order, must have subcontractor and/or supplier invoices attached to Supplier's invoice. Other format and support documents for invoices will be determined by City in advance of the first invoice cycle.

C. Payments otherwise due may be withheld by City, with prior notice to Supplier, on account of defective Goods not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of Supplier to make payments properly to its subcontractors or for material or labor, the failure of Supplier to perform any of its other obligations under the Agreement, or to protect City against any liability arising out of Supplier's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, City may remove them at Supplier's expense.

D. Payment of the final Progress Milestone payment or any retention will be made by City upon:

1. Submission of an invoice for satisfactory completion of the requirements of a Progress Milestone as defined in Exhibit "B" and in the amount associated with the Progress Milestone;

2. Written acceptance of the Goods by City;

3. Delivery of all drawings and specifications, if required by City;

4. Delivery of executed full releases of any and all liens arising out of this Agreement; and

5. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim, or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Supplier may furnish a bond satisfactory to City to indemnify City against any claim or lien at no cost to City.

E. Acceptance by Supplier of payment of the final Progress Milestone payment pursuant to Section 7.D will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which Supplier then has, or can subsequently acquire against City, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement. However, payment for the final Progress Milestone by City will not constitute a waiver, release or discharge of any claims or demands which City then has, or can subsequently acquire, against Supplier, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

F. Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Supplier shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Supplier in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Supplier is not entitled: (1) Supplier shall immediately notify the City and the financial institution; (2) Supplier shall not withdraw any of the funds which were erroneously deposited or to which Supplier is not entitled; and (3) Supplier authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Supplier is not entitled.

Section 8. SCHEDULE FOR DELIVERY.

A. The time of Supplier's performance is of the essence for this Agreement. The Goods will be delivered in accordance with the schedule set forth in Exhibit "B." Supplier must immediately notify City in writing any time delivery is behind schedule or may not be completed on schedule.

B. In the event that the Goods is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Supplier will fully cooperate in scheduling the delivery so that City can maximize the efficient completion of such project(s).

Section 9. TAXES.

A. Supplier agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Goods provided under this Agreement.

B. Supplier will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Supplier will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Goods provided hereunder, will be the responsibility of Supplier. In addition, all taxes assessed by any taxing jurisdiction based on Supplier property used or consumed in the provision of the Goods such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Supplier.

D. Supplier will, upon written request, submit to City written evidence of any filings or payments of all taxes required to be paid by Supplier hereunder.

Section 10. INDEPENDENT CONTRACTOR.

Supplier enters into this Agreement as an independent contractor and not as an employee of City. Supplier shall have no power or authority by this Agreement to bind City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Supplier are employees, agents, contractors or subcontractors of the Supplier and not of City. City shall not be obligated in any way to pay any wage claims or other claims made against Supplier by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

Section 11. SUBCONTRACTS.

Unless otherwise specified, Supplier must obtain City's written permission before subcontracting any portion of the Goods. Except for the insurance requirements in Section 13.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Goods, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Supplier from its obligations to City, including, but not limited to Supplier's insurance and indemnification obligations. No subcontract or order will bind City.

Section 12. TITLE AND RISK OF LOSS.

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Goods upon delivery, as well as materials delivered to and

stored on City property which are intended to become a part of the Goods. However, Supplier will be liable for any loss or damage to the Goods and/or the materials caused by Supplier or its subcontractors, their agents or employees, and Supplier will replace or repair said Goods or materials at its own cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Supplier for all or a portion of the Goods which remains in the possession of Supplier, then City shall have title to, and the right to take possession of, such Goods at any time following payment therefor. Risk of loss for any Goods which remains in the possession of Supplier shall remain with Supplier until such Goods has been delivered or City has taken possession thereof. Supplier will have risk of loss or damage to Supplier's property used in the construction of the Goods but which does not become a part of the Goods.

Section 13. INDEMNIFICATION.

A. Supplier shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Supplier, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Goods or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

B. Supplier's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, employees, agents, or volunteers shall be at Supplier's own cost, expense, and risk. Supplier shall pay and satisfy any judgment, award, or decree that may be rendered against City or its officials, officers, employees, agents, or volunteers, in any such suit, action, or other legal proceeding. Supplier shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

C. Supplier's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

Section 14. INSURANCE.

A. General. Supplier shall take out and maintain:

1. Commercial General Liability Insurance, of at least $2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01;

2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least $2,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);

3. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least $1,000,000 per occurrence; and

4. If Supplier is also the manufacturer of any equipment included in the Goods, Supplier shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than $1,000,000.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage. The policies required under this Section shall give City, its officials, officers, employees, agents or volunteers additional insured status on commercial general liability and automobile liability insurance with the endorsements. Such policies shall contain a provision stating that Supplier's policy is primary insurance and that any insurance, deductible, or self-insurance maintained by the City or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

C. Cancellation. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds

D. Insurance Carrier. All insurance required under this Section is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City.

E. Evidence of Insurance. Supplier shall furnish City with original certificates of insurance and endorsements effecting coverage required by the Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before delivery commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

F. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Supplier shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

G. Freight. Supplier shall ensure that third party shippers contracted by Supplier have adequate insurance coverage for the shipped Goods.

Section 15. LIENS.

A. Supplier, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Goods, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Supplier, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Supplier, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Supplier will save and hold City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Supplier will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 16. TERMINATION OF AGREEMENT BY CITY.

A. Should Supplier at any time refuse or fail to deliver the Goods with promptness and diligence, or to perform any of its other obligations under the Agreement, City may terminate Supplier's right to proceed with the delivery of the Goods by written notice to Supplier. In such event City may obtain the Goods by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Supplier. In such case Supplier will not be entitled to receive any further payments until the Goods is delivered. If City's cost of obtaining the Goods, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Agreement, Supplier will be liable for and will pay the difference to City.

B. City may, for its own convenience, terminate Supplier's right to proceed with the delivery of any portion or all of the Goods by written notice to Supplier. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which City may have against Supplier, and will not affect the obligations and duties of Supplier under the Agreement with respect to portions of the Goods not terminated.

C. On receipt of notice under Section 16.B, Supplier will, with respect to the portion of the Goods terminated, unless the notice states otherwise,

1. Immediately discontinue such portion of the Goods and the placing of orders for materials, facilities, and supplies in connection with the Goods,

2. Unless otherwise directed by City, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to City; and

3. Deliver only such portions of the Goods which City deems necessary to preserve and protect those portions of the Goods already in progress and to protect material, plant and equipment at the Goods site or in transit to the Goods site.

D. Upon termination pursuant to Section 16.B, Supplier will be paid a pro rata portion of the compensation in the Agreement for any portion of the terminated Goods already delivered,

including material and services for which it has made firm contracts which are not canceled, it being understood that City will be entitled to such material and services. Supplier shall also be compensated for all Equipment in progress and any reasonable expenses incurred by Supplier in terminating orders placed with its suppliers and/or sub-Suppliers. Upon determination of the amount of said pro rata compensation, City will promptly pay such amount to Supplier upon delivery by Supplier of the releases of liens and affidavit, pursuant to Section 7.C.

Section 17. LIMITATION OF LIABILITY

In no event shall Supplier be liable for any consequential, special, punitive, incidental, or indirection damages arising out of or relating to this Agreement, including but not limited to damages for loss of use, loss of income, or loss of profit. Except for (A) indemnification obligations for third-party claims; and (B) damages caused by Supplier's fraud, gross negligence, or willful misconduct, in no event shall Supplier's liability to City for claims arising out of this Agreement exceed the total purchase price payable hereunder.

This section 17 shall not apply to Supplier's indemnity obligations for third-party claims.

Section 18. FORCE MAJEURE

A. Supplier shall not be held responsible for failure or delay in shipping nor City for failure or delay in accepting goods described herein if such failure or delay is due to a Force Majeure Event.

B. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of Supplier and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

C. In the event of any such excused interference with shipments, City shall have the option either to reduce the quantity provided for in the order accordingly or to exercise its right of cancellation as set forth in this Agreement.

Section 19. MISCELLANEOUS PROVISIONS.

A. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address or at such other address as the respective parties may provide in writing for this purpose:

CITY:	SUPPLIER:
City of Ontario	De Nora Water Technologies, LLC

303 East “B” Street

Ontario, CA 91764

Attn: Chris Bonadurer, Water Production Manager

3000 Advance Lane

Colmar, PA 18915

Attn: Emile Musallam, Regional Sales Rep

Cc: Brent Shelley, Americas General Counsel

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

B. Assignment or Transfer. Supplier shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Supplier from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City.

C. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

D. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

E. Waiver. 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.

F. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

G. Attorneys’ Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party shall pay its own attorneys’ fees.

H. Interpretation. 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.

I. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

J. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

K. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

L. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

M. City's Right to Employ Other Suppliers. City reserves its right to employ other contractors in connection with the Goods.

N. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Goods specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

SIGNATURES ON FOLLOWING PAGE

SIGNATURE PAGE TO GOODS AND EQUIPMENT PURCHASE AGREEMENT BETWEEN THE CITY OF ONTARIO AND DE NORA WATER TECHNOLOGIES, LLC

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
Assistant City Clerk

DE NORA WATER TECHNOLOGIES, LLC

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

Attachment A
EXHIBIT "A" – Goods Specifications

Task Order	Quote Description	Not to Exceed Fee
Original Agreement	Quote No. P-98181 Q-22489 Rev. 7, Dated: 2025/01/31	$1,416,076
Grand Total		$1,416,076

Quote No. P-98181 Q-22489 Rev. 7

ClorTec

On-site Sodium Hypochlorite Generation System



Proposal Prepared For:

Ontario Municipal Utilities Company

Model: ClorTec 100-V-AW-480 & ClorTec 50-V-AW-480
Project Name: Ontario Wells 24, 30, 35, 36, 49, Mobile Trailer, and Spares
Proposal Number: P-98181 Q-22489 Rev. 7
Date: 31 January 2025

DE NORA

De Nora Water Technologies, LLC
1110 Industrial Blvd.
Sugar Land, TX 77478
United States of America
Tel: +1 281 240 6770

P-98181 Q-22489 Rev. 7

Date:	31 January 2025
Customer Name:	Ontario Municipal Utilities Company
Project Name:	Ontario Wells 24, 30, 35, 36, 49, Mobile Trailer, and Spares
Project Location:	California
RFQ Reference:	Email
Proposal No:	P-98181 Q-22489 Rev. 7

Attn: To whom it may concern,

On behalf of De Nora Water Technologies, LLC we are pleased to present our proposal for the Ontario Wells 24, 30, 35, 36, 49, Mobile Trailer, and Spares. De Nora Water Technologies - ClorTec technology has been effectively implemented worldwide and we are excited for the opportunity to provide our on-site sodium hypochlorite generation system for this project.

We are proposing our ClorTec 100-V-AW-480 sodium hypochlorite generator producing a minimum of 100 lbs/day solution at 0.8% FAC. The unit enclosure is the same for all De Nora generator in this series - only the electrolytic cell and program parameters differ from one capacity/version to the other. This particular unit capacity range is from 25 lbs/d FAC to 100 lbs/d FAC depending on the electrolytic cell installed.

We have enclosed a detailed proposal for your review and evaluation that has been prepared per your bid request and technical specifications. Please feel free to contact me should you have any questions.

Sincerely,

Emile Musallam
Regional Sales Manager, West
Cell +1 408 309 1549
emile.musallam@denora.com

DE NORA WATER TECHNOLOGIES, LLC
1110 Industrial Blvd, Sugar Land, TX 77478, United States - ph +1 281 240 6770 - fax +1 281 240 6762
Mail info.dnwt@denora.com **Web** www.denora.com

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This proposal is provided to the Buyer for confidential use in connection with the evaluation of this project. The information provided herein is limited to the specific purpose for which it is submitted. It may not be disclosed to any third parties or be reproduced in any form, without the written permission of the Seller.

It is understood that all of the technical details, specifications and other features of the process and equipment described in this proposal are of a preliminary nature only. The Seller reserves the right to modify, delete, or add to them during completion of detailed engineering. These changes shall be incorporated in the final designs at Buyer's cost, and further provided that the overall performance and guarantees are maintained.

This proposal will not constitute a binding obligation of Seller until it is accepted by Buyer and a formal agreement is reached between Buyer and Seller and entered into force by written instruments duly signed by the legal representative of each party. This Offer shall be subject to the conditions precedent that: (i) a satisfactory due diligence is carried out by DN on the client, the end user of the products as well as on the other persons and entities involved in the transaction, in adherence with EU and US legislation applicable to business

transaction with [name of the country] and (ii) DN receives satisfactory legal advice on the absence of EU and US export control restrictions on the products to be supplied by our company

Mail info.dnwt@denora.com **Web** www.denora.com

1. Scope of Supply

Equipment Description – ClorTec 100-V-AW-480 (formerly Vault H100) System

A) Equipment Scope of Supply – Base Scope

Qty	Description
On-Site Generator (OSG) unit	
Six (6)	ClorTec 100-V-AW-480 automatic, wall-mount system rated at 100 lb/day FAC. Each On-Site Generation (OSG) system includes the following components: • One (1) 100 lbs/day electrolytic cell with power supplies and variable speed brine pump and filter located in a high-density polyethylene (HDPE) enclosure with power supply and controls mounted in a powder-coated cabinet with HDPE panels. • Each unit operating voltage: **380-530 VAC (WYE), 3 Phase, 14 Amp** with AC to DC converters. • Electrical service: **35 amp** thermal magnetic dedicated circuit breaker for each unit. • Each De Nora ClorTec-V series On-Site Generator is controlled by an Allen-Bradley MicroLogix 1400 PLC controller complete with an Allen-Bradley PanelView Plus 600 with a 6" color touch screen. • The OSG is supplied pre-installed on a unistrut wall-mounted frame (SS304) • One (1) integrated brine filter, pre-installed on side of bottom enclosure.
Brine Boost Pumps & Filters	
Six (6)	**Brine Booster Pumps and Brine Filters** Complete with the following items: • One (1) 3-way valve • One (1) booster pump • One (1) 10" brine filter

B) Equipment Scope of Supply – Brine Tank

Qty	Description
Brine Tank/Generator	
Seven (7)	**360-gallons, open top Polyethylene tank with hinged lid** Tank is designed for indoor installation. Tank is 48" inside diameter x 48" height and can hold up to 3,240 lbs of dry salt. Each tank is designed to be refilled manually by hand using 50 lbs salt bags. Tank is complete with the following items: • One (1) mechanical float assembly for level control • One (1) set of inlet and discharge manual PVC isolation valves • One (1) Brine Guard (bottom PVC slotted discharge pipe)

C) Equipment Scope of Supply – Oxidant Storage Tank

Qty	Description
Oxidant Storage Tanks	
Seven (7)	**710-gallons cylindrical, single wall, solution storage tank.** Each tank is 61" internal diameter x 102" straight shell. Each tank is designed for indoor use and is complete with the following items: • One (1) Ultrasonic level sensor • One (1) tank adapter port for level switch • One (1) Hydrogen Vent Liquid Barrier System • **Hydrogen Safety & Handling Internal Liquid Barrier Hydrogen Vent System** comprised of PVC down tube in each of the tank(s), with a tee at the top of the down tube connected to a CPVC vent pipe to outside of building. This item requires no electricity, fans, blowers or controls.

D) Service – Well Sites

Services	
Six (6)	**One (1) trip for a total of three (3) days on site for:** • Inspect equipment installation, piping and wiring to ensure proper installation. • Start-up & testing services • Customer/operator training Additional days or trips required will be charged at $1,500 per day plus travel (air & local) and accommodation expenses.

E) Equipment Scope of Supply – Mobile Trailer Equipment

Qty	Description
On-Site Generator (OSG) unit	
One (1)	ClorTec 50-V-AW-480 automatic, wall-mount system rated at 50 lb/day FAC. Each On-Site Generation (OSG) system includes the following components: • One (1) 50 lbs/day electrolytic cell with power supplies and variable speed brine pump and filter located in a high-density polyethylene (HDPE) enclosure with power supply and controls mounted in a powder-coated cabinet with HDPE panels. • Each unit operating voltage: **208-240 VAC, 1 Phase, 26 Amp** with AC to DC converters • Electrical service: **60 amp** thermal magnetic dedicated circuit breaker for each unit • Each De Nora MIOX Vault™ series On-Site Generator is controlled by an Allen-Bradley MicroLogix 1400 PLC controller complete with an Allen-Bradley PanelView Plus 600 with a 6" color touch screen. • The OSG is supplied pre-installed on a unistrut wall-mounted frame. • One (1) integrated brine filter, pre-installed on side of bottom enclosure.
Brine Tank/Generator	
One (1)	**55-gallons, open top Polyethylene tank with hinged lid** Each tank is designed to be refilled manually by hand using 50 lbs salt bags. Tank is complete with the following items: • One (1) mechanical float assembly for level control • One (1) set of inlet and discharge manual PVC isolation valves • One (1) Brine Guard (bottom PVC slotted discharge pipe)
Oxidant Tank	
One (1)	**175-gallons cylindrical, single wall, solution storage tank.** Each tank is designed for indoor use and is complete with the following items: • One (1) Ultrasonic level sensor • One (1) tank adapter port for level switch • One (1) 2" CPVC inlet port • One (1) 2" PVC outlet port • One (1) 1" PVC overflow connection • One (1) 2" PVC top vent port • Two (2) 2" True Union Ball Valve for Outlet and Drain, PVC/Viton • One (1) 2" flexible hose for outlet piping • One (1) Hydrogen Vent Liquid Barrier System **Hydrogen Safety & Handling Internal Liquid Barrier Hydrogen Vent System** comprised of PVC down tube in each of the tank(s), with a tee at the top of the down tube connected to a CPVC vent pipe to outside of building. This item requires no electricity, fans, blowers or controls.

Technical Services

Engineering & Documentation

- One (1) electronic set of shop drawing & product data submittals.
- One (1) electronic copy of Operation & Maintenance Manuals.

Installation Inspection, Start-up & Training

- This proposal excludes any pre-start up or pre-installation consulting. If such service is required, it will be priced separately upon request.
- Proposed services are based on one (1) trip. Should additional trip(s) be required due to circumstances out of ClorTec control, such as uninstalled equipment, lack of power, lack of water, etc., a cost adder will apply.
- The above listed services must be provided by a De Nora, ClorTec factory trained technician or a factory authorized third party. Failure to comply will void the warranty. A list of such authorized third parties is available upon request.

Installation Services

- This proposal is for equipment Inspection, Start-up & Training only and does not include Installation services.

IMPORTANT NOTE

In the event that the performance of a contractual obligation hereunder by either party hereto is prevented, restricted, hindered, delayed or interfered with directly or indirectly in connection with the COVID-19 ("Coronavirus") pandemic or similar pandemic or epidemy and/or any measures introduced by any government authority to address such pandemics/epidemies, the party so affected shall be excused from such performance to the extent and for the duration of such prevention, restriction, hindrance, delay or interference, and shall not be liable for any costs or damages.

Each party shall exercise reasonable efforts to resolve any impediment, however, neither Party shall be obligated to incur additional costs of more than 5% of the order value. The party affected should give notice to the other party as soon as practicable of the prevention, restriction, hindrance, delay or interference with its performance.

2. Pricing

Design Notes, Clarifications and Exceptions

We have proposed our standard on-site generator unit with our standard materials of construction and our standard warranty as listed in this proposal. Our system designs have been developed over years of experience in the marketplace. We have selected robust, industry proven mechanical and electrical components for which replacement and/or spare parts are readily available. In addition, all our systems are factory tested before leaving our facility reducing the time required for commissioning and start-up. De Nora ensures that the performance requirements of this application will not be compromised. Our proposal is the most expedient and economical approach for the system required.

A. Pricing for Well Sites

Item	Qty.	Description	Price Per System US$	Total Price US$
1	6	100 lbs/d On-Site Sodium Hypochlorite System Equipment scope of supply is as described in SECTION 1A above. Any items not specifically listed in SECTION 1A are excluded.	**$ 111,872**	**$ 671,232**
2	7	Brine Tank/Generator Equipment scope of supply is as described in SECTION 1B above. Any items not specifically listed in SECTION 1B are excluded.	**$ 4,215**	**$ 29,505**
3	7	Oxidant Storage Tank w/ Hydrogen Venting Equipment scope of supply is as described in SECTION 1C above. Any items not specifically listed in SECTION 1C are excluded.	**$ 15,954**	**$ 111,678**
4	6	Crating	**Included**	**Included**
5	6	Startup & Training Service scope of supply is as described in SECTION 1D above	**$ 9,200**	**$ 55,200**
		Total	**$ 141,241**	**$ 867,615**

**Note: Please note that an acceptable purchase order will need to include a separate line for start-up/ training services as noted in the above table.*

B. Pricing for Mobile Trailer

Item	Qty.	Description	Total Price US$
1	1	50 lbs/d On-Site Sodium Hypochlorite System Equipment scope of supply is as described in SECTION 1E above. Any items not specifically listed in SECTION 1E are excluded.	**$ 92,023**
2	1	Documentation Basic standard documentation.	**Included**
3	1	Crating.	**Included**
4	1	Startup & Training	**Excluded**
		Total	**$ 92,023**

C. Pricing for Spare Parts

Item	Qty.	Description	Total Price US$
1	8	Spare 100 lbs/day Cell	**$ 203,232**
2	1	Spare 50 lbs/d Cell	**$ 18,948**
3	5	47000210 - 5MM BRINE PUMP KIT	**$ 13,379**
4	5	47000500 - HIGH FLOW SENSOR KIT	**$ 7,654**
5	10	45026320 - SWITCH LEVEL 6" GEMS 198189	**$ 8,385**
6	10	45025425 - KIT, H20 TEMP SENSOR	**$ 9,154**
7	10	47000211 - OXIDANT TEMPERATURE SENSOR KIT	**$ 13,250**
8	4	45030405 - ASSY, CABLE, PRESS TRANSDUCER	**$ 240**
9	5	47000496 - BRINE SOLENOID KIT	**$ 12,500**
10	50	45026975 - DISK, 1"OD x .001 THICK, PFA	**$ 123**

11	12	45025412 - Voltage Isolation Assy 3PH	**$ 3,785**
12	10	45030565 - ASSY, CABLE, PS1 TO J201	**$ 2,344**
13	5	45030301 - PUMP, BRINE 50ML/MIN (3MM)	**$ 12,569**
		Total	**$ 305,563**

*Spare parts warranty commences one (1) year from delivery or upon installation, whichever occurs first

D. Pricing Summary

Item	Price
Base Equipment & Spares (Total)	**$ 1,210,001**
Sales Tax Estimate (8.75%)	**$ 105,875**
Field Service (Total)	**$ 55,200**
Freight Estimate (ALL quoted items)	**$ 45,000**
TOTAL:	**$ 1,416,076**

3. Items Not Included in De Nora Proposal

- Freight/shipping of De Nora-supplied equipment to customer site unless agreed upon in this proposal.
- Loading/unloading of De Nora equipment at customer's site.
- Installation of all De Nora supplied equipment.
- Supply and installation of interconnect piping, power and control wiring between De Nora-supplied equipment.
- Ongoing operation and maintenance of De Nora-supplied equipment.
- Services do not include construction of building enclosure, concrete, civil or site work, obtaining permits, installation of new power distribution, or water service, sewer, or other utility modifications needed to accommodate the system requirements. De Nora service visit (if included in this proposal) should be scheduled when all building site, equipment installation, and other preparation work have been completed and prior to our service engineer's arrival at the job site.
- Pump motor starters if required, unless indicated otherwise on scope of supply description in SECTION 1.
- Water softener is not included in this proposal, it is to be provided by others as described in the specifications.
- Dosing/injection system to be provided, powered and controlled by others.
- Clean municipal feed water source. Please refer to the attached OSG specification sheet for feed water flow rate, pressure and temperature requirement. Inlet water and salt must meet the guidelines attached to this proposal for proper electrode operation and efficiency.
- Feed water for water softener regeneration. Consult De Nora for volume of water required for regeneration per day.
- Dedicated power supply to each OSG system. Please refer to the attached specifications sheet for power supply requirements.
- Electrical transformer if site power supply is different than the power supply requirements by De Nora supplied equipment.
- Floor drain to accommodate periodic water softener recharge wastewater.
- PVC/CPVC vent vertical piping from each solution tank's dome to the outside of the facility.
- PVC/CPVC vent vertical piping from each solution tank's Liquid Barrier Down Tube Hydrogen Vent Inlet to the outside of the facility.
- Insulation and heat tracing for De Nora supplied outdoor brine generator and oxidant storage tanks.
- Consumable items including salt, electrical power, and feed water to offered system.
- Heated/cooled facility or building for enclosure of system. Please refer to the attached specifications sheet for ambient temperature requirements.
- Any equipment or service not specifically listed in De Nora scope of supply section of this proposal.
- Federal, state or local sales, use or other taxes are not included in this proposal.
- Import duties, taxes or other related costs.

4. Terms of Equipment Sale

The price(s) offered in this proposal is/are based on the following terms:

Pricing:	Price(s) offered in this proposal are firm. All prices quoted are in $USD
Proposal Validity:	This proposal is valid until Jun 30, 2025
Payment terms:	The pricing quoted in this proposal is based on the following payment terms, subject to approval of Customer's credit. • **50% of equipment value**, Net 30 days upon order acceptance. • **50% of equipment value**, Net 30 days upon shipment. • **100% of commissioning/start-up value**, NET 30 days upon completion of start-up, not to exceed 60 days after delivery. Equipment release for shipment is contingent on receipt of all due payments.
Shipping Terms:	ExWorks, Sugar Land Factory (INCOTERMS 2020).
Submittals:	Scheduled delivery of submittals (if required): 4 - 6 weeks after the effective date of the purchase order. The effective date of the purchase order is the date by which the buyer and DNWT have signed the purchase order.
Delivery of Equipment:	10 - 14 weeks for shipping after approval of submittals or after authorization to proceed. Weekly minimum storage fee may apply if shipment is not authorized within 2 weeks after agreed scheduled shipment. Delivery dates and prices set forth in this proposal are the best estimate of Seller based on the current situation facing the U.S. and other countries due to the spread of COVID-19. Accordingly, delivery dates are approximate, and prices offered may have to be increased due to the negative effects of COVID-19 on international trade, the global supply chain, and the business activities of Seller, its affiliated companies, and its suppliers/partners. Seller expressly reserves the right to modify delivery dates and prices upon prior written notice to Buyer.
Taxes:	Federal, State or local sales, use or other taxes are not included in this proposal.
Terms & Conditions:	De Nora Water Technologies, LLC and Customer agree that the General Terms and Conditions of Sales set forth at http://www.denora.com/products.html ("The Terms") shall exclusively govern the transactions described or contemplated in this Proposal and any other sales or related transaction between the parties herein, and such Terms are expressly incorporated by reference herein and to any related transaction between the parties. Any additional or different terms or conditions which may appear in any communication from Customer, including, without limitation, in any printed form provided, are hereby expressly objected to and rejected in full and shall not be effective or binding in any capacity unless expressly accepted in an authorized writing by De Nora Water Technologies, LLC, regardless of, and fully notwithstanding, De Nora Water Technologies, LLC supply of any goods and services or the execution of any document or acceptance by any person other than an officer or authorized agent of De Nora Water Technologies, LLC.

Notwithstanding any other provision of these Terms or the Seller's Documentation, unless otherwise expressly stated in the Seller's Documentation, if, at any time during the course of Seller's performance of the sale of the Products or Services, there is an unforeseen and material increase in the price of raw materials, materials, labor, or other costs of Seller associated with the Products or Services, Seller shall have the right to reasonably adjust the prices set forth in the Seller's Documentation upon written notice to the Purchaser setting forth the amount of such price adjustment and reasonably setting forth the cost changes associated therewith.

5. De Nora ClorTec / MIOX National Service Center

Location:	De Nora Water Technologies, LLC. 1110 Industrial Boulevard Sugar land, TX 77478
Service Hours:	24 hours/day, 7 days/week P +1 800 524 6542
Spare Parts Department:	8-5 pm CST P +1 800 524 6542 F +1 281 240 6770

6. Disclaimers

This proposal contains proprietary or confidential information of De Nora Water Technologies, LLC (DNWT) regarding patent protected proprietary technologies and their implementation in the field, recommended uses and costs. Any such proprietary or confidential information disclosed herein is provided at buyer's request and solely for the purpose of enabling buyer to evaluate this proposal.

In receiving and reading this proposal, buyer agrees that it will not reveal or otherwise distribute its contents to any third party without DNWT's prior written consent. The foregoing limitation shall not preclude buyer from disclosing the contents of this proposal to its employees, on a need-to-know basis, who have the responsibility to evaluate and/or implement the program set forth in this proposal. This proposal shall at all times remain the exclusive property of DNWT until accepted by the party to which it was tendered.

This proposal is made under the DNWT standard terms and conditions of sale.

7. Supporting Documents

The documents listed below form an integral part of this offer.

- Warranty Rider for De Nora Electrolytic Cell
- OSG Specification Sheet
- Salt Quality Specification
- Water Quality Specification
- OSG General Arrangement drawing
- Preliminary P&ID

8. Signatures

In the event that this Proposal P-98181 Q-22489 Rev. 7 is executed by **Ontario Municipal Utilities Company**'s duly authorized representative and/or signatory, then all terms and conditions of this Proposal, including but not limited to all matters pertaining to pricing and specification, commercial terms and the Standard Terms and Conditions of Sale as included herein, are deemed to be accepted by **Ontario Municipal Utilities Company**. In the event that **Ontario Municipal Utilities Company** issues a Purchase Order containing any other terms and conditions, such terms shall be of no effect unless expressly agreed to in writing by a duly authorized representative of De Nora Water Technologies LLC This proposal is executed by:

This proposal is executed by:

Ontario Municipal Utilities Company, _____, ____, _____ XXXXX

Name: _____

Title: _____

Signature: _____

Date: _____

Purchase Order Number: _____

Ship To Address: _____

De Nora Water Technologies LLC, 1110 Industrial Blvd., Sugar Land, Texas 77478

Name: _____

Title: _____

Signature: _____

Date: _____

De Nora Water Technologies, LLC.
1110 Industrial Blvd.
Sugar Land, TX 77478
United States of America

T: +1 281 240 6770
F: +1 281 240 6762

www.denora.com

DE NORA

Warranty Rider for ClorTec, MIOX, and SeaClor Electrodes

De Nora Water Technologies, LLC, (henceforth referred to as DNWT) provides this Warranty Rider for ClorTec and MIOX Electrodes (this "Rider") in conjunction with DNWT's General Terms and Conditions of Sale, as amended from time to time, a copy of which is available at https://denora.com/info/Sales-Terms---Conditions.html (the "Terms").

This Rider electrodes modifies and supplements the duration of the warranty period as set forth in Article 8 of the Terms and applies only to DNWT- provided ClorTec, MIOX, or SeaClor electrodes. DNWT warrants the provided ClorTec, MIOX, or SeaClor electrodes against material defects in materials and workmanship for the time period listed below provided that the ClorTec, MIOX, or SeaClor equipment is operated strictly under normal use and service as defined in the ClorTec Standard Operating Conditions, the MIOX Standard Operating Conditions, or the SeaClor Standard Operating Conditions, as applicable, copies of which are available upon request (the "Standard Conditions") . At its sole and exclusive option, DNWT will repair, provide replacement or refurbish components deemed defective by DNWT, in its discretion, pursuant to this Warranty rider.

This warranty solely covers the bare DNWT-provided electrode and specifically excludes the housing and any ancillary components. The bare electrodes are warranted for seven (7) years that begins at transfer of title. Should a covered electrode fail during the first two (2) years, that electrode will be repaired, refurbished or replaced by DNWT, at its sole discretion. Should a covered electrode prove to be defective during years three (3) to seven (7), the repair, replacement or refurbishment of that bare electrode will be provided by DNWT, at its sole discretion, on a prorated basis based on the number of years (out of seven) remaining since the transfer of title on the respective component. The applicablity of this warranty shall inure solely to the initial purchaser of the system or an expressly authorized end-user, and shall be expressly contingent upon such warranty claimant not being in default of any payment or other obligation to DNWT of any kind or type. This warranty further expressly excludes any and all costs related to shipping, transportation, and labor and expenses for access to, removal, and reinstallation of warranty parts, which shall be at the sole cost and responsibility of the warranty claimant. This warranty also expressly excludes, and DNWT will have no liability or obligation regarding, any consequential, indirect, and/or secondary damages, or loss of any kind sustained directly or indirectly as a result of a defect in any equipment, material, repair, or installation. Any repair or replacement conducted under this Rider shall not extend the term or duration of any warranty for any Electrodes, which shall remain based on the initial transfer of title.

In the event that DNWT determines, pursuant to the terms hereof, that any claimed defect or failure to not be covered by this Rider or the Terms, Buyer shall pay DNWT DNWT's then-customary charges for any repair or replacement made by DNWT.

Exclusions

This warranty will be voided, does not cover, and will be of no effect in relation to any damages caused, in whole or in part, by:

1. "Acts of God" or unavoidable natural disasters including but not limited to floods, storms, lightning, power outages, weather, earthquakes, etc.
2. Theft, vandalism, or other damaging acts, whether or not intentional or negligent.
3. Abuse, misuse, or neglect, whether or not intentional or negligent.

4. Failures or repairs resulting from the failure (whether or not intentional or negligent) to perform preventative maintenance and/or operational procedures in strict accordance with the Standard Conditions.
5. Damages or defects in any DNWT product or compontent, which were caused by initial start-up, repairs or attempted repairs, improvements or attempted improvements, or any other alterations of any kind performed by anyone other than a DNWT-authorized service provider.
6. Normal wear and tear or depreciation.

7. Abnormal system conditions including but not limited to temperature, chemical, debris, or other conditions in excess of those expressly stated in the Standard Conditions.
8. Goods that have not been stored by the buyer, end-user, or their representatives prior to installation and start-up in strict compliance with the storage conditions stated in the Standard Conditions.
9. Equipment/programming which has been revised, altered, improved, modified, repaired, or otherwise changed in any way by anyone other than a DNWT-authorized service provider.

1

DE NORA
our research - your future

On-site Sodium Hypochlorite Generators

ClorTec®

25 to 100 lb/d (11 kg/d to 45 kg/d)

ClorTec® Makes Electrochlorination Easy

De Nora ClorTec® 25-100 on-site sodium hypochlorite generators are designed for high efficiency, low lifecycle cost, durability and reliability. Four model sizes generate from 25 - 100 lb/day (11 kg/d - 45 kg/d) with the ability to easily expand capacity 4X in the same enclosure.

Using just water, salt and power to generate sodium hypochlorite on site eliminates the storage and handling of hazardous chemicals while providing chlorine residual.

The ClorTec® designs include a range of features including:

- Remote monitoring and communication options available
- Unique cell design and flow control features for simplified maintenance and operation
- Modular design and scalability reduces footprint and space requirements
- NSF/ANSI 61 Certified and CE Marking



ClorTec® 25-100

WATER MADE EASY

MARINE | ENERGY | MUNICIPAL | INDUSTRIAL

ClorTec®
On-site Sodium Hypochlorite Generators

25 to 100 lb/d (11 kg/d to 45 kg/d)

Product Specifications

Model	Electrical Service Requirement	Salt Conversion	Energy Conversion	Water Treatment Capacity at 1ppm FAC	Output Capacity (chlorine equivalent)		Flow Rate ****		Soft Water		Brine Flow		Salt	
					(lb/d)	(kg/d)	(gpm)	(Lph)	(gpm)	(m^3/d)	(gpm)	(m^3/d)	(lb/d)	(kg/d)
ClorTec® 25	200 - 240 VAC, 1 ph, 30A, 50/60 Hz*	3.0 lb salt/ lb FAC 3.0 kg salt/ kg FAC	2.0 kW-hr/ lb FAC 4.4 kW-hr/ kg FAC	3.0 mgd 11,355 m^3/day	25	11.3	0.26	49.28	0.24	1.31	0.02	0.11	75	34
ClorTec® 50	200 - 240 VAC, 1 ph, 60A, 50/60 Hz*			6.0 mgd 22,710 m^3/day	50	22.7	0.52	98.57	0.48	2.62	0.04	0.22	150	68
ClorTec® 75	200 - 240 VAC, 1 ph, 90A, 50/60 Hz*			9.0 mgd 35,065 m^3/day	75	34	0.78	147.85	0.72	3.93	0.06	0.33	225	102
ClorTec® 100	200 - 240 VAC, 1 ph, 120A, 50/60 Hz*			12 mgd 45,420 m^3/day	100	45.4	1.04	197.14	0.96	5.24	0.08	0.44	300	136

Specifications

Control: Automatic batch, controlled by hypochlorite storage tank level

Sodium Hypochlorite: 0.8% ± 0.05 **

Water Supply: Potable water @ 25 - 100 psi (1.7 - 6.9 bar)

Temperature Range: 55°F - 80°F (12°C - 27°C)***

Salt Quality: 99.7% pure dry weight food grade salt or equivalent for best efficiency*****

Additional cell increments to meet higher capacity: 25 lb/11.3 kg

PLC & Operator Interface: Allen Bradley Micrologix 1400 with AB PanelView Plus 600

Control Panel: Painted Steel with rotomolded fascia

Hydrogen Venting: Passive venting via non-mechanical drop-tube design

Optional Self-Cleaning:

Option A: FAC Concentration 0.65% ± 0.1% at standard salt conversion efficiency
Option B: FAC Concentration 0.8% ± 0.1% mg/L at 4 lbs salt/lb FAC conversion efficiency

Notes:

* Available in 3 ph, Wye 380 - 530 VAC, 15A, 25A, 35A, 50/60 Hz
** HYPO Self-Cleaning FAC Concentration 0.65% ±0.1%
Additional options are available - contact De Nora Water Technologies for your options
*** Recommended range provided - acceptable range is 40°F - 90°F (5°C - 35°C)
**** Note flow is for generator only, additional water flow will be required for softening system and may vary but generally +15% should be adequate. Contact De Nora for project specifics.
*****For lower salt purity usage, please contact De Nora Water Technologies

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DE NORA
our research - your future

contact@mioxservice.com **www.denora.com**
info.dnwt@denora.com

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The information contained herein is offered for use by technically qualified personnel at their discretion and risk without warranty of any kind.

DNWT - ClorTec® On-site Sodium Hypochlorite Generator - 750.0305.0 - 6/2019

MIOX SALT GUIDELINES

Revised June 17, 2014

SALT GUIDELINES FOR MIOX GENERATORS

General Information

MIOX Corporation (MIOX) places importance on the quality of salt used in operating on-site generation equipment. High quality salt minimizes expense and customer equipment maintenance issues while maximizing the quality of the water treated using MIOX equipment. MIOX recommends food grade salt to help optimize MIOX system performance. Because contaminants can vary widely, even within the same mine, it is vital to request the most recent site specific contaminant analysis. The contaminant analysis should document the date that quality control was performed and the physical location where the salt was mined and processed. MIOX recommends that our customers regularly request salt product data sheets from the manufacturer to ensure consistent quality control. A reputable supplier will include the date of the quality analysis on the specification sheet in addition to the salt mine location. Please note, higher quality salt alone will not ensure reduced maintenance. Water used by the MIOX system must be softened adequately as well.

Warranty

MIOX continually strives to review and address all warranty claims in an equitable manner. It is important for our customers to understand that the use of poor quality salt may impact warranty claims. MIOX does not accept liability for any salt selected by the customer for use in MIOX equipment. MIOX reserves the right to deny any claims that could be considered under warranty if the equipment or electrolytic cell is performing below specification or is damaged due to contamination caused by, but not limited to, calcium, magnesium and insoluble material in a salt selected by the customer. NOTE: self-cleaning MIOX systems require the use of salt with a purity of 99.5% NaCl or greater (typically food grade) as described in the "Salt Purity" section below or the warranty is void.

Salt Purity

For all **self-cleaning systems,** only salt with a purity greater than 99.5% may be used (typically food grade) or the warranty is void. For all **non-self-cleaning systems,** MIOX recommends salt with a purity level of 99.5% NaCl or greater. Below is a table depicting what MIOX recommends for **non-self-cleaning systems** and what MIOX requires to keep the warranty intact for **self-cleaning systems.**

Component	Percent Minimum
NaCl (dry)	99.5
Impurity	**Percent Maximum**
Calcium (in all forms)	0.01
Magnesium (in all forms)	0.01
Manganese	0.00002
Iron (as Fe)	0.0005
Insolubles	0.005
Additives	0.0001

For several reasons, salt quality is highly variable and MIOX cannot control the quality processes at salt manufacturing sites. Typically, salts with fewer contaminants are more expensive because of additional purification steps during processing. Salt manufacturers usually provide salt product data sheets that list contaminants of concern in each type of salt they sell. Customers assume that the delivered salt will meet the specifications provided by the manufacturers. However, not all contaminants of concern for a specific application will be listed. For example, bromide in salt used for electrolysis can elevate the concentration of bromate in the treated water. Bromate is a water quality concern in drinking water applications, but not necessarily industrial applications.

There are three primary contaminants commonly listed in a salt product data sheet that impact the electrolytic cell; calcium (Ca), magnesium (Mg) and insoluble material. High calcium and magnesium salt concentrations cause accumulation of calcium/magnesium carbonate and magnesium hydroxide in the electrolytic cell. Fouling by these deposits in the cell is the single largest cause of maintenance issues. Insoluble material or solids present in the salt that do not dissolve in water can also deposit in the cell along with carbonates. This co-deposition tends to reduce the effectiveness of acid to remove the carbonates. As a result, longer acid wash times and sometimes physical scrubbing of the cell plates is required to remove the deposit. Other contaminants, such as manganese (Mn) and iron (Fe), are known to affect cell performance by producing an oxide layer that increases the degradation rate of the plates. MIOX recommends that the manganese and iron concentrations in salt not exceed 20 parts per billion in the electrolyte solution entering the cell. Manganese and iron are not included in MIOX's salt specification maintenance worksheet because they are not often reported on salt product data sheets. However, low concentrations of Mg and Ca are associated with low concentrations of Mn and Fe.

MIOX's Salt Specification Maintenance Worksheet versus Salt Manufacturer's Product Data Sheets

Although MIOX makes recommendations on the ideal salt for use in the on-site generation process, it is the customer's responsibility to obtain a salt quality analysis (salt specification or product data sheet) from the supplier and determine its suitability for their situation, region and application.

The salt manufacturer's product data sheet should contain information regarding the amount of calcium, magnesium and insoluble material in the salt at a minimum. MIOX and its customers use this standard information to estimate the amount of maintenance that is associated with these contaminants. This salt specification maintenance table is shown below.

	Lower Limit	Upper Limit	Maintenance
Calcium (Ca) (%)	0	0.020%	Acid wash for 20 min at 3000 hrs / quarterly
	0.020%	0.05%	Acid wash for 20 min at 750 hrs / monthly
	0.050%	0.08%	Acid wash twice for 20 min each at 24 hrs / daily
	0.080%	---	Calcium too high
Magnesium (Mg) (%)	0	0.020%	Acid wash for 20 min at 3000 hrs / quarterly
	0.020%	0.05%	Acid wash for 20 min at 750 hrs / monthly
	0.05%	0.08%	Acid wash twice for 20 min each at 24 hrs / daily
	0.08%	---	Magnesium too high
Insolubles (%)	0	0.01%	Change brine filter at 750 hrs / monthly
	0.010%	0.05%	Change brine filter at 325 hrs / biweekly
	0.050%	0.1%	Change brine filter at 24 hrs / daily
	0.10%	---	Insolubles too high

Please note that the manufacturer's product data sheets do not always give these contaminant concentrations in a standard form and the listing may refer to a brand of salt sourced from different salt mines. Different salt mines have different quality parameters. Be sure to request the salt product data sheet that is specific to the salt you will use in the MIOX system, including the mine location. For drinking water applications, the amount of bromide that may be present in certain salts should be evaluated because bromide can be converted to bromate in the cell.

Additives

Most salts have four basic types of additives:

- Hardening agent (Sodium Hexametaphosphate or SHMP)
- Cleanser (Citric Acid based)
- Free flowing/anti-caking agent (Yellow Prussiate of Soda or YPS)
- Detergents/surfactants

MIOX does not recommend the use of salt with additives. However, some customers have successfully used salts with these additives. Note that detergents/surfactants in the salt may cause foaming in the oxidant tank and reduce the effectiveness of the hydrogen venting system due to foam. It may be necessary to increase the vent pipe size. Organic additives such as citric acid can also be a source for additional trihalomethanes and haloacetic acids.

Physical Salt Size

Salt that is coarse or extra coarse is preferred. Granular or pelletized salt can be used equally well but requires some extra attention. Pellets that are larger than about ½ inch in size dissolve

slowly and can contribute to poor brine concentration in the brine tank, particularly when the salt level is low in the tank. For this reason, it is important to keep the brine generator filled at all times. Also, pelletized salt is too heavy to be pneumatically blown into large bulk brine generators.

Brine Filtration

Higher purity salt is often table quality, or food grade salt, in granular form. While this salt will work well, it requires an adaptation for both types of brine generators sold by MIOX, including the ton-sized bulk brine generators and the smaller brine generators with up to 1,000 gallons capacity. The large bulk brine generators must be filled with a two-layer washed quartz rock bed to avoid clogging of the brine intake port. The bottom layer should be 7 inches of quartz rock deep, using rock sizes between ¼ and ½ inch. The top layer should be 5 inches of quartz rock deep, using rock sizes between 1/8 and ¼ inch in size.

For smaller brine generators that utilize granular (fine grain) salt, a special in-tank roughing filter assembly must be used. Contact MIOX for details on this filter assembly. External to the brine generator and prior to the MIOX on-site generator cabinet, a 5-micron filter is required. This usually takes the form of a 10-inch standard filter housing with a 5-micron pleated filter cartridge element. A dual filter housing arrangement is also available to facilitate filter change-out while the systems are operational.

NSF Standard 60 Salt

Several state regulatory agencies are now requiring that the source material feeding on-site generators (i.e., salt) must be NSF-60 listed to ensure that no hazardous materials ultimately enter the drinking water supply. NSF-60 ensures that chemicals in contact with drinking water are safe and non-toxic to the drinking water supply. For a list of salt suppliers that offer NSF-60 listed salt, refer to the NSF web site at www.nsf.org. Product and service listings may be found at http://www.nsf.org/business/search_listings/.

ON-DEMAND CHEMISTRY

Water Quality Guidelines

Knowing what to look for when sizing a system will help remove hidden surprises after installation. Most of the items on the following list will be below the limits but should be checked nonetheless. Concentrations or measurements in brine feed water and/or treated water that are less than the stated limits are not anticipated to have the stated effect. These factors can affect the oxidant demand of each individual water system, the oxidant production of the MIOX system, or the life of the cell itself. It is important to use "worst case" measures since water quality can vary from season to season.

PARAMETER	MEASURE	LIMIT	WHAT IS IMPACTED		
			Oxidant Demand	Chlorine Production	Cell Life
Total Hardness **	grains/gal (or mg/L)	<1 grain (<17.1mg/L)		•	•
Iron (Fe) **†	mg/L	<1 mg/L **	•		•
Manganese (Mn)	µg/L	<50 µg/L **	•	•	•
Fluoride (Fl)	mg/L	<1 mg/L			•
Silica (SiO_2)	mg/L	<20 mg/L		•	•
Bromide	mg/L	<50 mg/L			•
Cyanide	mg/L	<1 mg/L			•
Lead (Pb)	mg/L	<2 mg/L			•
Dissolved Sulfides (as H_2S)	mg/L	***	•		
Ammonia Nitrogen (NH_3-N)	mg/L	***	•		
Organic Nitrogen (Org-N)	mg/L	***	•		
Total Organic Carbon (TOC)	mg/L	***	•		
pH	-	5-9		•	•
Water Temperature Range ^	°F (or °C)	55-80 °F (12-27°C)		•	•

**Caution: water softeners will remove these components up to a limit. See references to maximum ferrous iron and manganese in water softener documentation. Total hardness affects cell life only in that higher hardness requires acid washing to remove carbonate deposits from the cell. Use of water softened to < 1 grain hardness should not require acid washing of the cell.

*** Oxidant demand is affected by any level of H_2S, ammonia or organic nitrogen, or TOC.

† Iron may deposit $Fe(OH)_3$ on the anode, causing an electrical "blind", which would increase the brine proportion pump signal voltage (brine proportion pump speed) needed for the system to reach the operating window. Chlorine production would remain the same, but salt conversion effi ciency will decrease. The same effect is true of silica on the cathode.

^ The system will operate with water temperatures outside this range; however, there will be a performance change. Follow the system specifications for absolute limits.

5601 BALLOON FIESTA PARKWAY / ALBUQUERQUE, NEW MEXICO 87113 USA
505.343.0090 / 888.646.9420 / FAX 505.343.0093 / INFO@MIOX.COM / WWW.MIOX.COM

Attachment B
EXHIBIT "B" – Delivery Schedule

The services shall be completed within the durations specified below, following issuance of Purchase Order.

Quote Description	Project Duration	Not to Exceed Fee	P.O. Number
Quote Titled: ClorTec On-Site Sodium Hypochloorite Generation System, Dated: 2025/01/31	6 months	$1,416,076	Pending

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 1
TO THE GOODS AND EQUIPMENT PURCHASE AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
D&H WATER SYSTEMS

1. Parties and Date.

This Amendment No. 1 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **D&H Water Systems**, a Sole source parts distributor in this region. ("**Supplier**"). City and **Supplier** are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Supplier have entered into an agreement entitled "**Goods and Equipment Purchase Agreement**" dated July 17, 2024. ("Agreement").

2.2 Amendment Purpose. The City and **Supplier** desire to amend the Agreement to increase the compensation by **Two Hundred Seventy-Four Thousand, Eight Hundred Forty-Nine Dollars ($274,849)** for a total-not-to-exceed compensation of **Three Hundred Ten Thousand, Five Dollars ($310,005)** and includes an additional proposal to the Exhibit A through Exhibit B. This increase in compensation is for the additional goods and equipment listed in the attached Suppliers' Proposal titled **"ProMinent Dual Pump ProMus Chemical Feed Skids"** and dated **January 24, 2025**.

2.3 Amendment Authority. This Amendment No. 1 is authorized pursuant to Section 6 of the Agreement.

3. Terms.

3.1 Amendment. Sections 14.A.4 and 14.A.5 of the agreement are hereby deleted in their entirety. Exhibit "A" and Exhibit "B" of the agreement is hereby amended in its entirety to read as follows:

Exhibit "A" – Goods Specifications is hereby amended in its entirety and replaced with Attachment A attached hereto and incorporated herein by reference.

Exhibit "B" – Delivery Schedule is hereby amended in its entirety and replaced with Attachment B attached hereto and incorporated herein by reference.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 1, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 1. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.

3.4 Severability. If any portion of this Amendment No.1 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 1 TO THE GOODS AND EQUIPMENT PURCHASE AGREEMENT BETWEEN THE CITY OF ONTARIO AND D&H WATER SYSTEMS

IN WITNESS WHEREOF, the Parties have entered into this Amendment No.1 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

D&H Water Systems

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

Attachment A
EXHIBIT "A" – Goods Specifications

Task Order	Quote Description	Not to Exceed Fee
Original Agreement	Quote No. Q2023-1265, Dated: 2024/02/08	$35,156
Amendment 1.0	Quote Titled: ProMinent Dual Pump ProMus Chemical Feed Skids, Dated: 2025/01/24	$274,849
Grand Total		$310,005

Quote

D&H WATER SYSTEMS
603 Seagaze Dr. # 241
Oceanside, CA 92054
ph: 760-722-6893

Date	Quote #
2/8/2024	Q2023-1265

Bill To	Ship To
City of Ontario 1425 South Bon View Ave Ontario, CA 91761	City of Ontario 1425 South Bon View Ave Ontario, CA 91761

Rep	P.O. Number	Terms	Entered By	Estimate Status
TJH		Net 30 Days	AO	Open

Quantity	Description	Bin Loc	MPN	Cost Each	Total Amount
4	PROMUS140BPVT703D01K0 33.4 GPH. 232 PSI. PVDF single ball. MNPT PVDF connectors. 1/2 HP TEFC standard motor			5,606.32	22,425.28T
	**Promus pump parts **				
12	358815 Union Nut: 3/4" MNPT (DN20), PVDF			60.70	728.40T
10	1017381 3/4" PVDF Insert MNPT (DN20) (replaces 7358601)			38.801	388.01T
25	1019366 Molding Gasket DN20 (Replaces 483985)			16.7996	419.99T
5	792500 Valve body GI 1/4A-DN20 PVDF			70.806	354.03T
20	855201 Diaphragm 40 PTFE			37.1005	742.01T
10	7500292 "USA" 20mm Valve Ball Al2 O3 (Replaces 404273)			37.60	376.00T
10	792451 Ball Seat Disc d30 DN20-1 PTFE			13.50	135.00T
2	7500131 Calibration Column: 2000 mL PVC 1" NPT Ends (replaces 7302237)			311.595	623.19T
7	331-31-PL BLADDER KIT, SENTRY II, VITON			725.40	5,077.80T
1	Freight Charges - FOB Shipping Point			1,150.00	1,150.00
	POC: Jessie Sanchez 909 921 7085 Jsanchez2@ontarioca.gov				

	Subtotal
	Sales Tax (8.75%)
	Total

D&H WATER SYSTEMS

603 Seagaze Dr. # 241
Oceanside, CA 92054
ph: 760-722-6893

Quote

Date	Quote #
2/8/2024	Q2023-1265

Bill To
City of Ontario 1425 South Bon View Ave Ontario, CA 91761

Ship To
City of Ontario 1425 South Bon View Ave Ontario, CA 91761

Rep	P.O. Number	Terms	Entered By	Estimate Status
TJH		Net 30 Days	AO	Open

Quantity	Description	Bin Loc	MPN	Cost Each	Total Amount
	Conditions of Sale: - Payment terms: (upon approved credit) Net 30 days. - This quote is firm until DECEMBER 21, 2023 - Freight is estimated and is subject to change. - All credit card transactions will incur a 4% pass through service charge. - This quotation is limited to the products and services as listed, and excludes any item or service not listed. - This quotation EXCLUDES any permits, licenses, bonds, inspections, seismic calculations, or fees.			0.00	0.00T

Subtotal	$32,419.71
Sales Tax (8.75%)	$2,736.10
Total	$35,155.81

Page 2

Quote Titled: ProMinent Dual Pump ProMus Chemical Feed Skids

Jan 24, 2025

City of Ontario – Onsite Sodium Hypochlorite Upgrade

Attention: Chris Bonadurer
Subject: ProMinent Dual Pump ProMus Chemical Feed Skids

D & H Water Systems, Inc is pleased to offer the following **Budgetary Estimate** for your consideration.

Qty	Description	Price	Ext. Price
5	**PROMINENT TWO PUMP SODIUM HYPOCHLORITE FEED SKID SYSTEM** APPLICATION DATA: Chemical: Sodium Hypochlorite Pump Type: Motor driven diaphragm pump Pump Quantity: 2 Capacity: 33.4 GPH @ 232 PSIG Piping Material: SCH 80 CPVC/Viton Piping Connections: Socket weld / NPT Piping Configuration: Dual pump - primary/backup configuration MECHANICAL DETAILS: Skid Type: Black fusion welded polypropylene skid base, floor mounted (48.75"W x 30"D x 72"H) Chemical Inlet: (1) 0.75" Chemical Outlet: (1) 0.75" (1) Lot of isolation/drain/flush vented ball valves, as required (1) Inverted header with manual vent ball valve (1) Wye strainer (1) 4,000mL PVC calibration cylinder (2) CPVC Pressure relief valves with returns to pump suctions (1) 4.5" 316SS 0-160 PSIG Discharge pressure gauge with isolator (1) CPVC Back pressure valve (2) 1393mL CPVC/Viton Pulsation dampeners	$35,640.00	$178,200.00
10	**PROMINENT ProMus HYDRAULIC METERING PUMP** The ProMus is a motor driven metering pump with a hydraulically actuated Teflon diaphragm. The plunger and diaphragm are hydraulically coupled and are precisely controlled by a mechanically actuated replenishment valve,	$5,700.00	$57,000.00

603 Seagaze Drive #241, Oceanside, California 92054
PHONE 760.468.8006 FAX 760.659.5540 WEB www.dandhwatersystems.com
EMAIL Tom@dandhwatersystems.com

Qty	Description	Price	Ext. Price
	which senses diaphragm position to admit coupling fluid as needed. Built in accordance to API 675 standards, the ProMus pump comes in three size liquid ends: 17, 30, and 40. Stroke length adjustment from 0 - 100%, in 1% increments. Stroking rate varies for different models from 35 to 138 strokes per minute. Ident Code: PROMUS140BPVT703X01J0 Motor: 1/2 HP, 230-460 VAC, Inverter Duty, TEFC, 56C Flow: 33.4 GPH / 126.4 L/H Pressure: MAX 232 PSI / MAX 16 BAR Options Included: - Pump version 40B Size 40 liquid end 2" - Liquid end material PVT PVDF single ball - Connectors 7 MNPT PVDF - Gear ratio 03 30:1 56c - Base 0 Standard base - Stroke adjustment 1 Manual stroke - Internal relief valve J 200 psi/size 30 & 40 - Hydraulic oil 0 Standard Oil		
1	**Freight Cost for Delivery**	$6,500.00	$6,500.00
1	**Start-Up and Training (not included in Sales Tax)**	$12,000.00	$12,000.00
		Subtotal	$253,700.00
		Sales Tax (8.75%)	$21,148.75
		Total Lot Price	**$274,848.75**

Conditions of Sale:

- D&H Water Systems is serving as an equipment supplier.
- Payment: Net 30 days for orders under $200,000 and per the following schedule for orders over $200,000:
  - 25% at Submittal Approval
  - 75% Upon Delivery of Equipment
- This quote is firm up to **June 30, 2025.**
- All Visa and Master card transactions will incur a 4% pass through service charge.

603 Seagaze Drive #241, Oceanside, California 92054
PHONE 760.468.8006 FAX 760.659.5540 WEB www.dandhwatersystems.com
EMAIL Tom@dandhwatersystems.com

- Submittals provided 4-6 weeks after purchase order is fully executed by both parties.
- Delivery will be made in *approximately* 10-12 weeks after submittal approval.
- D&H reserves the right to adjust lead times if purchase order is submitted more than 30 days after proposal date.
- This quotation is limited to the products and services as listed, and excludes any item or service not listed.
- D&H Water Systems' standard insurance package covers commercial general, automotive, worker's compensation, and umbrella liability. We do not provide professional liability. Any costs associated with additional insurance requirements will be passed on to buyer.
- D&H will not be held liable for any liquidated damages incurred during project.
- This quotation EXCLUDES any permits, licenses, bonds, inspections or fees.
- This quotation EXCLUDES seismic calculation of any kind unless specifically noted in scope of supply.

Resulting Purchase Order should be made out to:

D&H Water Systems Inc
603 Seagaze Dr. #241
Oceanside, CA 92054

Please do not hesitate to contact me if you have any questions or require further information.
Sincerely,

Tom Hartwig
760.468.8006
D&H Water Systems, Inc.

603 Seagaze Drive #241, Oceanside, California 92054
PHONE 760.468.8006 FAX 760.659.5540 WEB www.dandhwatersystems.com
EMAIL Tom@dandhwatersystems.com

Attachment B
EXHIBIT "B" – Delivery Schedule

The services shall be completed within the durations specified below, following issuance of Purchase Order.

Amend No.	Quote Description	Project Duration	Not to Exceed Fee	P.O. Number
1.0	Quote Titled: ProMinent Dual Pump ProMus Chemical Feed Skids, Dated: 2025/01/24	6 months	$274,849	Pending

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Thomas Lambertson Staff Member Presenting: Scott Burton, Utilities General Manager Reviewed By: Dennice Raygoza, Albert G Gastelum, Michael Sigsbee Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 11

SUBJECT: **ADOPT A RESOLUTION AUTHORIZING SIGNATURE AUTHORITY FOR PROJECT AGREEMENTS AND DOCUMENTS FOR THE EUCLID RECYCLED WATER PROJECT AND WELL 50 TREATMENT FACILITY WITH THE UNITED STATES ARMY CORPS OF ENGINEERS**

RECOMMENDATION: That the City Council adopt a Resolution authorizing the City Manager, or his designee, to negotiate and execute all related project documents, including applications, agreements, project certifications and project-related documents with the United States Army Corps of Engineers (USACE), to design and construct the Euclid Avenue Recycled Water Project and the Well 50 Ion Exchange Treatment Facility.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: There is no impact to the General Fund. The USACE received $200,000 of Federal funding (appropriations) through a project submitted by Congresswoman Norma J. Torres to support City projects authorized under the Water Resources Development Act (WRDA). Of this funding, $25,000 will be allocated to preparing project partnership agreements. There is a cost-share element that requires the City fund 25% of project costs, and all costs for associated work not included in the project partnership agreements. Upon execution of the project partnership agreements, the remainder of the grant funds will be applied to the 75% of other project costs.

Beyond the initial $200,000 appropriation, annual allocations will be solicited through the City's United States Congressional District Office for approval and inclusion into the Federal budget. These funds will cover 75% of the USACE's continuing work, with the City contributing the remaining 25%. Total project costs are estimated to be $26 million over the next five years for the Euclid Avenue Recycled Water Project and $6 million for Well 50 Treatment Facility, for a total of $31 million. The City's 25% cost-share responsibility of the estimated total would be $7.75 million.

As a requirement, the City will annually request additional WRDA funding based on upcoming increments of work. The City's annual financial commitment will be dependent on the annual Federal appropriations authorized by USACE for these projects. The City's cost-share portion will be appropriated from the Water

Capital Fund in future Quarterly Budget Update Reports to the City Council.

BACKGROUND & ANALYSIS: WRDA is a comprehensive legislative package that provides for the conservation and development of water and related resources. It authorizes the Secretary of the Army, through the Assistant Secretary of the Army for Civil Works, to conduct studies, construct projects, and conduct research activities that can improve the rivers and harbors of the United States. However, WRDA serves only as authorizing legislation and does not provide direct funding. The funding of WRDA-authorized studies and projects is provided separately through the annual Energy and Water Development appropriations process and, at times, through supplemental appropriations. Federal funds are budgeted to USACE for 75% of the applicable project costs. The City is responsible for the remaining 25% of applicable project costs, cost overruns, and other costs required to support the project, such as State-specific environmental reviews, project related costs, including engineering, administrative, bidding, and construction tasks.

The City's adopted 2020 Urban Water Management Plan (UWMP) identifies recycled water as a key component of Ontario's plan for ensuring a long-term sustainable water supply. Recycled water is approved for use by the California State Water Resources Control Board - Division of Drinking Water for irrigation and industrial applications. One such initiative is the Euclid Avenue Recycled Water Project, which is included in the Capital Improvement Program. This project will develop a network of transmission and distribution main pipelines to deliver recycled water for irrigating street corridors, schools, parks, and other community development spaces. The project area is bounded by Baker Avenue to the East, James Bryant Park and D Street to the North, Oaks Street to the West, and Centennial Park to the South.

The UWMP also identifies groundwater as the City's largest individual water source. To protect this resource and meet the growing potable water demands in Ontario Ranch, existing Well No. 50 – which is currently inactive due to perchlorate contaminant approaching the state's Maximum Contaminant Level – must be restored through treatment.

To support these efforts, the Euclid Recycled Water Project and Well 50 Ion Exchange Treatment Facility Project were submitted by Congresswoman Norma J. Torres for consideration under WRDA. In 2024, the City was notified that the projects had been authorized, with $200,000 of the requested funding budgeted to USACE to begin the work in fiscal year 2024-2025. Under a Federal arrangement, USACE is responsible for managing all work associated with the project. The City will act as a partner and owner of the projects, ensuring the final product meets City standards through collaboration with USACE. The City will also submit annual requests to Federally fund USACE work on future increments of work associated with each project, which may require separate project agreements in compliance with USACE policies and procedures. Upon project completion, USACE will turn over the new facilities to the City for operation and maintenance.

Upon execution of the initial project agreement, USACE can begin work on the Euclid Recycled Water Project. Adoption of the attached resolution will further authorize the City Manager or his designee to review, negotiate, and execute resulting agreements and amendments with USACE to obtain funding for the full scope of the Euclid Recycled Water Project and the Well 50 Ion Exchange Treatment Facility.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND SIGN PROJECT PARTNERSHIP AGREEMENTS FOR THE EUCLID RECYCLED WATER PROJECT AND WELL 50 TREATMENT FACILITY WITH THE UNITED STATES ARMY CORPS OF ENGINEERS.

WHEREAS, the United States Army Corps of Engineers (USACE) has been delegated the responsibility for the administration and prosecution of work to complete projects awarded by the United States Congress under the Water Resources Development Act (WRDA); and

WHEREAS, the City of Ontario (City) desires to partner with the USACE to complete the City's recycled water and well treatment projects through the water resource improvement provisions of WRDA and submitted projects for federal authorization through their District Congressional Representative; and

WHEREAS, Federal funding was approved for Fiscal Year 2024 to cover all USACE costs to set up and execute project agreements with the City for the authorized projects under WRDA; and

WHEREAS, the USACE requires the City Council by resolution to authorize the City Manager, or designee, to sign and execute project agreements and provide financial certifications for USACE to carry out necessary Project-related activities; and

WHEREAS, the City shall through their Congressional Representative, solicit annual funding requests for USACE to continue the work, and will provide all necessary support documentation for USACE to administer and execute amendments or new agreements to complete the authorized projects; and

WHEREAS, the USACE will administer and execute the project agreements, utilizing annual awarded Federal Funds for 75-percent and annual City funds for 25-percent of the total work completed under the project agreements; and

WHEREAS, the USACE will execute and modify the scope of work under the project agreements in collaboration with the City and in accordance with the City's preferences so that upon completion of the work, the constructed facilities will be wholly and completely transferred by USACE to the City for their use and benefit.

NOW, THEREFORE, THE CITY OF ONTARIO DOES HEREBY RESOLVE, ORDER, AND DETERMINE AS FOLLOWS:

SECTION 1. The City Council does hereby find and declare that the above recitals are true and correct.

SECTION 2. The City Manager (the "Authorized Representative"), or designee, is hereby authorized and directed to sign and file, for and on the behalf of the City, project agreements and any amendments thereto from the USACE for the planning, design, and construction of the Euclid Avenue Recycled Water Project and the Well 50 Treatment Facility (the "Project").

SECTION 3. This Authorized Representative, or designee, is designated to provide the assurances, certifications, and commitments required to prepare the project partnership agreements, including negotiation and execution of financial assistance agreements with the USACE and any amendments or changes thereto.

SECTION 4. The Authorized Representative, or designee, is designated to represent the City in carrying out the City's responsibilities under the project agreements, including certifying disbursements on behalf of the City and compliance with applicable state and federal statutory and regulatory requirements related to these projects and any federal and state grants or other such funds received.

SECTION 5. Be it further resolved and ordered, that any and all actions, whether previously or subsequently taken by the City, which are consistent with the intent and purposes of the foregoing resolution, shall be, and hereby are, in all respects, ratified, approved and confirmed.

SECTION 6. The City Clerk shall certify to the adoption of this Resolution.

SECTION 7. This Resolution shall become effective upon its adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of April, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 15, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held April 15, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Cruz Torres Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Claudia Hernandez, Matthew Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 73 (WILDFLOWER ACRES)**

RECOMMENDATION: That the City Council consider and adopt an Ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 73 (Wildflower Acres).

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: The use of Mello-Roos financing in the Wildflower Acres residential development is projected to generate approximately $445,357 per year, at build-out, to fund administrative fees and municipal services; and approximately $17.7 million in bond proceeds to be used to fund a portion of the public infrastructure improvements needed to serve the project. Mello-Roos bonds are not a direct obligation of the City and are paid from special taxes levied on each taxable parcel in the District; therefore, there is no fiscal impact to the General Fund from the issuance of Mello-Roos bonds. City Council approval will be required to process annual special tax levies in future years.

BACKGROUND & ANALYSIS: The Mello-Roos Community Facilities Act of 1982 (the Act) provides local government, with the consent from a majority of the property owners, the authority to establish community facilities districts for the purpose of levying special taxes to finance various public infrastructure facilities and to fund municipal services.

At a public hearing conducted by the City Council on April 1, 2025, the City Council adopted a Resolution of Formation of Community Facilities District No. 73 (Wildflower Acres); authorized the levy of a special tax; established an appropriations limit of the Community Facilities District; and called a special election for the Community Facilities District. On that date, an election was held in

which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act. Adoption of the proposed ordinance to authorize the levy of special taxes within the Community Facilities District will conclude the formation process for the City of Ontario Community Facilities District No. 73 (Wildflower Acres).

The Wildflower Acres is a residential project development that is approximately 31.18 gross acres located north of Eucalyptus Avenue, west of Hamner Avenue, east of Clifton Avenue, and south of Ontario Ranch Road. At build-out, the project is expected to include a total of 333 residential units, comprised of 177 single-family units and 156 attached units.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING A SPECIAL TAX WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 73 (WILDFLOWER ACRES)

WHEREAS, on February 18, 2025, the City Council (the "City Council") of the City of Ontario (the "City"), pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"), adopted a resolution entitled "A Resolution of the City Council of the City of Ontario, California, of Intention to Establish a Community Facilities District Proposed to be Named City of Ontario Community Facilities District No. 73 (Wildflower Acres) and to Authorize the Levy of a Special Tax Therein," stating its intention to establish City of Ontario Community Facilities District No. 73 (Wildflower Acres) (the "Community Facilities District") and to authorize the Community Facilities District to levy a special tax (the "Special Tax") within the Community Facilities District for the purpose of financing certain public facilities (the "Facilities") and services (the "Services"); and

WHEREAS, on April 1, 2025, the City Council held a noticed public hearing on the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to the close of said hearing, the City Council adopted resolutions entitled "A Resolution of the City Council of the City of Ontario, California, of Formation of City of Ontario Community Facilities District No. 73 (Wildflower Acres), Proposing that the Community Facilities District be Authorized to Levy a Special Tax and Proposing that an Appropriations Limit of the Community Facilities District be Established" (the "Resolution of Formation"), "A Resolution of the City Council of the City of Ontario, California, Deeming it Necessary for City of Ontario Community Facilities District No. 73 (Wildflower Acres) to Incur Bonded Indebtedness" and "A Resolution of the City Council of the City of Ontario, California, Calling Special Election for City of Ontario Community Facilities District No. 73 (Wildflower Acres)," which resolutions established the Community Facilities District, proposed that the Community Facilities District be authorized to levy the Special Tax within the Community Facilities District, proposed that an appropriations limit of the Community Facilities District be established and called a special election to submit to the qualified electors of the Community Facilities District the combined ballot proposition to authorize the Community Facilities District to incur bonded indebtedness, to authorize the Community Facilities District to levy the Special Tax and to establish the appropriations limit of the Community Facilities District; and

WHEREAS, on April 1, 2025, an election was held in which the qualified electors of the Community Facilities District approved said proposition by more than the two-thirds vote required by the Act; and

WHEREAS, the City Council is the legislative body of the Community Facilities District;

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

SECTION 1. The City Council hereby authorizes and levies the Special Tax within the Community Facilities District pursuant to Sections 53328 and 53340 of the Act, at the rate and in accordance with the method of apportionment set forth in Exhibit B to the Resolution of Formation (the "Rate and Method"). The Special Tax is hereby levied commencing in fiscal year 2025-26 and in each fiscal year thereafter until the last fiscal year in which the Special Tax is authorized to be levied pursuant to the Rate and Method.

SECTION 2. The City Council may, pursuant to subdivision (b) of Section 53340 of the Act, provide, by resolution, for the levy of the Special Tax in the current tax year or in future tax years at the same rate or at a lower rate than the rate provided by this Ordinance. In no event shall the Special Tax be levied on any parcel within the Community Facilities District in excess of the maximum tax specified therefor in the Rate and Method.

SECTION 3. The Special Tax shall be levied on all of the parcels in the Community Facilities District, unless exempted by law or by the Rate and Method.

SECTION 4. The proceeds of the Special Tax shall only be used to pay, in whole or in part, the cost of providing the Facilities and Services and incidental expenses pursuant to the Act.

SECTION 5. The Special Tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in the case of delinquency as is provided for *ad valorem* taxes or in such other manner as the City Council shall determine, including direct billing of the affected property owners.

SECTION 6. If for any reason any portion of this Ordinance is found to be invalid, or if the Special Tax is found inapplicable to any particular parcel within the Community Facilities District by a court of competent jurisdiction, the balance of this Ordinance and the application of the Special Tax to the remaining parcels within the Community Facilities District shall not be affected.

SECTION 7. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 15th day of April, 2025.

_____

PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held April 1, 2025 and adopted at the regular meeting held April 15, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held April 15, 2025 and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Daniel P Beers Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 13

SUBJECT: **AUTHORIZE A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH PHILBIN CONSTRUCTION COMPANY FOR THE DEBRIS REMOVAL AND FINE GRADING FOR ONTARIO'S GRAND PARK PHASE 1 PROJECT**

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute Change Order No. 2 to the Construction Contract with Philbin Construction Company, of Laguna Niguel, California for the debris removal and fine grading of Ontario's Grand Park Phase 1 in the amount of $11,990,790 for a total contract amount of $17,420,243 plus a contingency of $2,409,507 to address any unforeseen issues that may arise during the demolition for a total not-to-exceed contract amount of $19,829,750; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but is not limited to agreements, assessments, easements, lot line adjustments, reduction of retention accounts, contracts and contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The recommended Change Order No. 2 to the Construction Contract with Philbin Construction Company is in the amount of $11,990,790 plus a contingency of $2,409,507 for a total not-to-exceed contract amount of $19,829,750. If approved, appropriations in the Park Impact Fund will be requested at future quarterly budget updates to the City Council for approval as needed.

BACKGROUND & ANALYSIS: On December 21, 2021, the City Council approved the conceptual "Grand Park" Master Plan and the Preliminary Park Design for Phase 1. Phase 1 builds upon the framework established in the Conceptual Park Master Plan and is comprised of approximately 130 acres of land and occurs within the eastern portion of Ontario Ranch. This phase is bordered by Grand Park Street to the north, Eucalyptus Avenue to the south, Haven Avenue on the east and Archibald Avenue on the west. This portion of the park contains meadows, trails, and a multi-use field that also functions as a stormwater capture system. Day one core park amenities are proposed in the center of this phase, which include a Market Alley designed for farmers markets, food trucks, and community events. There are plans for a community barn and farm hub, Kids' Corral (a children's playground), and a 5,000 capacity amphitheater along the central plaza. Ontario's Grand Park is anticipated to be operational by Summer of 2027.

On October 15, 2024, City Council awarded a Construction Contract to Philbin Construction Company for the mass grading of Ontario's Grand Park. During the grading, buried concrete and trash were found 15 feet below the surface which needs to be removed immediately. The recommended Change Order No. 2 with Philbin Construction Company includes the removal of debris and completion of fine grading of the project site.

Because this change order relates to latent subsurface conditions which are not amenable to competitive bidding, and because the Contract Documents ensure that compensation for latent subsurface conditions is compensated at fair and reasonable rates, this change order is authorized by law notwithstanding its magnitude.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
CHANGE ORDER

Project: D&C21-005 Grand Park Phase 1 Grading Change Order Number: 2

Contract Date: **October 15, 2024** Change Order Date:

To: Philbin Construction Company
28202 Cabot Rd, Suite 300
Laguna Niguel, CA 92677
Attn: Joe Philbin

THIS CHANGE ORDER FORM SHALL BE USED FOR ALL CHANGE ORDERS ASSOCIATED WITH THE WORK. NO ADDITIONS OR DELETIONS TO THIS FORM SHALL BE ALLOWED, EXCEPT WITH PERMISSION OF THE CITY OF ONTARIO.

The Contract is changed as follows:

- Per PCO #8 – Debris Removal and crush concrete. NTE increase of $8,591,120.
- Per PCO #9 – Fine grading. NTE increase of $3,399,670.

Contractor agrees to furnish all labor, materials, equipment and services to perform the Work, modified as described herein, in accordance with the Contract Documents as revised by this Change Order.

NOT VALID UNTIL SIGNED BY OWNER

In consideration of the change(s) described above, the Contract Price is adjusted as follows:

The original Contract Price was	$	4,534,000
Net change by previously authorized Change Orders	$	895,453
The Contract Price prior to this Change Order was	$	5,429,453
The Contract Price will be changed by this Change Order in the amount of	$	11,990,790
The new Contract Price including this Change Order will be	$	17,420,243

In consideration of the change(s) describe above, the Contract Time is adjusted as follows:

The Contract Time will be: increased ☒ decreased ☐ unchanged ☐ by	180	Days
The Contract Time prior to this Change Order was	226	Days
The new Contract Time including this Change Order will be	406	Days

Attachments: PCO #8, and 9 and all supporting documentation.

Contractor accepts the terms and conditions stated herein as full and final settlement of any and all claims arising from this Change Order. The adjustments to the Contract Price and Contract Time in this Change Order constitutes the entire compensation and/or adjustment thereto due to Contractor, including direct, indirect, consequential, and overhead (field and home office) costs, due to Contractor arising out of or related to the change in the Work covered by this Change Order. By signing this Change Order, Contractor agrees to accept the amount of the adjustment to the Contract Price, and the adjustment of the Contract Time, as payment in full for all costs, including direct, indirect, consequential, and overhead (field and home office) costs, related to the change in the Work covered by this Change Order.

Accepted:

(Signature) [Joe Philbin, Owner]	Date

Approved:

(Signature) [Tito Haes, Executive Director Public Works]	Date
(Signature) [Scott Ochoa, City Manager]	Date

Pursuant to Section 1, Procedures, of the City of Ontario's Purchasing Policies and Procedures Manual, "Construction change orders up to 75% of the City Council approved contingency amount shall be approved by the Agency Head. Change orders that exceed 75% of the approved contingency shall be signed by the City Manager."

If your Change Order is less than 75% of the City Council approved contingency amount, then indicate "N/A" on the line where the City Manager would sign and have your Agency Head sign only.

PHILBIN

28202 Cabot Road, Suite #300
Laguna Niguel, CA 92677
(714) 904-9860
(949) 415-7872 FAX

CA License #1032464
DIR #1000054316

To:	City Of Ontario	**Contact:**	Dan Beers
Address:	1333 South Bon View Ave	**Phone:**	(818) 388-0212
	Ontario, CA 91761 USA	**Fax:**	
Project Name:	ONTARIO GRAND PARK (COR-008 Debris Removal - Option #3)	**Bid Number:**	1093-008 OPTION #3
Project Location:	ONTARIO, CA	**Bid Date:**	3/14/2025

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
DEBRIS REMOVAL					
A-1	MOBILIZATION INCL. CRUSHING PLANT	1.00	LS	$29,000.00	$29,000.00
A-2	POTHOLE LIMITS OF DEBRIS (3 DAYS)	1.00	LS	$15,620.00	$15,620.00
A-3	SORT AND PROCESS DEBRIS	120,000.00	CY	$16.00	$1,920,000.00
A-4	SECONDARY PROCESSING FOR CRUSHING PLANT	70,000.00	CY	$12.00	$840,000.00
A-5	CRUSH CONCRETE TO MISC. BASE (1" MINUS) - LEAVE IN STOCKPILE	130,000.00	TON	$6.75	$877,500.00
A-6	LOAD/HAUL/DISPOSE INERT MATERIALS THAT CANNOT BE CRUSHED (SUPER 10 OR END DUMP)	1,000.00	LOAD	$1,100.00	$1,100,000.00
A-7	LOAD/HAUL/DISPOSE TRASH (PLASTIC, WOOD, TILE, MISC) AT CERTIFIED LANDFILL	15,000.00	TON	$134.00	$2,010,000.00
				Total Price for above DEBRIS REMOVAL Items:	**$6,792,120.00**
TRUCKING					
B-1	IMPORT CLEAN DIRT TO REPLACE DEBRIS BELOW FINISH GRADE	70,000.00	CY	$20.50	$1,435,000.00
				Total Price for above TRUCKING Items:	**$1,435,000.00**
DUST CONTROL					
C-1	DUST CONTROL ALLOWANCE	1.00	LS	$200,000.00	$200,000.00
				Total Price for above DUST CONTROL Items:	**$200,000.00**
BONDS AND INSURANCE					
D-1	BOND COST (1%)	1.00	LS	$82,000.00	$82,000.00
D-2	INSURANCE COST (1%)	1.00	LS	$82,000.00	$82,000.00
				Total Price for above BONDS AND INSURANCE Items:	**$164,000.00**

Total Bid Price: $8,591,120.00

Notes:

- BID INCLUDES ONE (1) MOVE.
- BID DOES NOT TESTING.
- BID DOES NOT INCLUDE HANDLING OR DISPOSING OF HAZARDOUS OR CONTAMINATED MATERIALS, INCLUDING BUT NOT LIMITED TO, ASBESTOS, LEAD-CONTAMINATED SOIL, TPH-CONTAMINATED SOIL, CREOSOTE, ETC.
- BID DOES NOT INCLUDE IMPLEMENTING, MONITORING, OR MAINTAINING SWPPP BMPS. BID DOES NOT INCLUDE QSD OR QSP.
- BID DOES NOT INCLUDE WORKING AROUND OR RELOCATING EXISTING UTILITIES.
- BID INCLUDES DUST CONTROL WHILE WORKING. DUST CONTROL DURING SHUT-DOWNS, WEEKENDS, HOLIDAYS, OR OFF-HOURS WILL BE PERFORMED ON A T&M BASIS.
- BID DOES NOT INCLUDE STREET SWEEPING COSTS, OTHER THAN WHEN PERFORMING A TRUCK HAUL.
- BID INCLUDES PREVAILING WAGES.
- BID INCLUDES WORKING M-F, 8 HOURS PER DAY.
- BID VALID FOR 30 DAYS.
- **QUANITIES ARE ESTIMATES ONLY. OFFSITE DISPOSAL TO BE PAID AT ACTUAL COUNTS (LOAD COUNTS AND TONNAGE).**

- **CONCRETE WILL BE CRUSHED TO 1" MINUS. THIS PROPOSAL DOES NOT GUARANTEE THAT MATERIAL MEETS SPECIFICATIONS FOR STRUCTURAL USE.**

ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. **Buyer:** _____ **Signature:** _____ **Date of Acceptance:** _____	**CONFIRMED:** **PHILBIN CONSTRUCTION COMPANY** **Authorized Signature:** _____ **Estimator:**

PHILBIN

28202 Cabot Road, Suite #300
Laguna Niguel, CA 92677
(714) 904-9860
(949) 415-7872 FAX

CA License #1032464
DIR #1000054316

To:	City Of Ontario	**Contact:**	Keith Wyatt
Address:	1333 South Bon View Ave	**Phone:**	
	Ontario, CA 91761 USA	**Fax:**	
Project Name:	ONTARIO GRAND PARK (COR-009 Precise Grading)	**Bid Number:**	1093-009
Project Location:	ONTARIO, CA	**Bid Date:**	3/12/2025

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
PRECISE GRADING					
A-1	CUT AND FILL TO NEW DESIGN	118,800.00	CY	$4.50	$534,600.00
A-2	FINISH GRADE - BUILDING PADS	55,000.00	SF	$0.40	$22,000.00
A-3	FINISH GRADE - PARKING LOTS	529,000.00	SF	$0.31	$163,990.00
A-4	FINISH GRADE - VEHICLE PATHS	278,000.00	SF	$0.37	$102,860.00
A-5	FINISH GRADE - WALKING PATHS	176,000.00	SF	$1.32	$232,320.00
A-6	FINISH GRADE - ARROYO	320,000.00	SF	$0.82	$262,400.00
A-7	FINISH GRADE - LANDSCAPE AREAS	4,300,000.00	SF	$0.10	$430,000.00
		Total Price for above PRECISE GRADING Items:			**$1,748,170.00**
TRUCKING					
B-1	IMPORT FILL TO ACHIEVE DESIGN GRADES	75,000.00	CY	$20.50	$1,537,500.00
		Total Price for above TRUCKING Items:			**$1,537,500.00**
SITE FENCING					
C-1	TEMP FENCE RENTAL	4.00	MO	$12,000.00	$48,000.00
		Total Price for above SITE FENCING Items:			**$48,000.00**
BONDS AND INSURANCE					
10	BOND COST (1%)	1.00	LS	$33,000.00	$33,000.00
11	INSURANCE COST (1%)	1.00	LS	$33,000.00	$33,000.00
		Total Price for above BONDS AND INSURANCE Items:			**$66,000.00**

Total Bid Price: $3,399,670.00

Notes:

- BID INCLUDES ONE (1) MOVE.
- BID DOES NOT TESTING.
- BID DOES NOT INCLUDE HANDLING OR DISPOSING OF HAZARDOUS OR CONTAMINATED MATERIALS, INCLUDING BUT NOT LIMITED TO, ASBESTOS, LEAD-CONTAMINATED SOIL, TPH-CONTAMINATED SOIL, CREOSOTE, ETC.
- BID DOES NOT INCLUDE IMPLEMENTING, MONITORING, OR MAINTAINING SWPPP BMPS. BID DOES NOT INCLUDE QSD OR QSP.
- BID DOES NOT INCLUDE WORKING AROUND OR RELOCATING EXISTING UTILITIES.
- BID INCLUDES DUST CONTROL WHILE WORKING. DUST CONTROL DURING SHUT-DOWNS, WEEKENDS, HOLIDAYS, OR OFF-HOURS WILL BE PERFORMED ON A T&M BASIS.
- BID DOES NOT INCLUDE STREET SWEEPING COSTS, OTHER THAN WHEN PERFORMING A TRUCK HAUL.
- BID INCLUDES PREVAILING WAGES.
- BID INCLUDES WORKING M-F, 8 HOURS PER DAY.
- BID VALID FOR 30 DAYS.

ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. **Buyer:** _____ **Signature:** _____ **Date of Acceptance:** _____	**CONFIRMED:** **PHILBIN CONSTRUCTION COMPANY** **Authorized Signature:** _____ **Estimator:**

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Manuel Rebolledo Staff Member Presenting: Tito Haes, Executive Director Public Works Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 14

SUBJECT: **AN AMENDMENT TO THE GOODS AND SERVICES AGREEMENT WITH SOUTHERN TIRE MART, LLC. FOR TIRE REPAIR, RETREADING, AND OTHER TIRE RELATED ITEMS**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 1 to the Goods and Services Agreement with Southern Tire Mart, LLC., of Columbia, Mississippi, for tire repair, retreading, and other tire related items in the amount of $1,040,000, bringing the new total not-to-exceed contract amount to $1,190,000. Additionally, authorize the option to extend the Agreement for up to three (3) additional one-year terms.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: The recommended Amendment No. 1 with Southern Tire Mart, LLC., authorizes total increase of $1,040,000 for a total not-to-exceed contract amount of $1,190,000 over the five-year term. If approved, appropriations in the Equipment Services Fund will be requested at future quarterly budget updates as needed.

BACKGROUND & ANALYSIS: On August 23, 2024, the City entered into a one-year Agreement with Southern Tire Mart, LLC. as a result of the Award for Bid No. 1792 for a total not-to-exceed contract amount of $150,000. As the City continues to grow, the demand on our fleet increases, resulting in higher mileage and a greater need for tire retreading. The City owns, operates, maintains, and repairs over 700 vehicles and equipment to ensure the safety, reliability and operational use to support critical services and infrastructure. The Fleet Services Department relies on vendors to supply tire repair, retreading, and other tire-related items to our fleet. Staff recommends approving Amendment No. 1 to ensure continued services and operations.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 1 TO THE GOODS AND SERVICE AGREEMENT BETWEEN THE CITY OF ONTARIO AND SOUTHERN TIRE MART, LLC

1. Parties and Date.

This Amendment No. **1** to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **Southern Tire Mart, LLC, a Limited Liability Company ("Contractor")**. City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Contractor have entered into an agreement entitled "**Goods and Service Agreement**" dated **August 23, 2024** ("Agreement").

2.2 Amendment Purpose. The City and Contractor desire to amend the Agreement to extend term to **June 30, 2026,** and increase compensation by **One Million Forty Thousand and Zero Cents ($1,040,000)** for a new total not-to-exceed amount of **One Million One Hundred Ninety Thousand and Zero Cents ($1,190,000).**

2.3 Amendment Authority. This Amendment No. 1 is authorized pursuant to Section **12.9**, and **12.17** of the Agreement.

3. Terms.

3.1 Amendment. Section **2.1** of the Agreement is hereby amended in its entirety to read as follows:

"The term of this Agreement shall be from **July 1, 2024**, to **June 30, 2026,** with three (3) additional one-year terms exercisable solely at the option of the City unless earlier terminated as provided herein. Vendor shall provide all Goods and complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the work."

3.2 Amendment. Section **3.1** of the Agreement is hereby amended in its entirety to read as follows:

"Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **One Million One Hundred Ninety Thousand ($1,190,000)** without the written approval of the City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement

Exhibit A is hereby deleted in its entirety and replaced with Attachment A attached hereto and incorporated herein by reference.

3.3 Continuing Effect of Agreement. Except as amended by this Amendment No. 1, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 1. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

3.4 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.

3.5 Severability. If any portion of this Amendment No. 1 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6 Integration This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 1 TO GOODS AND SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND SOUTHERN TIRE MART, LLC

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 1 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____

Scott Ochoa
City Manager

Approved as to Form:

_____

Best Best & Krieger LLP
City Attorney

Attested By:

_____

City Clerk

SOUTHERN TIRE MART, LLC

By: _____

Its: _____

Printed Name: _____

ATTACHMENT A

SCOPE OF SERVICE

TIRE REPAIR, RETREAD AND RELATED SERVICES

I. SCOPE OF WORK:

The City of Ontario is seeking to partner with a local vendor(s) to provide quality and efficient tire repairs, tire retreading, rim refurbishing, rim replacement and tire mounting services as needed to the specifications in this Bid. The City has a fleet of over 200 Medium to Heavy-Duty trucks which mandates the maintenance of vehicle rims, tire repairs and retreading of tires.

Annually, for the past three fiscal years the City has spent over $240,000 on tire repairs and retreading service. The dollar value provided is no guarantee of what the City intends to spend in the future. This amount can increase or decrease depending on the demand for these services.

At a minimum, the scope of services required by the successful firm shall consist of the following: pick-up and delivery services of rims and tires, the ability of the vendor to provide, mounted tire services, warranties, recaps /repair of tires and retreads, rim refurbishment, fleet reports; and tire analysis as needed, as requested by the City's Fleet Services Personnel. The supplier shall have all the resources necessary to supply the goods and services as specified in the Bid to meet the needs of the City.

Any like tire service not identified in this solicitation shall be available to the City at an equivalent category discount rate.

II. SPECIFIC CONDITIONS:

A. The Proposer shall provide the following tire services, and **the Proposer shall describe in detail in your proposal how your company will provide the following goods and/or services:**

1. The Proposer shall pick-up and deliver tires. Provide documentation for service performed.
2. The Proposer shall provide a warranty on all repaired and retreaded tires. 3.

The Proposer shall provide retread tires when requested by the City's Fleet Operation.

III. SPECIFICATIONS:

A. Mounted Tires

1. The Proposer shall provide tire mounting services, and **the Proposer shall describe in detail in your proposal the protocols for the performance of these services, and/or how your company will provide the following goods and/or services:**

   a) All tires shall be mounted in accordance with standard fleet practices as recommended by the American Trucking Association (ATA) and the tire manufactures.

   b) All tires shall be mounted on rims with new valve stems installed.

   c) The vendor shall deliver the re-treaded tires mounted to the City's Fleet Service garage within 7-10 business days of receiving a request or pick-up. An email notification will be required for any delays in service.

B. Recaps & Repair

1. The Proposer shall provide recaps and repair services, and **the Proposer shall describe in detail in your proposal the protocols for the performance of these services, and/or how your company will provide the following goods and/or services:**

   a) All tires must be re-treaded using pre-cure tread rubber.

   b) The retread shop must have all current retread certifications: **Include these certificates in the proposal.** All repair technicians must be certified. The Proposer shall **include** in its proposal **current certificates** of all key personnel that will be assigned to this project. Examples of key personnel: Shop Managers, Store Manager, and Assistant Manager.

   c) All repair technicians must be repair certified.

   d) All inspection technicians must be inspection certified.

   e) Inspection must be made using electronic nail-hole detection and include non-destructive inspection using shearography inspection.

   f) Retread curing temperatures must not exceed 210 Fahrenheit (known as the cold cure process).

   g) All major retread equipment in the retread facility must be of the same manufacturer to operate in conjunction with each other to assure quality and consistency.

   h) All repair materials used in the retreading process must have identification the same as the tread rubber used to retread the casing to product consistency.

   i) Retread buffing must be done using circumference buffing to true the casing for quality retreads.

   j) The retread process must be cement-less and adhering to current Environmental Protection Agency (EPA) Volatile Organic Compound (VOC) standards.

   k) All curing must have records for time, temperature, and pressure available on request from the City.

   l) No casings over 8 years old shall be re-capped. This date shall come from the Department of Transportation (DOT) date code on the tire.

m) Tires will only be re-treaded a maximum of 8 times using approved casings.

n) All casings that are to be re-capped must be of a major brand manufacturer.

o) Section repairs will be allowed on any tire regardless of location.

p) All nail holes shall be plugged and patched for repair.

q) There shall be no more than five (8) nail-hole repairs on any tire, and repairs will only be allowed in the crown area of the tire.

r) The vendor shall pick up tire casings for re-capping within 48 hours of receiving a request and create documentation showing brand, size, tread depth, DOT codes and casing age. A copy of the documentation and comprehensive trip log shall be left at the City facility. A master file shall be kept with the re-capping vendor for inspection upon request by the City's Fleet Services Department.

s) All scrap tires shall be returned to the City for inspection and disposal, and ¼ inch hole drilled in the sidewall.

t) The re-treaded pattern shall be Bridgestone/Bandag BRM Retread (pictured below) or a design that is as close as possible; the City will have final determination of the pattern.



C. Rim Refurbishment

1. The Proposer shall provide rim refurbishment services, **and the Proposer shall describe in detail in your proposal the protocols for the performance of these services, and/or how your company will provide the following goods and/or services:**

    a) All rims must be inspected by the **City of Ontario Fleet Services Personnel** for defects before refurbishment.

    b) All rims that are requested to be refinished shall be powder coated on both sides in the color specified by the **City of Ontario Fleet Services Personnel** after bead blasting.

c) All rejected rims shall be returned to the City of Ontario Fleet Services Department for inspection and disposal.

d) Provide replacement quotes for rejected rims.

IV. Facility

The facility must comply with the following criteria in order to be considered, No Exception will be considered for the following:

Have “Will Call” service available.

The nearest facility must have been in operation for a minimum of five (5) years.

The nearest facility must be within 25 road miles of 1425 S. Bon View Avenue, Ontario, CA 91761.

The City of Ontario reserves the right to visit the facility for the purpose of evaluation, and reject any bidder who, in the city’s sole opinion, does not fully comply.
The bidder shall submit the location of all Facilities along with the bid.

V. Billing, Payment and Reporting

The offeror shall provide a priced invoice to the City with each delivery and a return receipt for all returned items. The billing address shall be the same as the delivery address listed above. Credit statements shall be sent to **Fleetpartsroom@ontarioca.gov** within 5 business days of pick up.

The City shall pay invoices within thirty (30) days of receipt of invoices.
No invoices to be issued without a City of Ontario PO.
Upon the request of the Fleet Services Department the supplier/offeror shall provide applicable reports and/or statistics of the products provided.

EXHIBIT "B"
SCHEDULE OF SERVICES

Delivery

Provide the Goods and Services in this Bid as request be the City to the following location:

Fleet Services Department
1425 S. Bon View Avenue
Ontario, CA 91761

All deliveries shall be made within 7 - 10 days after receipt of order (ARO) and are to be made F.O.B. Destination with a delivery invoice. Deliveries are to be made Monday through Friday between the hours of 7:00 a.m. and 5:00 p.m.

EXHIBIT "C"
COMPENSATION

The City reserves the right to order items at the "per unit cost" stated. Quantities listed in the Bid were annual estimates only and not indicative of a guaranteed level of usage. Any like item(s) not identified in this solicitation shall be available for purchase by the City at an equivalent category discount.

The submitted bid price for each item must be invoiced inclusive of all extraneous charges, such as fuel and delivery with taxes, the only additional price component.

Southern Tire Mart

Description	**Unit Price**	
Repair		
Section Repair CT-33	$4.50	Brand
Section Repair CT-35	$6.00	Brand
Section Repair CT-40	$8.00	Brand
Section Repair CT-42	$10.50	Brand
Non-Reinforced Nail Hole Repair	$1.00	Brand
Tire Re-Treading		
Re-Tread 11R22.5 220 to 230 MM Wide	$160.00	Brand
Re-Tread 315/80R22.5 240 to 280 MM Wide	$195.00	Brand
Tire Mounting		
Tire Mounting on 22.5-inch Steel Rims	$25.00	
Rim Refurbishment		
Refurbish 22.5-inch Diameter Truck Rims	$26.00	

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Tim Masot Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 15

SUBJECT: A CONSTRUCTION CONTRACT WITH LEONIDA BUILDERS FOR THE DOWNTOWN BOLLARDS INSTALLATION PROJECT

RECOMMENDATION: That the City Council authorize the City Manager or his designee to execute a Construction Contract with Leonida Builders, of Santa Clarita, California, for the Downtown Bollards Installation Project for a contract amount of $294,500 plus a 10% contingency of $29,450 for a total contract amount not-to-exceed $323,950.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Maintain the Current High Level of Public Safety

FISCAL IMPACT: The proposed Construction Contract with Leonida Builders is in the amount of $294,500 plus a 10% contingency of $29,450 for a total contract amount not-to-exceed $323,950. The Capital Projects-Measure Q Fund includes partial appropriations for the Downtown Bollards Installation Project. If approved, appropriations in the Capital Projects-Measure Q Fund will be requested at future quarterly budget updates to the City Council for approval as needed.

BACKGROUND & ANALYSIS: The Downtown Bollard Installation Project involves the purchase and installation of 147 removable bollards at various side streets along Euclid Avenue between G Street and Holt Boulevard. The installation of removable bollards at crosswalks along Euclid Avenue is essential to enhance public safety and ensure effective traffic management during City-hosted events.

On March 4, 2024, the City Council approved the purchase of bollards and bollard bases from J.R. Hoe, Inc. These bollards will act as temporary barriers, preventing unauthorized vehicular access and enhancing pedestrian safety while maintaining the street's flexibility for regular use. Strategically placed at crosswalks, the bollards ensure optimal visibility during events, effectively managing traffic and enhancing pedestrian security. The removable design allows for easy installation and removal, enabling the City to store the bollards near each intersection after events for future use. This approach not only maximizes the efficiency of event setups but also minimizes

disruption to daily traffic, supporting the City's commitment to adaptable and sustainable infrastructure.

In February 2025, the City solicited bids for Invitation No. 1876 Downtown Bollards. Twelve proposals were received that met the bid criteria and standards necessary to perform this work. The bid results are listed below:

Vendor Name	Location	Bid Amount
Leonida Builders	Santa Clarita, CA	$294,500
Siterep Construction Services, Inc.	San Dimas, CA	$307,495
Metrocell Construction, Inc.	Ontario, CA	$360,610
CT&T Concrete Paving, Inc.	Diamond Bar, CA	$379,752
Inland Highway Services Corp	Upland, CA	$404,000
Wright Construction Engineering Corp	San Marcos, CA	$440,000
JNH Construction, Inc.	Oceanside, CA	$454,730
Creative Home/DBA: CHI Construction	Fullerton, CA	$499,800
M. Brey, Inc.	Beaumont, CA	$571,758
Towo Enterprise, Inc.	Fullerton, CA	$671,500
Gentry General Engineering, Inc.	Colton, CA	$864,250
3m Construction Corporation	Anaheim, CA	$3,777,777

Leonida Builders, of Santa Clarita, California, submitted the lowest responsible bid at $294,500. Based on their credentials, pricing, and favorable reference checks, Staff recommends awarding a Construction Contract to Leonida Builders to install the previously purchased bollards and bollard bases for the Downtown Bollards Installation Project.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. _____is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Leonida Builders Inc.**, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5, below, for the following Project:

Downtown Bollards

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within 60 working days (inclusive of materials procurement and field construction) from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **Two Hundred Ninety-Four Thousand Five Hundred**

Dollars ($294,500). Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $1,000.00 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages

and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

Consistent with Public Contract Code Section 7102, Contractor will be compensated for damages incurred due to delays for which the City is responsible. The parties agree that determining Contractor's exact delay damages is and will continue to be impracticable and extremely difficult. As such, for each calendar day in excess of the Contract Time, the City shall pay to the Contractor $50.00 per day as Reverse Liquidated Damages and not as a penalty or forfeiture. Such amount shall constitute the only payment allowed for any City caused delays and shall necessarily include all overhead, all profits, all administrative costs, all bond costs, all labor, materials, equipment and rental costs and any other costs, expenses and fees incurred or sustained as a result of such delays. Notice of requests for delay damages and additional days shall be provided to the City within five (5) Days from the discovery of the circumstances giving rise to any delay or three (3) Days from the discovery of any latent or subsurface conditions giving rise to a delay.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Information Required of Bidders
Non-Collusion Declaration Form
Iran Contracting Act Certification
Fleet Compliance Certification
Public Works Contractor DIR Registration Certification
Performance Bond

Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions
Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders Permits
Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

Leonida Builders Inc.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

_____
Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☐ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

SECTION 00610 – BOND FORMS

Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, (hereinafter referred to as the "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for **Contract No.**_____, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, ($_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by the City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by the City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

iii. Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20___.

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title_____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is $_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____
_____
_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____
_____
_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

END OF PERFORMANCE BOND

Payment Bond (Labor and Materials).

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Ontario , with its principal place of business at 303 East "B" Street, Ontario, CA 91764 (hereinafter designated as the "City"), by action taken or a resolution passed _____ , 20___, has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: **Contract No._____** (the "Project"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of

any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or the City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to, the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title_____

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND

SECTION 00700 – GENERAL CONDITIONS

ARTICLE 1 -TERMS; DEFINITIONS

1.1 Defined Terms

A. Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Act of God – An earthquake of magnitude of 3.5 or higher on the Richter scale or a tidal wave.

2. Addenda -- Written or graphic instruments issued prior to the submission of Bids which clarify, correct, or change the Contract Documents.

3. Additional Work -- New or unforeseen work will be classified as "Additional Work" when the Engineer determines that it is not covered by the Contract.

4. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.

5. Bid -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices and other terms for the Work to be performed.

6. Bid Guarantee -- The Bid Bond, cashier's check, or certified check to be made by the Bidder, which is to accompany the Bid as a guaranty of good faith to enter into a written contract.

7. Bidder -- The individual or entity who submits a Bid directly to the City.

8. Change Order ("CO") -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.

9. Change Order Request ("COR") -- A request made by the Contractor for an adjustment in the Contract Price and/or Contract Times as the result of a Contractor-claimed change to the Work.

10. City's Representative – The City of Ontario, and acting through properly authorized agents, such as the Engineer or such other agents acting within the scope of the particular duties entrusted to them. Also sometimes referred to as the "City's Representative" or "Representative" in the Contract Documents. The terms the City and Owner may be used interchangeably

11. Claim -- A demand or assertion by the City or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

12. Contract -- The entire integrated written agreement between the City and Contractor concerning the Work. “Contract” may be used interchangeably with “Agreement” in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.

13. Contract Documents -- The documents listed in Section 00 52 13, Article 5 of the Contract for Construction. Some documents provided by the City to the Bidders and Contractor, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.

14. Contract Price -- Amount to be paid by the City to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.

15. Contract Time -- The number of days or the dates stated in the Contract Documents to: achieve defined milestones, if any; and to complete the Work so that it is ready for final payment.

16. Contractor -- The individual or entity with which the City has contracted for performance of the Work.

1. Contractor’s Designated On-Site Representative -- The Contractor’s Designated On-Site Representative will be identified by the Contractor and shall not be changed without prior written consent of the City.

2. Critical Supply Shortage -- An unusual shortage in materials that is (a) supported by documented proof that Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Contractor at the time it submitted its bid or entered the Contract. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.

3. Day -- A calendar day of 24 hours measured from midnight to the next midnight.

4. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.

5. Demobilization -- The complete dismantling and removal by the Contractor of all of the Contractor's temporary facilities, equipment, and personnel at the Site.

6. Drawings -- That part of the Contract Documents prepared by of the Engineer of Record which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor Submittals are not Drawings as so defined.

7. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

8. Engineer -- Whenever not qualified, shall mean the City Engineer or the Engineer authorized to act for and in behalf of the City, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.

9. Force Majeure Event -- An event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

10. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time, or any substance or material identified as hazardous under any state or federal statute governing handling, disposal and/or cleanup of any such substance or material, whichever is more restrictive.

11. Holiday – Holidays occur on:

New Year's Day - January 1
President's Day – Third Monday in February
Memorial Day - Last Monday in May
Independence Day - July 4
Labor Day - First Monday in September
Veteran's Day - November 11
Thanksgiving Day - Fourth Thursday in November
Friday after Thanksgiving
Christmas Eve – December 24
Christmas Day - December 25
Day After Christmas – December 26

New Year's Eve – December 31

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

12. Notice of Award -- The written notice by the City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, the City will sign and deliver the Contract.

13. Notice of Completion -- The form which may be executed by the City constituting final acceptance of the Project.

14. Notice to Proceed -- A written notice given by the City to Contractor fixing the date on which the Contractor may proceed with the Work and when Contract Times will commence to run.

15. Project -- The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

16. Record Drawings – The record set of as-builts prepared by the Contractor during the Work in accordance with the requirements of the General Conditions.

17. Recyclable Waste Materials -- Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include, but are not limited to, asphalt, concrete, brick, concrete block, and rock.

18. Sample -- A physical example furnished by the Contractor to illustrate materials, equipment or workmanship; to establish standards by which the Work will be judged.

19. Schedule of Submittals -- A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.

20. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

21. Site -- Lands or areas indicated in the Contract Documents as being furnished by the City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the City which are designated for the use of Contractor.

22. Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

23. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.

24. Subcontractor -- An individual or entity other than a Contractor having a contract with any other entity than the City for performance of any portion of the Work at the Site.

25. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work.

26. Successful Bidder -- The responsible Bidder submitting a responsive Bid to whom the City makes an award.

27. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.

28. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

29. Unit Price Work -- Work to be paid for on the basis of unit prices as provided by the Contractor in its Bid or as adjusted in accordance with the Contract Documents.

30. Warranty -- A guarantee provided to the City by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this state, whichever is longer.

31. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.2 Terminology.

A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Contractor is implied.

B. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 -PRELIMINARY MATTERS

2.1 Delivery of Contract Documents

A. Within ten (10) Days after receipt of the Notice of Award and before the City will execute the Contract, the Contractor shall furnish and file with the City a signed Contract and the necessary Performance Bond, Payment Bond, and Certificates of Insurance and Endorsements, as well as any other documents specified in the Contract Documents.

2.2 Bonds

A. Contractor shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to the City conditioned upon the faithful performance by the Contractor of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price. Bonds shall be delivered to the City within ten (10) Days after receipt of the Notice of Award and before execution of the Contract by the City.

2.3 Evidence of Insurance

A. Prior to commencing any Work but no later than ten (10) Days after receipt of the Notice of Award, the Contractor shall submit or cause to be submitted any and all Certificates of Insurance and Endorsements, showing that the Contractor has the required insurance, to the attention of the City. Such insurance is to be provided at the sole cost and expense of the Contractor. No Work shall be performed until all of the required insurance has been received and approved.

2.4 Execution of the Contract

A. Upon receipt of the required Contract Documents, the City will execute the Contract, establishing the Effective Date of the Contract.

2.5 Contractor's Failure to Perform

A. Should Contractor fail to comply with timelines provided above, the City shall retain the right to enforce and collect on the Contractor's Bid Guarantee, rescind award to the Contractor and award the Contract to the next lowest responsive, responsible bidder as determined by the City. If the City elects to accept bonds and insurance submitted late, the Contract Times will begin to run as of the date stated in the Notice to Proceed. However, the number of days beyond the original ten (10) Days it took to receive the properly executed Contract and related items may be deducted from the Contract Times.

2.6 Commencement of Contract Times; Notice to Proceed

A. The City will not issue a Notice to Proceed until after the Effective Date of the Contract. Work shall commence within ten (10) Days of the date stated in the Notice to Proceed. The Contract Times begin to run on the date specified in the Notice to Proceed. No Work shall be done at the Site prior to the issuance of the Notice to Proceed.

2.7 Copies of Documents

A. Contractor will be furnished, free of charge, five (5) copies of the Contract Documents. Additional copies may be obtained at cost of reproduction. Contractor shall maintain a clean, undamaged set of Contract Documents, including Submittals, at the Project site.

2.8 Substitution Requests, Schedule of Submittals, and Schedule

A. Substitution Requests. Within thirty-five (35) days of Contract award (unless otherwise specified in the Contract Documents), Contractor shall provide all substitution requests as further described in the General Conditions.

B. Schedule of Submittals. Within five (5) Days after the issuance of the Notice of Proceed (unless otherwise specified in the Contract Documents), Contractor shall submit to the City a Schedule of Submittals that conforms with the requirements of Section 00 72 00, Article 5.21.

C. Schedule. Within ten (10) days after the issuance of the Notice of Proceed (unless otherwise specified in the Contract Documents), the Contractor shall submit a construction schedule that conforms with the requirements of Section 00 72 00, Article 8.2.

2.9 Preconstruction Conference; Designation of Authorized Representatives.

A. Before any Work at the Site is started, a conference attended by the City, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Submittals and Shop Drawings, processing applications for payment, and maintaining required records.

B. At this conference the City and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and

responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.10 Subcontractor Mobilization Meeting.

A. Prior to the start of each major Subcontractor's Site Work, the Contractor, the involved Subcontractor, and Engineer shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.11 Authority of Council; Engineer

A. The City Council has the final authority in all matters affecting the Work. Within the scope of the Contract, the Engineer has the authority to enforce compliance with the Contract Documents. The Contractor shall promptly comply with instructions from the Engineer.

B. The decision of the Engineer is final and binding on all questions relating to:

1. quantities;

2. acceptability of material, equipment, or work;

3. execution, progress or sequence of work;

4. interpretation of the Plans, Specifications, or other Contract Documents; and

5. Any other areas specifically identified in the Contract Documents or under the law.

C. Compliance with instructions from the Engineer shall be a condition precedent to any payment under the Contract, unless otherwise ordered by the City Council.

2.12 Mobilization

A. When a Bid item is included in the Bid Schedule for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate. When no bid item is provided for mobilization payment for such costs will be deemed to be included in the other items of the Work.

B. Payment for mobilization based on the lump sum provided in the Bid Schedule, shall constitute full compensation for all such Work. No payment for mobilization will be made until all of the listed items have been completed to the satisfaction of the Engineer. The scope of the Work included under mobilization shall include, but shall not be limited to, the following principal items:

1. Obtaining and paying for all bonds, insurance, and permits.

2. Moving on to the Project Site of all Contractor's plant and equipment required for the first month's operations.

3. Installing temporary construction power, wiring, and lighting facilities, as applicable.

4. Establishing fire protection system, as applicable.

5. Developing and installing a construction water supply, as applicable.

6. Providing and maintaining the field office trailers for the Contractor, if necessary, and the Engineer (if specified), complete, with all specified furnishings and utility services.

7. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.

8. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.

9. Arranging for and erection of Contractor's work and storage yard.

10. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.

11. Full-time presence of Contractor's superintendent at the job Site as required herein.

12. Submittal of construction schedule as required by the Contract Documents.

ARTICLE 3 -CONTRACT DOCUMENTS; INTENT

3.1 Examination of Drawings, Specifications, and Site of Work

A. Examination of Contract Documents; Site. Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project Site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.

B. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

C. Quality of Parts, Construction and Finish. All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.

D. Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all Applicable Laws, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

3.2 Intent of Contract Documents

A. The Contract Documents are complementary; what is required by any one will be binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to the City.

B. The Contractor shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project.

C. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in these General Conditions.

D. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.

E. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.3 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of the City, Contractor, or any of their Subcontractors, consultants, agents, or

employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the City, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.4 Reporting and Resolving Discrepancies; Order of Precedence.

A. Reporting Discrepancies.

1. The Contract Documents are intended to be fully cooperative and complementary. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to the City any conflict, error, ambiguity, or discrepancy which Contractor discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from the City before proceeding with any Work affected thereby. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, then Contractor shall promptly submit a written Request for Information (RFI) to the City. Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Contractor before receipt of an amendment or supplement shall be at Contractor's own risk.

B. Order of Precedence.

1. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

   a. Permits from other agencies as may be required by law

   b. Change Orders, most recent first

   c. Contract

   d. Addenda, most recent first

   e. Special Conditions

   f. Specifications

   g. Construction Plans and Drawings(Contract Drawings)

   h. General Conditions

   i. Instructions to Bidders

   j. Notice Inviting Bids

k. Contractor's Bid (Bid Forms)

l. Standard Specifications for Public Works Construction "Greenbook" latest edition (Sections 1-9 Excluded)

m. Applicable Local Agency Standards and Specifications

n. Standard Drawings

o. Reference Documents

2. With reference to the Drawings the order of precedence shall be as follows:

a. Figures govern over scaled dimensions

b. Detail drawings govern over general drawings

c. Addenda/Change Order drawings govern over Drawings

d. Contract Drawings govern over Standard Drawings

e. Contract Drawings govern over Shop Drawings

3. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

3.5 Amending and Supplementing Contract Documents.

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by Change Order or written amendment to the Contract duly executed by the parties.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to the City, by one or more of the following ways:

1. The City's review of a Submittal, Shop Drawing, Sample or substitution request without exception (subject to the provisions of the Contract Documents); or

2. The City's issuance of a response to an RFI.

C. However, no review or RFI response will reduce or modify the Contractor's obligation to fully satisfy and comply with the requirements of the Contract Documents.

3.6 Reuse of Documents.

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer of Record or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of the City and Engineer of Record and specific written verification or adaptation by Engineer of Record.

B. The prohibitions of this Article will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 -INDEMNIFICATION; INSURANCE

4.1 Indemnification

A. To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the City's choosing), indemnify and hold harmless the City, its officials, officers, agents, employees, and representatives, and each of them from and against:

1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City or its officials, officers, employees, or authorized volunteers.

2. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.

3. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;

4. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

B. Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the counsel of the City choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

C. The provisions of this Article shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article.

4.2 Insurance

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required hereunder. Contractor shall not allow any Subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause. Contractor shall furnish the City with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the City. All certificates and endorsements must be received and approved by the City before Work commences.

A. **Additional Insureds; Waiver of Subrogation**. The City, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against the City, its officers, officials**,** agents, employees or volunteers or shall specifically allow Contractor - or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to the City prior to commencement of work.

B. **Workers' Compensation Insurance**. The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the City, if in the form and coverage as set forth in the Contract Documents.

C. **Employer's Liability Insurance**. Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars ($1,000,000.00) per person per accident. Contractor shall provide the City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the City.

D. **Commercial General Liability Insurance**. Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than $3,000,000 per occurrence for bodily injury, personal injury and property damage If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the City, and shall not preclude the City from taking such other actions available to the City under other provisions of the Contract Documents or law.

2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.

3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.

4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

E. **Automobile Liability Insurance**. Contractor shall provide Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars ($2,000,000) per accident for bodily injury and property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the City. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

F. **Builder's Risk ["All Risk**

1. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The City accepts no responsibility for the Work until the Work is formally accepted by the City. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.

2. The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and the City, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by the City.

3. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to the City to ensure adequacy and sublimit.

4. In addition, the policy shall meet the following requirements:

a. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.

b. Coverage shall include all materials stored on site and in transit.

c. Coverage shall include Contractor's tools and equipment.

d. Insurance shall include boiler, machinery and material hoist coverage.

G. **Contractor's Pollution Liability Coverage**. Contractor shall provide pollution liability insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 aggregate.

H. Contractor shall require all tiers of Subcontractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by the City. Contractor shall make certain that any and all Subcontractors hired by Contractor are insured in accordance with this Contract. If any Subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the City harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the City as a result thereof.

I. Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, if Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

J. **Form and Proof of Carriage of Insurance**

1. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the City's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the City the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related

investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

2. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, officers, agents, employees, and volunteers.

3. The Certificates(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the City prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the City may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the City has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

4. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

5. The City reserves the right to adjust the monetary limits and types of insurance coverages during the term of this Contract including any extension thereof if, in the City's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.

6. Contractor shall report to the City, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.

7. Products/completed operations coverage shall extend a minimum of three years after the project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on

the part of the insurer. The City, its officers, officials, agents employees, and volunteers shall be included as insureds under the policy.

ARTICLE 5 -CONTRACTOR RESPONSIBILITIES; REGULATORY REQUIREMENTS

5.1 Applicable Laws

A. Contractor shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither the City nor the City's Representative shall be responsible for monitoring Contractor's compliance with any Applicable Laws. If Contractor performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

5.2 Permits and Licenses

A. Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Contractor, including, but not limited to, excavation permit, for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the City, unless otherwise specified in the Contract Documents.

B. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the City's responsibility pursuant to the Contract Documents.

C. Before acceptance of the Work, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the City.

5.3 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Laws of the place of the Project which are applicable during the performance of the Work. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

5.4 Traffic Control

A. Traffic control plans, if required, shall be prepared at Contractor's expense. Traffic control shall be performed at Contractor's expense in accordance with the requirements of the City and/or the local agency with jurisdiction. Costs for traffic control plans, implementation of traffic control, or traffic signal services required by the City shall be included in the Contractor's Bid.

B. All warning signs and safety devices used by the Contractor to perform the Work shall conform to the requirements contained in the State of California, Department of Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones" or to the requirements of the local agency. The Contractor shall also be responsible for all traffic control required by the agency having jurisdiction over the Project on the intersecting streets. Contractor must submit a traffic control plan to the agency having jurisdiction over the Project for approval prior to starting Work.

C. The Contractor's representative on the site responsible for traffic control shall produce evidence that he/she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the agency of jurisdiction. Businesses and residences adjacent to the Work shall be notified forty-eight (48) hours in advance of closing of driveways. The Contractor shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of pipe or other material will be allowed in traveled right-of-ways after working hours unless otherwise approved by the Engineer.

5.5 Safety

A. Contractor shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Contractor shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

B. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq*.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512. The Contractor shall submit an Illness and Injury Prevention Program and a Project Site specific safety program to the City prior to beginning Work. Contractor shall maintain a confined space program that meets or exceeds the City's standards. Contractor needs to make themselves aware of the City's safety policies and procedures, and shall meet or exceed all City standards in areas where the City must enter to perform inspections.

C. Hazard Communication Programs. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Applicable Laws.

5.6 Hazardous Materials

A. The City shall not be responsible for any Hazardous Waste brought to the site by the Contractor. If the Contractor: (i) introduces and/or discharges a Hazardous Waste onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the Contractor shall hire a qualified remediation contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Contractor perform Work for which it is not qualified. The City, in its sole discretion, may require the Contractor to retain at Contractor's cost an independent testing laboratory.

B. If the Contractor encounters a Hazardous Waste which may cause foreseeable injury or damage, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify the City (and promptly thereafter confirm such notice in writing).

C. Subject to Contractor's compliance with this Article 5.6(B), the City shall verify the presence or absence of the Hazardous Waste reported by the Contractor, except as qualified under Article 5.6(A) and Article 5.6(B) in the event such material or substance is found to be present, verify that the levels of the hazardous material are below OSHA Permissible Exposure Levels and below levels which would classify the material as a state of California or federal hazardous waste. When the material falls below such levels, Work in the affected area shall resume upon direction by the City.

D. Contractor shall indemnify and hold harmless the City from and against claims, damages, losses and expenses, arising from a Hazardous Waste on the Project Site, if such Hazardous Waste exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste, and was either i) shown on the Contract Documents or information available to bidders; or (ii) brought to the site by Contractor. Nothing in this paragraph shall obligate the Contractor to indemnify the City in the event of the sole or active negligence or willful misconduct of the City, its officers, agents, or employees.

5.7 Sanitary Facilities.

A. Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with local codes and ordinances. Toilets shall be placed inside sealed secondary containment devices installed on a flat, level surface. Accumulated liquids in the secondary containment devices shall be properly removed and legally disposed without spillage onto the ground. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by Cal/OSHA shall be the responsibility of the Contractor.

5.8 Dust Control

A. Contractor, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

5.9 Air Pollution Control

A. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

B. Without limiting the foregoing, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over the Project and/or California Air Resources Board (CARB). Contractor shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine. Contractor shall indemnify the City against any fines or penalties imposed by the air quality management district, CARB, or any other governmental or regulatory agency for its violations of Applicable Laws as well as those of its subcontractors or others for whom Contractor is responsible under its indemnity obligations provided for in the Contract Documents.

5.10 Water Quality Management and Compliance

A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the Work. The Contractor hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

B. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 13000 et seq.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California State Water Resources Control Board (“State Water Board”) Order Number 2009-0009-DWQ (NPDES Permit No. CAS000002), as amended by Order Numbers 2010-0014-DWQ, 2012-0006-DWQ, 2022-0057-DWQ, and any subsequent amendment to or renewal thereof, State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004), Santa Ana Regional Water Quality Control Board No. R8-2010-0036 (NPDES No. CAS618036), and any amendment or renewal thereof.

C. Contractor shall comply with all conditions of the State Water Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Construction General Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall comply with the lawful requirements of the City, and any other applicable municipality, drainage district, or other local agency with jurisdiction over the location where the Work is to be conducted, regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

D. Unless otherwise specified in the Special Conditions or other portion of the Contract Documents, the City has not prepared a Storm Water Pollution Prevention Plan ("SWPPP") or other storm water compliance plan for the Project Site. A SWPPP must be prepared and Best Management Practices (BMP) must be implemented for the Project Site. A qualified SWPP Developer ("QSD") and a Qualified SWPPP Practitioner ("QSP") for the project is required to prepare and implement the SWPPP for the Project Site, including condition and documenting weekly inspections of the project, pre- and post-storm event inspections and inspections every 24 hours, for annual reporting and proper site management. The Contractor shall retain personnel serving as QSD(s) that shall have an active and current certification. Engineering and/or geology work performed for the site shall be conducted by a California licensed professional.

   Contractor shall be responsible for filing the Notice of Intent ("NOI") and for obtaining coverage under the Construction General Permit. This includes filing all necessary documentation including the Permit Registration Documents ("PRDs") through the Stormwater Multiple Applications and Report Tracking System ("SMARTS"); preparing and implementing a SWPPP for the Work site; implementing all other provisions, and monitoring and reporting requirements required by the Construction General Permit; and providing a Qualified SWPPP Developer ("QSD") and Qualified SWPPP Practitioner ("QSP"), as necessary for all Work site activities, including but not limited to preparation and submittal of all reports, plans, inspections, and monitoring information in compliance with the Construction General Permit. All submittals shall be coordinated with the City's Legally Responsible Person and Authorized Signatory as those terms are defined in the Construction General Permit. Before any NOI, PRD, SWPPP, or other Construction General Permit-related document may be submitted to the State Water Board or implemented on the Project site, it must first be reviewed and approved by the City and/or City's designee. Contractor shall include all costs of compliance with specified requirements in the Contract Price.

E. The City retains the right to develop its own documentation for the Project site, including but not limited to the SWPPP, and in the alternative may require Contractor to adopt and implement portions of the City developed SWPPP. The City expressly reserves the right to procure coverage under the Construction General Permit for the Work site if Contractor fails to draft satisfactory PRDs or SWPPP or otherwise fails to proceed in a manner that complies with the requirements of the Construction General Permit. The City additionally reserves the right to hire additional contractors to maintain compliance at the Work site. Whether Contractor has adequately

maintained compliance with the Construction General Permit shall be the City's sole determination. Any costs incurred by the City in procuring coverage under the Construction General Permit, or drafting and/or implementing a SWPPP for the Work site shall be paid by Contractor.

F. Notwithstanding the above, for those Work sites where construction activity results in the disturbance of less than one acre of total land area and/or do not need coverage under the Construction General Permit, the Contractor shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004) and any amendment to or renewal thereof.

G. Failure to comply with the Construction General Permit, laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in these Contract Documents, Contractor agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, fees, costs, expenses, or losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit, laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

H. The City reserves the right to defend any enforcement action or civil action brought against the City for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and any relevant enforcement entity.

5.11 Environmental Quality Protection

A. The Contractor shall comply with all requirements of applicable federal, state, and local environmental rules and regulations. Any infractions of said rules and regulations by the Contractor during the term of the Contract, which result in penalties, will be the responsibility of the Contractor. The City operates under a number of environmental permits issued by various agencies. If due to an action, inaction, or negligence by the Contractor, the City becomes subject to non-compliance penalties, the cost of such penalties shall be borne by the Contractor.

B. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

C. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal. If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents. Any costs or delays incurred by City or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.

D. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor shall notify the construction/archeological monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the construction/archeological monitor and/or City within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource. If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the City Representative and the construction/archeological monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.

5.12 Excessive Noise

A. Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements.

B. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

5.13 Diversion of Recyclable Waste Material

A. In compliance with the applicable City's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by the City or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

5.14 Inspector's Field Office.

A. If required by the City, the Contractor shall be responsible for providing the inspector's field office. The office shall be a substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock clasp. The office shall have heating and air conditioning and shall be equipped with a telephone, a telephone answering machine, an ability to connect to the internet, and a fax machine at Contractor's expense. The field office shall be provided within 20 Days of the Notice to Proceed.

B. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

5.15 Contractor's Supervision.

A. Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the City. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

5.16 Workers.

A. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.

B. Any person in the employ of the Contractor whom the City may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

5.17 Independent Contractors.

A. Contractor shall be an independent contractor for the City and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of the City and are not entitled to benefits of any kind normally provided employees of the City, including but not limited to, state unemployment compensation or workers' compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.

5.18 Verification of Employment Eligibility.

A. By executing the Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the City to terminate the Contract for cause: (1) failure of the Contractor or its Subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

5.19 Labor.

A. Hours of Work

1. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

2. The Contractor and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

3. The Contractor shall pay to the City a penalty of twenty-five dollars ($25.00) for each worker employed in the execution of this Contract by the Contractor or by

any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

4. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the City.

5. If Contractor gives notice of an inspection pursuant to the Contract Documents, the City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Requested inspections before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two (2) Days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to city/county ordinance.

6. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project Site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on City-observed Holidays, unless otherwise approved by the City:

a. Powered Vehicles

b. Construction Equipment

c. Loading and Unloading Vehicles

d. Domestic Power Tools

B. Payroll Records; Labor Compliance

1. Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. In accordance with Labor Code section 1771.4, the Contractor and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3. Any stop orders issued by the DIR against Contractor or any Subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any Subcontractor.

4. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the City. The Contractor shall also provide the following:

a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.

5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

7. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars ($100.00) to the City for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

8. The responsibility for compliance with this Article shall rest upon the Contractor.

C. Prevailing Rates of Wages

1. The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total

compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the City's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

2. The Contractor shall forfeit as a penalty to the City not more than Two Hundred Dollars ($200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the DIR for such work or craft in which such worker is employed for any public work done under the Contract by it or by any Subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

3. Contractor shall post, at appropriate conspicuous points on the Project Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

D. Public Works Contractor Registration

1. Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

E. Employment of Apprentices

1. Contractor and all Subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices.

2. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio

the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

3. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars ($100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

F. Nondiscrimination/Equal Employment Opportunity

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

G. Debarment of Contractors and Subcontractors

1. Contractors or Subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

5.20 Subcontracts.

A. Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the Work. Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the City.

B. The City reserves the right to accept all subcontractors. The City's acceptance of any Subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

C. Prior to substituting any Subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

5.21 Progress Meetings

A. The Contractor shall schedule and hold regular progress meetings at least weekly and at other times as requested by Engineer or as required by progress of the Work. The Contractor, City, and all Subcontractors active on the Site shall attend each meeting. Contractor may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors. The City will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Contractor shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

5.22 Submittals

A. Schedule of Submittals. Within five (5) Days after the Notice to Proceed (unless otherwise specified in the Contract Documents), Contractor will prepare and deliver a Schedule of Submittals to the City that has been fully integrated with the progress schedule and identifies each Submittal required by the Contract Documents as well as the date on which Contractor will deliver each Submittal to the City. Each Submittal must be delivered to the City at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Contractor is responsible for any schedule delays resulting from the Submittal process.

B. Submittal Procedures.

1. Contractor will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:

   a. Submittals must be transmitted electronically.

   b. Transmittals will be sequentially numbered. Contractor to mark revised Submittals with original number and sequential alphabetic suffix.

   c. Each Submittal will identify the Project, Contractor, Subcontractor and Supplier, pertinent Drawing and detail number, and Specification Section number appropriate to Submittal.

   d. By transmitting a Submittal, Contractor certifies it has reviewed and approved each Submittal, verified products required, field dimensions, adjacent construction Work, and that coordination of information is according to requirements of the Work and Contract Documents.

   e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.

   f. When Submittal is revised for resubmission, Contractor shall promptly address the City's comments and resubmit. Contractor shall identify changes made since previous submission.

g. The City's review of Shop Drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called the City's attention to such deviations at time of submission and the City has taken no exception to the deviation. The City's review of Shop Drawings shall not relieve Contractor from responsibility for errors in Shop Drawings.

h. Submittals not required by the Contract Documents or requested by the City will not be acknowledged or processed.

i. Incomplete Submittals will not be reviewed by the City. Delays resulting from incomplete Submittals are not the responsibility of the City.

j. Contractor shall not be entitled to any extension of the Contract Times as a result of the Submittal process.

k. Contractor shall allow a minimum of 20 working days for review of Submittals unless otherwise specified in the Contract Documents.

2. Where a Submittal, Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to the City review and approval of the pertinent submittal will be performed at the sole risk and expense and responsibility of Contractor.

C. Schedule Milestone for Submittals. Contractor must submit all Submittals required by the Contract Documents in accordance with the Schedule of Submittals. If Contractor fails to submit the Submittals in accordance with the Schedule of Submittals, Contractor will be solely liable for any delays or impacts caused by the delayed Submittal, whether direct or indirect. Contractor will be liable for the time calculated from the date the Submittal is due until the date a compliant Submittal is made. A compliant Submittal will be one that is complete and satisfies the requirements of the Contract Documents.

5.23 Shop Drawings and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, Contractor shall have:

1. Reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

2. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

3. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

4. Determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, Contractor shall give the City specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample Submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to the City for review and approval of each such variation.

C. Shop Drawings.

1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the City the services, materials, and equipment Contractor proposes to provide and to enable the City to review the information for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.

3. Shop Drawings for steel structures shall consist of shop details, erection and other working Drawings showing details, dimensions, sizes of members and other information necessary for the complete fabrication and erection of the metal work.

4. Shop Drawings of concrete structures shall consist of such detailed drawings as may reasonably be required for the successful prosecution of the Work and which are not included in the Drawings furnished by the Engineer. These may include drawings for false work, bracing, centering and form work, masonry layout diagrams, and diagrams for bent reinforcement.

5. Contractor shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable the City to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. City's Review.

1. The City will review Shop Drawings and Samples in accordance with the Schedule of Submittals. The City's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible

with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. The City review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. The City's review and acceptance shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless the City has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample.

F. Resubmittal Procedures. Contractor shall make corrections required by the City and shall return corrected Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by the City on previous Submittals.

5.24 Record ("As-Built") Drawings.

A. The Contractor shall maintain one record set of Contract Documents at the Site or digitally in an acceptable format. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Drawings. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations. Said Drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. Any required as-built drawings of civil engineering elements of the Work shall be prepared by a registered civil engineer.

B. These master Record Drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders, shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date. Record Drawings shall be accessible to the Engineer at all times during the construction period. Failure on the Contractor's part to keep Record Drawings current could result in withholding partial payment.

C. Upon completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to the Engineers. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to the City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.

D. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Record Drawings shall be included in Contractor's bid and distributed in the Bid Schedule. No additional compensation shall be made to the Contractor for this Work.

5.25 Layout and Field Engineering.

A. The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed.

5.26 Separate Contracts and Cooperation.

A. Separate Contracts. The City reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.

B. Cooperation. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the City in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project Site.

5.27 Work Site.

A. Limitation of Use of Site and Other Areas. Rights-of-way, easements, or rights-of-entry for the Work will be provided by the City. Unless otherwise specified in the Special Provisions, the Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. The Contractor shall indemnify and hold the City harmless from all claims for damages caused by such actions. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to City or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

B. Site Maintenance. During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws. The Contractor shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal.

C. Cleaning. Prior to Completion of the Work, Contractor shall clean the Site and make it ready for utilization by the City. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

5.28 Utility Usage.

A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Contractor shall remove all temporary distribution systems. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. All permanent meters installed shall be listed in the Contractor's name until the Work is accepted. For Work to be performed in existing City facilities, Contractor may use the City's existing utilities, provided such use is reasonable under the circumstances. If Contractor uses the City utilities, it will not need to compensate the City for reasonably consumption of utilities, but Contractor will be responsible for any excessive, unreasonable or wasteful utility usage. Amounts due the City under this section may be deducted from progress payments.

5.29 Protection of Work and Property.

A. The Contractor shall digitally record video and take photographs of the Project site and adjacent improvements in a manner and quality that clearly depicts the existing condition of the Project Site and adjacent improvements immediately prior to the start of Work (minimum 1080p video and 4MP photo). All videos and photographs shall be date and time stamped. The Contractor shall submit the video and photos in digital format on a memory stick before the commencement of Work, along with a map outlining the route and locations of the videos and/or photographs. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the City. All Work shall be solely at the Contractor's risk.

B. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and

properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

C. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

D. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:

1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.

2. Provide substantial barricades around any shrubs or trees indicated to be preserved.

3. Deliver materials to the Site over a route designated by the City.

4. Provide any and all dust control required and follow the applicable air quality regulations as appropriate. If the Contractor does not comply immediately with a notice from the City or a public agency responsible for air quality, the City shall have the authority to provide dust control and deduct the cost from payments to the Contractor.

5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the City. Contractor shall not unreasonably encumber the Site with its materials.

6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the City, at no cost to the City.

7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the City.

8. Preserve and protect from injury all buildings, pole lines and all directional, warning and mileage signs that have been placed within the right-of-way.

9. At the completion of work each day, leave the Work and the Site in a clean, safe condition.

10. Comply with any stage construction and/or traffic handling plans. Access to residences and businesses shall be maintained at all times, except with the City's written approval. Any request for approval to reduce or restrict access to

residences and business must be submitted to the City at least seven (7) Days in advance, and the City may issue or withhold approval in its sole discretion.

E. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the work involved in the protection and preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.

F. Should damage to persons or property occur as a result of the Work, Contractor shall promptly notify the City, in writing. Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The City shall be entitled to inspect and copy any such documentation, video, or photographs.

G. Contractor shall maintain all investigation documentation including video and/or photographs for a minimum of four (4) years following completion of the Project.

5.30 Emergencies.

A. In emergencies affecting the safety or protection of persons or the Work or Property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the City or the Engineer, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

ARTICLE 6 -MATERIALS; INSPECTION

6.1 Access to Work.

A. The City, Engineer, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs.

6.2 Materials.

A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Contract within the Contract Time. Unless otherwise specified, all materials, parts, and equipment furnished by the Contractor in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.

B. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other

agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the City free from any claims, liens, or charges.

C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work. Materials shall be stored on the Project Site in such manner so as not to interfere with any operations of the City or any independent contractor.

D. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the City shall not be liable for Contractor's failure to so. Except for an adjustment to Unit Price Work for item overruns and underruns in accordance with the Contract Documents, no additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Schedule, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

6.3 Test and Inspections.

A. Inspection and Testing of Work and Materials

1. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the City, Contractor shall promptly inform the City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for City testing and inspection shall be paid by the City. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

2. The Contractor shall pay for the cost of any minimum "show up" costs of a materials testing technician that was called for by the Contractor but ultimately the Contractor work was not ready for the inspection. Any such costs shall be deducted from any amounts due to the Contractor.

3. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.

4. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the City, and not by Contractor. Unless otherwise stated and as provided by the Contract Documents, the City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents. All tests

or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

5. Reexamination of Work may be ordered by the City. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the City shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

B. Testing of Materials

1. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the City so that the City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

2. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

3. Unless otherwise specified in the Special Provisions, all initial testing and a reasonable amount of retesting will be performed under the direction of the Engineer, and at no expense to the Contractor. The Contractor shall notify the Engineer in writing, at least 15 days in advance, of its intention to use materials for which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed supplier and source of material. If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the Work, it will be the Contractor's responsibility to re-notify the Engineer when samples which are representative may be obtained.

4. A Certificate of Compliance shall be furnished to the Engineer prior to the use of any material or assembled material for which these Specifications so require or if so required by the Engineer. The Engineer may waive the materials testing requirements and accept a Certificate of Compliance. Material test data may be required by the Engineer to be included with the submittal. Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The submission of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection by the Engineer whether in place or not.

5. Copies of mill certificates of composition and quality of all component materials (reinforcing steel, structural steel, lumber, etc.) incorporated in the construction of the Work shall be provided to the City at the time of delivery. City shall retain the right to reject any raw material not provided with a mill certificate at the time of delivery.

6. If, after incorporating such materials into the Work, it is found that sources of supply that have been approved do not furnish a uniform product, or if the product from

any source proves unacceptable at any time, the Contractor shall furnish approved material from other approved sources. If any product proves unacceptable after improper storage, handling or for any other reason it shall be rejected, not incorporated into the Work, and shall be removed from the Project Site all at the Contractor's expense.

6.4 Requests for Substitutions.

A. For the purposes of this provision, the term "substitution" shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.

B. Pursuant to Public Contract Code section 3400(b), the City may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.

C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the City has adopted uniform standards for certain materials, processes, and articles.

D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than thirty-five (35) calendar days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the City, the Contractor shall provide the material, method or service specified herein. The City shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.

E. Substantiating data as described above shall include, at a minimum, the following information:

1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.

2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.

3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.

4. Information detailing the durability and lifecycle costs of the proposed substitution.

F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.

G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.

H. The Contractor shall bear the costs of all the City work associated with the review of substitution requests.

I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

ARTICLE 7 -SUBSURFACE AND PHYSICAL CONDITIONS; UTILITIES

7.1 Soils Investigations.

A. When a soils investigation report for the Site is available, such report is provided for informational purposes only. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required to examine the Site before submitting its Bid and must make whatever tests it deems appropriate to determine the condition of the so

7.2 Ownership of Site Materials Found.

A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Contractor or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by the City. Neither Contractor nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Contractor will, as determined by the City's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided the City shall have the right to use or consume these materials without payment to a third party.

7.3 Existence of Utilities at the Work Site.

A. Existing Utilities

1. The location of known existing utilities and pipelines are shown on the Plans in their approximate locations. However, nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the Site of the Project.

2. The City will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified by the City in the Contract Documents or which cannot reasonably be inferred from the presence of other visible facilities.

B. Utility Location

1. It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Article.

2. The locating of utilities shall be in conformance with Government Code Section 4216 et seq. except for the City's utilities located on the City's property and not on public right-of-way.

3. A "High Priority Subsurface Installation" is defined in Government Code Section 4216 (j) as "high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig) or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged."

4. A "Subsurface Installation" is defined in Government Code Section 4216 (s) as "any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewer lines, nonpressurized storm drains, or other nonpressurized drain lines."

5. Pursuant to Government Code Section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days but not more than 14 Days before performing any excavation. The date of the notification shall not count as part of the two-working-day notice. Before notifying the appropriate regional notification center, the Contractor shall delineate the area to be excavated. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service. The Contractor

shall furnish to the Engineer written documentation of its contact(s) with the regional notification center prior to commencing excavation at such locations.

6. After the utility survey is completed, the Contractor shall commence “potholing” or hand digging to determine the actual location of the pipe, duct, or conduit and in accordance with Government Code Section 4216.4 if the excavation within the “tolerance zone” of a subsurface installation. The Engineer shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities, which are to remain in service for any period subsequent to the construction of the run of pipe involved.

7. The Contractor's attention is directed to the requirements of Government Code Section 4216.2 (c) which provides: “When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting.” The Contractor shall notify the Engineer in advance of this meeting.

C. Utility Relocation and Repair

1. If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Engineer in writing. The Engineer will supply a method for correcting said interferences in accordance with the responsibilities of this section and Government Code Section 4215. To the extent any delay is caused thereby, Contractor shall submit a notice of delay within five (5) Days of discovery of the circumstances giving rise to the delay in accordance with Article 9.1 Change Orders and Time Extensions.

2. Care shall be exercised by the Contractor to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed. If high priority subsurface installations are damaged and the operator cannot be contacted, the Contractor shall call 911 emergency services.

3. The City will compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work. The payment for such costs will be made as provided in Article 9.1 Change Orders and Time Extensions. The Contractor shall not be assessed liquidated damages for delay in completion of the

Project, when such delay is caused by the failure of the City or utility company to provide for removal or relocation of such utility facilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with Article 9.1 Change Orders and Time Extensions and Article 9.3 Time for Completion and Liquidated Damages.

4. The public utility, where it is the owner of the affected utility, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The right is reserved to the City and the owners of utilities or their authorized agents to enter upon the Work area for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

5. When the Contract Documents indicate that a utility is to be relocated, altered or constructed by others, the City will conduct all negotiations with the utility company and the work will be done at no cost to the Contractor, unless otherwise stipulated in the Contract Documents.

6. Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.

D. Construction at Existing Utilities

1. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodates to maintain, all utilities.

2. Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the City Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.

3. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this work, shall be included in Contractor's bid and distributed in the schedule of pay Items. No additional compensation shall be made to the Contractor for this work.

7.4 Trenches

A. Trenches Five Feet or More in Depth.

1. Contractor shall submit to the Engineer at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer. Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.

B. Excavations Deeper than Four Feet.

1. If the Work involves excavating trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly within three (3) Days, and before the excavation is further disturbed, notify the City in writing of any of the following conditions:

a. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

b. Subsurface or latent physical conditions at the site differing from those indicated.

c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract

2. The City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in Article 9.1 Change Orders and Time Extensions.

3. In the event that a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 8 -PROSECUTION OF THE WORK

8.1 Contractor's Means and Methods.

A. Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

8.2 Construction Schedule.

A. General Requirements. The schedule shall be prepared in a Critical Path Method ("CPM") format and in an electronic scheduling program acceptable to the City and as specified in the Contract Documents. Contractor shall deliver the schedule and all updates to the City in both paper and electronic form. The electronic versions shall be in the format and include all data used to prepare the schedule. Copies are not acceptable.

B. Schedule. The receipt or approval of any schedules by the City shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract Time. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the City.

C. Schedule Contents. The schedule shall allow enough time for inclement weather. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall include appropriate time allowances and constraints for submittals, items of interface with Work performed by others, and specified construction, start-up and performance tests. All float shall be owned by the Project. Schedules indicating early or late completion shall not modify or have any effect on the Contract Time, regardless of whether the schedules are reviewed and/or accepted by the City. For purposes of determining Liquidated Damages, the Contract Time shall control and may only be altered by a duly authorized Change Order.

D. Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the City: (1) prior to the start of construction, if there are any changes to the initial schedule; (2) with each progress payment request; and (3) whenever requested to do so by the City. The City may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule. Upon the City's request, Contractor shall submit any schedules or updates to the City in the native electronic format of the software used to create the schedule. Contractor shall also submit schedules showing a two-week detailed look-ahead at weekly meetings conducted with the City. The two-week look-ahead schedule shall clearly identify all staffing and other resources which in the

Contractor's judgment are needed to complete the Work within the Contract Time, and it shall clearly state the number of staff to be used on each daily segment of the Work.

E. Acceptance. Acceptance of the schedules by the City will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Contractor from Contractor's full responsibility therefor.

F. Recovery Schedule.

1. Should any of the following conditions exist, City may require Contractor to prepare, at no extra cost to City, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the allotted Contract Time:

a. The Contractor's monthly progress report indicates delays that are, in the opinion of City, of sufficient magnitude that City questions the Contractor's ability to complete the Work;

b. The schedule shows the Contractor to be thirty (30) or more days behind the critical path at any time during construction;

c. The Contractor desires to make changes in the logic or the planned duration of future activities of the schedule which, in the opinion of City, are major in nature.

2. The recovery schedule shall include proposed revisions to the Construction Schedule, demonstrating how Contractor intends to achieve all contractual milestones including Contract completion within the allotted Contract Time. The submittal shall include a narrative describing the actions planned by the Contractor to recover the schedule.

3. Contractor shall submit the Recovery Schedule within seven (7) Days of City's request. If Contractor asserts that City is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of City's request, will be considered a concurrent delay event attributable to Contractor, and Contractor shall only be entitled to non-compensable adjustments to Contract Times. If Contractor is responsible for the delay, this provision will not limit or affect Contractor's liability and failure to submit the recovery schedule with seven (7) Days of City's request may result in City withholding progress payments or other amounts due under the Contract Documents.

4. Contractor is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence. Regardless of whether City directs Contractor to prepare a recovery schedule pursuant to this Section, Contractor shall promptly undertake appropriate action at no additional cost to City to recover the schedule whenever the current construction schedule shows that the Contractor will not achieve a milestone and/or complete the Work within the allotted Contract Time.

8.3 Time for Completion and Liquidated Damages

A. Time for Completion. The time for completion set forth in Article 2 of the Contract for Construction shall commence: (1) on the date stated in the Notice to Proceed, or (2) if the Notice to Proceed does not specify a commencement date, then on the date of the Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The City is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the City's receipt or acceptance of the Contractor's proposed earlier completion date. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float. Contractor shall not be entitled to compensation, and the City will not compensate Contractor, for delays which impact early completion. Contractor shall not, under any circumstances, receive additional compensation from the City (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date.

B. Liquidated Damages. If the Work is not completed within the Contract Time(s), it is understood that the City will suffer damage. In accordance with Government Code section 53069.85 and Public Contract Code section 7102, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

C. Inclement Weather. Contractor shall abide by the City's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule. Contractor shall not be entitled to reverse liquidated damages for time extensions resulting from inclement weather.

D. Extension of Time. Contractor's entitlement to an extension of the Contract Time is limited to a City-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its Subcontractors or Suppliers). The City shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Contractor shall not be entitled to an adjustment in the Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

E. Reverse Liquidated Damages. Consistent with Public Contract Code Section 7102, Contractor will be compensated for damages incurred due to unreasonable delays to the critical path for which the City is responsible. The parties agree that determining Contractor's exact delay damages are and will continue to be impracticable and extremely difficult. As such, for each calendar day in excess of

the time for completion set forth in Article 2 of the Contract for Construction, the City shall pay to the Contractor the sum stipulated in the Contract per day. Such amount shall constitute the only payment allowed for any City-caused delays and shall necessarily include all overhead, all profits, all administrative costs, all bond costs, all labor, materials, equipment and rental costs and any other costs, expenses and fees incurred or sustained as a result of such delays. Contractor shall not be entitled to reverse liquidated damages for any change in the Work in which Contractor is compensated for overhead and profit through a change in Unit Price Work or a Change Order resulting in a lump sum or allowed mark-up for the additional Work. The amount of reverse liquidated damages shall be reduced by Contractor's concurrent delays.

F. Force Majeure. In accordance with subparagraphs "D" and "E" above, the Contractor shall not be charged liquidated damages, and the City shall not be responsible, for any delays resulting from a Force Majeure Event. If a delay to the critical path results from a Force Majeure Event, the Contractor will be entitled to a time extension but will not receive an adjustment to the Contract Price or any other compensation. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays.

G. No Damages for Reasonable Delay. The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

H. Procedure for Time Extensions and Delay Damages. Contractor shall not be entitled to any extension of time or any reverse liquidated damages unless Contractor properly notices the delay and adjustment to compensation and requests a Change Order in accordance with Article 9.1 Change Orders and Time Extensions. Contractor's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Contractor's right to a time extension or reverse liquidated damages.

8.4 Contractor's Responsibility for Work.

A. Until the acceptance of the Work by the Engineer as evidenced in writing, it shall be under the charge and care of the Contractor. The Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work. The Contractor shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work before its completion and acceptance. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City will pay for repair or restoration to damaged Work in excess of 5% of the total Bid.

8.5 Occupancy.

A. The City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

8.6 Securities for Money Withheld

A. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the City to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the City to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

8.7 The City's Right to Suspend/Terminate the Contract

A. Suspension of Work by the City

1. The City may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Contractor. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Contractor shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.

2. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

a. Immediately discontinue Work on the date and to the extent specified in the notice;

b. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;

c. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the City's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and

d. Continue to protect and maintain the Work including those portions on which Work has been suspended.

3. Except as provided by this Article, as full and complete compensation for such suspension, Contractor shall be granted an adjustment in the Contract Price based on a negotiated daily rate that reflects the Contractor's actual costs associated with the demobilized condition of the Site and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of Contract Price or extension of Contract Times shall be granted if

the suspension results from Contractor's non-compliance with the requirements of the Contract.

B. Termination for Cause by the City:

1. In the sole estimation of the City, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the City may serve written notice upon the Contractor and its surety of the City's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) Days unless such violations have ceased and arrangements satisfactory to the City have been made for correction of said violations.

2. After expiration of the ten (10) Day period, the City may terminate the Contract by providing a Notice of Termination to the Contractor. The City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project performance bond. Contractor and its surety shall be liable to the City for any excess costs or other damages incurred by the City to complete the Work. If the City takes over the Work, the City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Site.

3. Upon termination, Contractor shall not be entitled to receive any further payment from the City, except for Work which was duly performed prior to the effective date of the Notice of Termination. Contractor shall submit an invoice for final payment within thirty (30) Days of the effective date of the Notice of Termination. The City may withhold from final payment up to 150% of any disputed amounts, including any amounts which may be necessary to repair defective Work, complete unfinished Work, or are otherwise occasioned by Contractor’s failure to perform its duties under the Contract.

C. Termination for Convenience by the City:

1. The City may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, upon ten (10) Days written notice if the City determines that a termination is in the City's interest.

2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the City, the extent of termination, and the effective date of such termination.

3. After receipt of Notice of Termination, and except as directed by the City's Representative, the Contractor shall, regardless of any delay in determining or

adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations:

a. Stop Work as specified in the Notice.

b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.

e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.

f. Submit to the City's Representative, within ten (10) Days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the City's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 Days after the effective date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the City's Termination for Convenience." If the City rejects any costs, Contractor shall be deemed to waive the rejected costs unless Contractor files a Claim within thirty (30) Days of the rejection pursuant to Article 9.2.

g. Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to the City.

4. Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.

5. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the City may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the City or the Contract is terminated.

6. If the City terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section,

and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

8.8 Completion and Acceptance of Work

A. Final Inspection. Upon written notice from Contractor that the entire Work is complete, the Engineer will promptly make a final inspection with the City and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

B. Final Acceptance. The acceptance of the Work on behalf of the City will be made by the Engineer. Such acceptance by the City shall not constitute a waiver of defects. After Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, Record Documents, and other documents required by the Contract Documents, the City shall execute a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

8.9 Warranty and Guaranty of Work.

A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor hereby agrees to repair or replace, at the discretion of the City, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year (or as otherwise indicated in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) from the date of the Notice of Completion of the Project without any expense whatever to the City, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.

B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) Days after being notified in writing of required repairs, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work

damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder immediately upon demand.

C. In addition to the warranty set forth in this Article, Contractor shall obtain for the City all warranties that would be given in normal commercial practice and assign to the City any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the City with all warranty and guarantee documents prior to final acceptance of the Project by the City as required.

D. When specifically indicated in the Contract Documents or when directed by the Engineer, the City may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the City for installation by the Contractor to be voided or reduced, Contractor shall indemnify the City from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the City for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.

E. The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.

F. The City shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect or damage, the City shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.

G. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the City may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.

H. Acceptance of Defective Work.

1. If, instead of requiring correction or removal and replacement of defective Work, the City prefers to accept it, the City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to the City's evaluation of and determination to accept such defective Work and for the diminished value of the Work. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by the City. If the acceptance of defective occurs after release of the Project retention, an appropriate amount will be paid by Contractor to the City.

I. The City May Correct Defective Work

1. If Contractor fails within a reasonable time after written notice from the City to correct Defective Work, or to remove and replace rejected Work as required by the City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the City may, after seven (7) Days written notice to Contractor, correct, or remedy any such deficiency.

2. In connection with such corrective or remedial action, the City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the City has paid Contractor but which are stored elsewhere. Contractor shall allow the City, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable the City to exercise the rights and remedies to correct the Defective Work.

3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the City correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.

4. If the Change Order is executed after all payments under the Contract have been paid by the City and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to the City. If the Change Order is executed after release of the Project retention, an appropriate amount will be paid by Contractor to the City. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the City correcting Defective Work.

J. Nothing in the warranty or in the Contract Documents shall be construed to limit the rights and remedies available to the City at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 9 -CHANGE ORDERS; DISPUTE RESOLUTION

9.1 Change Orders and Time Extensions

All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. The City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and Contractor's compensation and the time for completion shall be adjusted accordingly. Whenever

any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the Work, including Additional Work, promptly and expeditiously. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

A. Change in Contract Procedures

1. City Directive. The City may direct changes in the Work by delivering a written directive. To the extent the work directive results in a change to compensation or time, Contractor must timely request a Change Order and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a work directive, Contractor's failure to timely request a Change Order shall constitute a waiver by Contractor of any adjustment to compensation or time extension for Work performed under the directive. The City shall not be liable to Contractor for Work performed or omitted by Contractor in reliance on verbal orders.

2. Contractor's Notice of Change/Delay. If Contractor intends to initiate a Change Order Request, then Contractor shall provide the City with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:

a. If due to unknown subsurface or latent physical conditions, within three (3) Days from the discovery date or prior to the alterations of the conditions, whichever is earlier.

b. If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, which shall be no longer than three (3) Days from the date the Contractor discovers that the Force Majeure Event gives rise to a change, unless that the conditions are such that notice within three (3) Days is not possible or practicable.

c. If due to any other matter that may involve an adjustment to the Contract Time or the Contract Price, within seven (7) days from the discovery date.

To be considered valid and complete, the notice of change/delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs and/or time. If the circumstances give rise to both a cost adjustment and time extension, Contractor shall submit the notice of change and notice of delay concurrently.

3. Request for Change in Compensation and/or Extension of Time. Contractor shall submit a Change Order Request for any adjustment to Contractor's compensation and/or any extension of time. The Change Order Request shall be made prior to incurring any expense and within fourteen (14) Days from either Contractor's notice of change/delay or the City's directive ordering the change. The Change Order Request shall include all of the following information (unless inapplicable to the change):

a. A detailed description of the circumstances giving rise to the request;

b. A complete itemized cost proposal, including itemized pricing for first tier Subcontractors;

c. Supporting documentation for all costs;

d. A time impact analysis showing the impact of the delay to the critical path to completion;

e. If any added costs or information cannot be determined at the time of the Change Order Request, the reason the costs or information cannot be determined at the time; and

f. Certification to the accuracy of the Change Order Request under penalty of perjury.

The time impact analysis shall be in the critical path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule.

The City may demand, and Contractor shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. Contractor shall provide the requested additional information within five (5) Days of the request.

For any costs or information that cannot be determined at the time Contractor submits the Change Order Request, Contractor shall submit to the City notice of the costs or information and all supporting documentation within five (5) Days of when the costs or other information become subject to determination.

4. City's Final Decision on Change Order; Ordered Changes. If the City denies the Change Order Request or disagrees with the proposal submitted by Contractor, it will notify the Contractor, and the City will provide its opinion of the appropriate price and/or time extension. If no agreement can be reached, the City shall have the right to order the Work performed on a time and materials basis or to issue a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The City shall also have the right to order changes in the Work to be performed promptly by the Contractor on a time and materials basis or to issue a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The City's determination shall become final and binding if the Contractor fails to submit a Claim in writing to the City within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the City may reasonably require.

5. Contractor's Waiver of Further Relief. **CONTRACTOR'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE/DELAY AND/OR CHANGE ORDER REQUEST, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH**

CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.

Contractor recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of the City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

6. Change Order Format

a. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

b. The City may designate the forms to be used for notices, requests, and Change Orders. If so designated, Contractor may only use such forms. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the City's Change Order form in an attempt to reserve additional rights.

B. Determining Adjustments to Compensation.

1. Limitation on Costs. Contractor shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.

2. Unit Price Change Orders. When the actual quantity of a Unit Price Work item varies from the Bid Schedule, compensation for the change in quantity will be calculated by multiplying the actual quantity by the unit price. This calculation may result in either an additive or deductive Change Order. Bid items included on the Bid Schedule may be deducted from the Work in their entirety without any negotiated extra costs. Because Unit Price Work includes overhead and profit as determined by Contractor at the time of its Bid submission, no mark up or deduction for overhead and profit will be allowed.

3. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the Contractor and the City.

4. Time and Materials Change Orders. The City may direct the Contractor to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the Contractor exceeds at its own risk.

5. Federally Funded Projects. For any change in price to the Contract, general and administrative expenses shall be negotiated and must conform to the cost principles set forth under at 2 C.F.R. Part 200, subpart E, and profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the Additional Work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

6. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows:

a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon supplier or manufacturer’s invoice.

c. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed. The Contractor shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each items of equipment shall be the rate resulting in the least total cost to the City for the total period of use. The City shall the make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of $1,000 or less.

(i) The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

(ii) All equipment shall, in the opinion of the City, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(iii) Before construction equipment is used on any Additional Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the City, in duplicate, a description of the equipment and its identifying number.

(iv) When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.

d. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:

(i) "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and Subcontractors at cost only, without mark-up. Contractor shall provide the City with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the City may reasonably request.

(ii) For Work performed by the Contractor's forces the allowed mark-up shall not exceed fifteen (15%) percent of labor costs, ten percent (10%) of material costs, and ten percent (10%) of the cost of tools and equipment use.

(iii) For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Subcontractor's Net Cost of the Work to which the Contractor may add up to five percent (5%) of the Subcontractor's Net Cost.

(iv) For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the Subcontractor and Contractor may each add up to an additional five percent (5%) of the Net Cost of the lower tier subcontractor.

(v) No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the City exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.

(vi) Calculation of the mark-up will be subject to the limitations above and to calculation as further detailed in (b)(B)(5) above.

e. Documentation of Time-and-Material Costs.

(i) T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the City's for an approval signature each day that Work is performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the City's agreement to Contractor's entitlement to the cost.

(ii) T&M Summary Sheet. Contractor shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Contractor's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the Additional Work.

f. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the Contractor's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:

(i) Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Work;

(ii) Office Expenses. Expenses of Contractor's principal and branch offices;

(iii) Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;

(iv) Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

(v) Small Tools. Cost of small tools valued at less than $1,000 and that remain the property of Contractor;

(vi) Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;

(vii) Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;

(viii) Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;

(ix) Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.

(x) Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

(xi) Compliance with Federal Cost Principles. If the Project is federally funded, any costs that are not allowable, reasonable and allocable to the Project, under generally accepted accounting principles and the applicable federal requirements.

9.2 Procedure for Resolving Claims.

Contractor shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Article 9.1, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Contractor's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

A. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.

B. Claims. For purposes of this Article, "Claim" means a separate demand by the Contractor for:

1. An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the City;

2. Payment by the City of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or

3. An amount the payment of which is disputed by the City.

A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

C. Filing Claims. Claims governed by this Article may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

D. **Documentation.** The Contractor shall submit all Claims in the following format:

1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made

2. List of documents relating to Claim:

a. Specifications

b. Drawings

c. Clarifications (Requests for Information)

d. Schedules

e. Other

3. Chronology of events and correspondence

4. Narrative analysis of Claim merit

5. Analysis of Claim cost, including calculations and supporting documents

6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested

E. City's Response. Upon receipt of a Claim pursuant to this Article, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after the City issues its written statement.

1. If the City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three (3) Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

2. Within 30 Days of receipt of a Claim, the City may request in writing additional documentation supporting the Claim or relating to defenses or Claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor. The City's written response to the Claim, as further documented, shall be submitted to the Contractor within 30 Days (if the Claim is less than $50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

F. Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

G. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The public entity and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

2. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.

3. Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

H. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.

I. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of $375,000 or less:

1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be

experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

J. Government Code Claim Procedures.

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commending with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.

3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against the City.

4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Contractor or that should reasonably by known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

K. Non-Waiver. The City's failure to respond to a Claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

ARTICLE 10 - MEASUREMENT; PAYMENT

10.1 Cost Breakdown.

A. Lump Sum Work.

1. Contractor shall furnish on forms approved by the City within ten (10) Days of the Notice to Proceed, a schedule of values allocating the entire Contract Price to the various portions of the Work and prepared in such a form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule of values, unless objected to by the Engineer, shall be used as a basis for reviewing

the Contractor's applications for payment. Contractor shall submit the schedule of values prior to submitting its first application for payment, and the City will not issue any payment until it receives and approves the schedule of values.

B. Unit Price Work.

1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and or profit for each separately identified item.

2. Unless otherwise specified, payment will be based on the actual quantities of Work as verified and approved by the Engineer, based on the price per unit as set forth in the Bid.

3. The City or Contractor may initiate a Change Order or Change Order Request to adjust the Contract Price in accordance with Contractor Documents based on actual quantities of Unit Price Work. The City or Contractor may make a claim for an adjustment in the Unit Price in accordance with the Contract Documents if:

a. the quantity of any item of Unit Price Work performed by Contractor differs by twenty-five percent (25%) or more from the estimated quantity of such item indicated in the Contract; and

b. there is no corresponding adjustment with respect to any other item of Work; and

c. Contractor believes that Contractor is entitled to an increase in unit price as a result of having incurred additional expense or the City believes that the City is entitled to a decrease in unit price and the parties are unable to agree as to the amount of any such increase or decrease.

10.2 Progress Estimates and Payment.

A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date Work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid. Contractor shall include any amount earned for authorized Additional Work. Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

B. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the City has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the

remainder a further deduction may be made in accordance with Section C below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.

C. The City may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

1. Payments which may be past due and payable for just claims against Contractor or any Subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.

2. Defective work not remedied.

3. Failure of Contractor to make proper payments to his Subcontractor or for material or labor.

4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.

5. Damage to another contractor or a third party.

6. Amounts which may be due the Count for claims against Contractor.

7. Failure of Contractor to keep the Record Drawings up to date.

8. Failure to provide update on construction schedule as required herein.

9. Site cleanup.

10. Failure to comply with Contract Documents.

11. Liquidated damages.

12. Legally permitted penalties.

D. The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (C)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the City shall be deemed the agent of Contractor and any payment so made by the City shall be considered as a payment made under contract by the City to Contractor and the City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

E. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The City shall make the progress payment within 30 Days after the receipt of an undisputed and

properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the City to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of Days by which the Engineer exceeds the seven (7) Day requirement.

F. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the City.

G. The City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

10.3 Final Acceptance and Payment

A. Following the City's acceptance of the Work, the Contractor shall submit to the City a written statement of the final quantities of unit price items for inclusion in the final payment request. The City shall have the right to adjust any estimate of quantity and to correct any error made in any estimate for payment.

B. When the Work has been accepted there shall be paid to Contractor a sum equal to the Contract Price less any amounts previously paid Contractor and less any amounts withheld by the City from Contractor under the terms of the Contract. The final five percent (5%), or the percentage specified in the Notice Inviting Bids where the City has adopted a finding of substantially complete, shall not become due and payable until as required by Public Contract Code section 7107. If the Contractor has placed securities with the City as described herein, the Contractor shall be paid a sum equal to one hundred percent (100%) of the Contract Price less any amounts due the City under the terms of the Contract.

C. Unless Contractor advises the City in writing prior to acceptance of the final five percent (5%) or the percentage specified in the Notice Inviting Bids where the City has adopted a finding of completion, or the return of securities held as described herein, said acceptance shall operate as a release to the City of all claims and all liability to Contractor for all things done or furnished in connection with this Work and for every act of negligence of the City and for all other claims relating to or arising out of this Work. If Contractor advises the City in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due the Contractor, the City may pay the undisputed amount contingent upon the Contractor furnishing a release of all undisputed claims against the City with the disputed claims in stated amounts being specifically excluded by Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Contractor or its sureties from the Faithful Performance Bond, Labor and Material Payment Bond, or from any other obligation under this Contract.

D. In case of suspension of the Contract any unpaid balance shall be and become the sole and absolute property of the City to the extent necessary to repay the City any excess in the cost of the Work above the Contract Price.

E. Final payment shall be made no later than 60 Days after the date of acceptance of the Work by the City or the date of occupation, beneficial use and enjoyment of the

Work by the City including any operation only for testing, start-up or commissioning accompanied by cessation of labor on the Work, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8136. In the event of a dispute between the City and the Contractor, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

F. Within ten (10) Days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor shall pay each of its Subcontractors from whom retention has been withheld each Subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor if the payment is consistent with the terms of the subcontract.

ARTICLE 11 -MISCELLANEOUS

11.1 Patents.

A. Contractor shall hold and save the City, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this Contract.

11.2 Document Retention & Examination

A. In accordance with Government Code section 8546.7, records of both the City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

B. Contractor shall make available to the City any of the Contractor's other documents related to the Project immediately upon request of the City.

C. In addition to the State Auditor rights above, the City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the City, for a period of four (4) years after final payment.

11.3 Notice.

A. All notices shall be in writing and either served by personal delivery or mailed to the other party. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to the City shall be addressed to the City as designated in the Notice Inviting Bids unless the City designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

11.4 Notice of Third Party Claims

A. Pursuant to Public Contract Code section 9201, the City shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The City is entitled to recover reasonable costs incurred in providing such notification.

11.5 State License Board Notice

A. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

11.6 Assignment of Contract

A. Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the City. Any assignment or change of Contractor's name of legal entity without the written consent of the City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

11.7 Change In Name And Nature Of Contractor's Legal Entity.

A. Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect the City's rights under the Contract, including but not limited to the bonds.

11.8 Prohibited Interests

A. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

11.9 Controlling Law

A. Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall

be governed by the law of the State of California excluding any choice of law provisions.

11.10 Jurisdiction; Venue

A. Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of San Bernardino County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

11.11 Cumulative Remedies.

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

11.12 Survival of Obligations.

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

11.13 Headings.

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

11.14 Assignment of Antitrust Actions

A. In accordance with §7103.5(b) of the California Public Contract Code, Contractor and Subcontractors must conform to the following requirements:

1. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or Subcontractor offer and agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

2. This assignment must be made and become effective at the time the awarding body tenders to Contractor, without further acknowledgment by the parties.

11.15 All Legal Provisions Included

A. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify City in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, he shall bear all costs arising therefrom.

B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Contractor shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.

C. Contractor acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

D. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.

E. Contractor shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the regulations imposed by California Air Resources Board ("CARB") including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation").

   Throughout the Project, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and its subcontractors' fleets including, without limitation, the Certificates of Reported Compliance ("CRCs"), fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from the City.

   Contractor shall be solely liable for any and all costs associated with compliance with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation. Contractor shall defend, indemnify and hold harmless the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Regulation

F. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by City, at no increase in Contract Price or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Gil H Mars Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 16

SUBJECT: **AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH FREDERICK FISHER PARTNERS, ARCHITECTS FOR THE NORTH WING GALLERY, WELCOME DESK, AND ELECTRICAL INFRASTRUCTURE UPGRADE FOR THE ONTARIO MUSEUM OF HISTORY AND ART**

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute Amendment No. 1 to the Design Services Agreement with Frederick Fisher Partners, Architects, of Los Angeles, California, to provide on-call design services for the North Wing Gallery, welcome desk, and electrical infrastructure upgrade for the Ontario Museum of History and Art (OMHA) in the amount of $186,709 for a total not-to-exceed contract amount of $436,709; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but is not limited to agreements, assessments, easements, reduction of retention accounts, contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The proposed Amendment No. 1 to the Design Services Agreement with Frederick Fisher Partners, Architects is in the amount of $186,709 for a total not-to-exceed contract amount of $436,709. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the North Wing Gallery, welcome desk, and electrical infrastructure upgrade for the OMHA.

BACKGROUND & ANALYSIS: On October 15, 2024, the City Council approved a Design Services Agreement with Frederick Fisher Partners, Architects for on-call architectural services for the OMHA. The recommended Amendment No. 1 entails renovations to the North Wing Gallery including new flooring, lighting, and a heating, ventilation, and air conditioning (HVAC) system, installation of a new welcome desk, and an electrical infrastructure upgrade to include a new transformer from Southern California Edison. These upgrades to the North Wing Gallery not only modernize the space but provide the OMHA with an opportunity for enhanced programming. The OMHA has entered into an agreement with The Los Angeles County Museum of Art to host a traveling exhibition at the North Wing Gallery in 2027. This renovation is required to meet the terms of the agreement.

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CITY MANAGER

AMENDMENT NO. 1 TO THE MODEL DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND FREDERICK FISHER PARTNERS, ARCHITECTS

1. Parties and Date.

This Amendment No. 1 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **Frederick Fisher Partners, Architects**, a corporation. City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Consultant have entered into an agreement entitled "Model Design Services Agreement" dated October 15, 2024 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to increase amount by $186,709 for the design of north wing gallery, welcome desk and electrical infrastructure upgrade for new total not-to-exceed compensation amount of Four Hundred Thirty-Six Thousand Seven Hundred and Nine Dollars ($436,709).

2.3 Amendment Authority. This Amendment No. 1 is authorized pursuant to Section 3.37 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1.1 and Section 3.10.1 of the Agreement is hereby amended in its entirety to read as follows:

> 3.1.1. Scope of Services. Consultant promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional architectural and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached

hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Consultant shall be subject to the sole and discretionary approval of the City, which approval shall not be unreasonably withheld.

3.10.1 Consultant's Compensation for Basic Services. City shall pay to Consultant, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **Four Hundred Thirty-Six Thousand Seven Hundred and Nine Dollars ($436,709)** ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

Exhibit "A" and "B" are hereby amended to add Attachment A attached hereto and incorporated herein by reference.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 1, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 1. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 1.

3.4 Severability. If any portion of this Amendment No. 1 is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 1 TO DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND FREDERICK FISHER PARTNERS, ARCHITECTS

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 1 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

FREDERICK FISHER PARTNERS, ARCHITECTS

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

Frederick Fisher and Partners

Hector Semidey
Project Manager

Ontario Museum of History and Art
Att: Gil Mars
Design & Construction Project Manager
1333 S. Bon View, Ontario CA 91761

06 March, 2025

Proposal for Architectural Services for North Gallery Project at the Ontario Museum of History and Art (OMHA).

Dear Gil:

Thanks for taking the time to speak with us about the improvement project for OMHA. We are thrilled with the possibility of collaborating with you and the Museum Staff in developing solutions to enhance the North Gallery exhibition spaces and the overall visitor's experience.

We thought about your goals and aspirations for the project and realized the best way forward is to engage OMHA in a Concept Design phase to validate our project assumptions and goals. Once we have a better understanding of the project scope and budget, we can finalize a contract.

We understand the schedule from design through construction may be approximately 18 months. We are including a workplan/schedule to better understand milestones and proposed timing of phases, including construction.

The following outlines the basic services with a Concept Design Phase to start:

CONCEPT DESIGN PHASE (6 weeks)

During the concept design phase, the architect and client work together to create the long-term goals and anticipated obstacles, for the overall design process. In this phase, potentially the most important part of design will occur. We work with you and your team to define the architectural solutions to improve exhibition spaces and visitor's experience. Our scope of work includes North Galleries, Gift Shop and Welcoming Desk.

We consider this the IDEA phase and will come up with conceptual schemes and then work to distill them down to one or two ideas that best suit your needs.

Deliverables: Concept Sketches and imagery, Floor Plan Sketches, Image library and Final presentation package.

The scope of work for concept/schematic outlined will be billed as a fixed fee of $30,000. We anticipate the time frame will be 6 weeks to complete the concept design.

BASIC SERVICES

SCHEMATIC DESIGN PHASE (6 weeks)

After Concept design we would define one scheme and take it through Schematic Design. During Schematic Design (SD), we would further develop one scheme through study drawings, documents, or other media that illustrate the concepts of the design and include spatial relationships, scale, and form for the owner to review. During SD phase we initiate coordination with MEP engineers and Lighting designer to develop solutions that reflect the clients goal's and the support the design intent. We will also discuss options with Electrical and Mechanical engineers for early procurement of materials to maintain desired project schedule.

This phase produces a final schematic design, to which the owner agrees after consultation and discussions with the architect. Construction cost estimates would be provided by Cost Estimator. The design then moves forward to the Design Development phase.

Deliverables: Floor plans, reflected ceiling plans, sections, elevation, other illustrative materials; computer images and/or renderings.

DESIGN DEVELOPMENT PHASE (6 weeks)

Design Development (DD) services use the initial design documents from the schematic phase and take them one step further. This phase lays out mechanical, electrical, plumbing, structural, and architectural details. Typically referred to as DD, this phase results in drawings that often specify design elements such as material selections. The level of detail provided in the DD phase is determined by the project requirements. The DD phase often ends with a formal presentation to, and approval by, the owner.

Deliverables: Design Development includes floor plans, sections, millwork, reflected ceiling/lighting plan and elevations with full

dimensions. Outline material specifications are issued at the end of the DD Phase.

CONSTRUCTION DOCUMENT PHASE (8 weeks)

The next phase is Construction Documents (CDs). Once the owner and architect are satisfied with the documents produced during DD, the architect moves forward and produces drawings with greater detail. These drawings typically include specifications for construction details and materials.

Deliverables: The CD phase produces a set of drawings that include all pertinent information required for the contractor to price and build the project.

BID OR NEGOTIATION PHASE

We would suggest cost estimates, provided by others, occur at the completion of Concept Design, Schematic Design, Design Development and Construction Documents. The cost estimate can be used as a reference tool to compare bids from possible General Contractors.

Deliverables: The final deliverable is a construction contract.

CONSTRUCTION PHASE (26 weeks/ 6 months)

CA services begin with the initial contract for construction and terminate when the final certificate of payment is issued. The architect's core responsibility during this phase is to help the contractor to build the project as specified in the CDs as approved by the owner. Questions may arise on site that require the architect to develop architectural sketches: drawings issued after construction documents have been released that offer additional clarification to finish the project properly. During this phase we will also respond to questions in writing by the contractor and will review submittals, material samples and substitution requests. The final month of the construction process is dedicated to punch list and project close out.

PROJECT SCOPE

Renovation of approximately 3,200 sf of Gallery space and 500 sf at gift shop and entry vestibule. Coordination with MEP systems and lighting design.

FEE

Currently we estimate our full service fee including Concept, Schematic Design, Design Development, Construction Documents, Bidding and Construction Observation is $250,000. These fees listed here include architectural design services only.

The breakdown of Basic Services is as follows:

Concept Phase	$30,000
Schematic Design	$42,000
Design Development	$50,000
Construction Documents/Bid	$68,000
Construction Administration	$60,000

Total Architectural Fee: **$250,000**

We assume CA phase is 6 months.

Additional consultants required for this project include MEP engineers Structural Engineer, Lighting Designer and Cost Estimator. Landscape Architects to provide services for Concept Design. See attached proposals.

COMBINED FEE

Ontario Museum of History and Art **Architectural and Engineering Fee Structure**	
Architectural	$250,000
Mechanical / T24 Energy Modeling	$39,353
Electrical	$44,313
Plumbing	$17,073
Data/Telecom/Low Voltage/AV	$18,970
Structural	$5,000
Landscape Design-Concept	$22,000
Lighting Design	$23,000
Commissioning	$12,000
Total Basic Services	**$431,709**

Reimbursables	$5,000
Total Fee Combined	**$436,709**

Supplemental Services
Cost Estimator $11,750

INVOICING

Billing shall be invoiced as work is completed. Invoices are due and payable upon receipt of invoice including reimbursable expenses such as graphic reproduction, travel, mileage and delivery services.

Our hourly rates for the work are as follows:

Fred Fisher	- $400 per hour
Joe Coriaty	- $295 per hour
Project Manager/Architect	- $180 per hour
Project Designer	- $160 per hour
Project Assistant	- $140 per hour

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Niles Boyer Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig, Bonnie Tam Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 17

SUBJECT: A CONSTRUCTION CONTRACT WITH KRESSA, LLC. FOR THE HOMER BRIGGS PARK CONCESSION RENOVATION PROJECT

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute a Construction Contract with Kressa, LLC, of West Covina, California, for the Homer Briggs Park Concession Renovation Project in the amount of $174,150 plus a 10% contingency of $17,415 to address any unforeseen issues that may arise during the construction for a total not-to-exceed contract amount of $191,565; and
B. Authorize the City Manager, or his designee, to execute all documents required for the completion of the project which may include, but is not limited to agreements, assessments, easements, reduction of retention accounts, contract amendments within the authorization limits, and filing a notice of completion at the conclusion of all construction related activities.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities

FISCAL IMPACT: The proposed Construction Contract with Kressa, LLC is in the amount of $174,150 plus a 10% contingency of $17,415 for a total not-to-exceed contract amount of $191,565. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Capital Projects-Measure Q Fund for the Homer Briggs Park Concession Renovation Project.

BACKGROUND & ANALYSIS: The kitchen area of the Homer Briggs Park Concession Stand is in poor condition and in need of additional dry storage areas on the first floor and additional office storage on the second floor of the building. The renovation project will provide improved concession facilities and an improved office area for the users of the ballfield area, including the Ontario Western Little League.

In February 2025, the City solicited bids for Invitation No. 1882 Homer Briggs Park Concession Renovation Project. Seventeen bids were received that met the bid criteria and standards necessary to perform this work. The bid results are listed below:

Vendor Name	Location	Bid Amount
Kressa, LLC	West Covina, CA	$174,150
Metro Builders & Engineers Group, Ltd.	Newport Beach, CA	$192,960
Global Builders, Inc.	Laguna Hills, CA	$217,888
The Stone Collector	Anaheim, CA	$218,000
ENL Building Service, Inc.	Fullerton, CA	$249,700
R Dependable Const, Inc.	San Bernardino, CA	$269,900
IPI Construction	Panorama City, CA	$278,855
KBCI	Rowland Heights, CA	$289,333
RS Construction & Development	Ontario, CA	$312,158
Bridgerock Construction, Inc.	La Puente, CA	$316,150
Reed Family Enterprises, Inc.	Temecula, CA	$317,000
Valmor Construction Services	Menifee, CA	$354,000
Trust General Contracting	Rancho Cucamonga, CA	$358,750
Edra Construction Corporation	Glendora, CA	$388,000
JRH Construction Company, Inc.	Irvine, CA	$404,229
AVA Builders, Inc.	North Hollywood, CA	$450,000
SPEC Construction Co., Inc.	Ontario, CA	$478,000

Kressa LLC, of West Covina, California, submitted the lowest responsible bid at $174,150. Based on their credentials, pricing, and favorable reference checks, Staff recommends awarding a Construction Contract to Kressa LLC for the Homer Briggs Park Concession Renovation Project.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

SECTION 00500 – CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. _____ is made and entered as of _____, by and between City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, sometimes hereinafter called the "City" and **Kressa LLC.,** sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

ARTICLE 1. SCOPE OF WORK.

The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5, below, for the following Project:

Homer Briggs Park Concession Renovation Project

Contractor is an independent contractor and not an agent of the City. The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within 90 (ninety) calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Hundred Seventy-Four Thousand One Hundred Fifty Dollars** (**$174,150**). Payment shall be made as set forth in the General Conditions. The City will pay to Contractor compensation based upon the prices set forth in the Bid Schedule.

ARTICLE 4. LIQUIDATED DAMAGES.

Contractor acknowledges that the City will sustain actual damages for each and every Day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of $50.00 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may

deduct that amount from any money due or that may become due the Contractor under the Contract. This Section does not exclude recovery of other damages specified in the Contract Documents. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

Consistent with Public Contract Code Section 7102, Contractor will be compensated for damages incurred due to delays for which the City is responsible. The parties agree that determining Contractor's exact delay damages is and will continue to be impracticable and extremely difficult. As such, for each calendar day in excess of the Contract Time, the City shall pay to the Contractor $50.00 per day as Reverse Liquidated Damages and not as a penalty or forfeiture. Such amount shall constitute the only payment allowed for any City caused delays and shall necessarily include all overhead, all profits, all administrative costs, all bond costs, all labor, materials, equipment and rental costs and any other costs, expenses and fees incurred or sustained as a result of such delays. Notice of requests for delay damages and additional days shall be provided to the City within five (5) Days from the discovery of the circumstances giving rise to any delay or three (3) Days from the discovery of any latent or subsurface conditions giving rise to a delay.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following :

Notice Inviting Bids
Instructions to Bidders
Bid Forms
Bid Acknowledgement
Bid Schedule
Bid Guarantee
Designation of Subcontractors
Information Required of Bidders
Non-Collusion Declaration Form
Iran Contracting Act Certification
Fleet Compliance Certification
Public Works Contractor DIR Registration Certification
Performance Bond
Payment (Labor and Materials) Bond
Contract for Construction
General Conditions
Special Conditions

Specifications
Addenda
Construction Plans and Drawings
Standard Specifications for Public Works Construction "Greenbook", latest edition, Except Sections 1-9
Applicable Local Agency Standards and Specifications, as last revised
Reference Specifications
Approved and fully executed Change Orders
Permits
Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. In the event of conflict, the various Contract Documents will be given effect in the order set forth in the General Conditions. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

ARTICLE 7. INDEMNIFICATION.

Contractor shall provide indemnification and defense as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City's Office or may be obtained online at http://www.dir.ca.gov and which must be posted at the job site.

ARTICLE 9. FALSE CLAIMS.

Contractor acknowledges that if a false claim is submitted to the City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that the False Claims Act, California Government Code sections 12650, et seq., provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include within their scope false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information. In the event the City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorneys' fees. Contractor hereby acknowledges that the filing of a false claim may the Contractor to an administrative debarment proceeding wherein Contractor may be prevented from further bidding on public contracts for a period of up to five (5) years.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

By: _____
Sheila Mautz, City Clerk

APPROVED AS TO FORM:

By: _____
Best Best & Krieger LLP
City Attorney

KRESSA LLC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

END OF CONTRACT

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

_____
Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☐ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

SECTION 00610 – BOND FORMS

Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Ontario, with its principal place of business at 303 East "B" Street, Ontario, CA 91764, (hereinafter referred to as the "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for **Contract No.**_____, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, ($_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by the City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by the City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under

the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

iii. Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20___.

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title_____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is $_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____
_____
_____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____
_____
_____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

END OF PERFORMANCE BOND

Payment Bond (Labor and Materials).

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Ontario , with its principal place of business at 303 East "B" Street, Ontario, CA 91764 (hereinafter designated as the "City"), by action taken or a resolution passed _____ , 20___, has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: **Contract No._____** (the "Project"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars ($_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating

to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or the City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to, the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

_____
Contractor/ Principal

By_____

Title_____

(Corporate Seal)

_____
Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title_____

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual
☐ Corporate Officer

_____
Title(s)

☐ Partner(s) ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20___, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☐ Corporate Officer

_____
Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☐ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
Title or Type of Document

_____
Number of Pages

_____
Date of Document

_____
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND

SECTION 00700 – GENERAL CONDITIONS

ARTICLE 1 -TERMS; DEFINITIONS

1.1 Defined Terms

A. Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Act of God – An earthquake of magnitude of 3.5 or higher on the Richter scale or a tidal wave.

2. Addenda -- Written or graphic instruments issued prior to the submission of Bids which clarify, correct, or change the Contract Documents.

3. Additional Work -- New or unforeseen work will be classified as "Additional Work" when the Engineer determines that it is not covered by the Contract.

4. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.

5. Bid -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices and other terms for the Work to be performed.

6. Bid Guarantee -- The Bid Bond, cashier's check, or certified check to be made by the Bidder, which is to accompany the Bid as a guaranty of good faith to enter into a written contract.

7. Bidder -- The individual or entity who submits a Bid directly to the City.

8. Change Order ("CO") -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.

9. Change Order Request ("COR") -- A request made by the Contractor for an adjustment in the Contract Price and/or Contract Times as the result of a Contractor-claimed change to the Work.

10. City's Representative – The City of Ontario, and acting through properly authorized agents, such as the Engineer or such other agents acting within the scope of the particular duties entrusted to them. Also sometimes referred to as the "City's Representative" or "Representative" in the Contract Documents. The terms the City and Owner may be used interchangeably

11. Claim -- A demand or assertion by the City or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

12. Contract -- The entire integrated written agreement between the City and Contractor concerning the Work. “Contract” may be used interchangeably with “Agreement” in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.

13. Contract Documents -- The documents listed in Section 00 52 13, Article 5 of the Contract for Construction. Some documents provided by the City to the Bidders and Contractor, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.

14. Contract Price -- Amount to be paid by the City to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.

15. Contract Time -- The number of days or the dates stated in the Contract Documents to: achieve defined milestones, if any; and to complete the Work so that it is ready for final payment.

16. Contractor -- The individual or entity with which the City has contracted for performance of the Work.

1. Contractor’s Designated On-Site Representative -- The Contractor’s Designated On-Site Representative will be identified by the Contractor and shall not be changed without prior written consent of the City.

2. Critical Supply Shortage -- An unusual shortage in materials that is (a) supported by documented proof that Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Contractor at the time it submitted its bid or entered the Contract. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.

3. Day -- A calendar day of 24 hours measured from midnight to the next midnight.

4. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.

5. Demobilization -- The complete dismantling and removal by the Contractor of all of the Contractor's temporary facilities, equipment, and personnel at the Site.

6. Drawings -- That part of the Contract Documents prepared by of the Engineer of Record which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor Submittals are not Drawings as so defined.

7. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

8. Engineer -- Whenever not qualified, shall mean the City Engineer or the Engineer authorized to act for and in behalf of the City, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.

9. Force Majeure Event -- An event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

10. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time, or any substance or material identified as hazardous under any state or federal statute governing handling, disposal and/or cleanup of any such substance or material, whichever is more restrictive.

11. Holiday – Holidays occur on:

    New Year's Day - January 1
    President's Day – Third Monday in February
    Memorial Day - Last Monday in May
    Independence Day - July 4
    Labor Day - First Monday in September
    Veteran's Day - November 11
    Thanksgiving Day - Fourth Thursday in November
    Friday after Thanksgiving
    Christmas Eve – December 24
    Christmas Day - December 25

Day After Christmas – December 26
New Year's Eve – December 31

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

12. Notice of Award -- The written notice by the City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, the City will sign and deliver the Contract.

13. Notice of Completion -- The form which may be executed by the City constituting final acceptance of the Project.

14. Notice to Proceed -- A written notice given by the City to Contractor fixing the date on which the Contractor may proceed with the Work and when Contract Times will commence to run.

15. Project -- The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

16. Record Drawings – The record set of as-builts prepared by the Contractor during the Work in accordance with the requirements of the General Conditions.

17. Recyclable Waste Materials -- Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include, but are not limited to, asphalt, concrete, brick, concrete block, and rock.

18. Sample -- A physical example furnished by the Contractor to illustrate materials, equipment or workmanship; to establish standards by which the Work will be judged.

19. Schedule of Submittals -- A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.

20. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

21. Site -- Lands or areas indicated in the Contract Documents as being furnished by the City upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the City which are designated for the use of Contractor.

22. Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

23. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.

24. Subcontractor -- An individual or entity other than a Contractor having a contract with any other entity than the City for performance of any portion of the Work at the Site.

25. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work.

26. Successful Bidder -- The responsible Bidder submitting a responsive Bid to whom the City makes an award.

27. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.

28. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

29. Unit Price Work -- Work to be paid for on the basis of unit prices as provided by the Contractor in its Bid or as adjusted in accordance with the Contract Documents.

30. Warranty -- A guarantee provided to the City by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this state, whichever is longer.

31. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.2 Terminology.

A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Contractor is implied.

B. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 -PRELIMINARY MATTERS

2.1 Delivery of Contract Documents

A. Within ten (10) Days after receipt of the Notice of Award and before the City will execute the Contract, the Contractor shall furnish and file with the City a signed Contract and the necessary Performance Bond, Payment Bond, and Certificates of Insurance and Endorsements, as well as any other documents specified in the Contract Documents.

2.2 Bonds

A. Contractor shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to the City conditioned upon the faithful performance by the Contractor of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price. Bonds shall be delivered to the City within ten (10) Days after receipt of the Notice of Award and before execution of the Contract by the City.

2.3 Evidence of Insurance

A. Prior to commencing any Work but no later than ten (10) Days after receipt of the Notice of Award, the Contractor shall submit or cause to be submitted any and all Certificates of Insurance and Endorsements, showing that the Contractor has the required insurance, to the attention of the City. Such insurance is to be provided at the sole cost and expense of the Contractor. No Work shall be performed until all of the required insurance has been received and approved.

2.4 Execution of the Contract

A. Upon receipt of the required Contract Documents, the City will execute the Contract, establishing the Effective Date of the Contract.

2.5 Contractor's Failure to Perform

A. Should Contractor fail to comply with timelines provided above, the City shall retain the right to enforce and collect on the Contractor's Bid Guarantee, rescind award to the Contractor and award the Contract to the next lowest responsive, responsible bidder as determined by the City. If the City elects to accept bonds and insurance submitted late, the Contract Times will begin to run as of the date stated in the Notice to Proceed. However, the number of days beyond the original ten (10) Days it took to receive the properly executed Contract and related items may be deducted from the Contract Times.

2.6 Commencement of Contract Times; Notice to Proceed

A. The City will not issue a Notice to Proceed until after the Effective Date of the Contract. Work shall commence within ten (10) Days of the date stated in the Notice to Proceed. The Contract Times begin to run on the date specified in the Notice to Proceed. No Work shall be done at the Site prior to the issuance of the Notice to Proceed.

2.7 Copies of Documents

A. Contractor will be furnished, free of charge, five (5) copies of the Contract Documents. Additional copies may be obtained at cost of reproduction. Contractor shall maintain a clean, undamaged set of Contract Documents, including Submittals, at the Project site.

2.8 Substitution Requests, Schedule of Submittals, and Schedule

A. Substitution Requests. Within thirty-five (35) days of Contract award (unless otherwise specified in the Contract Documents), Contractor shall provide all substitution requests as further described in the General Conditions.

B. Schedule of Submittals. Within five (5) Days after the issuance of the Notice of Proceed (unless otherwise specified in the Contract Documents), Contractor shall submit to the City a Schedule of Submittals that conforms with the requirements of Section 00 72 00, Article 5.21.

C. Schedule. Within ten (10) days after the issuance of the Notice of Proceed (unless otherwise specified in the Contract Documents), the Contractor shall submit a construction schedule that conforms with the requirements of Section 00 72 00, Article 8.2.

2.9 Preconstruction Conference; Designation of Authorized Representatives.

A. Before any Work at the Site is started, a conference attended by the City, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules

referred to herein, procedures for handling Submittals and Shop Drawings, processing applications for payment, and maintaining required records.

B. At this conference the City and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.10 Subcontractor Mobilization Meeting.

A. Prior to the start of each major Subcontractor's Site Work, the Contractor, the involved Subcontractor, and Engineer shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

2.11 Authority of Council; Engineer

A. The City Council has the final authority in all matters affecting the Work. Within the scope of the Contract, the Engineer has the authority to enforce compliance with the Contract Documents. The Contractor shall promptly comply with instructions from the Engineer.

B. The decision of the Engineer is final and binding on all questions relating to:

1. quantities;

2. acceptability of material, equipment, or work;

3. execution, progress or sequence of work;

4. interpretation of the Plans, Specifications, or other Contract Documents; and

5. Any other areas specifically identified in the Contract Documents or under the law.

C. Compliance with instructions from the Engineer shall be a condition precedent to any payment under the Contract, unless otherwise ordered by the City Council.

2.12 Mobilization

A. When a Bid item is included in the Bid Schedule for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate. When no bid item is provided for mobilization payment for such costs will be deemed to be included in the other items of the Work.

B. Payment for mobilization based on the lump sum provided in the Bid Schedule, shall constitute full compensation for all such Work. No payment for mobilization will be made until all of the listed items have been completed to the satisfaction of the Engineer. The scope of the Work included under mobilization shall include, but shall not be limited to, the following principal items:

1. Obtaining and paying for all bonds, insurance, and permits.

2. Moving on to the Project Site of all Contractor's plant and equipment required for the first month's operations.

3. Installing temporary construction power, wiring, and lighting facilities, as applicable.

4. Establishing fire protection system, as applicable.

5. Developing and installing a construction water supply, as applicable.

6. Providing and maintaining the field office trailers for the Contractor, if necessary, and the Engineer (if specified), complete, with all specified furnishings and utility services.

7. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.

8. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.

9. Arranging for and erection of Contractor's work and storage yard.

10. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.

11. Full-time presence of Contractor's superintendent at the job Site as required herein.

12. Submittal of construction schedule as required by the Contract Documents.

ARTICLE 3 -CONTRACT DOCUMENTS; INTENT

3.1 Examination of Drawings, Specifications, and Site of Work

A. Examination of Contract Documents; Site. Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project Site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.

B. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

C. Quality of Parts, Construction and Finish. All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.

D. Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all Applicable Laws, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

3.2 Intent of Contract Documents

A. The Contract Documents are complementary; what is required by any one will be binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to the City.

B. The Contractor shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project.

C. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in these General Conditions.

D. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.

E. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.3 Reference Standards.

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of opening of Bids (or on the Effective Date of the

Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of the City, Contractor, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the City, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.4 Reporting and Resolving Discrepancies; Order of Precedence.

A. Reporting Discrepancies.

1. The Contract Documents are intended to be fully cooperative and complementary. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to the City any conflict, error, ambiguity, or discrepancy which Contractor discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from the City before proceeding with any Work affected thereby. If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, then Contractor shall promptly submit a written Request for Information (RFI) to the City. Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Contractor before receipt of an amendment or supplement shall be at Contractor's own risk.

B. Order of Precedence.

1. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

   a. Permits from other agencies as may be required by law

   b. Change Orders, most recent first

   c. Contract

   d. Addenda, most recent first

   e. Special Conditions

   f. Specifications

g. Construction Plans and Drawings(Contract Drawings)

h. General Conditions

i. Instructions to Bidders

j. Notice Inviting Bids

k. Contractor's Bid (Bid Forms)

l. Standard Specifications for Public Works Construction "Greenbook" latest edition (Sections 1-9 Excluded)

m. Applicable Local Agency Standards and Specifications

n. Standard Drawings

o. Reference Documents

2. With reference to the Drawings the order of precedence shall be as follows:

a. Figures govern over scaled dimensions

b. Detail drawings govern over general drawings

c. Addenda/Change Order drawings govern over Drawings

d. Contract Drawings govern over Standard Drawings

e. Contract Drawings govern over Shop Drawings

3. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

3.5 Amending and Supplementing Contract Documents.

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by Change Order or written amendment to the Contract duly executed by the parties.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to the City, by one or more of the following ways:

1. The City's review of a Submittal, Shop Drawing, Sample or substitution request without exception (subject to the provisions of the Contract Documents); or

2. The City's issuance of a response to an RFI.

C. However, no review or RFI response will reduce or modify the Contractor's obligation to fully satisfy and comply with the requirements of the Contract Documents.

3.6 Reuse of Documents.

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer of Record or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of the City and Engineer of Record and specific written verification or adaptation by Engineer of Record.

B. The prohibitions of this Article will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 -INDEMNIFICATION; INSURANCE

4.1 Indemnification

A. To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the City's choosing), indemnify and hold harmless the City, its officials, officers, agents, employees, and representatives, and each of them from and against:

1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City or its officials, officers, employees, or authorized volunteers.

2. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.

3. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;

4. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

B. Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the counsel of the City choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

C. The provisions of this Article shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article.

4.2 Insurance

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required hereunder. Contractor shall not allow any Subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause. Contractor shall furnish the City with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the City. All certificates and endorsements must be received and approved by the City before Work commences.

A. **Additional Insureds; Waiver of Subrogation**. The City, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. All insurance coverage maintained or procured

pursuant to this Contract shall be endorsed to waive subrogation against the City, its officers, officials**,** agents, employees or volunteers or shall specifically allow Contractor - or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to the City prior to commencement of work.

B. **Workers' Compensation Insurance**. The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the City, if in the form and coverage as set forth in the Contract Documents.

C. **Employer's Liability Insurance**. Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars ($1,000,000.00) per person per accident. Contractor shall provide the City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the City.

D. **Commercial General Liability Insurance**. Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or

suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the City, and shall not preclude the City from taking such other actions available to the City under other provisions of the Contract Documents or law.

2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.

3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.

4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

E. **Automobile Liability Insurance**. Contractor shall provide Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, two million dollars ($2,000,000) per accident for bodily injury and property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the City. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

F. **Builder's Risk ["All Risk"]**

1. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The City accepts no responsibility for the Work until the Work is formally accepted by the City. The Contractor shall

provide a certificate evidencing this coverage before commencing performance of the Work.

2. The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and the City, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by the City.

3. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to the City to ensure adequacy and sublimit.

4. In addition, the policy shall meet the following requirements:

a. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.

b. Coverage shall include all materials stored on site and in transit.

c. Coverage shall include Contractor's tools and equipment.

d. Insurance shall include boiler, machinery and material hoist coverage.

G. **Contractor's Pollution Liability Coverage**. Contractor shall provide pollution liability insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 aggregate.

H. Contractor shall require all tiers of Subcontractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by the City. Contractor shall make certain that any and all Subcontractors hired by Contractor are insured in accordance with this Contract. If any Subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the City harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the City as a result thereof.

I. Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, if Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

J. **Form and Proof of Carriage of Insurance**

1. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the City's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the City the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

2. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, officers, agents, employees, and volunteers.

3. The Certificates(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the City prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the City may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the City has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

4. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

5. The City reserves the right to adjust the monetary limits and types of insurance coverages during the term of this Contract including any extension thereof if, in the City's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.

6. Contractor shall report to the City, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.

7. Products/completed operations coverage shall extend a minimum of three years after the project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The City, its officers, officials, agents employees, and volunteers shall be included as insureds under the policy.

ARTICLE 5 -CONTRACTOR RESPONSIBILITIES; REGULATORY REQUIREMENTS

5.1 Applicable Laws

A. Contractor shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither the City nor the City's Representative shall be responsible for monitoring Contractor's compliance with any Applicable Laws. If Contractor performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

5.2 Permits and Licenses

A. Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Contractor, including, but not limited to, excavation permit, for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the City, unless otherwise specified in the Contract Documents.

B. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the City's responsibility pursuant to the Contract Documents.

C. Before acceptance of the Work, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the City.

5.3 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Laws of the place of the Project which are applicable during the performance of the Work. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory

interest subject to personal property taxation for which Contractor will be responsible.

5.4 Traffic Control

A. Traffic control plans, if required, shall be prepared at Contractor's expense. Traffic control shall be performed at Contractor's expense in accordance with the requirements of the City and/or the local agency with jurisdiction. Costs for traffic control plans, implementation of traffic control, or traffic signal services required by the City shall be included in the Contractor's Bid.

B. All warning signs and safety devices used by the Contractor to perform the Work shall conform to the requirements contained in the State of California, Department of Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones" or to the requirements of the local agency. The Contractor shall also be responsible for all traffic control required by the agency having jurisdiction over the Project on the intersecting streets. Contractor must submit a traffic control plan to the agency having jurisdiction over the Project for approval prior to starting Work.

C. The Contractor's representative on the site responsible for traffic control shall produce evidence that he/she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the agency of jurisdiction. Businesses and residences adjacent to the Work shall be notified forty-eight (48) hours in advance of closing of driveways. The Contractor shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of pipe or other material will be allowed in traveled right-of-ways after working hours unless otherwise approved by the Engineer.

5.5 Safety

A. Contractor shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Contractor shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

B. The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq*.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with

California Code of Regulations, Title 8, Section 1512. The Contractor shall submit an Illness and Injury Prevention Program and a Project Site specific safety program to the City prior to beginning Work. Contractor shall maintain a confined space program that meets or exceeds the City's standards. Contractor needs to make themselves aware of the City's safety policies and procedures, and shall meet or exceed all City standards in areas where the City must enter to perform inspections.

C. Hazard Communication Programs. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Applicable Laws.

5.6 Hazardous Materials

A. The City shall not be responsible for any Hazardous Waste brought to the site by the Contractor. If the Contractor: (i) introduces and/or discharges a Hazardous Waste onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the Contractor shall hire a qualified remediation contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Contractor perform Work for which it is not qualified. The City, in its sole discretion, may require the Contractor to retain at Contractor's cost an independent testing laboratory.

B. If the Contractor encounters a Hazardous Waste which may cause foreseeable injury or damage, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify the City (and promptly thereafter confirm such notice in writing).

C. Subject to Contractor's compliance with this Article 5.6(B), the City shall verify the presence or absence of the Hazardous Waste reported by the Contractor, except as qualified under Article 5.6(A) and Article 5.6(B) in the event such material or substance is found to be present, verify that the levels of the hazardous material are below OSHA Permissible Exposure Levels and below levels which would classify the material as a state of California or federal hazardous waste. When the material falls below such levels, Work in the affected area shall resume upon direction by the City.

D. Contractor shall indemnify and hold harmless the City from and against claims, damages, losses and expenses, arising from a Hazardous Waste on the Project Site, if such Hazardous Waste exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste, and was either i) shown on the Contract Documents or information available to bidders; or (ii) brought to the site by Contractor. Nothing in this paragraph shall obligate the Contractor to indemnify the City in the event of the sole or active negligence or willful misconduct of the City, its officers, agents, or employees.

5.7 Sanitary Facilities.

A. Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with local codes and ordinances. Toilets shall be placed inside sealed secondary containment devices installed on a flat, level surface. Accumulated liquids in the secondary containment devices shall be properly removed and legally disposed without spillage onto the ground. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by Cal/OSHA shall be the responsibility of the Contractor.

5.8 Dust Control

A. Contractor, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

5.9 Air Pollution Control

A. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

B. Without limiting the foregoing, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over the Project and/or California Air Resources Board (CARB). Contractor shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine. Contractor shall indemnify the City against any fines or penalties imposed by the air quality management district, CARB, or any other governmental or regulatory agency for its violations of Applicable Laws as well as those of its subcontractors or others for whom Contractor is responsible under its indemnity obligations provided for in the Contract Documents.

5.10 Water Quality Management and Compliance

A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the Work. The Contractor hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

B. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 13000 et seq.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California State Water Resources Control Board ("State Water Board") Order Number 2009-0009-DWQ (NPDES Permit No. CAS000002), as amended by Order Numbers 2010-0014-DWQ, 2012-0006-DWQ, 2022-0057-DWQ, and any subsequent amendment to or renewal thereof, State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004), Santa Ana Regional Water Quality Control Board No. R8-2010-0036 (NPDES No. CAS618036), and any amendment or renewal thereof.

C. Contractor shall comply with all conditions of the State Water Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Construction General Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall comply with the lawful requirements of the City, and any other applicable municipality, drainage district, or other local agency with jurisdiction over the location where the Work is to be conducted, regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

D. Unless otherwise specified in the Special Conditions or other portion of the Contract Documents, the City has not prepared a Storm Water Pollution Prevention Plan ("SWPPP") or other storm water compliance plan for the Project Site. A SWPPP must be prepared and Best Management Practices (BMP) must be implemented for the Project Site. A qualified SWPP Developer ("QSD") and a Qualified SWPPP Practitioner ("QSP") for the project is required to prepare and implement the SWPPP for the Project Site, including condition and documenting weekly inspections of the project, pre- and post-storm event inspections and inspections every 24 hours, for annual reporting and proper site management. The Contractor shall retain personnel serving as QSD(s) that shall have an active and current certification. Engineering and/or geology work performed for the site shall be conducted by a California licensed professional.

Contractor shall be responsible for filing the Notice of Intent ("NOI") and for obtaining coverage under the Construction General Permit. This includes filing all necessary documentation including the Permit Registration Documents ("PRDs") through the Stormwater Multiple Applications and Report Tracking System ("SMARTS"); preparing and implementing a SWPPP for the Work site; implementing all other provisions, and monitoring and reporting requirements required by the Construction General Permit; and providing a Qualified SWPPP Developer ("QSD") and Qualified SWPPP Practitioner ("QSP"), as necessary for all Work site activities, including but not limited to preparation and submittal of all reports, plans, inspections, and monitoring information in compliance with the Construction General Permit. All

submittals shall be coordinated with the City's Legally Responsible Person and Authorized Signatory as those terms are defined in the Construction General Permit. Before any NOI, PRD, SWPPP, or other Construction General Permit-related document may be submitted to the State Water Board or implemented on the Project site, it must first be reviewed and approved by the City and/or City's designee. Contractor shall include all costs of compliance with specified requirements in the Contract Price.

E. The City retains the right to develop its own documentation for the Project site, including but not limited to the SWPPP, and in the alternative may require Contractor to adopt and implement portions of the City developed SWPPP. The City expressly reserves the right to procure coverage under the Construction General Permit for the Work site if Contractor fails to draft satisfactory PRDs or SWPPP or otherwise fails to proceed in a manner that complies with the requirements of the Construction General Permit. The City additionally reserves the right to hire additional contractors to maintain compliance at the Work site. Whether Contractor has adequately maintained compliance with the Construction General Permit shall be the City's sole determination. Any costs incurred by the City in procuring coverage under the Construction General Permit, or drafting and/or implementing a SWPPP for the Work site shall be paid by Contractor.

F. Notwithstanding the above, for those Work sites where construction activity results in the disturbance of less than one acre of total land area and/or do not need coverage under the Construction General Permit, the Contractor shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004) and any amendment to or renewal thereof.

G. Failure to comply with the Construction General Permit, laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in these Contract Documents, Contractor agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, fees, costs, expenses, or losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit, laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

H. The City reserves the right to defend any enforcement action or civil action brought against the City for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and any relevant enforcement entity.

5.11 Environmental Quality Protection

A. The Contractor shall comply with all requirements of applicable federal, state, and local environmental rules and regulations. Any infractions of said rules and

regulations by the Contractor during the term of the Contract, which result in penalties, will be the responsibility of the Contractor. The City operates under a number of environmental permits issued by various agencies. If due to an action, inaction, or negligence by the Contractor, the City becomes subject to non-compliance penalties, the cost of such penalties shall be borne by the Contractor.

B. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.

C. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to City within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal. If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any City directed changes to the Work as a result of a siting will be pursuant to the Contract Documents. Any costs or delays incurred by City or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.

D. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor shall notify the construction/archeological monitor and/or the City Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the construction/archeological monitor and/or City within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource. If directed by the City Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the City Representative and the construction/archeological monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any City directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents. Should

Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify City pursuant to the Contract Documents.

5.12 Excessive Noise

A. Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements.

B. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

5.13 Diversion of Recyclable Waste Material

A. In compliance with the applicable City's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by the City or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

5.14 Inspector's Field Office.

A. If required by the City, the Contractor shall be responsible for providing the inspector's field office. The office shall be a substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock clasp. The office shall have heating and air conditioning and shall be equipped with a telephone, a telephone answering machine, an ability to connect to the internet, and a fax machine at Contractor's expense. The field office shall be provided within 20 Days of the Notice to Proceed.

B. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local

telephone service, and adequate heat and air conditioning for the field office until authorized removal.

5.15 Contractor's Supervision.

A. Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the City. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

5.16 Workers.

A. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.

B. Any person in the employ of the Contractor whom the City may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

5.17 Independent Contractors.

A. Contractor shall be an independent contractor for the City and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of the City and are not entitled to benefits of any kind normally provided employees of the City, including but not limited to, state unemployment compensation or workers' compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.

5.18 Verification of Employment Eligibility.

A. By executing the Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the City to terminate the Contract for cause: (1) failure of the Contractor or its Subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

5.19 Labor.

A. Hours of Work

1. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall

constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

2. The Contractor and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

3. The Contractor shall pay to the City a penalty of twenty-five dollars ($25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.

4. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the City.

5. If Contractor gives notice of an inspection pursuant to the Contract Documents, the City will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Requested inspections before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two (2) Days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to city/county ordinance.

6. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project Site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on City-observed Holidays, unless otherwise approved by the City:

a. Powered Vehicles

b. Construction Equipment

c. Loading and Unloading Vehicles

d. Domestic Power Tools

B. <u>Payroll Records; Labor Compliance</u>

1. Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. In accordance with Labor Code section 1771.4, the Contractor and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3. Any stop orders issued by the DIR against Contractor or any Subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any Subcontractor.

4. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the City. The Contractor shall also provide the following:

a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.

5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

7. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars ($100.00) to the City for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

8. The responsibility for compliance with this Article shall rest upon the Contractor.

C. Prevailing Rates of Wages

1. The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the City's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

2. The Contractor shall forfeit as a penalty to the City not more than Two Hundred Dollars ($200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the DIR for such work or craft in which such worker is employed for any public work done under the Contract by it or by any Subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

3. Contractor shall post, at appropriate conspicuous points on the Project Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

D. Public Works Contractor Registration

1. Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

E. Employment of Apprentices

1. Contractor and all Subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices.

2. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

3. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars ($100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

F. Nondiscrimination/Equal Employment Opportunity

1. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

G. Debarment of Contractors and Subcontractors

1. Contractors or Subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Contractor shall be responsible for the payment

of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

5.20 Subcontracts.

A. Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the Work. Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the City.

B. The City reserves the right to accept all subcontractors. The City's acceptance of any Subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

C. Prior to substituting any Subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

5.21 Progress Meetings

A. The Contractor shall schedule and hold regular progress meetings at least weekly and at other times as requested by Engineer or as required by progress of the Work. The Contractor, City, and all Subcontractors active on the Site shall attend each meeting. Contractor may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors. The City will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Contractor shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

5.22 Submittals

A. Schedule of Submittals. Within five (5) Days after the Notice to Proceed (unless otherwise specified in the Contract Documents), Contractor will prepare and deliver a Schedule of Submittals to the City that has been fully integrated with the progress schedule and identifies each Submittal required by the Contract Documents as well as the date on which Contractor will deliver each Submittal to the City. Each Submittal must be delivered to the City at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Contractor is responsible for any schedule delays resulting from the Submittal process.

B. Submittal Procedures.

1. Contractor will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:

a. Submittals must be transmitted electronically.

b. Transmittals will be sequentially numbered. Contractor to mark revised Submittals with original number and sequential alphabetic suffix.

c. Each Submittal will identify the Project, Contractor, Subcontractor and Supplier, pertinent Drawing and detail number, and Specification Section number appropriate to Submittal.

d. By transmitting a Submittal, Contractor certifies it has reviewed and approved each Submittal, verified products required, field dimensions, adjacent construction Work, and that coordination of information is according to requirements of the Work and Contract Documents.

e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.

f. When Submittal is revised for resubmission, Contractor shall promptly address the City's comments and resubmit. Contractor shall identify changes made since previous submission.

g. The City's review of Shop Drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called the City's attention to such deviations at time of submission and the City has taken no exception to the deviation. The City's review of Shop Drawings shall not relieve Contractor from responsibility for errors in Shop Drawings.

h. Submittals not required by the Contract Documents or requested by the City will not be acknowledged or processed.

i. Incomplete Submittals will not be reviewed by the City. Delays resulting from incomplete Submittals are not the responsibility of the City.

j. Contractor shall not be entitled to any extension of the Contract Times as a result of the Submittal process.

k. Contractor shall allow a minimum of 20 working days for review of Submittals unless otherwise specified in the Contract Documents.

2. Where a Submittal, Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to the City review and approval of the pertinent submittal will be performed at the sole risk and expense and responsibility of Contractor.

C. Schedule Milestone for Submittals. Contractor must submit all Submittals required by the Contract Documents in accordance with the Schedule of Submittals. If Contractor fails to submit the Submittals in accordance with the Schedule of Submittals, Contractor will be solely liable for any delays or impacts caused by the delayed Submittal, whether direct or indirect. Contractor will be liable for the time calculated from the date the Submittal is due until the date a compliant Submittal is

made. A compliant Submittal will be one that is complete and satisfies the requirements of the Contract Documents.

5.23 Shop Drawings and Sample Submittal Procedures.

A. Before submitting each Shop Drawing or Sample, Contractor shall have:

1. Reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

2. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

3. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

4. Determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

B. With each Submittal, Contractor shall give the City specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample Submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to the City for review and approval of each such variation.

C. Shop Drawings.

1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the City the services, materials, and equipment Contractor proposes to provide and to enable the City to review the information for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.

3. Shop Drawings for steel structures shall consist of shop details, erection and other working Drawings showing details, dimensions, sizes of members and other information necessary for the complete fabrication and erection of the metal work.

4. Shop Drawings of concrete structures shall consist of such detailed drawings as may reasonably be required for the successful prosecution of the Work and which are not included in the Drawings furnished by the Engineer. These may include

drawings for false work, bracing, centering and form work, masonry layout diagrams, and diagrams for bent reinforcement.

5. Contractor shall make revisions and provide additional information when required by authorities having jurisdiction.

D. Samples. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable the City to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.

E. City's Review.

1. The City will review Shop Drawings and Samples in accordance with the Schedule of Submittals. The City's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. The City review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. The City's review and acceptance shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless the City has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample.

F. Resubmittal Procedures. Contractor shall make corrections required by the City and shall return corrected Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by the City on previous Submittals.

5.24 Record ("As-Built") Drawings.

A. The Contractor shall maintain one record set of Contract Documents at the Site or digitally in an acceptable format. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Drawings. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical

locations. Said Drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. Any required as-built drawings of civil engineering elements of the Work shall be prepared by a registered civil engineer.

B. These master Record Drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders, shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date. Record Drawings shall be accessible to the Engineer at all times during the construction period. Failure on the Contractor's part to keep Record Drawings current could result in withholding partial payment.

C. Upon completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to the Engineers. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to the City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.

D. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Record Drawings shall be included in Contractor's bid and distributed in the Bid Schedule. No additional compensation shall be made to the Contractor for this Work.

5.25 Layout and Field Engineering.

A. The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed.

5.26 Separate Contracts and Cooperation.

A. Separate Contracts. The City reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.

B. Cooperation. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the City in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily

and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project Site.

5.27 Work Site.

A. Limitation of Use of Site and Other Areas. Rights-of-way, easements, or rights-of-entry for the Work will be provided by the City. Unless otherwise specified in the Special Provisions, the Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. The Contractor shall indemnify and hold the City harmless from all claims for damages caused by such actions. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to City or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

B. Site Maintenance. During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws. The Contractor shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal.

C. Cleaning. Prior to Completion of the Work, Contractor shall clean the Site and make it ready for utilization by the City. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

5.28 Utility Usage.

A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Contractor shall remove all temporary distribution systems. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. All permanent meters installed shall be listed in the Contractor's name until the Work is accepted. For Work to be performed in existing City facilities, Contractor may use the City's existing utilities, provided such use is reasonable under the circumstances. If Contractor uses the City utilities, it will not need to

compensate the City for reasonably consumption of utilities, but Contractor will be responsible for any excessive, unreasonable or wasteful utility usage. Amounts due the City under this section may be deducted from progress payments.

5.29 Protection of Work and Property.

A. The Contractor shall digitally record video and take photographs of the Project site and adjacent improvements in a manner and quality that clearly depicts the existing condition of the Project Site and adjacent improvements immediately prior to the start of Work (minimum 1080p video and 4MP photo). All videos and photographs shall be date and time stamped. The Contractor shall submit the video and photos in digital format on a memory stick before the commencement of Work, along with a map outlining the route and locations of the videos and/or photographs. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the City. All Work shall be solely at the Contractor's risk.

B. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

C. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

D. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:

1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.

2. Provide substantial barricades around any shrubs or trees indicated to be preserved.

3. Deliver materials to the Site over a route designated by the City.

4. Provide any and all dust control required and follow the applicable air quality regulations as appropriate. If the Contractor does not comply immediately with a notice from the City or a public agency responsible for air quality, the City shall have the authority to provide dust control and deduct the cost from payments to the Contractor.

5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the City. Contractor shall not unreasonably encumber the Site with its materials.

6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the City, at no cost to the City.

7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the City.

8. Preserve and protect from injury all buildings, pole lines and all directional, warning and mileage signs that have been placed within the right-of-way.

9. At the completion of work each day, leave the Work and the Site in a clean, safe condition.

10. Comply with any stage construction and/or traffic handling plans. Access to residences and businesses shall be maintained at all times, except with the City's written approval. Any request for approval to reduce or restrict access to residences and business must be submitted to the City at least seven (7) Days in advance, and the City may issue or withhold approval in its sole discretion.

E. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the work involved in the protection and preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.

F. Should damage to persons or property occur as a result of the Work, Contractor shall promptly notify the City, in writing. Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The City shall be entitled to inspect and copy any such documentation, video, or photographs.

G. Contractor shall maintain all investigation documentation including video and/or photographs for a minimum of four (4) years following completion of the Project.

5.30 Emergencies.

A. In emergencies affecting the safety or protection of persons or the Work or Property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the City or the Engineer, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

ARTICLE 6 -MATERIALS; INSPECTION

6.1 Access to Work.

A. The City, Engineer, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs.

6.2 Materials.

A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Contract within the Contract Time. Unless otherwise specified, all materials, parts, and equipment furnished by the Contractor in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.

B. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the City free from any claims, liens, or charges.

C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work. Materials shall be stored on the Project Site in such manner so as not to interfere with any operations of the City or any independent contractor.

D. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the City shall not be liable for Contractor's failure to so. Except for an adjustment to Unit Price Work for item overruns and underruns in accordance with the Contract Documents, no additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Schedule, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

6.3 Test and Inspections.

A. Inspection and Testing of Work and Materials

1. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the City, Contractor shall promptly inform the City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for City testing and inspection shall be paid by the City. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.

2. The Contractor shall pay for the cost of any minimum "show up" costs of a materials testing technician that was called for by the Contractor but ultimately the Contractor work was not ready for the inspection. Any such costs shall be deducted from any amounts due to the Contractor.

3. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.

4. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the City, and not by Contractor. Unless otherwise stated and as provided by the Contract Documents, the City shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

5. Reexamination of Work may be ordered by the City. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the City shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

B. Testing of Materials

1. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the City so that the City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.

2. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

3. Unless otherwise specified in the Special Provisions, all initial testing and a reasonable amount of retesting will be performed under the direction of the Engineer, and at no expense to the Contractor. The Contractor shall notify the Engineer in writing, at least 15 days in advance, of its intention to use materials for

which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed supplier and source of material. If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the Work, it will be the Contractor's responsibility to re-notify the Engineer when samples which are representative may be obtained.

4. A Certificate of Compliance shall be furnished to the Engineer prior to the use of any material or assembled material for which these Specifications so require or if so required by the Engineer. The Engineer may waive the materials testing requirements and accept a Certificate of Compliance. Material test data may be required by the Engineer to be included with the submittal. Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The submission of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection by the Engineer whether in place or not.

5. Copies of mill certificates of composition and quality of all component materials (reinforcing steel, structural steel, lumber, etc.) incorporated in the construction of the Work shall be provided to the City at the time of delivery. City shall retain the right to reject any raw material not provided with a mill certificate at the time of delivery.

6. If, after incorporating such materials into the Work, it is found that sources of supply that have been approved do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from other approved sources. If any product proves unacceptable after improper storage, handling or for any other reason it shall be rejected, not incorporated into the Work, and shall be removed from the Project Site all at the Contractor’s expense.

6.4 Requests for Substitutions.

A. For the purposes of this provision, the term “substitution” shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.

B. Pursuant to Public Contract Code section 3400(b), the City may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.

C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words “or equal.” Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in

the Contract Documents. However, the City has adopted uniform standards for certain materials, processes, and articles.

D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than thirty-five (35) calendar days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the City, the Contractor shall provide the material, method or service specified herein. The City shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.

E. Substantiating data as described above shall include, at a minimum, the following information:

1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.

2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.

3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.

4. Information detailing the durability and lifecycle costs of the proposed substitution.

F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.

G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.

H. The Contractor shall bear the costs of all the City work associated with the review of substitution requests.

I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

ARTICLE 7 -SUBSURFACE AND PHYSICAL CONDITIONS; UTILITIES

7.1 Soils Investigations.

A. When a soils investigation report for the Site is available, such report is provided for informational purposes only. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Contractor is required to examine the Site before submitting its Bid and must make whatever tests it deems appropriate to determine the condition of the so

7.2 Ownership of Site Materials Found.

A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Contractor or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by the City. Neither Contractor nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Contractor will, as determined by the City's Representative, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided the City shall have the right to use or consume these materials without payment to a third party.

7.3 Existence of Utilities at the Work Site.

A. Existing Utilities

1. The location of known existing utilities and pipelines are shown on the Plans in their approximate locations. However, nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the Site of the Project.

2. The City will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified by the City in the Contract Documents or which cannot reasonably be inferred from the presence of other visible facilities.

B. Utility Location

1. It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid

interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Article.

2. The locating of utilities shall be in conformance with Government Code Section 4216 et seq. except for the City's utilities located on the City's property and not on public right-of-way.

3. A "High Priority Subsurface Installation" is defined in Government Code Section 4216 (j) as "high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig) or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged."

4. A "Subsurface Installation" is defined in Government Code Section 4216 (s) as "any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewer lines, nonpressurized storm drains, or other nonpressurized drain lines."

5. Pursuant to Government Code Section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days but not more than 14 Days before performing any excavation. The date of the notification shall not count as part of the two-working-day notice. Before notifying the appropriate regional notification center, the Contractor shall delineate the area to be excavated. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service. The Contractor shall furnish to the Engineer written documentation of its contact(s) with the regional notification center prior to commencing excavation at such locations.

6. After the utility survey is completed, the Contractor shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit and in accordance with Government Code Section 4216.4 if the excavation within the "tolerance zone" of a subsurface installation. The Engineer shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities, which are to remain in service for any period subsequent to the construction of the run of pipe involved.

7. The Contractor's attention is directed to the requirements of Government Code Section 4216.2 (c) which provides: "When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the

information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting." The Contractor shall notify the Engineer in advance of this meeting.

C. Utility Relocation and Repair

1. If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Engineer in writing. The Engineer will supply a method for correcting said interferences in accordance with the responsibilities of this section and Government Code Section 4215. To the extent any delay is caused thereby, Contractor shall submit a notice of delay within five (5) Days of discovery of the circumstances giving rise to the delay in accordance with Article 9.1 Change Orders and Time Extensions.

2. Care shall be exercised by the Contractor to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed. If high priority subsurface installations are damaged and the operator cannot be contacted, the Contractor shall call 911 emergency services.

3. The City will compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work. The payment for such costs will be made as provided in Article 9.1 Change Orders and Time Extensions. The Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay is caused by the failure of the City or utility company to provide for removal or relocation of such utility facilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with Article 9.1 Change Orders and Time Extensions and Article 9.3 Time for Completion and Liquidated Damages.

4. The public utility, where it is the owner of the affected utility, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The right is reserved to the City and the owners of utilities or their authorized agents to enter upon the Work area for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct its operations in such a manner as to avoid any unnecessary delay or hindrance to the work being performed by such forces and shall allow the respective utilities time to relocate their facility.

5. When the Contract Documents indicate that a utility is to be relocated, altered or constructed by others, the City will conduct all negotiations with the utility company and the work will be done at no cost to the Contractor, unless otherwise stipulated in the Contract Documents.

6. Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.

D. Construction at Existing Utilities

1. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodates to maintain, all utilities.

2. Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the City Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.

3. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this work, shall be included in Contractor's bid and distributed in the schedule of pay Items. No additional compensation shall be made to the Contractor for this work.

7.4 Trenches

A. Trenches Five Feet or More in Depth.

1. Contractor shall submit to the Engineer at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer. Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.

B. Excavations Deeper than Four Feet.

1. If the Work involves excavating trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly within three (3) Days, and before the excavation is further disturbed, notify the City in writing of any of the following conditions:

a. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

b. Subsurface or latent physical conditions at the site differing from those indicated.

c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract

2. The City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in Article 9.1 Change Orders and Time Extensions.

3. In the event that a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 8 -PROSECUTION OF THE WORK

8.1 Contractor's Means and Methods.

A. Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

8.2 Construction Schedule.

A. General Requirements. The schedule shall be prepared in a Critical Path Method ("CPM") format and in an electronic scheduling program acceptable to the City and as specified in the Contract Documents. Contractor shall deliver the schedule and all updates to the City in both paper and electronic form. The electronic versions shall be in the format and include all data used to prepare the schedule. Copies are not acceptable.

B. Schedule. The receipt or approval of any schedules by the City shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project.

Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract Time. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the City.

C. Schedule Contents. The schedule shall allow enough time for inclement weather. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall include appropriate time allowances and constraints for submittals, items of interface with Work performed by others, and specified construction, start-up and performance tests. All float shall be owned by the Project. Schedules indicating early or late completion shall not modify or have any effect on the Contract Time, regardless of whether the schedules are reviewed and/or accepted by the City. For purposes of determining Liquidated Damages, the Contract Time shall control and may only be altered by a duly authorized Change Order.

D. Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the City: (1) prior to the start of construction, if there are any changes to the initial schedule; (2) with each progress payment request; and (3) whenever requested to do so by the City. The City may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule. Upon the City's request, Contractor shall submit any schedules or updates to the City in the native electronic format of the software used to create the schedule. Contractor shall also submit schedules showing a two-week detailed look-ahead at weekly meetings conducted with the City. The two-week look-ahead schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Work within the Contract Time, and it shall clearly state the number of staff to be used on each daily segment of the Work.

E. Acceptance. Acceptance of the schedules by the City will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Contractor from Contractor's full responsibility therefor.

F. Recovery Schedule.

1. Should any of the following conditions exist, City may require Contractor to prepare, at no extra cost to City, a plan of action and a recovery schedule for completing the Work and achieving all contractual milestones within the allotted Contract Time:

a. The Contractor's monthly progress report indicates delays that are, in the opinion of City, of sufficient magnitude that City questions the Contractor's ability to complete the Work;

b. The schedule shows the Contractor to be thirty (30) or more days behind the critical path at any time during construction;

c. The Contractor desires to make changes in the logic or the planned duration of future activities of the schedule which, in the opinion of City, are major in nature.

2. The recovery schedule shall include proposed revisions to the Construction Schedule, demonstrating how Contractor intends to achieve all contractual milestones including Contract completion within the allotted Contract Time. The submittal shall include a narrative describing the actions planned by the Contractor to recover the schedule.

3. Contractor shall submit the Recovery Schedule within seven (7) Days of City's request. If Contractor asserts that City is responsible for the delay, failure to submit the recovery schedule within seven (7) Days of City's request, will be considered a concurrent delay event attributable to Contractor, and Contractor shall only be entitled to non-compensable adjustments to Contract Times. If Contractor is responsible for the delay, this provision will not limit or affect Contractor's liability and failure to submit the recovery schedule with seven (7) Days of City's request may result in City withholding progress payments or other amounts due under the Contract Documents.

4. Contractor is responsible for all costs associated with the preparation and execution of the recovery schedule, including any necessary recovery actions, which may include, but are not limited to, assignment of additional labor, and/or equipment, shift or overtime work, expediting of submittals or deliveries, overlapping of activities or sequencing changes to increase activity concurrence. Regardless of whether City directs Contractor to prepare a recovery schedule pursuant to this Section, Contractor shall promptly undertake appropriate action at no additional cost to City to recover the schedule whenever the current construction schedule shows that the Contractor will not achieve a milestone and/or complete the Work within the allotted Contract Time.

8.3 Time for Completion and Liquidated Damages

A. Time for Completion. The time for completion set forth in Article 2 of the Contract for Construction shall commence: (1) on the date stated in the Notice to Proceed, or (2) if the Notice to Proceed does not specify a commencement date, then on the date of the Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The City is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the City's receipt or acceptance of the Contractor's proposed earlier completion date. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float. Contractor shall not be entitled to compensation, and the City will not compensate Contractor, for delays which impact early completion. Contractor shall not, under any circumstances, receive additional compensation from the City (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date.

B. Liquidated Damages. If the Work is not completed within the Contract Time(s), it is understood that the City will suffer damage. In accordance with Government Code section 53069.85 and Public Contract Code section 7102, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

C. Inclement Weather. Contractor shall abide by the City's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule. Contractor shall not be entitled to reverse liquidated damages for time extensions resulting from inclement weather.

D. Extension of Time. Contractor's entitlement to an extension of the Contract Time is limited to a City-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its Subcontractors or Suppliers). The City shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Contractor shall not be entitled to an adjustment in the Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

E. Reverse Liquidated Damages. Consistent with Public Contract Code Section 7102, Contractor will be compensated for damages incurred due to unreasonable delays to the critical path for which the City is responsible. The parties agree that determining Contractor's exact delay damages are and will continue to be impracticable and extremely difficult. As such, for each calendar day in excess of the time for completion set forth in Article 2 of the Contract for Construction, the City shall pay to the Contractor the sum stipulated in the Contract per day. Such amount shall constitute the only payment allowed for any City-caused delays and shall necessarily include all overhead, all profits, all administrative costs, all bond costs, all labor, materials, equipment and rental costs and any other costs, expenses and fees incurred or sustained as a result of such delays. Contractor shall not be entitled to reverse liquidated damages for any change in the Work in which Contractor is compensated for overhead and profit through a change in Unit Price Work or a Change Order resulting in a lump sum or allowed mark-up for the additional Work. The amount of reverse liquidated damages shall be reduced by Contractor's concurrent delays.

F. Force Majeure. In accordance with subparagraphs "D" and "E" above, the Contractor shall not be charged liquidated damages, and the City shall not be responsible, for any delays resulting from a Force Majeure Event. If a delay to the critical path results from a Force Majeure Event, the Contractor will be entitled to a time extension but will not receive an adjustment to the Contract Price or any other

compensation. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays.

G. No Damages for Reasonable Delay. The City's liability to Contractor for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

H. Procedure for Time Extensions and Delay Damages. Contractor shall not be entitled to any extension of time or any reverse liquidated damages unless Contractor properly notices the delay and adjustment to compensation and requests a Change Order in accordance with Article 9.1 Change Orders and Time Extensions. Contractor's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Contractor's right to a time extension or reverse liquidated damages.

8.4 Contractor's Responsibility for Work.

A. Until the acceptance of the Work by the Engineer as evidenced in writing, it shall be under the charge and care of the Contractor. The Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work. The Contractor shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work before its completion and acceptance. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City will pay for repair or restoration to damaged Work in excess of 5% of the total Bid.

8.5 Occupancy.

A. The City reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

8.6 Securities for Money Withheld

A. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the City to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the City to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

8.7 The City's Right to Suspend/Terminate the Contract

A. Suspension of Work by the City

1. The City may, at its sole option, decide to suspend at any time the performance of all or any portion of the Work by notice in writing to Contractor. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Contractor shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.

2. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

a. Immediately discontinue Work on the date and to the extent specified in the notice;

b. Place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice;

c. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to the City's Representative of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and

d. Continue to protect and maintain the Work including those portions on which Work has been suspended.

3. Except as provided by this Article, as full and complete compensation for such suspension, Contractor shall be granted an adjustment in the Contract Price based on a negotiated daily rate that reflects the Contractor's actual costs associated with the demobilized condition of the Site and an extension of the Contract Times equal to the number of days performance of Work is suspended; provided, however, that no adjustment of Contract Price or extension of Contract Times shall be granted if the suspension results from Contractor's non-compliance with the requirements of the Contract.

B. Termination for Cause by the City:

1. In the sole estimation of the City, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the City may serve written notice upon the Contractor and its surety of the City's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) Days unless such violations have ceased and arrangements satisfactory to the City have been made for correction of said violations.

2. After expiration of the ten (10) Day period, the City may terminate the Contract by providing a Notice of Termination to the Contractor. The City may take over and complete the Work by any method it may deem appropriate, including enforcement of the Project performance bond. Contractor and its surety shall be liable to the City for any excess costs or other damages incurred by the City to complete the Work. If the City takes over the Work, the City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Site.

3. Upon termination, Contractor shall not be entitled to receive any further payment from the City, except for Work which was duly performed prior to the effective date of the Notice of Termination. Contractor shall submit an invoice for final payment within thirty (30) Days of the effective date of the Notice of Termination. The City may withhold from final payment up to 150% of any disputed amounts, including any amounts which may be necessary to repair defective Work, complete unfinished Work, or are otherwise occasioned by Contractor's failure to perform its duties under the Contract.

C. Termination for Convenience by the City:

1. The City may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, upon ten (10) Days written notice if the City determines that a termination is in the City's interest.

2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the City, the extent of termination, and the effective date of such termination.

3. After receipt of Notice of Termination, and except as directed by the City's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations:

a. Stop Work as specified in the Notice.

b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.

e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.

f. Submit to the City's Representative, within ten (10) Days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents

to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the City's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 Days after the effective date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the City's Termination for Convenience." If the City rejects any costs, Contractor shall be deemed to waive the rejected costs unless Contractor files a Claim within thirty (30) Days of the rejection pursuant to Article 9.2.

g. Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to the City.

4. Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.

5. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the City may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the City or the Contract is terminated.

6. If the City terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

8.8 Completion and Acceptance of Work

A. Final Inspection. Upon written notice from Contractor that the entire Work is complete, the Engineer will promptly make a final inspection with the City and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

B. Final Acceptance. The acceptance of the Work on behalf of the City will be made by the Engineer. Such acceptance by the City shall not constitute a waiver of defects. After Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, Record Documents, and other documents required by the

Contract Documents, the City shall execute a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

8.9 Warranty and Guaranty of Work.

A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor hereby agrees to repair or replace, at the discretion of the City, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year (or as otherwise indicated in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) from the date of the Notice of Completion of the Project without any expense whatever to the City, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.

B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) Days after being notified in writing of required repairs, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder immediately upon demand.

C. In addition to the warranty set forth in this Article, Contractor shall obtain for the City all warranties that would be given in normal commercial practice and assign to the City any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the City with all warranty and guarantee documents prior to final acceptance of the Project by the City as required.

D. When specifically indicated in the Contract Documents or when directed by the Engineer, the City may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the City for installation by the Contractor to be voided or reduced, Contractor shall indemnify the City from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the City

for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.

E. The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.

F. The City shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect or damage, the City shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.

G. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the City may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.

H. Acceptance of Defective Work.

1. If, instead of requiring correction or removal and replacement of defective Work, the City prefers to accept it, the City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to the City's evaluation of and determination to accept such defective Work and for the diminished value of the Work. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by the City. If the acceptance of defective occurs after release of the Project retention, an appropriate amount will be paid by Contractor to the City.

I. The City May Correct Defective Work

1. If Contractor fails within a reasonable time after written notice from the City to correct Defective Work, or to remove and replace rejected Work as required by the City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the City may, after seven (7) Days written notice to Contractor, correct, or remedy any such deficiency.

2. In connection with such corrective or remedial action, the City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the City has paid Contractor but which are stored elsewhere. Contractor shall allow the City, and the agents, employees, other contractors, and consultants of each of

them, access to the Site to enable the City to exercise the rights and remedies to correct the Defective Work.

3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the City correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.

4. If the Change Order is executed after all payments under the Contract have been paid by the City and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to the City. If the Change Order is executed after release of the Project retention, an appropriate amount will be paid by Contractor to the City. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the City correcting Defective Work.

J. Nothing in the warranty or in the Contract Documents shall be construed to limit the rights and remedies available to the City at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 9 -CHANGE ORDERS; DISPUTE RESOLUTION

9.1 Change Orders and Time Extensions

All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. The City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and Contractor's compensation and the time for completion shall be adjusted accordingly. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the Work, including Additional Work, promptly and expeditiously. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

A. Change in Contract Procedures

1. City Directive. The City may direct changes in the Work by delivering a written directive. To the extent the work directive results in a change to compensation or time, Contractor must timely request a Change Order and comply with all Change

Order procedures in accordance with this Article. Notwithstanding issuance of a work directive, Contractor's failure to timely request a Change Order shall constitute a waiver by Contractor of any adjustment to compensation or time extension for Work performed under the directive. The City shall not be liable to Contractor for Work performed or omitted by Contractor in reliance on verbal orders.

2. Contractor's Notice of Change/Delay. If Contractor intends to initiate a Change Order Request, then Contractor shall provide the City with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:

a. If due to unknown subsurface or latent physical conditions, within three (3) Days from the discovery date or prior to the alterations of the conditions, whichever is earlier.

b. If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, which shall be no longer than three (3) Days from the date the Contractor discovers that the Force Majeure Event gives rise to a change, unless that the conditions are such that notice within three (3) Days is not possible or practicable.

c. If due to any other matter that may involve an adjustment to the Contract Time or the Contract Price, within seven (7) days from the discovery date.

To be considered valid and complete, the notice of change/delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs and/or time. If the circumstances give rise to both a cost adjustment and time extension, Contractor shall submit the notice of change and notice of delay concurrently.

3. Request for Change in Compensation and/or Extension of Time. Contractor shall submit a Change Order Request for any adjustment to Contractor's compensation and/or any extension of time. The Change Order Request shall be made prior to incurring any expense and within fourteen (14) Days from either Contractor's notice of change/delay or the City's directive ordering the change. The Change Order Request shall include all of the following information (unless inapplicable to the change):

a. A detailed description of the circumstances giving rise to the request;

b. A complete itemized cost proposal, including itemized pricing for first tier Subcontractors;

c. Supporting documentation for all costs;

d. A time impact analysis showing the impact of the delay to the critical path to completion;

e. If any added costs or information cannot be determined at the time of the Change Order Request, the reason the costs or information cannot be determined at the time; and

f. Certification to the accuracy of the Change Order Request under penalty of perjury.

The time impact analysis shall be in the critical path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule.

The City may demand, and Contractor shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. Contractor shall provide the requested additional information within five (5) Days of the request.

For any costs or information that cannot be determined at the time Contractor submits the Change Order Request, Contractor shall submit to the City notice of the costs or information and all supporting documentation within five (5) Days of when the costs or other information become subject to determination.

4. City's Final Decision on Change Order; Ordered Changes. If the City denies the Change Order Request or disagrees with the proposal submitted by Contractor, it will notify the Contractor, and the City will provide its opinion of the appropriate price and/or time extension. If no agreement can be reached, the City shall have the right to order the Work performed on a time and materials basis or to issue a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The City shall also have the right to order changes in the Work to be performed promptly by the Contractor on a time and materials basis or to issue a unilateral Change Order setting forth the City's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The City's determination shall become final and binding if the Contractor fails to submit a Claim in writing to the City within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the City may reasonably require.

5. Contractor's Waiver of Further Relief. **CONTRACTOR'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE/DELAY AND/OR CHANGE ORDER REQUEST, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.**

   Contractor recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of the City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written

(including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.

6. Change Order Format

a. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

b. The City may designate the forms to be used for notices, requests, and Change Orders. If so designated, Contractor may only use such forms. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the City's Change Order form in an attempt to reserve additional rights.

B. Determining Adjustments to Compensation.

1. Limitation on Costs. Contractor shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.

2. Unit Price Change Orders. When the actual quantity of a Unit Price Work item varies from the Bid Schedule, compensation for the change in quantity will be calculated by multiplying the actual quantity by the unit price. This calculation may result in either an additive or deductive Change Order. Bid items included on the Bid Schedule may be deducted from the Work in their entirety without any negotiated extra costs. Because Unit Price Work includes overhead and profit as determined by Contractor at the time of its Bid submission, no mark up or deduction for overhead and profit will be allowed.

3. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the Contractor and the City.

4. Time and Materials Change Orders. The City may direct the Contractor to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the Contractor exceeds at its own risk.

5. Federally Funded Projects. For any change in price to the Contract, general and administrative expenses shall be negotiated and must conform to the cost principles set forth under at 2 C.F.R. Part 200, subpart E, and profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the Additional Work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

6. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows:

a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon supplier or manufacturer’s invoice.

c. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed. The Contractor shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each items of equipment shall be the rate resulting in the least total cost to the City for the total period of use. The City shall the make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of $1,000 or less.

(i) The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

(ii) All equipment shall, in the opinion of the City, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(iii) Before construction equipment is used on any Additional Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the City, in duplicate, a description of the equipment and its identifying number.

(iv) When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.

d. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:

(i) "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and Subcontractors at cost only, without mark-up. Contractor shall provide the City with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the City may reasonably request.

(ii) For Work performed by the Contractor's forces the allowed mark-up shall not exceed fifteen (15%) percent of labor costs, ten percent (10%) of material costs, and ten percent (10%) of the cost of tools and equipment use.

(iii) For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Subcontractor's Net Cost of the Work to which the Contractor may add up to five percent (5%) of the Subcontractor's Net Cost.

(iv) For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the Subcontractor and Contractor may each add up to an additional five percent (5%) of the Net Cost of the lower tier subcontractor.

(v) No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the City exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.

(vi) Calculation of the mark-up will be subject to the limitations above and to calculation as further detailed in (b)(B)(5) above.

e. Documentation of Time-and-Material Costs.

(i) T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the City's for an approval signature each day that Work is performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the City's agreement to Contractor's entitlement to the cost.

(ii) T&M Summary Sheet. Contractor shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. Contractor's total actual cost shall be

presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Contractor's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the Additional Work.

f. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the Contractor's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:

(i) Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Work;

(ii) Office Expenses. Expenses of Contractor's principal and branch offices;

(iii) Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;

(iv) Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;

(v) Small Tools. Cost of small tools valued at less than $1,000 and that remain the property of Contractor;

(vi) Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;

(vii) Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;

(viii) Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;

(ix) Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.

(x) Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

(xi) Compliance with Federal Cost Principles. If the Project is federally funded, any costs that are not allowable, reasonable and allocable to the Project, under generally accepted accounting principles and the applicable federal requirements.

9.2 Procedure for Resolving Claims.

Contractor shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Article 9.1, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Contractor's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

A. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.

B. Claims. For purposes of this Article, "Claim" means a separate demand by the Contractor for:

1. An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the City;

2. Payment by the City of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or

3. An amount the payment of which is disputed by the City.

A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

C. Filing Claims. Claims governed by this Article may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

D. **Documentation.** The Contractor shall submit all Claims in the following format:

1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made

2. List of documents relating to Claim:

a. Specifications

b. Drawings

c. Clarifications (Requests for Information)

d. Schedules

e. Other

3. Chronology of events and correspondence

4. Narrative analysis of Claim merit

5. Analysis of Claim cost, including calculations and supporting documents

6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested

E. City's Response. Upon receipt of a Claim pursuant to this Article, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after the City issues its written statement.

1. If the City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three (3) Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

2. Within 30 Days of receipt of a Claim, the City may request in writing additional documentation supporting the Claim or relating to defenses or Claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor. The City's written response to the Claim, as further documented, shall be submitted to the Contractor within 30 Days (if the Claim is less than $50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

F. Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

G. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The public entity and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

2. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through

negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.

3. Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

H. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.

I. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of $375,000 or less:

1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

J. Government Code Claim Procedures.

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commending with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.

3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against the City.

4. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Contractor or that should reasonably by known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.**

K. Non-Waiver. The City's failure to respond to a Claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

ARTICLE 10 - MEASUREMENT; PAYMENT

10.1 Cost Breakdown.

A. Lump Sum Work.

1. Contractor shall furnish on forms approved by the City within ten (10) Days of the Notice to Proceed, a schedule of values allocating the entire Contract Price to the various portions of the Work and prepared in such a form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule of values, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's applications for payment. Contractor shall submit the schedule of values prior to submitting its first application for payment, and the City will not issue any payment until it receives and approves the schedule of values.

B. Unit Price Work.

1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and or profit for each separately identified item.

2. Unless otherwise specified, payment will be based on the actual quantities of Work as verified and approved by the Engineer, based on the price per unit as set forth in the Bid.

3. The City or Contractor may initiate a Change Order or Change Order Request to adjust the Contract Price in accordance with Contractor Documents based on actual quantities of Unit Price Work. The City or Contractor may make a claim for an adjustment in the Unit Price in accordance with the Contract Documents if:

a. the quantity of any item of Unit Price Work performed by Contractor differs by twenty-five percent (25%) or more from the estimated quantity of such item indicated in the Contract; and

b. there is no corresponding adjustment with respect to any other item of Work; and

c. Contractor believes that Contractor is entitled to an increase in unit price as a result of having incurred additional expense or the City believes that the City is entitled to a decrease in unit price and the parties are unable to agree as to the amount of any such increase or decrease.

10.2 Progress Estimates and Payment.

A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date Work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid. Contractor shall include any amount earned for authorized Additional Work. Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

B. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the City has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the remainder a further deduction may be made in accordance with Section C below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.

C. The City may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:

1. Payments which may be past due and payable for just claims against Contractor or any Subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.

2. Defective work not remedied.

3. Failure of Contractor to make proper payments to his Subcontractor or for material or labor.

4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.

5. Damage to another contractor or a third party.

6. Amounts which may be due the Count for claims against Contractor.

7. Failure of Contractor to keep the Record Drawings up to date.

8. Failure to provide update on construction schedule as required herein.

9. Site cleanup.

10. Failure to comply with Contract Documents.

11. Liquidated damages.

12. Legally permitted penalties.

D. The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (C)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the City shall be deemed the agent of Contractor and any payment so made by the City shall be considered as a payment made under contract by the City to Contractor and the City shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

E. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The City shall make the progress payment within 30 Days after the receipt of an undisputed and properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the City to make a payment without incurring

interest pursuant to this paragraph shall be reduced by the number of Days by which the Engineer exceeds the seven (7) Day requirement.

F. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the City.

G. The City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

10.3 Final Acceptance and Payment

A. Following the City's acceptance of the Work, the Contractor shall submit to the City a written statement of the final quantities of unit price items for inclusion in the final payment request. The City shall have the right to adjust any estimate of quantity and to correct any error made in any estimate for payment.

B. When the Work has been accepted there shall be paid to Contractor a sum equal to the Contract Price less any amounts previously paid Contractor and less any amounts withheld by the City from Contractor under the terms of the Contract. The final five percent (5%), or the percentage specified in the Notice Inviting Bids where the City has adopted a finding of substantially complete, shall not become due and payable until as required by Public Contract Code section 7107. If the Contractor has placed securities with the City as described herein, the Contractor shall be paid a sum equal to one hundred percent (100%) of the Contract Price less any amounts due the City under the terms of the Contract.

C. Unless Contractor advises the City in writing prior to acceptance of the final five percent (5%) or the percentage specified in the Notice Inviting Bids where the City has adopted a finding of completion, or the return of securities held as described herein, said acceptance shall operate as a release to the City of all claims and all liability to Contractor for all things done or furnished in connection with this Work and for every act of negligence of the City and for all other claims relating to or arising out of this Work. If Contractor advises the City in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due the Contractor, the City may pay the undisputed amount contingent upon the Contractor furnishing a release of all undisputed claims against the City with the disputed claims in stated amounts being specifically excluded by Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Contractor or its sureties from the Faithful Performance Bond, Labor and Material Payment Bond, or from any other obligation under this Contract.

D. In case of suspension of the Contract any unpaid balance shall be and become the sole and absolute property of the City to the extent necessary to repay the City any excess in the cost of the Work above the Contract Price.

E. Final payment shall be made no later than 60 Days after the date of acceptance of the Work by the City or the date of occupation, beneficial use and enjoyment of the Work by the City including any operation only for testing, start-up or commissioning accompanied by cessation of labor on the Work, provided that a release of liens and

claims has been received from the Contractor pursuant to Civil Code section 8136. In the event of a dispute between the City and the Contractor, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

F. Within ten (10) Days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor shall pay each of its Subcontractors from whom retention has been withheld each Subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor if the payment is consistent with the terms of the subcontract.

ARTICLE 11 -MISCELLANEOUS

11.1 Patents.

A. Contractor shall hold and save the City, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this Contract.

11.2 Document Retention & Examination

A. In accordance with Government Code section 8546.7, records of both the City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

B. Contractor shall make available to the City any of the Contractor's other documents related to the Project immediately upon request of the City.

C. In addition to the State Auditor rights above, the City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the City, for a period of four (4) years after final payment.

11.3 Notice.

A. All notices shall be in writing and either served by personal delivery or mailed to the other party. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to the City shall be addressed to the City as designated in the Notice Inviting Bids unless the City designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

11.4 Notice of Third Party Claims

A. Pursuant to Public Contract Code section 9201, the City shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The City is entitled to recover reasonable costs incurred in providing such notification.

11.5 State License Board Notice

A. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

11.6 Assignment of Contract

A. Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the City. Any assignment or change of Contractor's name of legal entity without the written consent of the City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

11.7 Change In Name And Nature Of Contractor's Legal Entity.

A. Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect the City's rights under the Contract, including but not limited to the bonds.

11.8 Prohibited Interests

A. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

11.9 Controlling Law

A. Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall

be governed by the law of the State of California excluding any choice of law provisions.

11.10 Jurisdiction; Venue

A. Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of San Bernardino County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

11.11 Cumulative Remedies.

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Article will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

11.12 Survival of Obligations.

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

11.13 Headings.

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

11.14 Assignment of Antitrust Actions

A. In accordance with §7103.5(b) of the California Public Contract Code, Contractor and Subcontractors must conform to the following requirements:

1. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or Subcontractor offer and agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

2. This assignment must be made and become effective at the time the awarding body tenders to Contractor, without further acknowledgment by the parties.

11.15 All Legal Provisions Included

A. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify City in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to City, he shall bear all costs arising therefrom.

B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Contractor shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.

C. Contractor acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

D. No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.

E. Contractor shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the regulations imposed by California Air Resources Board ("CARB") including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation").

Throughout the Project, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and its subcontractors' fleets including, without limitation, the Certificates of Reported Compliance ("CRCs"), fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from the City.

Contractor shall be solely liable for any and all costs associated with compliance with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation. Contractor shall defend, indemnify and hold harmless the City, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities,

costs, penalties or interest arising out of any failure or alleged failure to comply with the Regulation

F. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by City, at no increase in Contract Price or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

CITY OF ONTARIO

Agenda Report
April 15, 2025

SECTION:
CONSENT CALENDAR

Department: Public Works
Prepared By: Blaine M Ishii
Staff Member Presenting: Tito Haes, Executive Director Public Works
Reviewed By: Andrea Ampig, Bonnie Tam
Approved By:

Submitted To: Council/OHA
Approved: _____
Continued To: _____
Denied: _____
Item No: 18

SUBJECT: A GOODS AND EQUIPMENT PURCHASE AGREEMENT WITH MCLAUGHLIN WASTE EQUIPMENT, INC. FOR COMMERCIAL BIN PARTS

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute a Goods and Equipment Purchase Agreement with McLaughlin Waste Equipment, Inc., of Canyon Country, California, for the purchase of commercial bin parts for a total contract amount not-to-exceed $1,000,000 for up to five (5) years.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The recommended contract award to McLaughlin Waste Equipment, Inc. is for a total not-to-exceed contract amount of $600,000 over a three-year term. Two (2) one-year extensions may be exercised at the City's sole discretion for an additional contract amount of $200,000 per year for a total contract amount not-to-exceed $1,000,000 over the five-year term. The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Integrated Waste Fund for the purchase of commercial bin parts.

BACKGROUND & ANALYSIS: The Integrated Waste Department currently has approximately 14,000 commercial containers of various sizes in service for refuse, recycling, organics and temporary bin service for residential customers. The Department routinely repairs commercial containers in order to prolong their useful life as needed in order to maintain adequate inventory to meet customer needs.

On February 12, 2025, the City solicited quotes for Invitation No. 1867 for Commercial Bin Parts. The following four (4) vendors responded:

Vendor	Location	Amount
DH Caster International	Ontario, CA	$30,481
McLaughlin Waste Equipment, Inc.	Canyon Country, CA	$135,842.82
Wastebuilt Environmental Solutions, LLC	Jurupa Valley, CA	$140,711.11
Blue Angel International LLC	Berkeley, CA	$171,295.69

The criteria used to assess the quotes included the total cost of parts, production design, warranty, and delivery lead time. DH Caster International did not submit quotes for all of the parts listed on the bid and were found non-responsive. Therefore, Staff recommends that this purchase be awarded to McLaughlin Waste Equipment, Inc. since they submitted the lowest quote for all the required criteria.

McLaughlin Waste Equipment, Inc. has been the primary supplier of commercial waste containers to the City for the last five (5) years. Additionally, purchasing the McLaughlin Waste Equipment, Inc. parts will help reduce the inventory of spare parts due to interchangeability with the current bin inventory and provide greater visual continuity with the existing bins throughout the City.

CITY OF ONTARIO
303 EAST B STREET | ONTARIO, CALIFORNIA 91764
(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

ALAN D. WAPNER
MAYOR PRO TEM

JIM W. BOWMAN
DEBRA PORADA
DAISY MACIAS
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
CITY TREASURER

SCOTT OCHOA
CITY MANAGER

CITY OF ONTARIO
GOODS AND EQUIPMENT PURCHASE AGREEMENT

This Goods and Equipment Purchase Agreement ("Agreement") is made and entered as of _____, by and between the City of Ontario, a municipal corporation organized under the laws of the State of California with its principal place of business at 303 East "B" Street, Ontario, California 91764-4196, County of San Bernardino, State of California ("City"), and McLaughlin Waste Equipment, Inc., a **Corporation,** with its principal place of business at **17000 Sierra HWY, Canyon Country, California 91351** ("Supplier"). City and Supplier are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

Section 1. DEFINITIONS.

A. "Goods" means all machinery, equipment, supplies, items, parts, materials, labor or other services, including design, engineering and installation services, provided by Supplier as specified in Exhibit "A," attached hereto and incorporated herein by reference.

B. "Delivery Date(s)" means that date or dates upon which the Goods is to be delivered to City, ready for approval, testing and/or use as specified in Exhibit "B."

Section 2. MATERIALS AND WORKMANSHIP.

When Exhibit "A" specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without City's written approval. Machinery, equipment or material installed in the Goods without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit "A" as equal to any particular standard, City will decide the question of equality. When requested by City, Supplier will furnish City with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Goods. Material samples will be submitted at City's request.

Section 3. INSPECTIONS AND TESTS.

City shall have the right to inspect and/or test the Goods prior to acceptance. If upon inspection or testing the Goods or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained in Exhibit "A," then without prejudice to any other rights or remedies, City may reject the Goods or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City's right to reject nonconforming goods, irrespective of City's failure to notify Supplier of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

Section 4. WARRANTY.

A. Supplier warrants that the Goods will be of merchantable quality and free from defects in design, engineering, material, and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer's warranty or as agreed to by Supplier and City, from the date of final written acceptance of the Goods by City as required for final payment under Section 7. Supplier further warrants that any services provided in connection with the Goods will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

B. Supplier further warrants that all machinery, equipment, or process included in the Goods will meet the performance requirements and specifications specified in Exhibit "A" and shall be fit for the purpose intended. City's inspection, testing, approval, or acceptance of any such machinery, equipment, or process will not relieve Supplier of its obligations under this Section 4.B.

C. For any breach of the warranties contained in Section 4.A and Section 4.B, Supplier will, immediately after receiving notice from City, at the option of City, and at Supplier's own expense and without cost to City:

1. Repair the defective Goods;

2. Replace the defective Goods with conforming Goods, F.O.B. City's plant, office or other location of City where the Goods was originally performed or delivered; or

3. Repay to City the purchase price of the defective Goods.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair, and replacement of the defective Goods, and reinstallation of new Goods. All such defective Goods that is so remedied will be similarly warranted as stated above. In addition, Supplier will repair or replace other items of the Goods which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

D. Supplier also warrants that the Goods is free and clear of all liens and encumbrances whatsoever, that Supplier has a good and marketable title to same, and that

Supplier owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Supplier agrees to indemnify, defend, and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

E. In the event of a breach by Supplier of its obligations under this Section 4, City will not be limited to the remedies set forth in this Section 4, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to City under the California Commercial Code.

Section 5. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "C," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of City. No extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. The total price shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Goods furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

Section 6. CHANGES.

City, at any time, by a written order, and without notice to any surety, may make changes in the Goods, including but not limited to, City's requirements and specifications. If such changes affect the cost of the Goods or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between City and Supplier and such change will be authorized by a change order document signed by City and accepted by Supplier.

Section 7. PAYMENTS.

A. Terms of payment, are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable Progress Milestones. Final payment shall be made by City after Supplier has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of Goods.

B. If Progress Milestones have been specified in Exhibit "B," then payments for the Goods will be made as the requirements of such Progress Milestones are met. Progress payments for the Goods will be made by City upon proper application by Supplier during the progress of the Goods and according to the terms of payment as specified in Exhibit "B." Supplier's progress billing invoice will include progress payments due for the original scope of work and changes. Each "Item for Payment" shown in Exhibit "B" and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Exhibit "B" or a change order, must have subcontractor and/or supplier invoices attached to Supplier's invoice. Other format and support documents for invoices will be determined by City in advance of the first invoice cycle.

C. Payments otherwise due may be withheld by City on account of defective Goods not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or

other claims, failure of Supplier to make payments properly to its subcontractors or for material or labor, the failure of Supplier to perform any of its other obligations under the Agreement, or to protect City against any liability arising out of Supplier's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, City may remove them at Supplier's expense.

D. Payment of the final Progress Milestone payment or any retention will be made by City upon:

1. Submission of an invoice for satisfactory completion of the requirements of a Progress Milestone as defined in Exhibit "B" and in the amount associated with the Progress Milestone;

2. Written acceptance of the Goods by City;

3. Delivery of all drawings and specifications, if required by City;

4. Delivery of executed full releases of any and all liens arising out of this Agreement; and

5. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim, or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Supplier may furnish a bond satisfactory to City to indemnify City against any claim or lien at no cost to City.

E. Acceptance by Supplier of payment of the final Progress Milestone payment pursuant to Section 7.D will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which Supplier then has, or can subsequently acquire against City, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement. However, payment for the final Progress Milestone by City will not constitute a waiver, release or discharge of any claims or demands which City then has, or can subsequently acquire, against Supplier, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

F. Automated Clearing House ("ACH") payments. It is the City's policy to pay its consultant invoices via electronic fund transfers through the ACH network. All payments due and owing pursuant to a properly issued and correct invoice or under this Agreement shall be made through electronic ACH transfers, unless otherwise agreed upon by both Parties in writing. Supplier shall provide the City with ACH payment details whereby the City shall initiate the ACH transfers to Supplier in the amount required pursuant to a properly issued and correct invoice or under this Agreement. Each Party shall undertake any and all required actions and execute any required documents, instruments, or agreements required to effectuate the requirements of this Section. In the event the City erroneously deposits funds into an account, or otherwise deposits funds to which Supplier is not entitled: (1) Supplier shall immediately notify the City and the

financial institution; (2) Supplier shall not withdraw any of the funds which were erroneously deposited or to which Supplier is not entitled; and (3) Supplier authorizes both the City and financial institution to take all actions necessary to correct the error and return to the City all funds erroneously deposited or to which Supplier is not entitled.

Section 8. SCHEDULE FOR DELIVERY.

A. The time of Supplier's performance is of the essence for this Agreement. The Goods will be delivered in accordance with the schedule set forth in Exhibit "B." Supplier must immediately notify City in writing any time delivery is behind schedule or may not be completed on schedule. In addition to any other rights City may have under this Agreement or at law, Supplier shall pay City the sum of **$0** per item of Goods for each calendar day for which the item of Goods is unavailable beyond the scheduled delivery date(s) specified in Exhibit "B."

B. In the event that the Goods is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Supplier will fully cooperate in scheduling the delivery so that City can maximize the efficient completion of such project(s).

Section 9. TAXES.

A. Supplier agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Goods provided under this Agreement.

B. Supplier will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Supplier will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Goods provided hereunder, will be the responsibility of Supplier. In addition, all taxes assessed by any taxing jurisdiction based on Supplier property used or consumed in the provision of the Goods such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Supplier.

D. Supplier will, upon written request, submit to City written evidence of any filings or payments of all taxes required to be paid by Supplier hereunder.

Section 10. INDEPENDENT CONTRACTOR.

Supplier enters into this Agreement as an independent contractor and not as an employee of City. Supplier shall have no power or authority by this Agreement to bind City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Supplier are employees, agents, contractors or subcontractors of the Supplier and not of City. City shall not be obligated in any way to pay any wage claims or other claims made against Supplier by any such employees, agents, contractors or subcontractors or any other person resulting from

performance of this Agreement.

Section 11. SUBCONTRACTS.

Unless otherwise specified, Supplier must obtain City's written permission before subcontracting any portion of the Goods. Except for the insurance requirements in Section 14.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Goods, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Supplier from its obligations to City, including, but not limited to Supplier's insurance and indemnification obligations. No subcontract or order will bind City.

Section 12. TITLE AND RISK OF LOSS.

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Goods upon delivery, as well as materials delivered to and stored on City property which are intended to become a part of the Goods. However, Supplier will be liable for any loss or damage to the Goods and/or the materials caused by Supplier or its subcontractors, their agents or employees, and Supplier will replace or repair said Goods or materials at its own cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Supplier for all or a portion of the Goods which remains in the possession of Supplier, then City shall have title to, and the right to take possession of, such Goods at any time following payment therefor. Risk of loss for any Goods which remains in the possession of Supplier shall remain with Supplier until such Goods has been delivered or City has taken possession thereof. Supplier will have risk of loss or damage to Supplier's property used in the construction of the Goods but which does not become a part of the Goods.

Section 13. INDEMNIFICATION.

A. Supplier shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Supplier, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Goods or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

B. Supplier's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, employees, agents, or volunteers shall be at Supplier's own cost, expense, and risk. Supplier shall pay and satisfy any judgment, award, or decree that may be rendered against City or its officials, officers, employees, agents, or volunteers, in any such suit, action, or other legal proceeding. Supplier shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

C. Supplier's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

Section 14. INSURANCE.

A. General. Supplier shall take out and maintain:

1. Commercial General Liability Insurance, of at least $2,000,000 per occurrence/ $4,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01;

2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least $2,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);

3. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least $1,000,000 per occurrence; and

4. Pollution Liability Insurance of at least $2,000,000 per occurrence shall be provided by the Supplier if transporting hazardous materials.

5. If Supplier is also the manufacturer of any equipment included in the Goods, Supplier shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than $1,000,000.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage. The policies required under this Section shall give City, its officials, officers, employees, agents or volunteers additional insured status on commercial general liability and automobile liability insurance with the endorsements. Such policies shall contain a provision stating that Supplier's policy is primary insurance and that any insurance, deductible, or self-insurance maintained by the City or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

C. Cancellation. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect

coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds

D. Insurance Carrier. All insurance required under this Section is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City.

E. Evidence of Insurance. Supplier shall furnish City with original certificates of insurance and endorsements effecting coverage required by the Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before delivery commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

F. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Supplier shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

G. Freight. Supplier shall ensure that third party shippers contracted by Supplier have adequate insurance coverage for the shipped Goods.

Section 15. LIENS.

A. Supplier, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Goods, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Supplier, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Supplier, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Supplier will save and hold City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Supplier will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 16. TERMINATION OF AGREEMENT BY CITY.

A. Should Supplier at any time refuse or fail to deliver the Goods with promptness and diligence, or to perform any of its other obligations under the Agreement, City may terminate Supplier's right to proceed with the delivery of the Goods by written notice to Supplier. In such event City may obtain the Goods by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Supplier. In such case Supplier will not be entitled to receive any further payments

until the Goods is delivered. If City's cost of obtaining the Goods, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Agreement, Supplier will be liable for and will pay the difference to City.

B. City may, for its own convenience, terminate Supplier's right to proceed with the delivery of any portion or all of the Goods by written notice to Supplier. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which City may have against Supplier, and will not affect the obligations and duties of Supplier under the Agreement with respect to portions of the Goods not terminated.

C. On receipt of notice under Section 16.B, Supplier will, with respect to the portion of the Goods terminated, unless the notice states otherwise,

1. Immediately discontinue such portion of the Goods and the placing of orders for materials, facilities, and supplies in connection with the Goods,

2. Unless otherwise directed by City, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to City; and

3. Deliver only such portions of the Goods which City deems necessary to preserve and protect those portions of the Goods already in progress and to protect material, plant and equipment at the Goods site or in transit to the Goods site.

D. Upon termination pursuant to Section 16.B, Supplier will be paid a pro rata portion of the compensation in the Agreement for any portion of the terminated Goods already delivered, including material and services for which it has made firm contracts which are not canceled, it being understood that City will be entitled to such material and services. Upon determination of the amount of said pro rata compensation, City will promptly pay such amount to Supplier upon delivery by Supplier of the releases of liens and affidavit, pursuant to Section 7.C.

Section 17. FORCE MAJEURE

A. Supplier shall not be held responsible for failure or delay in shipping nor City for failure or delay in accepting goods described herein if such failure or delay is due to a Force Majeure Event.

B. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the work); (4) pandemics, epidemics or quarantine restrictions; and (5) strikes and other organized labor action occurring at the project site and the effects thereof on the work, only to the extent such strikes and other organized labor action are beyond the control of Supplier and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

C. In the event of any such excused interference with shipments, City shall have the option either to reduce the quantity provided for in the order accordingly or to exercise its right of cancellation as set forth in this Agreement.

Section 18. MISCELLANEOUS PROVISIONS.

A. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address or at such other address as the respective parties may provide in writing for this purpose:

CITY:	SUPPLIER:
City of Ontario 303 East "B" Street Ontario, CA 91764 Attn: Blaine Ishii, Integrated Waste Director	McLaughlin Waste Equipment, Inc. 17000 Sierra Hwy Canyon Country, CA 91351 Attn: John McLaughlin,

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

B. Assignment or Transfer. Supplier shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Supplier from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City.

C. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

D. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

E. Waiver. 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.

F. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

G. Attorneys' Fees and Costs. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party shall pay its own attorneys' fees.

H. Interpretation. 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.

I. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

J. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

K. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

L. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

M. City's Right to Employ Other Suppliers. City reserves its right to employ other contractors in connection with the Goods.

N. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Goods specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

SIGNATURES ON FOLLOWING PAGE

SIGNATURE PAGE TO GOODS AND EQUIPMENT PURCHASE AGREEMENT BETWEEN THE CITY OF ONTARIO AND MCLAUGHLIN WASTE EQUIPMENT, INC.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
Assistant City Clerk

MCLAUGHLIN WASTE EQUIMENT, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

Exhibit A

SCOPE OF SERVICES

Deliveries

Orders of products will be on an as needed basis to replenish the City's inventory to an expectable level throughout the term of the agreement and are to be delivered as described in Exhibit "B" Schedule of Services; a priced invoice shall accompany each delivery and a return receipt for all returned items; option delivered with a packing/delivery slip and the invoice emailed within 24 hours of delivery.

Will-Call

Any item picked up at your location must be accompanied with a priced invoice that includes the employees printed and signed name. Employees names authorized to charge to this account will be provided.

Payments

The City shall review and process all invoices within thirty (30) days of receipt.

Reporting

Upon the request of the City vendor shall provide applicable reports and/or statistics of the products or goods provided.

Guarantee

In no instance shall the quality of the items sold to the City be less that the specifications indicated.

All deliveries are to meet specifications. If at any time the product delivered does not meet specifications, vendor shall be responsible for making proper adjustments satisfactory to the City of Ontario, at no additional charge.

Safety Data Sheet

Any materials requiring a Safety Data Sheet (SDS) shall be shipped and emailed with the proper documentation; one (1) SDS for each product must accompany the initial delivery (as required).

Exhibit B
Delivery Schedule

Deliveries

All deliveries shall be made within 24-72 hours after receipt of order (ARO) and are to be made F.O.B. destination with a priced delivery invoice; option delivered with a packing/delivery slip and the invoice emailed with 24 hours of delivery (as determined by the City some special-order items may be an exemption from the delivery time frame).

Delivery Hours are Monday through Friday 6:00 a.m. and 3:30 p.m.

Delivery Location:

Ontario Municipal Services Center – 14252 South Bon View Avenue, Ontario, CA 91761

Exhibit C
Fee Schedule

No.	Item Description	Estimated Qty.	UOM	Per Unit Cost
1.	Corner Plate	600	each	$5.65
2.	5 x 7 Multi-mesh Tarp	10	each	$121.87
3.	Roller (1107994)	1	each	$40.42
4.	P62 Poly Premium 6x2 HD Polyolefin Swivel Caster	2000	each	$13.51
5.	Steel Bottom - 1.5 Yard	20	each	$95.80
6.	Steel Bottom - 4 Yard	300	each	$162.24
7.	Steel Bottom - 3 Yard	50	each	$137.70
8.	3 Yard Front Load Lid	300	each	$23.55
9.	4 Yard Front Load Lid	600	each	$23.55
10.	6x2 Polyolefin Wheel, Bearing Bushing, Axles and Nuts.	3000	each	$7.78
11.	10.75 x 8.25 Ground Roller	20	each	$63.12
12.	Steel Bottom (1/2) 6 Yard	5	each	$203.14

The City reserves the right to purchase more or less of the items listed above at the "per unit cost" stated. Annual quantities listed in the bid were estimates and not indicative of a guaranteed level of usage. Any like item(s) not identified in this solicitation shall be available for purchase by the City at an equivalent category discount.

The contract term shall be from April 15, 2025 through April 15, 2028. The total compensation shall not exceed Six Hundred Thousand Dollars ($600,000) over a three-year term. The City may extend the agreement for up to two (2) additional one-year terms for Two Hundred Thousand Dollars ($200,000) per year for an amount not-to-exceed One Million Dollars ($1,000,000) over the 5-year term.

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Police Department Prepared By: Lizceth Zazueta Staff Member Presenting: Mike Lorenz, Chief of Police Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 19

SUBJECT: **AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH PHOENIX GROUP INFORMATION SYSTEMS REFERENCE PROCESSING SERVICES FOR POLICE PARKING CITATIONS, FIRE AND COMMUNITY IMPROVEMENT ADMINISTRATIVE CITATIONS, AND FALSE ALARM PROGRAM**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement for citation services with Phoenix Group Information Systems, based in Santa Ana, California. This amendment will extend the optional two additional one-year terms and increase the authorized contract amount by $250,000, resulting in a total not-to-exceed contract amount of $1,000,000.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: Amendment No. 1 to the Professional Services Agreement with Phoenix Group Information Systems will increase the authorized contract by $250,000, resulting in a total not-to-exceed contract amount of $1,000,000. Should the City Council approve this amendment, appropriations for citation services will be requested in the General Fund during the next quarterly budget for Fiscal Year 2024-25, as needed. Additionally, appropriations for future fiscal years will be incorporated into the General Fund budget for City Council review and approval in the respective fiscal year.

BACKGROUND & ANALYSIS: On July 1, 2022, the City of Ontario entered into a Professional Services Agreement with Phoenix Group Information Systems (Phoenix Group) for processing services related to police parking citations, fire and community improvement administrative citations, and the management of the false alarm program. This agreement was the result of a comprehensive procurement process under RFP#1491. Amendment No. 1 extends the Professional Services Agreement by two additional one-year terms and increases the compensation to cover the costs of these additional years. The updated agreement is designed to ensure the continued provision of high-quality citation processing services.

The City of Ontario issues citations for various municipal violations, including Ontario Municipal Code violations, fireworks offenses, false alarms, and parking violations. Phoenix Group supports the City by processing invoices, managing false alarm registrations, paying county fees related specifically to parking citations, and assisting with the processing of contested tickets. Outsourcing these citation processing services helps reduce administrative burdens on City staff, allowing employees to focus on other priority services. It also minimizes the risk of errors and ensures the accurate and timely processing of citations. Phoenix Group's online payment options provide citizens with a convenient and accessible method for paying citations and obtaining related information.

City staff recommend that the City Council approve Amendment No. 1 to the Professional Services Agreement with Phoenix Group Information Systems to extend the contract for two additional one-year terms and increase compensation by $250,000, bringing the total not-to-exceed contract amount to $1,000,000.

CITY OF ONTARIO
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COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND PHOENIX GROUP INFORMATION SYSTEMS

1. Parties and Date.

This **Amendment No. 1** to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **Phoenix Group Information Systems**, a Corporation (Consultant). City and are sometimes individually referred to as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and the Consultant have entered into an agreement entitled **Services for Processing Police Parking Citations, Fire and Community Improvement Administrative Citations, and False Alarm Program** dated **July 1st, 2022**("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to **amend the Agreement to extend the term of services and add additional compensation.**

2.3 Amendment Authority. This **Amendment No. 1** is authorized pursuant to **Section 3.7.15** of the Agreement.

3. Terms.

3.1 Amendment

3.1.1 **Section 3.1.2 "Term"** of the Agreement is hereby amended in its entirety to read as follows:

Section 3.1.2 Term. The term of this Agreement shall be from **July 1st, 2022** to **June 30th, 2027** unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two additional one-year terms. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement, if necessary, to complete the Services.

3.1.2 **Section 3.2.1 "Compensation"** of the Agreement is hereby amended in its entirety to read as follows:

Section 3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference not to exceed **One Million Dollars** ($1,000,000) without written approval of City's Manager, or his or her

designee**.** Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.2 Continuing Effect of Agreement. Except as amended by this **Amendment No. 1**, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this **Amendment No. 1**. From and after the date of this **Amendment No. 1**, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this **Amendment No. 1**.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this **Amendment No. 1**.

3.4 Severability. If any portion of this **Amendment No. 1** is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5 Integration. This Amendment represents the entirety of the Parties' understanding relating to the subject of this Amendment, including written or verbal communications between the Parties, which shall have no relevance unless expressly incorporated herein. This is an integrated amendment.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR AMENDMENT NO. 1
TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO
AND PHOENIX GROUP INFORMATION SYSTEMS

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 1 as of the day and year first above written.

CITY OF ONTARIO

Approved By:

_____
Scott Ochoa
City Manager

Approved as to Form:

_____
Best Best & Krieger LLP

City Attorney

Attested By:

_____
City Clerk

PHOENIX GROUP INFORMATION SYSTEMS

If corporation, two signatures, president or vice president and secretary or treasurer required.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

EXHIBIT "A"
SCOPE OF SERVICES

CITATION PROCESSING SERVICE AGREEMENT

PHOENIX GROUP Information Systems, a California Corporation
2677 N. Main Street, Suite 440
Santa Ana, CA 92705
(Hereinafter referred to as "PHX")

Agrees to provide to:
City of Ontario
303 East "B" Street
Ontario, CA 91764
(Hereinafter referred to as "AGENCY")

Ongoing Citation Processing in accordance with the following terms and conditions:

1.0 PROCESSING SERVICES PROVIDED: will design, implement and maintain a system to serve as the billing and collections agent and accounts receivable (AIR) manager for the City Alarm Program Administration and Collection Service. PM AM will provide all hardware, software, materials, supplies, space, and staff resources as required.

1.0.1 PHX shall receive from the AGENCY and process **Parking Citations** issued to California and out-of-state vehicles issued by the AGENCY. PHX will provide the AGENCY with a citation processing management system and access to the database using the Internet, Wincite.net and Paymycite.com for payment services.

1.0.2 PHX shall receive from the AGENCY and process **Fire Administration Citations** issued by the AGENCY. PHX will provide the AGENCY with a citation processing management system and access to the database using the Internet, Wincite.net and Paymycite.com for payment services.

1.0.3 PHX shall receive from the AGENCY and process **Community Improvement Citations** issued by the AGENCY. PHX will provide the AGENCY with a citation processing management system and access to the database using the Internet, Wincite.net and Paymycite.com for payment services.

1.0.4 PHX shall receive from the AGENCY and process **False Alarm Citations** issued by the AGENCY. PHX will provide the AGENCY with a citation processing management system and access to the database using the Internet, Wincite.net and Paymycite.com for payment services.

1.1 Citation referral and Reconciliation: The AGENCY will notify PHX daily or weekly via electronic communication of all citation payments received and processed by the City. Monthly reporting prepared by PHX will provide the detail of the information received by issue date.

1.2 Payment Dispositions: The AGENCY will forward any payment information as well as cancellations, dismissals, voids, corrections and/or other relevant information pertaining to the citation(s) status. PHX will update the AGENCY on a monthly basis regarding status of payment updates. The AGENCY may also update this information directly to the database remotely.

1.3 Registered Owner Information: PHX will be responsible for maintaining on-line communications with the California DMV if applicable. This communication is required as part of this agreement to request registered owner information. Further, PHX will be responsible for communicating and

purchasing registration information with DMV offices out-of-state for citations issued to out-of-state vehicles. If PHX is unable to obtain the information necessary, the citation may be returned to AGENCY for research and follow up.

1.4 Delinquent Notices: PHX will generate and mail the notices for citations that have been referred to PHX by AGENCY. PHX will generate and mail the notices for citations that have been referred to PHX by AGENCY following the guidelines set forth in CVC 40207 when applicable. The mailed notice will include at a minimum:

a) Citation number,
b) Date and time of issuance,
c) Violation and description,
d) The amount of fine/fee due,
e) How to pay the citation and,
f) Return Envelope and address for payment

1.5 Notice of Delinquent Violation: Notices are sent to the owner that DMV has on record at the time the citation is written for Parking Citations.

The notice will include all the information included on the citation (i.e., citation number, violation number, and violation description) and consequences for nonpayment, and/or any additional information required by the code section. The notice of violation is a letter format with a remittance return portion for payment. If required by the City's ordinance, additional letters may be generated.

The notice of violation will be generated by PHX and include:

a) Amount due for the violation issued,
b) Applicable late fees,
c) How to contest the citation,
d) Toll free number for customer service.
e) Custom website address for online payments

2.0 PAYMENT PROCESSING

Payment processing services are provided by CONTRACTOR and by the AGENCY. All payments collected on behalf of the AGENCY will be deposited by the Contractor into an account controlled by the AGENCY. Contractor has the ability to distinguish moneys deposited by AGENCY from moneys deposited by CONTRACTOR. The Agency shall open a bank account. Withdrawals from such account shall be controlled by the City, and any such withdrawals be made only by signatories designated by the City.

All bank charges incurred in connection with the services rendered under this agreement shall be paid by the program before the foregoing split of fees.

Payments received by the CONTRACTOR, by mail will be sorted, recorded and deposited daily, not to exceed 48 hours, (excluding weekends and holidays) with the banking institution agreed upon between the AGENCY and the CONTRACTOR.

CONTRACTOR shall have an internal on-line payment processing capability to enter payment data against the citation record at the time of payment to insure payment is due and correct.

Duplicate payments should not be processed by the Contractor. These payments should be returned to the violator by the Contractor when possible.

CONTRACTOR must be able to process a payment in advance of the citation data entry. In these

cases, the data from the citation should be updated when it is available for verification at the time of payment entry.

2.1 Bank Returned Checks: Fees established by the AGENCY for bank returned checks and additional follow-up will be included to the citation/account as directed by AGENCY.

2.2 Credit Card Payments: Credit Card payments will be accepted by Phone or Internet. The public/violator will have the option to connect to a secured website. The access to the information will be available based on a License Plate or Citation number. The system will access data real time, and the information provided will include the total amount due, including a convenience fee, before final authorization is completed. Payments can be made with Discover, Master Card, Visa, or AMEX. The confirmation will include the total paid and the name of the Payee.

The violator will be charged a convenience fee that is retained by CONTRACTOR for processing and merchant fees with no additional costs passed on to the AGENCY. If the AGENCY chooses not the charge a convenience fee, the CONTRACTOR will provide costs for approval to the AGENCY.

Payment disbursement to AGENCY is made monthly for previous month's credit card transactions. Disbursement is made in the form of a check and deposited to the bank account established by the AGENCY as stated in Section 2.4 of this agreement for the total amount of credit card collections.

2.3 Credit Card Charge Back: The process includes the following:

a) Charge back notification received by PHX;
b) PHX locates the citation(s) that were paid on the transaction being disputed;
c) A letter of dispute describing the charge is sent to the credit card company;
d) If the dispute is found in favor of the credit card holder, then the charge back is accepted and a notice of unpaid fees are sent to the registered owner;
e) PHX reverses the payment of the citation(s) and reopens the citation(s) immediately;
f) PHX enters notes regarding the credit card payment information including, but not limited to:
    - Original Transaction ID(s);
    - Chargeback ID; and
    - Any pertinent correspondence regarding the charge back.
g) Charge back paperwork is then filed by PHX for later retrieval if necessary; and
h) Charge backs are reflected in the monthly reporting.

2.4 Bank Account and Depositing Procedures: Payments processed by the CONTRACTOR will be deposited into an account established by the AGENCY

Except as otherwise stated in this section, by signatures of this contract, CONTRACTOR is authorized to make deposits to the bank account established by the AGENCY.
The deposits are prepared by CONTRACTOR along with all payments (check OR Money order only) and delivered to the bank for deposit. The CONTRACTOR will also maintain copies of the deposits and allow access by the AGENCY to this data through a secured site via the Internet.

2.5 Reconciliation: Citation data and payments must reconcile to the money deposited to the bank on a monthly basis.

Records of deposits, management reports, billing reports, surcharge reports, and statistical summaries and details of activity for the period, will be provided to City of Ontario. Verifications of deposit shall be available to the AGENCY on a daily basis through a written deposit report, copy of deposit and/or email notification. The CONTRACTOR shall also prepare a monthly deposit report of all transactions

entered into the system and sent to the bank, the report should include the date of deposit, batch number, total amount of deposit, and number of items per batch. The combination of the deposit slip and the Deposit report will offer a complete audit trail of the payments received and deposited by CONTRACTOR.

2.6 Revenue Reporting: PHX will forward revenue reports to balance the deposits for the month. The reports will list all citations paid by citation number and all deposits made by day.

2.7 Changes to Payment Processing Procedures
The AGENCY retains the right to change the banking procedure. Changes to the procedures will be negotiated with PHX to the extent that the banking procedures remain within the scope of services provided by PHX. Changes to the process will be finalized in writing between the AGENCY and PHX.

3.0 CUSTOM WEBSITE FOR PUBLIC INFORMATION
PHX will create a website and link for public inquiry and payment. The website will simulate the AGENCY'S website to provide consistency when the public is transitioning from the AGENCY'S website to our site.

The credit card option will be set-up and maintained by PHX at no additional costs charged to AGENCY. The services include:

a) Setting up a custom header and footer page based on graphics approved by AGENCY,
b) All merchant fees,
c) Internet security and website fees,
d) Provide for the ability to make payments, contest the citation, and provide any governing rules that are applicable.

4.0 REMOTE DATA ENTRY:
Remote data entry capability will be provided through the Internet, using Internet Explorer and Wincite.net. Each operator would be set up with a unique password and Security Level. Individual function levels will include view only, edit, add, and dismiss/void capabilities.

4.1 User accounts: Accounts may be established by the AGENCY and/or PHX. Access is limited to employees of the AGENCY only and all PHX shall provide training for authorized City employees for to the Vendor's online system. This limitation specifically excludes contractors and/or consultants. Exceptions to the limitation must be approved in writing by PHX.

4.2 Hardware/Software (Equipment) Requirements: The AGENCY will be required to provide a standard Personal Computer that will run Microsoft Internet Explorer 7.0 or greater, and Windows XP Pro or greater. PHX will provide Wincite.net to the AGENCY for citation data and reporting access. Any license requirements to operate Microsoft products will be the responsibility of the AGENCY.

5.0 ONLINE INQUIRY
System inquiry will provide to the AGENCY (inquiry for citations):

a. Access to the citation data is available by citation number, vehicle license number, name, or VIN number,
b. All citation information,
c. Current status of the citation,
d. Delinquent notice information, due date, mailing date,
e. Administrative review, hearing court appeals, and disposition information,
f. Payment information, including all date, amounts and payment codes,
g. Registered owner information, and Electronic facsimile of the original citation.

6.0 REPORTING
PHX will supply AGENCY with electronic monthly reporting. The reports will be supplied to the AGENCY in a PDF format available for access using Adobe Reader with the option to export to Excel. The reports will include but not be limited to at least the following:

a) Monthly Billing Report
b) Officer Summary Report
c) Officer Summary Y-T-D Monthly Recap
d) Void/Dismiss Report by Operator
e) Habitual Offender Hot Sheet Report and Detail
f) DMV Monthly Reports
g) Out of State Revenue Detail Report
h) Revenue Collection Detail Report
i) Daily Deposit Report
j) Revenue Distribution Surcharge Report
k) Contested Citations pending and outcome
l) Refunds 'Due' Report
m) FTB or Special Collections Report, if applicable.

The monthly production report schedule may change as needed. Reporting information may also be provided to the AGENCY in Excel or other method mutually agreeable to both parties. Additional reports are provided Daily for specific requirements needed by the AGENCY, such as daily deposit reports.

7.0 SURCHARGES
It is the responsibility of the AGENCY to identify and outline to PHX all surcharges (fees) applicable for the AGENCY. PHX will provide a monthly Surcharge Disbursement Report that includes the surcharges identified by the AGENCY as part of the monthly reports as identified in Section REPORTING. The AGENCY will disburse surcharges funds on behalf of the AGENCY directly to the County.

8.0 OWNERSHIP OF SOFTWARE
Agency acknowledges that the software and software programs used by the AGENCY have been developed by PHX and PHX is the sole property owner. AGENCY obtains no right or interest in the software by virtue of this agreement.

9.0 FEES
Processing Services include, entering the citation, Notice of Violation (letter) and full payment processing/updating. The following is a list of services and some detailed information on each.
In consideration of the services provided, AGENCY agrees to pay the following fees:

PARKING CITATION MANAGEMENT COSTS:

Cost per citation Cost per electronic citation	$0.68 $0.40	Cost per handwritten citation. Cost per electronic citation.
Notice of Violation / Delinquent Notice	$0.60	A notice of violation (delinquent notice) is sent after an INDIVIDUAL received the initial citation as a courtesy reminder. If applicable, A second notice of delinquency is sent if the payment is not made by the initial due date. Includes: printing and sending daily, windowed envelope, 8.5 x 11" semi-custom notice, return insert envelope for payment.
Out of State citations	28%	Out of State processing includes any costs charged by the state for the registered owner. The percentage is charged only for citations that are collected.
Credit Card Payments	No Charge	A credit card processing fee of $3.95 or 3.25%, whichever is greater, will be charged to the INDIVIDUAL at no cost to the AGENCY.
Special Custom Letter	$1.50	Special letters are custom notices used as follow-up for hearing dates, review results, hearing results, collections or habitual violations (Scofflaw).
FTB (Franchise Tax Board)	15%	Franchise Tax Board Collections: Activated Based on age of collections. Includes FTB pre intercept letter and SSN # acquisition, set up of account at FTB, Dispute resolution. Monthly Revenue reporting. The percentage is charged only for citations that are collected.
Online Contesting	$75.00	Monthly Fee – Includes paperless appeals; This service will provide an online contesting application that provides, dispute instructions, forms, and information as a convenient portal to the public.
Payment Processing	No Charge	Includes: Manually received payments (checks, cash, money orders sent via US Mail) received at our PO Box in Santa Ana (bonded courier service included for bank deposits). Daily deposits are made to the Agency account by Accounting Staff at PHX, a deposit slip is generated daily and sent to the Agency via e-mail.
AB503 Payment Plan Processing	$245.00	Monthly fee for the creation, processing and monitoring of all payment plans in compliance with legislative bill 503. Includes online application.
Refunds if applicable	$5.00	Includes weekly generation of refund checks, monthly reconciliation and monetary advance of funds to cover refunds issued on a monthly basis.
Bank Returned Checks	$10.00	Bank returned items are charged to the AGENCY in the event that the bank returns a citation payment uncollected. These charges are usually passed on to the violator. There is no charge to reopen a citation.

Chargebacks if applicable	$30.00	If applicable, citation will be reopened and fee will be added to citation. Pass through costs for the City.
Software Maintenance	$350.00	Wincite Data base, data storage, remote support and follow-up training configuration adjustments on software interfaces.
Postage	First Class Rates	For all correspondence mailed.
Unlimited Online Web Access	Included	For Agency's customers, real time citation data, ability to pay single or multiple citations. E-mail receipts automatically generated and sent to the customer.
Custom Website	Included	Includes: custom website for the City of Ontario at www.paymycite.com/Ontario Accepts secure online payments via Visa, MC, Discover, American Express credit/debit. PCI complaint,TLS1.2 encryption level. McAfee Secure.Trustwave.
Customized IVR and Toll-free phone number	Included	PHX IVR system provides real time information to the caller regarding status, including amount due. All major credit cards are accepted. E-mail receipts automatically generated and sent to the customer.
Customer Service	Included	Live on-site bilingual Customer service. Calls can be recorded for quality assurance.
Unlimited Online Access for Agency Staff	Included	Provided with unique usernames and encrypted passwords assigned, audit trail detailing all activity in the system, view real time data, depending on security level reduce or increase violation amounts, dismiss citations, void citations and place citations on hold. Additional features available.
Reports/ Revenue management	Included	Includes: online reports to generate, print and re-print 24/7. Reports can be exported in both PDF and Excel. Custom reports are available upon request.
Adjudication Services	Included	Includes: adjudication holds and scanning, disposition entry, scheduling hearings, providing back-up to Hearing Officers including hearing packets.
Expedited Collections	23%	If bail amount is recovered after 90 days past due.
Franchise Tax Board Collections includes: Placement at FTB, Dispute resolution.	15% + $1.35	Charged only if bail amount is collected through FTB processing. Acquisition of SSN# (used for FTB processing)
Hearing Officer /Optional	$135.00 per hour	PHX will provide an impartial hearing officer to appear at scheduled hearings, make a fair determination, enter the decision in the system and send out the decision letter. Optional Service.

Hearing Scheduling	Included	Hearings will be scheduled as directed by the City. PHX will send out hearing schedule letters, handle reschedules and notification to the city and the citizen.

ADMINISTRATIVE CITATION MANAGEMENT COSTS: FIRE DEPARTMENT

Item Description	Per Item Cost
All services below are INCLUDED: ***Unlimited Online Web Access** for Agency's customers, real time citation data, ability to pay single or multiple citations. E-mail receipts automatically generated and sent to the customer. ***Custom Website** payments and contesting: **www.paymycite.com** Accepts secure online payments via Visa, MC, Discover, American Express credit/debit. PCI complaint, TLS1.2 encryption level. McAfee Secure.Trustwave. ***Customized IVR** and **Toll-free phone number** for payments. PHX IVR system provides real time information to the caller regarding status, including amount due. All major credit cards are accepted. E-mail receipts automatically generated and sent to the customer. * **Live on-site bilingual Customer service**. Calls can be recorded for quality assurance. ***Unlimited Online Access for Agency Staff**; with unique usernames and encrypted passwords assigned, audit trail detailing all activity in the system, view real time data, depending on security level reduce or increase violation amounts, dismiss citations, void citations and place citations on hold. Additional features available. ***Reports** includes: online reports to generate, print and re-print 24/7. Reports can be exported in both PDF and Excel. Custom reports are available upon request. ***Payment Plan Setups** incudes letter generated to customer specifying plan arrangements. ***Online Contesting** includes paperless appeals ***Adjudication Services**; adjudication holds and scanning, disposition entry, scheduling hearings, providing back-up to Hearing Officers including hearing packets. ***Payment Processing** includes: Manually received payments (checks, cash, money orders sent via US Mail) received at our PO Box in Santa Ana (bonded courier service included for bank deposits). Daily deposits are made to the Agency account by Accounting Staff at PHX, a deposit slip is generated daily and sent to the Agency via e-mail.	$350.00 per month
Cost per citation issued: electronic or manually processed	$3.75
Notice of Violation (1st Courtesy Notices required by County) includes: printing and sending daily, windowed envelope, 8.5 x 11" semi-custom notice, return insert envelope for payment.	$0.95
Credit Card Payments (The credit card convenience fee is charged to the public, $3.95 or 3.25% per transaction)	**Included**
Postage - First Class Rates (for all correspondence mailed)	First Class Rates

Other correspondence letter including disposition letters, hearing schedule letters, and FTB Pre-Intercept Notice	$1.00
Refunds if applicable includes weekly generation of refund checks, monthly reconciliation	$5.00
Credit Card Chargebacks; if applicable	$30.00
Bank Returned Checks	$10.00
Data Retention: Shipped back to Agency via Fedex or shred: bi-annually charge	$50.00
Preliminary Collections | citation 90 days past due	20%
Acquisition of SSN# (used for FTB processing)	$1.35
Franchise Tax Board Collections includes: Placement at FTB, Dispute resolution,	15%
Training; full training of Wincite Administrative Database Management System for County Staff. All training sessions can be digitally recorded and given to the Agency for future use and reference.	**Free of Charge**

ADMINISTRATIVE CITATION MANAGEMENT COSTS: COMMUNITY IMPROVEMENT

Item Description	Per Item Cost
All services below are INCLUDED: ***Unlimited Online Web Access** for Agency's customers, real time citation data, ability to pay single or multiple citations. E-mail receipts automatically generated and sent to the customer. ***Custom Website** payments and contesting: **www.paymycite.com** Accepts secure online payments via Visa, MC, Discover, American Express credit/debit. PCI complaint, TLS1.2 encryption level. McAfee Secure.Trustwave. ***Customized IVR** and **Toll-free phone number** for payments. PHX IVR system provides real time information to the caller regarding status, including amount due. All major credit cards are accepted. E-mail receipts automatically generated and sent to the customer. * **Live on-site bilingual Customer service**. Calls can be recorded for quality assurance. ***Unlimited Online Access for Agency Staff**; with unique usernames and encrypted passwords assigned, audit trail detailing all activity in the system, view real time data, depending on security level reduce or increase violation amounts, dismiss citations, void citations and place citations on hold. Additional features available. ***Reports** includes: online reports to generate, print and re-print 24/7. Reports can be exported in both PDF and Excel. Custom reports are available upon request. ***Payment Plan Setups** incudes letter generated to customer specifying plan arrangements. ***Online Contesting** includes paperless appeals ***Adjudication Services**; adjudication holds and scanning, disposition entry, scheduling hearings, providing back-up to Hearing Officers including hearing packets. ***Payment Processing** includes: Manually received payments (checks, cash, money	$350.00 per month

orders sent via US Mail) received at our PO Box in Santa Ana (bonded courier service included for bank deposits). Daily deposits are made to the Agency account by Accounting Staff at PHX, a deposit slip is generated daily and sent to the Agency via e-mail.	
Cost per citation issued: electronic or manually processed	$3.75
Notice of Violation (1st Courtesy Notices required by County) includes: printing and sending daily, windowed envelope, 8.5 x 11" semi-custom notice, return insert envelope for payment.	$0.95
Credit Card Payments (The credit card convenience fee is charged to the public, $3.95 or 3.25% per transaction)	**Included**
Postage - First Class Rates (for all correspondence mailed)	First Class Rates
Other correspondence letter including disposition letters, hearing schedule letters, and FTB Pre-Intercept Notice	$1.00
Refunds if applicable includes weekly generation of refund checks, monthly reconciliation	$5.00
Credit Card Chargebacks; if applicable	$30.00
Bank Returned Checks	$10.00
Data Retention: Shipped back to Agency via Fedex or shred: bi-annually charge	$50.00
Preliminary Collections | citation 90 days past due	20%
Acquisition of SSN# (used for FTB processing)	$1.35
Franchise Tax Board Collections includes: Placement at FTB, Dispute resolution,	15%
Training; full training of Wincite Administrative Database Management System for County Staff. All training sessions can be digitally recorded and given to the Agency for future use and reference.	**Free of Charge**

Mobile Enforcement/ Additional Services

Android HHU | Wi-Fi only w/ military grade protective case, phone can be supplied by City and cost of device will be waived.	TBD
Wincite Mobile Software License | Unlimited site license; One-time charge per unit	$695.00
Software Installation/configuration | One-time charge per unit	$100.00
TSC Alpha 3R | Bluetooth Printer w/ 2-year warranty / Protective environmental case	$680.00
Hardware/Software Support | ongoing monthly charge per unit	$40.00
LPR Software License & Activation, one time fee per device This service charge of $3995.00 per device was waived and included at no cost.	$0.00
LPR real time accessibility | ongoing monthly charge per unit	$60.00

Training; full training of Wincite Mobile Automated Ticket writing software for Agency Staff. All training sessions can be digitally recorded and given to the Agency for future use and reference. A video will be provided for future training purposes.	**Free of Charge**

FALSE ALARM MANAGEMENT SYSTEM:

One time Set Up/Sign On Fee, includes customized website for City with online credit card processing for citizens and business owners. Integration of City's business rules in compliance with City Ordinance. Integration of any existing accounts.	INCLUDED
False Alarm Payments Collected Revenue Share 1. Alarm permit and renewal fees 2. False alarms violation fees 3. Reinstatement fees 4. Late fee for false alarms 5. Delinquent Collections 6. Customer Service	25% of amount collected
Monthly Database Fee, includes licensing, remote access, support, reporting and revenue management.	$395.00
Notices, special letters and Renewal Letters	INCLUDED
1st class postage for all correspondence mailed	INCLUDED
Credit Card Processing Fees, charged to public	$3.95 or 3.25% per transaction
Credit Card Chargebacks if applicable, pass through cost to the City, fee is added to the individual or commercial entity that initiates the chargeback.	$30.00 per chargeback if applicable

Customer Service:

- ✓ PHX provides a live, bi-lingual, on-site Customer Service Department that is fully trained to answer questions related to citation issuance, payment, adjudication, FTB, Collections.
- ✓ All calls are recorded to quality assurance and recordings can be sent to the Agency at any time for review
- ✓ PHX's IVR is bi-lingual and accessible via several toll-free numbers; the IVR provides real-time information to the caller regarding current status, including the amount due
- ✓ The IVR accepts VISA, MasterCard, Discover, and American Express

Web Presence:

- ✓ PHX Solution is 100% web-based: https://www.paymycite.com/Ontario; https://fams.wincitex.com/City/Ontario are custom websites for the Public for complete transparency.
- ✓ PCI complaint,TLS1.2 encryption level. McAfee Secure.Trustwave.
- ✓ Web Content Accessibility Compliance: WCAG20- 20081211/ Level AA, Section 508

* Postage Costs: Agency will be notified in writing prior to increase
* Citation rolls and supplies are available. Costs vary based on quantity
* Additional Work to be quoted based on scope of services. Custom development $175.00 per hour/optional.

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Planning Prepared By: Lorena Mejia Department: Prepared By: Lorena Mejia Staff Member Presenting: Rudy Zeledon, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 20

SUBJECT: **A DEVELOPMENT AGREEMENT (FILE NO. PDA23-005) BETWEEN THE CITY OF ONTARIO AND DIVERSIFIED PACIFIC DEVELOPMENT GROUP, LLC IN CONJUNCTION WITH THE EMPIRE GROVES SPECIFIC PLAN (FILE NO. PSP23-001)**

RECOMMENDATION: That the City Council consider and adopt:

A. An Ordinance for a Development Agreement (File No. PDA23-005) between the City of Ontario and Diversified Pacific Development Group, LLC to establish terms and conditions for the associated Development Plan (File No. PDEV23-039);
B. An Ordinance for the Empire Grove Specific Plan (File No. PSP23-001) to establish the Land Use District, development standards, guidelines, and infrastructure improvements.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The proposed hotel is expected to generate approximately $4.5 million in transit occupancy tax revenue during its first year, rising to $6.5 million by year five. Additionally, the project is projected to produce around $2.2 million in Development Impact Fees. It will also contribute to an increase in property tax revenues, based on the hotel's anticipated market value. The development will create between 700 and 900 permanent jobs, along with 500 temporary construction jobs. Specific details regarding the payment schedule and timing of Development Impact Fees are outlined in the Development Agreement (File No. PDA23-005).

BACKGROUND & ANALYSIS: On April 1, 2025, the City Council introduced and waived further reading of Ordinances Approving the Development Agreement (File No. PDA23-005) and the Empire Groves Specific Plan (File No. PSP23-001).

On March 18, 2025, the City Council continued this item to a future City Council meeting.

On January 27, 2010, the Ontario City Council certified The Ontario Plan Environmental Impact Report in conjunction with File No. PGPA06-001 (City Council Resolution No. 2010-006). On August 16, 2022, the Ontario City Council certified The Ontario Plan 2050 Update Supplemental Environmental Impact Report in conjunction with File No. PGPA20-002 (City Council Resolution No. 2022-129). The Ontario Plan 2050 (TOP) and associated Environmental Impact Report analyzed the Project site and established the vision, general guidelines, overlays, districts, mixed-use areas, etc. for the Project site and surrounding area.

The TOP adopted several overlay areas at varying scales. The first is the Ontario Airport Metro Center Overlay (OAMC Overlay), which envisioned an area developed with a mix of regional serving retail, office, restaurant, cultural, entertainment, and residential uses. The OAMC is bounded by Fourth Street to the north, the 1-15 Freeway to the east, the Southern Pacific Railroad and Airport Drive to the south and Vineyard Avenue to the west. Within the OAMC there are two Place Type Districts - Airport Metro/Entertainment District and Guasti District, as well as six Mixed Use zoning designations.

The project site is within the Guasti Place Type District and the Multimodal Mixed-Use zoning designation. Both areas are envisioned with office, commercial, hospitality, and residential uses that can complement current and future public transportation and the nearby Ontario Airport.

On October 16, 2023, the applicant submitted three applications to facilitate the development of a 600-room hotel with commercial/retail space.

- A Development Agreement (File No. PDA23-005) between the City of Ontario and Diversified Pacific Development Group, LLC to establish the terms and conditions for the associated Development Plan (File No. PDEV23-039).
- A Specific Plan application (File No. PSP23-001 - Empire Groves Specific Plan) to establish the land use district, development standards, guidelines, and infrastructure improvements for the potential development of up to 600,000 square feet of hospitality and commercial land uses.
- A Development Plan (File No. PDEV23-039) to construct a 600,000 square foot hotel consisting of 600 rooms and commercial space for restaurant and retail uses for hotel guests and the general public.

DEVELOPMENT AGREEMENT: The proposed Development Agreement is between the City of Ontario and Diversified Pacific Development Group, LLC for the construction of a full-service hotel with several on-site amenities. The City is considering this Development Agreement due to the substantial economic and community benefits the Convention Hotel will bring. Additionally, it aligns with the City's vision to transform the area into a regional tourism hub, capitalizing on the increasing success and its close proximity to the Ontario International Airport (ONT), located directly across from the Ontario Convention Center. The terms of the Agreement outline the development of the hotel project, timing of development, required infrastructure improvements, as well as obligations towards Development Impact Fees, off-site street improvements, among others. Key components of the Development Agreement include the following:

Development of the Property

- Timing: The Developer is required to develop the Project no later than four years after the completion of the Convention Center expansion.
- Public Infrastructure Improvements: Developer is responsible for connecting the hotel project to all utilities necessary to provide adequate water, sewer, gas, etc., and it is responsible for sewer and storm drain improvements necessary for the construction of the facilities.

Public Benefits

- Covenant to Rebate/Reimburse: The Hotel Project is anticipated to provide substantial public benefits from the increase in property taxes, retail sales taxes, transient occupancy taxes and parking taxes. Of those taxes described, the Developer shall be entitled to the rebate and reimbursement of only Transit Occupancy and Parking Taxes for a period of 20 years.
- Pedestrian Bridge: The cost to construct a pedestrian bridge spanning Holt Boulevard connecting the future parking structure to the Convention Hotel will be split equally between the City and Developer if the bridge is complete by December 31, 2026. Otherwise, the City will be responsible for 100 percent of the cost to construct this bridge.
- Guasti Road: Developer at its sole expense will construct and complete required right-of way improvements along the property frontage of Guasti Road. The City will issue Development Impact Fee credits to Developer for the amount incurred.
- Holt Boulevard: City agrees to make road improvement to Holt Boulevard adjacent to the Property in accordance with City standards.

Staff finds that the Development Agreement is consistent with State law, The Ontario Plan, and the City's Development Agreement policies.

SPECIFIC PLAN: The Empire Grove Specific Plan serves to implement the City's Policy Plan for the project site and provides zoning regulations for development of the Project site by establishing permitted land uses, development standards, infrastructure requirements, implementation requirements that are outlined below. The proposed Specific Plan boundary covers 10.43 acres of vacant land for the development of a hotel and commercial/retail space. While the Specific Plan currently facilitates the hotel and commercial/retail development, there is anticipation that the proposed development will encourage future growth in the immediate and surrounding areas.

- Land Use Plan – The Empire Grove Specific Plan land use plan includes one Planning Area for the Project site, the Hospitality Mixed Use (PA1). The Hospitality Mixed-Use combines hotel uses, ancillary services and amenities with local service commercial/retail uses on a single property. At buildout, the total development allowed for the project site will be 600,000 square feet (hotel: 553,124 square feet and retail: 46,876 square feet) and up to 600 guest rooms.
- Design Guidelines – The design concept ensures a high-quality, attractive, and cohesive design structure for the Specific Plan. The guidelines ensure a high-quality design for new development design standards that promote energy and water conservation.
- Site Plan and Circulation – The Circulation Plan for the Specific Plan reinforces the objective of moving vehicles, pedestrians, cyclists, and public transit safely and efficiently through and around the Project. The site planning and circulation design guidelines are intended to promote high quality aesthetics, efficient land use practices, and public safety.
- Landscape Design – The landscape design guidelines ensure water-conserving, drought-

tolerant plant palette that will soften transitions from the ground plane to the vertical plane of the building; offer screening from the adjacent neighborhood; and add color and texture to the development.

- Infrastructure – Development of the Specific Plan requires the installation of all infrastructure necessary to serve the Project as a standalone development.

PLANNING COMMISSION REVIEW: On February 25, 2025, the Planning Commission conducted a duly noticed public hearing on the subject applications and voted (4-0) to recommend that the City Council approve the Development Agreement (Resolution No. PC25-007), and the Specific Plan (Resolution No. PC25-008).

COMPLIANCE WITH THE ONTARIO PLAN: The proposed Project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan (TOP).

HOUSING ELEMENT COMPLIANCE: The Project is consistent with the Housing Element of the Policy Plan (general plan) component of The Ontario Plan, as the Project site is not one of the properties in the Housing Element Sites contained in Tables B-1 and B-2 (Housing Element Sites Inventory) of the Housing Element Technical Report.

AIRPORT LAND USE COMPATIBILITY PLAN COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan. On April 19, 2011, the City Council of the City of Ontario approved and adopted the ONT ALUCP, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the City Council finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP.

ENVIRONMENTAL REVIEW: Staff has prepared an Addendum to The Ontario Plan 2050 Supplemental Environmental Impact Report (State Clearinghouse No. 2021070364, certified by the City Council on August 16, 2022. This Application introduces no new significant environmental impacts. All previously adopted mitigation measures are a condition of Project approval and are incorporated herein by this reference.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA23-005, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND DIVERSIFIED PACIFIC DEVELOPMENT GROUP, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH A DEVELOPMENT PLAN (FILE NO. PDEV23-039), FOR A 10.43 ACRE PROPERTY LOCATED ON THE SOUTHEAST CORNER OF GUASTI ROAD AND HOLT BOULEVARD WITHIN THE PROPOSED PA1 (HOSPITALITY MIXED-USE) DISTRICT OF THE EMPIRE GROVES SPECIFIC PLAN, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 110-322-33

WHEREAS, DIVERSIFIED PACIFIC DEVELOPMENT GROUP, LLC ("Applicant") has filed an Application for the approval of a Development Agreement, File No. PDA23-005, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 10.43 acres of land generally located on southeast corner of Guasti Road and Holt Boulevard, within the proposed Empire Groves Specific Plan; and

WHEREAS, the properties to the north of the Project site are within the CCS (Convention Center Support Commercial) zoning district and are developed with offices and hotel. The property to the east is within the UC (Utilities Corridor) zoning district and is developed with a flood control channel. The property to the south and west is within the CCS (Convention Center Support Commercial) zoning district, and is developed with hotel; and

WHEREAS, the applicant submitted a Development Plan (File No. PDEV23-039) to construct a 600,000 square foot hotel and commercial building consisting of 600 rooms; and

WHEREAS, in conjunction with the Project, the Applicant also filed an application for a Specific Plan (Empire Groves), File No. PSP23-001, to establish the land use district, development standards, guidelines, and infrastructure improvements for the development of up to 600,000 square feet of hospitality and commercial land uses on the project site; and

WHEREAS, on February 25, 2025, the Planning Commission conducted a public hearing and approved Resolution No. PC25-006, recommending the City Council approve a Resolution adopting an Addendum to the Ontario Plan 2050 Supplemental Environmental Impact Report (State Clearinghouse No. 2021070364), certified by the City Council on August 16, 2022, in conjunction with File No. PGPA20-002. The Addendum finds that the proposed project introduces no new significant environmental impacts. Furthermore, all mitigation measures previously adopted with the Certified Environmental Impact Report are incorporated into the Project by reference; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (ALUCP), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on February 25, 2025, the Planning Commission of the City of Ontario conducted a hearing to consider the SEIR Addendum and the Project, and concluded said hearing on that date, voting to issue Resolution No. PC25-007, recommending the City Council approve the Application; and

WHEREAS, on March 18, 2025, the City Council of the City of Ontario conducted a hearing to consider the SEIR Addendum and the Project, and continued said hearing to April 1, 2025, date; and

WHEREAS, as the first action on the Project, on April 1, 2025, the City Council approved a Resolution adopting an SEIR Addendum to a previous Certified EIR prepared pursuant to CEQA, the State CEQA Guidelines and the City of Ontario Local CEQA Guidelines, which indicated that all potential environmental impacts from the Project were less than significant or could be mitigated to a level of significance; and

WHEREAS, on April 1, 2025, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were reviewed in conjunction with an Addendum to TOP 2050 Supplemental Environmental Impact Report, certified by the City of Ontario City Council on August 16, 2022, in conjunction with File No. PGPA20-002.

(2) The Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(3) The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts; and

(4) The Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the City Council; and

(5) There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts; and

(6) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the Certified EIR, and all mitigation measures previously adopted by the Certified EIR, are incorporated herein by this reference.

SECTION 2: ***Additional Environmental Review Not Required.*** Based on the Addendum, all related information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain 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 Certified EIR was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more significant effects on the environment, but which the City declined to adopt.

SECTION 3: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP

Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP; and

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 3, above, the City Council hereby concludes as follows:

The provisions of the development agreement are consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan, and any applicable specific plans. The Development Agreement applies to approximately 10.43 acres of land located on the southeast corner of Guasti Road and Holt Boulevard within the proposed Empire Groves Specific Plan (File No. PSP23-001). The Development Agreement establishes parameters for the development of land within the Empire Groves Specific Plan. The Development Agreement also grants the Applicant, the right to develop, the Project site. These terms and conditions are consistent with The Ontario Plan Policy Plan (General Plan), design guidelines and development standards for the proposed Empire Groves Specific Plan and will help further the vision of the Guasti District, the Multimodal Mixed-Use Land Use designation, and support the nearby Convention Center.

SECTION 5: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the City Council hereby APPROVES the herein described Development Agreement, attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the

fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 9: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 10: ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 15th day of April, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held April 1, 2025 and adopted at the regular meeting held April 15, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held April 15, 2025 and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PDA23-005
Development Agreement

(Document follows this page)

RECORDING REQUESTED BY AND

WHEN RECORDED MAIL TO:

CITY OF ONTARIO
CITY CLERK / RECORDS MANAGEMENT
303 EAST "B" STREET
ONTARIO, CA 91764-4196

Exempt from Fees Per Gov. Code § 6103 and 27383

Space above this line for Recorder's Use Only

FILE NO. PDA_____

DEVELOPMENT AGREEMENT

By and Between

City of Ontario
a California municipal corporation

and

DIVERSIFIED PACIFIC DEVELOPMENT GROUP LLC,
a California limited liability company

_____, 2025

San Bernardino County, California

DEVELOPMENT AGREEMENT NO. PDA_____

This Development Agreement (hereinafter "Agreement") is dated as of _____, 2025, for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation (hereinafter "CITY"), and DIVERSIFIED PACIFIC DEVELOPMENT GROUP LLC, a California limited liability company (hereinafter "OWNER"):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code and Section 4.01.015 of the Ontario Development Code; and

WHEREAS, OWNER and CITY desire that they enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the California Environmental Quality Act, Public Resources Code §§21000, et seq. ("CEQA") have been met with respect to the Hotel Project and the Agreement in that certain Addendum to the Final Supplemental Environmental Impact Report for the Ontario Plan 2050; Empire Groves Specific Plan (State Clearinghouse No. 2021070364 (the "Addendum"); and

WHEREAS, the City Council found and determined that the Addendum was prepared in accordance with the requirements of CEQA and adequately describes the impacts of the Hotel Project described in the Addendum, which included consideration of this Agreement; and

WHEREAS, CITY is currently engaged in the Ontario Convention Center Expansion & Renovation Project (as further defined in Section 4.8.1 as the "Convention Center Project"), which is slated to significantly expand and remodel the existing convention center. To support the Convention Center Project and other possible improvements that CITY is considering making, as discussed further in this Agreement, CITY and OWNER desire that OWNER develop, construct and operate a full service convention hotel ("Hotel") on the Property, which can support and enhance the Convention Center Project. For purposes of this Agreement, a full service convention hotel means a hotel that offers a range of onsite amenities, including but not limited to a restaurant, pool, gym, laundry services, business center and meeting space or conference rooms; and

WHEREAS, CITY and OWNER acknowledge that no such premium first class hotel exists in the City of Ontario, and that OWNER will incur significant expense and risk in the

development, construction and operation of the Hotel Project. Further, CITY and OWNER acknowledge that the Hotel may be difficult to finance, and that this Agreement is necessary to help facilitate investment and financing of the Hotel Project. Further, OWNER would not proceed with the Hotel without this Agreement. For purposes of this Agreement, a full service convention hotel means a hotel that offers a range of onsite amenities, including a restaurant, pool, gym, laundry services, business center and meeting space or conference rooms; and

WHEREAS, CITY and OWNER agree that the Convention Center Project and Hotel Project are complementary and that the parties agree to use commercially reasonable efforts to coordinate the reopening of Convention Center and opening of the Hotel Project. As part of the Convention Center Project, CITY intends to significantly expand the Convention Center and may construct a public parking facility and outdoor plaza as part of the Convention Center Project to provide new parking near the Convention Center and the proposed Hotel Project. To further the success of the Convention Center, CITY is considering the acquisition of some or all of the Surrounding Properties (described in Section 4.7 below), to establish thereon vibrant high-end, luxury retail, commercial and residential uses that would enhance the economic viability of the Hotel Project and to further improve the tax base of CITY; and

WHEREAS, the Hotel Project will provide substantial public benefits to CITY, including the creation of job opportunities for local residents in hospitality, retail, management, construction and maintenance. The Hotel Project will support local entrepreneurs and small businesses by providing them with platforms to showcase and sell their products or services. The Hotel Project will generate tax revenue for CITY. The Hotel Project will attract visitors, host key events, provide support to the Convention Center and other local businesses, ultimately enhancing the overall cityscape, further benefiting local businesses and the local economy; and

WHEREAS, this Agreement and the Hotel Project are consistent with CITY'S Comprehensive General Plan and any specific plan applicable thereto; and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Property, as defined in Section 1.1.21 and as more particularly described and depicted in the attached Exhibit "A" – Legal Description of the Property and Exhibit "B" - Map Showing Property and its Location, in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for timely entitlement processing and development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Hotel Project, and generally serve the purposes for which development agreements under Sections 65864 et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future be incurring substantial costs to facilitate development of the Property in accordance with this Agreement; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements to assure vesting of legal rights to develop the Property in accordance with this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1. Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1. "Agreement" means this Development Agreement.

1.1.2. "CITY" means the City of Ontario, California, a California municipal corporation.

1.1.3. "Convention Center Project" is defined in the recitals to this Agreement and supplemented pursuant to Section 4.8.1 below.

1.1.4. "Development" means the improvement of the Property for the purposes of completing the Hotel Project, including the structures, improvements and facilities comprising the Hotel Project including, but not limited to: grading; the construction of public infrastructure and public facilities related to the Hotel Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.5. "Development Approvals" means all permits and other entitlements required as of the Effective Date for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

(a) specific plans and specific plan amendments;

(b) tentative and final subdivision and parcel maps;

(c) development plan review;

(d) conditional use permits, public use permits and plot plans;

(e) zoning;

(f) grading and building permits.

1.1.6. "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.7. "Development Impact Fee" means a monetary exaction or other charge, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion

of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4. For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

1.1.8. "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.9. "Effective Date" means the date that the ordinance approving this Agreement goes into effect.

1.1.10. "Existing Development Approvals" means all Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the Approvals incorporated herein as **Exhibit "C"** and all other Approvals which are a matter of public record on the Effective Date.

1.1.11. "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the Regulations incorporated herein as **Exhibit "D"** and all other Land Use Regulations that are in effect and a matter of public record on the Effective Date.

1.1.12. "Final Non-Appealable Date" means the date the Existing Development Approvals are final and non-appealable as set forth in the CITY Development Code and any applicable laws and the applicable statute of limitations has expired under the California Environmental Quality Act (Public Resources Code §21000 *et seq.)* and implementing Guidelines for CEQA (14 Cal. Code Regs. § 15000 *et seq.)* with respect to the Addendum, in each case without the filing of any third party challenge, appeal, or lawsuit or, if filed, such challenge, appeal, or lawsuit has been resolved in a manner satisfactory to OWNER. Promptly after the Final Non-Appealable Date occurs, the parties shall execute a joint memorandum or side letter confirming the final date of the Final Non-Appealable Date and, thereafter, the Final Non-Appealable Date shall be deemed to be the date agreed upon by the parties in such memorandum or side letter.

1.1.13. "Force Majeure" has the meaning set forth in Section 10.11.

1.1.14. "Full Service Convention Hotel" has the meaning as set forth in the Recitals and supplemented pursuant to Section 4.4.3 below.

1.1.15. "General Plan" means The Ontario Plan adopted and updated on August 16, 2022 by Resolution No. 2022-129 for the Supplemental Environmental Impact Report for the General Plan Amendment; Resolution No. 2022-130 for the Governance Manual of the Ontario Plan; and Resolution No. 2022-131 for the Policy Plan component of The Ontario Plan, as amended up to the date of the first reading of the ordinance adopting and approving this Agreement.

1.1.16. "Hotel Project" means the development of the Property contemplated by the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.17. "Improvement" or "Improvements" means those public improvements required to support the development of the Hotel Project as described in the development conditions for the Hotel Project, as further described in **Exhibit "E"** and depicted in **Exhibit "F"** (together, the "Infrastructure Improvements Exhibit").

1.1.18. "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

(a) the conduct of businesses, professions, and occupations;

(b) taxes and assessments;

(c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of similar rights and interests that provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain.

1.1.19. "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.20. "OWNER" means the persons and entities listed as OWNER on page 1 of this Agreement and their permitted successors in interest to all or any part of the Property.

1.1.21. "Parking Tax" means the tax imposed by CITY for the renting of a parking space in a parking station in the City of Ontario pursuant to Title 3, Chapter 8 of the Ontario Municipal Code, as may be modified from time to time.

1.1.22. "Property" means the real property described on **Exhibit "A"** and shown on **Exhibit "B"** to this Agreement.

1.1.23. "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY

under Section 3.7 of this Agreement.

1.1.24. "Specific Plan" means that certain specific plan adopted by CITY Council, and entitled, "Empire Groves Specific Plan."

1.1.25. "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Property. Subsequent Development Approvals shall be deemed to be subject to the provisions of this Agreement, without any further action needed on the part of either CITY or OWNER, and as defined in Section 3.7 of this Agreement.

1.1.26. "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Effective Date.

1.1.27. "Transient Occupancy Tax" or "TOT" means the tax imposed by CITY on the rent charged to guests for occupancy of hotel rooms within the development, as authorized by Title 3, Chapter 6 of the Ontario Municipal Code or otherwise, as may be modified from time to time.

1.1.28. "Total Project Costs" means all costs and expenses incurred by OWNER to acquire, develop and construct the Hotel Project and all portions thereof, and to brand and open the Hotel Project to the public, inclusive of all hotel management and franchise costs, fees and charges.

1.2. Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

1.2.1. Exhibit "A" — Legal Description of the Property.

1.2.2. Exhibit "B" — Map showing Property and its location.

1.2.3. Exhibit "C" — Existing Development Approvals.

1.2.4. Exhibit "D" — Existing Land Use Regulations.

1.2.5. Exhibit "E" — Description of Required Infrastructure Improvements.

1.2.6. Exhibit "F" — Depiction of Required Infrastructure Improvements.

1.2.7. Exhibit "H-1"— Surrounding Property.

1.2.8. Exhibit "H-2" — Miller Property.

1.2.9. Exhibit "I" – Conceptual Depiction of the Convention Center Expansion.

1.2.10. Exhibit "J" - Development Impact Fees Imposed by the CITY.

2. GENERAL PROVISIONS.

2.1. Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.2. Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to the Property or a portion thereof, or the lessee of the Property or has the right to acquire fee simple title to the Property or a portion thereof from the current owner(s) thereof. To the extent OWNER does not own fee simple title to the Property, OWNER shall

obtain written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof.

2.3. Term. The term of this Agreement shall commence on the Effective Date and shall continue for an initial term of thirty (30) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

2.4. Assignment.

2.4.1. Right to Assign. OWNER shall have the right to sell, transfer or assign the Property (inclusive of all improvements thereon) in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.), to any person, partnership, limited liability company, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in compliance with the following:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property.

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, OWNER shall notify CITY'S City Manager, in writing, of such sale, transfer or assignment and shall provide CITY with: (1) an executed agreement providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement with respect to the portion of the Property so sold, transferred or assigned arising from and after the date of such sale, transfer or assignment; and (2) the payment of the applicable processing charge to cover CITY'S review and consideration of such sale, transfer or assignment.

(c) Any sale, transfer or assignment not made in compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the benefits and burdens of this Agreement shall be binding upon and inure to such purchaser, transferee or assignee, arising from and after the date of such assignment. The City Manager shall have the authority to review, consider and either approve, conditionally approve, or deny any proposed sale, transfer or assignment that is not made in compliance with this Section 2.4.

2.4.2. Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement unless OWNER no longer has a controlling legal or controlling equitable interest in all or any part of the portion of the Property sold, transferred or assigned, or such transferring owner is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring owner of the following conditions:

(a) OWNER no longer has a controlling legal or controlling equitable interest in all or any part of the portion of the Property sold, transferred or assigned.

(b) OWNER is not then in default under this Agreement, which default has not been cured in accordance with Section 7.4.

(c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

(e) The provisions of this Section 2.4.2 and Section 2.4.3 below shall not apply to the holder of a mortgage (inclusive of a deed of trust) encumbering the Property as security for the provision of financing towards the improvement of the Property, but shall be governed pursuant to the terms of Section 9 of this Agreement.

2.4.3. Effect of Assignment and Release of Obligations. In the event of a sale, transfer or assignment pursuant to the provisions of Section 2.4.1 above and notwithstanding the release provisions of Section 2.4.2 above:

(a) The assignee shall be liable for the performance of all obligations of OWNER with respect to transferred property, but shall have no obligations with respect to the portions of the Property, if any, not transferred (the "Retained Property").

(b) The owner of the Retained Property shall remain liable for the performance of all obligations of OWNER with respect to Retained Property, but shall have no further obligations with respect to the transferred property.

(c) The assignee's exercise, use and enjoyment of the Property or portion thereof (but not any Retained Property) shall be subject to the terms of this Agreement to the same extent as if the assignee were OWNER from and after the date the assignee took title to the Property or portion thereof.

2.4.4. Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.4.

2.4.5. Partial Assignment and Assumption. CITY and OWNER agree OWNER may partially assign its obligations and rights under this Agreement, and all amendments hereto, to a purchaser, transferee or assignee of a lot, which has been subdivided subject to provisions of a partial assignment and assumption agreement in a form reasonably approved by CITY. Any such complete and executed partial assignment and assumption of this Agreement shall be submitted to CITY for approval pursuant to Section 2.4.1 of this Agreement. Within sixty (60) days following such complete submittal, CITY shall review, and if the above conditions are satisfied, shall approve the partial assignment and release and notify the purchaser, transferee or assignee in writing thereof. If CITY shall fail to respond to such request for approval within such sixty (60) day period, CITY shall be deemed to have approved such request. No such release approved pursuant to this Subsection 2.4.5 shall cause, or otherwise affect, a release of OWNER from the duties and obligations under this Agreement that are retained by OWNER and excluded from the transfer or assignment.

2.5. Amendment or Cancellation of Agreement. This Agreement may be amended or cancelled in whole or in part only in the manner provided for in Government Code Section 65868.1. Any amendment of this Agreement, which amendment has been requested by OWNER, shall be considered by CITY only upon the payment of the applicable processing charge. This provision shall not limit any remedy of CITY or OWNER as provided by this

Agreement. Either Party or successor in interest, may propose an amendment to or cancellation, in whole or in part, of this Agreement. Any amendment or cancellation shall be by mutual consent of the parties or their successors in interest except as provided otherwise in this Agreement or in Government Code Section 65865.1. For purposes of this section, the term "successor in interest" shall mean any person having a legal or equitable interest in the whole of the Property, or any portion thereof as to which such person wishes to amend or cancel this Agreement. The procedure for proposing and adopting an amendment to, or cancellation of, in whole or in part, this Agreement shall be the same as the procedure for adopting and entering into this Agreement in the first instance. Notwithstanding the foregoing sentence, if CITY initiates the proposed amendment to, or cancellation of, in whole or in part, this Agreement, CITY shall first give notice to OWNER of its intention to initiate such proceedings at least sixty (60) days in advance of the giving the public notice of intention to consider the amendment or cancellation.

2.6. Amendment to Reflect Consistency With Future Amendments to the Development Plan. To the extent any future amendment to the Development Plan (which shall occur only with OWNER'S prior written approval) provides for modifications to rights or obligations that differ from or alter the same or similar rights or obligations contained in this Development Agreement, OWNER reserves the right to request, and thereupon CITY shall cause, an amendment to this Development Agreement to reflect and address such modifications.

2.7. Minor Modification. Upon the written application of OWNER, minor modifications and changes to the Development Plan including modifications to building design or footprint (not affecting minimum setbacks), parking layout and design, and landscape area design may be approved by the Director of the Planning Department without the need to amend this Development Agreement. Other changes in the Development Plan shall be processed pursuant to the CITY Zoning Ordinance. It is also contemplated by CITY and OWNER that OWNER may, from time to time, seek amendments to one or more of the Development Approvals. Any such amendments are contemplated by CITY and OWNER as being within the scope of this Agreement as long as they are consistent with the Land Use Regulations and shall, upon approval by CITY, continue to constitute the Development Approvals as referenced herein. The parties agree that any such modifications or amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

2.8. Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

2.8.1. Expiration of the stated term of this Agreement as set forth in Section 2.3.

2.8.2. Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

2.8.3. Termination of this Agreement based on any uncured default of OWNER and following the termination proceedings requirement by the Development Agreement policies.

Completion of the Hotel Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by CITY or applicable public agency of all required dedications, shall not terminate this Agreement or the rights of OWNER or CITY hereunder. Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this

Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, any public facilities and services mitigation fees paid pursuant to Section 4.2 of this Agreement by OWNER to CITY on which construction has not yet begun shall be refunded to OWNER by CITY within a reasonable period of time.

2.9. Notices.

2.9.1. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

2.9.2. All notices shall be in writing and shall be considered given either: (i) when delivered in person, including, without limitation, by courier, to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows. A copy of any notice may be sent via electronic mail to the email addresses as specified below:

If to CITY:	**If to OWNER:**
Scott Ochoa, City Manager	Jeff Burum and Matt Jordan
City of Ontario	Diversified Pacific Development Group LLC
303 East "B" Street	10621 Civic Center Drive
Ontario, CA 91764	Rancho Cucamonga, CA 91730
Email: SOchoa@ontarioca.gov	Email: JBurum@divpac.com
with a copy to:	**with a copy to:**
Ruben Duran, City Attorney	Guy Maisnik
Best Best & Krieger, LLP	Jeffer, Mangels, Butler & Mitchell LLP
2855 E Guasti Road, Suite 400	1900 Avenue of the Stars, 7th Floor
Ontario, CA 91761	Los Angeles, CA 90067
Email: ruben.duran@bbklaw.com	Email: mgm@jmbm.com

2.9.3. Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1. Development of the Hotel Project; Rights to Develop.

3.1.1. Development of the Hotel Project. In consideration of the premises, purposes, and intentions set forth in this Agreement, and in consideration of the assurances for development of the Hotel Project pursuant to this Agreement, OWNER agrees to use commercially reasonable efforts to develop the Hotel Project, and development of the Hotel Project shall be in accordance with: (i) the terms and conditions of this Agreement; (ii) the terms and conditions established in the Development Approvals; and (iii) the Existing Land Use Regulations. OWNER further agrees that the use, density and intensity, maximum height and size of structures and provisions for the Property reservation and dedication of land for public purposes related to the Property shall be limited to those uses permitted by the Existing Land Use Regulations. Development of the Hotel Project shall be in accordance with the Development Approvals. CITY will use reasonable diligence in processing all plans and other submittals by OWNER for the Hotel Project, so that such plans are construction ready in a timely manner for purposes of all applicable governmental approvals, inclusive of building codes and standards. Construction of the Hotel Project shall be in compliance with all applicable building codes and standards, as such may be modified from time to time.

3.1.2. Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with the Existing Land Use Regulations, subject to the terms and conditions of this Agreement and the conditions established in the Development Approvals. The Hotel Project shall remain subject to all Subsequent Development Approvals required to complete the Hotel Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Existing Land Use Regulations.

3.2. Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority in Section 3.6 herein, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise discretion in accordance with the same manner as it exercises its discretion under its police powers, including the Reservations of Authority set forth herein; provided however, that such discretion shall not prevent development of the Property for the uses and to the density or intensity of development set forth in this Agreement.

3.3. Timing of Development. The parties acknowledge that OWNER cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of OWNER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and

providing that OWNER shall have the right to develop the Property in such order and at such rate and at such times as OWNER deems appropriate within the exercise of its subjective business judgment, subject to any timing or phasing requirements set forth in the Development Plan or the Phasing Plan; provided, however, that OWNER and CITY acknowledge that it shall not be a default of OWNER under this Agreement or otherwise, if the following milestones dates or any dates set forth in the Development Plan or the Phasing Plan are not achieved:

Milestone Table:

	Event	Date
1.	Submission by OWNER of building plans to CITY for the Hotel Project	On or before three hundred sixty-five (365) days following the Final Non-Appealable Date.
2.	Commencement of Construction of the Hotel Project	On or before two (2) years following the Final Non-Appealable Date. In order to achieve this milestone, CITY agrees to complete its review of (a) OWNER'S initial plan check submission within twenty-one (21) days after receipt of such initial submission by CITY (provided, however, prior to such submission OWNER and CITY shall meet to review the proposed application), and (b) any additional submissions required to obtain the required permits for the Hotel Project within fourteen (14) days following receipt of such additional submissions by CITY. There shall be a day-for-day extension of this Commencement of Construction milestone if CITY fails to timely respond to such submissions within the time periods set forth above (each, a "CITY Response Delay").

Notwithstanding anything to the contrary herein, subject to force majeure, if OWNER has not substantially completed the Hotel by the expiration of four (4) calendar years following the Completion of the Convention Center Project, CITY shall have the right to terminate this Agreement, provided that the foregoing period shall be extended if OWNER has proceeded in good faith, but has not yet been able to obtain feasible financing on commercially reasonable terms and conditions for the construction of the Hotel Project or on account of a Force Majeure event for the number of days that the inability to obtain feasible financing event or the Force Majeure event was in effect. OWNER shall provide at least sixty (60) days advance written notice to CITY if OWNER exercises an option to extend the completion date of the Hotel Project.

3.4. Requirement for Public Infrastructure Improvements. OWNER shall comply with any conditions of the Development Approvals with respect to providing public infrastructure improvements or facilities, if any, to the extent required in connection with the Hotel Project. Notwithstanding any terms that may expressly identify, or the absence thereof to identify, any certain Public Infrastructure Improvements within the terms of this Agreement, the obligations of OWNER which are imposed by the conditions of the Development Approvals for the Hotel Project shall still be in effect and are not waived. Development of the Property is contingent in part on the phasing of area-wide infrastructure improvements over which OWNER has control and subject to the provisions of this Agreement. The issuance of building permits by CITY for the Development of the Property is, in general, contingent on OWNER'S completion of such needed infrastructure improvements to the extent provided herein and the availability of improvements and services to serve the Property.

3.4.1. Infrastructure Improvement Exhibit. Attached hereto as **Exhibits "E**" and **"F"** are a description and depiction, respectively, of the Improvements needed for the development of the Property. In the event of any discrepancy between **Exhibit "E"** and **Exhibit "F"**, **Exhibit "F"** shall control.

3.4.2. Infrastructure Improvement Plan. Subject to the prior submittal by OWNER and approval by CITY of a plan to provide sufficient public infrastructure for the construction of the Development of the Property. The plan to be submitted by OWNER for CITY approval shall describe the utilities and other infrastructure necessary to provide sufficient fire protection and other public health and safety requirements for the Development and other facilities for the Hotel Project, as shown on **Exhibits "E" and "F"**.

3.5. Phasing Plan. Development of the Property shall be subject to all timing and any phasing requirements established by the Development Plan, provided the same are consistent with the terms of this Agreement.

3.6. Changes and Amendments. The parties acknowledge that refinement and further development of the Hotel Project may require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to **Exhibit "C"**, and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY'S reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

(a) Alter the permitted uses of the Property as a whole; or

(b) Increase the density or intensity of use of the Property as a whole; or

(c) Increase the maximum height and size of permitted buildings; or

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.7. Reservations of Authority.

3.7.1. Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, CITY shall not be prevented from applying new rules, regulations and policies upon OWNER, nor shall a development agreement prevent CITY from denying or conditionally approving any subsequent development project application on the basis of such new rules, regulations and policies, where the new rules, regulations and policies consist of the following:

(a) Processing fees and charges of every kind and nature imposed by CITY to cover the costs of processing applications for Development Approvals or for monitoring compliance with any Development Approvals;

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure;

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety, including all uniform codes adopted by CITY and any local amendments to those codes adopted by CITY; provided however that, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the standards and specifications that are expressly identified in the Specific Plan;

(d) Regulations that may conflict with this Agreement and the Development Plan but that are reasonably necessary to protect the residents of the project and/or of the immediate community from a condition perilous to their health or safety;

(e) Regulations that do not conflict with those rules, regulations and policies set forth in this Agreement or the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property;

(f) Regulations that may conflict with this Agreement or the Development Plan, but to which OWNER consents in writing.

3.7.2. Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations that do not conflict with the Development Plan and/or Existing Development Approvals, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan and/or the Existing Development Approvals; provided such Subsequent Development Approvals or Subsequent Land Use Regulations are based upon any such new rules, regulations and polices described and provided above in Section 3.7.1 above.

3.7.3. Modification or Suspension by State or Federal Law. In the event that

State or Federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. In the event OWNER alleges that such State or Federal laws or regulations preclude or prevent compliance with one or more provisions of this Agreement, and CITY does not agree, OWNER may, at its sole cost and expense, seek declaratory relief (or other similar non-monetary remedies); provided however, that nothing contained in this Section 3.7.3 shall impose on CITY any monetary liability for contesting such declaratory relief (or other similar non-monetary relief).

3.7.4. Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.8. Public Works; Utilities. If OWNER is required by this Agreement or as a condition of the Hotel Project Development Approval to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws in existence as of the Effective Date to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency should it have undertaken such construction. As a condition of development approval, and subject to the terms of this Agreement, OWNER shall connect the Hotel Project to all utilities necessary to provide adequate water, recycled water, sewer, gas, electric, and other utility service to the Hotel Project, as further described and depicted in the Infrastructure Improvements Exhibit. As a further condition of development approval, OWNER shall contract with CITY for CITY-owned or operated utilities for this purpose, for such price and on such terms as may be available to similarly situated customers in the City of Ontario as of the Effective Date. Notwithstanding the foregoing, OWNER is not responsible for a future or unreasonable requests to upsize or increase the capacity of any utilities to provide adequate water, recycled water, sewer, gas, electric and other utility service that are not directly related to and caused by the Hotel Project. As a further condition of development approval of the Property, to the extent OWNER does not own the Property in fee simple, OWNER must provide to CITY the written consent from the current fee owner of the Property agreeing to the terms of this Agreement and the recordation thereof, pursuant to Section 2.2.

3.8.1. OWNER agrees that development of the Hotel Project shall require the construction of storm drain improvements as described in **Exhibit "E"** and depicted in **Exhibit "F"**. OWNER shall be responsible for the construction of the necessary extension of storm drain facilities to the extent such storm drain facilities are needed for the Hotel Project.

3.8.2. OWNER agrees that development of the Hotel Project shall require the construction of street improvements as described in **Exhibit "E"** and depicted in **Exhibit "F".**

3.8.3. OWNER agrees that development of the Property shall require the extension of permanent water and recycled water improvements as described in **Exhibit "E"** and depicted in **Exhibit "F"** to serve the Property. OWNER also agrees that recycled water, if

available, shall be utilized by OWNER for all construction-related water uses including prior to, and during, any grading of the Property. CITY agrees to work with OWNER to the construction and installation of the non-potable reuse system ("Reuse System"), and OWNER acknowledges that the Reuse System is subject to submittal to and approval by the State Regional Water Quality Control Board.

3.8.4. OWNER agrees that development of the Property shall require the sewer improvements, at OWNER'S sole cost and expense, subject to the terms of this Agreement, as described in **Exhibit "E"** and depicted in **Exhibit "F"**.

3.8.5. If imposed by CITY as a condition of approval for the Hotel Project, prior to the issuance of building permits for the Hotel Project, CITY agrees to enter into an agreement with San Bernardino County Flood Control District ("Flood Control") for fire access by emergency, fire and first responders vehicles and personnel on the east side of the Property boundary using the existing San Bernardino County Flood Control District's Access Road. Any modifications to the entitlement landscape plans to address Flood Control's requirements will be made to the landscape construction documents that will become part of the Development Plan. If the proposed alternative emergency access is determined to be unfeasible by the CITY, OWNER shall be responsible for providing a revised access plan that ensures sufficient access for Fire Department and other emergency vehicles and personnel to service the east tower of the Hotel Project to the satisfaction of the Fire Department and the CITY. CITY agrees to work cooperatively with OWNER to adjust the landscaping plan on the Property to ensure sufficient access for Fire Department and other emergency vehicles and personnel to service the east tower of the Hotel Project to the satisfaction of the Fire Department.

3.9. Acquisition of Offsite Provision of Real Property Interests. In any instance where OWNER is required by any Development Approval or Land Use Regulation and the Development Plan to construct any public improvement on land not owned by OWNER ("Offsite Improvements"), and such public improvement solely relates to the Property and OWNER'S development and construction thereon as provided in this Agreement, as a condition of OWNER'S rights to use and occupy the Property as provided in this Agreement, OWNER shall at its sole cost and expense provide or cause to be provided, the real property interests necessary for the construction of such public improvements (the "Offsite Property").

3.9.1. CITY Acquisition of Offsite Property. In the event OWNER is unable, after exercising reasonable and good faith efforts, including, but not limited to, the rights under Sections 1001 and 1002 of the Civil Code, to acquire the Offsite Property necessary for the construction of the Offsite Improvements, and following the written request by OWNER to CITY, CITY agrees to take reasonable and good faith efforts to acquire the Offsite Property from the owner or owners of record by negotiation to the extent permitted by law and consistent with this Agreement. If CITY is unable to acquire the Offsite Property by negotiation within thirty (30) days after OWNER'S written request, CITY shall, in accordance with the procedures established by law, use its power of eminent domain to acquire the required Offsite Property at a public hearing noticed and conducted in accordance with California Code of Civil Procedure Section 1245.235 for the purpose of considering the adoption of a resolution of necessity concerning the Offsite Property, subject to approval by the City Council and the conditions set forth in this Section 3.9.1. CITY and OWNER acknowledge that the timelines set forth in this Section 3.9.1 represent the maximum time periods which CITY and OWNER reasonably believe will be necessary to complete the acquisition of any Offsite Property. CITY agrees to use

reasonable efforts to complete the actions described within lesser time periods, to the extent that it is reasonably able to do so, consistent with the legal constraints imposed upon CITY. OWNER shall pay all necessary costs associated with such acquisition or condemnation proceedings for the required real property interests. This Section 3.9.1 is not intended by the parties to impose upon OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that OWNER elects to proceed with the development of the Hotel Project, and CITY is prevented by applicable law from acquiring such Offsite Property, and then only in accordance with valid conditions imposed by CITY upon the development of the Hotel Project under the Subdivision Map Act (California Government Code Section 66410 et seq.), or other legal authority.

3.9.2. Owner's Option to Terminate Proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to making an offer to the owner of the Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease all acquisition proceedings with respect to that Offsite Property, whereupon CITY shall cease such proceedings. CITY shall provide written notice to OWNER no later than fifteen (15) days prior to the date of the hearing on CITY'S intent to consider the adoption of a resolution of necessity as to any Offsite Property. At any time within that fifteen (15) day period, OWNER may, at its option, notify CITY that it wants CITY to cease condemnation proceedings, whereupon CITY shall cease such proceedings. If OWNER does not notify CITY to cease condemnation proceedings within said fifteen (15) day period, then CITY may proceed to consider and act upon the Offsite Property resolution of necessity. If CITY adopts such resolution of necessity, then CITY shall diligently institute condemnation proceedings and file a complaint in condemnation and seek an order of immediate possession with respect to the Offsite Property.

3.10. Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies. CITY agrees to cooperate fully, at no cost to CITY, with OWNER in obtaining any required permits or compliance with the regulations of other public agencies provided such cooperation is not in conflict with any laws, regulations or policies of CITY.

4. PUBLIC BENEFITS.

4.1. Intent. The parties acknowledge and agree that development of the Property per the Development Plan will result in substantial public benefits and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that are balanced by commensurate public benefits. Accordingly, the parties agree that this Agreement and the Project contribute material consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2. Development Impact Fees.

4.2.1. Amount and Components of Development Impact Fees. For purposes of this Agreement, Development Impact Fees ("DIF") is meant to reference the fees imposed by the CITY and those fees collected by the CITY on behalf of other public agencies shall be paid by OWNER. The Development Impact Fee amounts imposed by the CITY ("CITY DIF") to be

paid by OWNER shall only be the amounts that are in effect at the time as of the Effective Date as shown on **Exhibit "J", Development Impact Fees Imposed by CITY,** attached hereto and by this reference incorporated herein. Additionally, nothing contained in this Agreement shall affect the ability of other public agencies that are not controlled by CITY to impose and amend, from time to time, Development Impact Fees established or imposed by such other public agencies, even though such Development Impact Fees may be collected by CITY solely on behalf of and the benefit of such other public agencies.

(a) Schools Obligations. OWNER shall satisfy its school obligations with the applicable school district by paying school impact fees. Written evidence of approval by the applicable school district that OWNER has met its school obligations may be required by CITY as the condition to the issuance by CITY of any building permits for the Hotel Project.

(b) Inland Empire Utilities Agency ("IEUA") Sewer Connection Fees. OWNER shall satisfy the applicable obligations by paying IEUA fees.

4.2.2. Time of Payment. Development Impact Fees for the CITY DIF shall be paid to CITY prior to the issuance of any building permits for the Hotel Project or except when OWNER and CITY enter into a DIF Credit Agreement at the time the CITY DIF is due with a credit issued up to the amounts of the CITY DIF provided in **Exhibit "J"** and as further described in Section 4.8.4. The Development Impact Fees established or imposed by other public agencies that are not controlled by CITY even if such Development Impact Fees may be collected by CITY (including without limitation, if applicable, the Inland Empire Utilities Agency Sewer Connection Fees, Ontario-Montclair School District (K-12) Fees, Cucamonga School District and Chaffey Joint Union High School Fees) (collectively, the "Pass Through DIF") must be paid when and as required in their standard course and schedule. The DIF payment obligation shall be a covenant running with the land and shall survive the expiration or early termination of this Agreement indefinitely until the DIFs are paid in full in accordance with this Agreement and in the event that any of the above requirements have not been satisfied by the OWNER.

4.3. Responsibility for Construction of Public Improvements.

4.3.1. Timely Construction of Public Infrastructure. The phasing of the area wide infrastructure construction within the vicinity of the Hotel Project must be as approved by CITY as shown on the attached **Exhibit "F"**. OWNER shall be responsible for the timely construction and completion of all public infrastructure required as a condition of approval for the Hotel Project as shown on the attached **Exhibit "F"** and any and all Hotel Project development conditions included in the Development Approvals. Unless otherwise specified in the Development Plan, all other required Improvements for the Hotel Project, shall be completed and operational for occupancy in accordance with a schedule approved by CITY and OWNER. All Infrastructure and Improvements shall be completed as required by the Development Plan.

4.3.2. Construction of DIF Program Infrastructure. To the extent OWNER is required to construct and completes construction of public improvements that are included in CITY'S Development Impact Fee Program, CITY agrees that CITY shall issue CITY DIF Credit in accordance with the provisions of a separate Fee Credit Agreement between CITY and OWNER to be entered into at the time the CITY DIF is due and payable by OWNER. Limitations on the use of DIF Credit issued to OWNER to offset OWNER'S DIF payment obligations shall also be subject to the provisions of a separate Fee Credit Agreement. CITY and

OWNER agree that the Fee Credit Agreement between CITY and OWNER shall comply with CITY'S adopted policies applicable to such agreements.

4.4. Hotel Requirements. To balance any private benefit conferred upon OWNER under this Agreement, and provided CITY has substantially completed the Convention Center Project, OWNER agrees to provide the following as consideration for such private benefits:

4.4.1. For the duration of operating the Hotel that will be constructed as part of the Hotel Project, OWNER will maintain or caused to be maintained a booking policy that allows the Visitor and Convention Bureau to reserve a minimum number of hotel rooms to secure a convention at the then market rates and subject to room availability;

4.4.2. The new Hotel must:

(a) have at least 500 rooms;

(b) be a full-service convention hotel such that it will contain (i) appropriate meeting space for the number of hotel rooms; (ii) a full service bar; (iii) retail/restaurant areas; (iv) spa services and (v) at least one three meal restaurant on premises;

(c) be a major brand that is a well-established hotel chain, generally recognized for offering hotel patrons an expected high quality level of standardized services, amenities and experiences for that major brand hotel ("Major Brand") or, if not a Major Brand, must be associated with a brand that operates through a franchising or management agreement model that has a widespread presence and characteristics consistent with a major brand hotel or be affiliated with national independent booking service (such as Preferred Hotels & Resorts or The Leading Hotels of the World), and should the Major Brand Hotel be between brands, franchises or management companies, OWNER shall undertake diligent efforts to secure a replacement Major Brand hotel within eighteen (18) months from the earlier of: (i) the date the previous Major Brand hotel has given notice to OWNER, its successors or assigns, that the Major Brand will no longer be operating at the Property pursuant to a right in its agreement with OWNER or (ii) the date the Major Brand vacates the Property.

(d) be located on the Property, which is in the "Convention Center-Hotel District," which will soon be established and would generally be defined as the area bounded by Corona Avenue to the west, Turner Avenue to the east, I-10 to the north, and the BNSF railroad to the south.

4.5. Taxes. The Hotel Project is anticipated to provide substantial public benefits from the increase in property taxes, retail sales taxes, transient occupancy taxes, and Parking Taxes. The purpose of this section is to establish the terms and conditions under which CITY will rebate or reimburse a certain volume of gross tax revenue comprised of the Transient Occupancy Taxes, and Parking Taxes (collectively referred to as the "Taxes") for a set period of years, provided certain conditions are met by OWNER and pursuant to the terms and conditions in this Section 4.5. The rebate or reimbursement is intended to support the financial feasibility of the Hotel Project and encourage economic growth within the City of Ontario. OWNER would not enter into this Agreement and take the risk of the Hotel Project without the provisions of this Section 4.5. The rebate or reimbursement of Taxes to OWNER provided in Section 4.5.1 shall be considered material consideration by CITY for OWNER to encourage OWNER to incur the significant risk and liability in connection with the Hotel Project and to encourage and facilitate economic growth in the City of Ontario.

4.5.1. Covenant to Rebate/Reimburse. CITY and OWNER agree that OWNER shall be entitled to the rebate and reimbursement of the Taxes on an annual basis commencing upon the date the Hotel opens for business to the public and continuing until the earlier of (a) the twentieth (20th) anniversary of such opening date of the Hotel, or (b) the date that the Taxes rebated and received by OWNER meets the fifty percent (50%) of the Total Project Costs threshold, which rebate and reimbursement period shall be extended on a day for day basis for each day following the date that the Hotel opens for business that the Convention Center Project is not completed; but such rebate and reimbursement period shall not exceed thirty (30) years from the Effective Date. The rebate and reimbursement of Taxes will occur by CITY providing annually a rebate of such tax revenue to OWNER, without offset, deduction or abatement, up to limits provided in this Section 4.5.1.

4.5.2. Accounting and Audits. OWNER shall provide to CITY with all the necessary documentation to substantiate the amount of TOT and Parking Taxes otherwise collectable each year of the Covenant Period. CITY reserves the right to audit the books and records of OWNER exclusively related to the Total Project Costs and TOT, provided that (a) such audit shall not occur more than once in any twelve month period, (b) such audit shall be performed not later than ninety (90) days following the date OWNER delivers to CITY such documentation and (c) such auditor shall be a national and reputable auditor and not compensated in whole or part on a contingency basis, including any incentive payment based on a percentage of savings or revenues. OWNER shall make such records available to CITY upon reasonable written notice during such audit period.

4.6. Maintenance of Open Space. OWNER shall provide for ongoing maintenance of all parks, common areas, and open space areas within the Hotel Project as may be set forth in the Development Approvals.

4.7. Compliance with Public Benefits Requirements. In the event OWNER fails or refuses to comply with any obligation of OWNER referenced in Sections 4.2, 4.3 and 4.4 beyond all applicable cure periods, OWNER shall be deemed in default of this Agreement pursuant to Section 7. below, thereby entitling the CITY to any and all remedies permitted under this Agreement, including, without limitation, the right of the CITY to withhold OWNER'S Project-related building permits, certificates of occupancy, or discretionary approvals, without liability.

4.8. City Improvements. Notwithstanding anything to the contrary in this Agreement, it shall be a condition of CITY'S obligations, if such obligation exists in this Agreement, to acquire, design, develop, construct and operate the Convention Center Project that CITY completes all actions and procedures necessary to complete a public project, including without limitation, satisfying the requirements of the California Environmental Quality Act and applicable laws for a public work project and is subject to the availability and sufficiency of funding by the CITY, as determined by CITY in its sole discretion and good faith judgment.

4.8.1. Convention Center Expansion. CITY is currently engaged in the Ontario Convention Center Expansion & Renovation Project ("Convention Center Project"), which is slated to significantly expand the existing convention center and renovate the premises and will include the construction of public parking facilities and outdoor plaza as part of the Convention Center Project to provide new parking near the Convention Center and the Hotel Project as shown in the attached **Exhibit "I"**, Conceptual Depiction of the Convention Center Expansion.

CITY has the sole right and discretion to design and construct, as part of its Convention Center Project, expanded or new public parking facilities that may be in the form of (i) a parking structure or surface parking lot, (ii) surface parking lot only, or (iii) a parking structure and surface parking lot(s) ("CITY Parking Facilities"), which may be located on or off the Convention Center property site, or a combination of both. CITY agrees to size its CITY Parking Facilities to accommodate all Convention Center activities and employee parking for the Convention Center and incremental overflow parking for employees of the Hotel Project that may be identified as needed in the Development Plan, subject to the City's discretion on which CITY Parking Facilities it will make available or construct.

4.8.2. Public Parking. CITY is willing to allow OWNER certain permissions to use any of the CITY Parking Facilities on a first come first serve basis with no dedicated spaces for such use. CITY and OWNER agree that the Convention Center Project and the Hotel Project are complementary and that the parties agree to use commercially reasonable efforts to coordinate the re-opening of Convention Center Project and the opening of the Hotel Project. OWNER shall have the right to use the CITY Parking Facilities, on a first come, first serve basis for parking for the benefit of its Hotel guests and other Hotel patrons; provided any parking fees and costs, if due, for such parking shall be borne and paid by the OWNER, the Hotel guests or Hotel patrons using the parking and not at the cost to CITY. Further, in the event that OWNER desires dedicated parking spaces for any particular event or to provide parking validations to the Hotel guests or Hotel patrons, OWNER shall submit a request to CITY and CITY agrees to work cooperatively with OWNER to accommodate OWNER'S request based on availability and events at the Convention Center and such parking fees and costs shall be borne and paid by OWNER, the Hotel guests or Hotel patrons using the parking spaces. OWNER shall pay to CITY any such parking fees and costs paid by Hotel guests and patrons to park in the CITY parking structure or surface parking which are collected by OWNER in its Hotel operations.

4.8.3. Pedestrian Bridge. A pedestrian bridge ("Bridge") spanning Holt Boulevard is estimated to cost $6.5M. This cost to design and maintain the Bridge shall be at CITY'S cost and expense. The cost to construct the Bridge, not to exceed such estimated cost, shall be split equally between CITY and OWNER if, and only if, the Bridge is completed and open to the public by December 31, 2026; otherwise, CITY will bear one hundred percent of the cost to construct the Bridge. Notwithstanding the aforementioned agreement to share the cost of to construct the Bridge, CITY retains and shall have all rights and sole discretion to design and construct such improvements on CITY'S timing for and scope of the completion of the bridge improvements that has been determined by CITY.

4.8.4. Guasti Road. OWNER agrees to construct and complete Guasti Road in accordance with CITY standards for road improvements, and CITY agrees that CITY shall issue a credit to OWNER up to the amount of the CITY DIF imposed by CITY that would be due for the Hotel Project as shown in **Exhibit "J"** for OWNER'S costs actually incurred in connection with the Guasti Road improvements in the public right of way area. Subject to the terms in Section 4.3.2, the CITY DIF credit shall be issued in a separate fee credit agreement to be entered into between CITY and OWNER at the time the CITY DIF is due and payable by OWNER. Additionally, the widening of Guasti Bridge over the Cucamonga Creek Channel ("Guasti Bridge Widening") is a condition of receipt of a certificate of occupancy of the Hotel Project. Such widening of the Guasti Bridge and related improvements as shown in **Exhibit "J"** will be funded and constructed by CITY at its sole discretion. If the Guasti Bridge is not

completed by CITY in a timely manner with the completion of the Hotel Project, such condition of the Guasti Bridge Widening shall automatically be deemed waived by CITY without the necessity of any further action by CITY or OWNER. In such event, the Guasti Bridge Widening will be required as part of any future development on the Miller Property.

4.8.5. Holt Boulevard. CITY agrees to make road improvements to Holt Boulevard adjacent to the Property in accordance with CITY standards for road improvements as shown in **Exhibit "J"**. CITY retains and shall have all rights and sole discretion to design and construct such improvements on CITY'S timing for and scope of the completion of the road improvements on Holt Boulevard that has been determined by CITY. The intersection of Holt Boulevard and Guasti Road including modifications to the existing traffic signal is inclusive within the scope of Holt Boulevard and will be the obligation of CITY. OWNER shall complete such improvements on the parkway behind the curb and gutter as shown on **Exhibit "B"**.

4.8.6. Cucamonga Creek Flood Control Channel. Improvements to the Cucamonga Creek Flood Control Channel is not part of CITY'S Capital Improvement Program. To include any such improvements to CITY'S Capital Improvement Program, CITY shall have the right and sole discretion to design and construct such improvements on CITY'S timing and scope that has been determined by CITY.

4.9. Acquisition Properties. The acquisition of any of the Surrounding Properties or the Miller Property are subject to compliance with all applicable laws and regulations, including but not limited to, laws pertaining to land use approvals, subdivisions of land, budgetary considerations, environmental reviews and the acquisition and disposition of real property by CITY and any subsequent required discretionary approvals by the City Council of the CITY. Nothing contained herein this Section 4.9 of the Agreement shall mean that CITY is set on a certain course or action pertaining to the acquisition or disposition of any or all of the Surrounding Properties or the Miller Property.

CITY is exploring and assessing the feasibility of establishing an entertainment and convention district, located generally around the Ontario Convention Center ("Convention Center"), the Ontario International Airport ("Airport") and the Property, which may be comprised of a mix of high density residential housing, entertainment, retail, hospitality and commercial office-oriented uses. This may include the acquisition of several properties in the areas and certain capital improvements and infrastructure as part of the overall vision of creating key destination areas and high end amenities in this community to promote economic growth and development, whereby a number of properties surrounding the Convention Center have been preliminarily identified as potential sites for public purposes, as depicted in **Exhibit "H-1"** (individually or collectively, as applicable, "Surrounding Property").

4.9.1. Miller Property. Separate from the Surrounding Property shown on **Exhibit "H-1"**, CITY acknowledges that it is material to OWNER'S development of the Hotel Project that certain real property and improvements thereon shown on **Exhibit "H-2"** (the "Miller Property") be available to OWNER by granting an option to acquire from CITY in the event that CITY acquires the Miller Property. OWNER acknowledges that CITY desires to acquire the Miller Property for its own uses and public purposes, including but not limited to using it as a multi-modal transit hub or for another public purpose. As of the Effective Date, neither CITY nor OWNER own any portion of or interest in the Miller Property. CITY shall use commercially reasonable efforts to acquire the Miller Property directly from the current Miller

Property owners by negotiated purchase; provided, that CITY determines by proper CITY procedures that acquisition of any or all of the Miller Property is necessary for its uses or projects. To the extent that the exact location for the interface between rail, bus, passenger vehicle, and active transportation to the Airport has not been determined by the San Bernardino County Transportation Authority ("SBCTA") and the Ontario International Airport Authority ("OIAA"), CITY shall use commercially reasonable efforts to acquire the entire site, subject to the limitations and reservation provided in this Section 4.9 of the Agreement. If a portion of the Miller Property acquired is not developed for a public purpose and CITY makes available said portion for sale, OWNER shall have the right to exercise an option (the "Option") to acquire within one (1) year of both CITY'S acquisition of the Miller Property and CITY making available (and complying with all public notice requirements in connection therewith) said portion of the Miller Property at the price for which it was acquired (or such price shall be pro-rated to the extent CITY is making only a portion of the Miller Property for sale); provided that OWNER is under substantial construction of and demonstrated to CITY that OWNER has secured sufficient funds to complete the construction or has substantially completed the Hotel Project by the time this property is made available by CITY. OWNER shall give written notice exercising its Option to CITY per the terms in Section 4.9.1(c) below and OWNER shall consummate and close escrow for the acquisition of the portion of the Miller Property made available for sale by CITY within one (1) year thereafter. In the event that OWNER does not timely exercise its Option, then CITY shall have no further obligations to OWNER pertaining to any portion of the Miller Property and shall have the right to dispose of said property free of any options to purchase.

(a) Reservation of CITY Discretion. CITY retains the discretion of when it may initiate or attempt the acquisition the Miller Property, which would not occur before June 30, 2029. If CITY is unable to negotiate the purchase of the Miller Property between itself and the Miller Property owners, CITY may consider initiating eminent domain proceedings to acquire the Miller Property, subject to and in accordance with all applicable laws and procedures. It is expressly acknowledged, understood and agreed by the Parties that CITY undertakes no obligation to adopt any resolution of necessity, and does not prejudge or commit to any person regarding the findings and determinations to be made by CITY with respect to any resolution of necessity. If CITY does not elect to or is unable to acquire title or the insurable right to possession of the Miller Property through exercise of its power of eminent domain or by negotiated purchase on or before June 30, 2031, the Parties shall meet and confer for ninety (90) days to discuss in good faith alternative deal structures. If no such alternative is approved by the Parties within such ninety (90) day period, the Parties shall have no further obligations or liability to the other Party or to any person relative to the terms of this Section 4.9.1 in this Agreement and neither OWNER nor CITY shall be in Default under this Agreement.

(b) Independent Contract Consideration. Upon the Effective Date, OWNER shall deliver to CITY the sum of one hundred dollars ($100.00) ("Independent Contract Consideration"), which amount has been bargained for and agreed to as adequate consideration for OWNER'S option to purchase the Miller Property, or any portion thereof, during the time periods provided in Section 4.9.1 above and for CITY'S execution, delivery and performance of this Agreement. The Independent Contract Consideration is in addition to and independent of all other consideration provided in this Agreement and is nonrefundable to OWNER in all events.

(c) Exercise of Option. OWNER may exercise the Option, if at all, by

delivering notice to CITY of OWNER'S intent to exercise the Option (the "Option Exercise Notice"). Upon CITY'S receipt of the Option Exercise Notice, the parties shall enter into a purchase and sale agreement for the applicable Option Property at the Option Price described above and on other terms and provisions consistent with the terms by which CITY acquired the Miller Property.

4.9.2. Surrounding Properties. In the event that CITY acquires, or makes available for purchase, any real property owned by CITY or any real property interest in the Surrounding Property located near the Convention Center and provided that (i) OWNER, its successors or assigns, has substantially completed the Hotel Project and has substantially completed the approved development plan for the Miller Property or portion thereof in the event that OWNER, its successors or assigns, has acquired any portion of the Miller Property, or (ii) OWNER, its successors or assigns, has completed the Hotel Project and OWNER has not acquired any portion of the Miller Property as described in Section 4.9.1 above, CITY grants OWNER, and OWNER shall have, a first right of refusal to purchase any such Surrounding Property that CITY has acquired, is unencumbered and makes available for purchase, at the then-price offered by a bonafide third party, for a period of thirty (30) days after the date CITY provides written notice of said bonafide offer ("CITY Notice") to OWNER, subject to all applicable laws and regulations that must be complied with, including but not limited to, laws pertaining to land use approvals, subdivisions of land, budgetary considerations, environmental reviews and the acquisition and disposition of real property by CITY and provided the parties enter into a separate agreement or agreements for any Surrounding Property, subject to any subsequent required discretionary approvals by the City Council of the CITY. Should OWNER choose to acquire the particular Surrounding Property in response to CITY's Notice, OWNER shall consummate the purchase and close escrow within one (1) year of notifying CITY of its election to purchase said Surrounding Property. If OWNER elects not to purchase, then the first right of refusal is extinguished for that particular Surrounding Property and CITY is free to dispose of that particular Surrounding Property without any further obligation to OWNER. Notwithstanding the foregoing, the CITY retains all rights and discretion to use any or all of any acquired Surrounding Property for its own uses and purposes. Nothing contained in this Agreement shall mean that CITY is set on a certain course or action pertaining to the Surrounding Property shown on **Exhibit "H-1"**, nor does it obligate CITY to purchase any of the Surrounding Property shown on **Exhibit "H-1"**, nor does it mean that CITY would be liable to OWNER should CITY not acquire any of the real property interests of said Surrounding Property shown on **Exhibit "H-1"**.

4.9.3. Insufficient Funds for Acquisition of Properties. In the event that CITY determines, in CITY'S sole and exclusive discretion, that CITY does not have sufficient funds to purchase the Miller Property or any or all of the Surrounding Properties, CITY shall provide Notice to OWNER of the amount that CITY requires to complete the acquisition of the Miller Property only in the event that OWNER is under substantial construction of and demonstrated to CITY that OWNER has secured sufficient funds to complete the construction or has substantially completed the Hotel Project, or to complete acquisition of any of the Surrounding Properties only in the event that OWNER has substantially completed the Hotel Project and has substantially completed the approved development plan for the Miller Property or portion thereof in the event that OWNER, its successors or assigns, has acquired any portion of the Miller Property. OWNER may, but shall not be obligated to, provide the funds necessary to complete the acquisition of the Surrounding Properties or the Miller Property. In such event, upon

OWNER providing proof of funds necessary to complete the acquisition of the Surrounding Properties or the Miller Property, as applicable, CITY shall assign to OWNER or OWNER'S designee any and all contracts to which the CITY is a party for such acquisition. If CITY determines that it has insufficient funds to acquire the Surrounding Properties or the Miller Property and Developer does not provide the funds necessary for CITY to acquire the Surrounding Properties or the Miller Property, CITY shall not be in default under this Agreement and shall be without liability to OWNER.

4.10. Signage. OWNER shall have the right to install and maintain or cause to be installed and maintained signage throughout the Hotel Project, and on improvements throughout the Hotel Project and other portions of the Specific Plan Area controlled or occupied by OWNER or any affiliate thereof in accordance with the Sign Program set forth in the Specific Plan and as shown on the Development Plan, including the right to engage in advertising and marketing using display messages or images, utilizing a series or grid of lights that may, be changed by electronic means, including without limitation cathode ray, LED display, plasma screen, liquid crystal display (LCD), LED embedded, architectural glass fiber optic, or other electronic media or technology.

5. FINANCING OF PUBLIC IMPROVEMENTS.

5.1. Financing Mechanism(s). If deemed appropriate and acceptable to OWNER in its sole and absolute discretion based on its feasibility for the Hotel Project, CITY and OWNER will cooperate in the formation of any special assessment district, community facilities district or alternate financing mechanism to pay for the construction and/or maintenance and operation of public infrastructure facilities or Improvements required as part of the Development Plan. CITY also agrees that, to the extent any such district or other financing entity is formed and sells bonds in order to finance such infrastructure or Improvements, OWNER may be reimbursed to the extent that OWNER spends funds or dedicates land for the establishment of public facilities. Notwithstanding the foregoing, it is acknowledged and agreed by the parties that nothing contained in this Agreement shall be construed as requiring OWNER or CITY to form any such district or to issue and sell bonds.

6. REVIEW FOR COMPLIANCE.

6.1. Periodic and Special Reviews.

6.1.1. Time for and Initiation of Periodic Review. CITY shall review this Agreement every twelve (12) months from the Effective Date in order to ascertain the good faith compliance by OWNER with the terms of this Agreement. The OWNER shall submit an Annual Monitoring Report to CITY, in a form reasonably acceptable to the City Manager, along with any applicable processing charge within ten (10) days after each anniversary date of the Effective Date. Within thirty (30) days after the receipt of the Annual Monitoring Report, CITY shall review the Annual Monitoring Report. Prior to the expiration of the thirty (30) day review period, CITY shall either issue a notice of continuing compliance or a notice of non-compliance and a notice of CITY'S intent to conduct a Special Review pursuant to Sections 6.1.2 through 6.1.6. Issuance of a notice of continuing compliance may be issued by the City Manager or his designee. If CITY does not issue a notice of non-compliance within such thirty (30) day period, CITY shall be deemed to have issued a notice of compliance only for that year of review and shall not apply to any subsequent, future years in which a review and monitoring by be conducted by CITY.

6.1.2. Initiation of Special Review. A special review may be called either by agreement between the parties or by initiation in one or more of the following ways:

(a) Affirmative vote of at least four (4) members of the Planning Commission; or

(b) Affirmative vote of at least three (3) members of the City Council.

6.1.3. Notice of Special Review. The City Manager shall begin the special review proceeding by giving notice that CITY intends to undertake a special review of this Agreement to OWNER. Such notice shall be given at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

6.1.4. Public Hearing. The Planning Commission shall conduct a hearing at which OWNER must demonstrate good faith compliance with the terms of this Agreement. The burden of proof on this issue is upon OWNER.

6.1.5. Findings Upon Public Hearing. The Planning Commission shall determine upon the basis of substantial evidence whether or not OWNER has, for the period under review, complied in good faith with the terms and conditions of this Agreement.

6.1.6. Procedure Upon Findings.

(a) If the Planning Commission finds and determines on the basis of substantial evidence that OWNER has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.

(b) If the Planning Commission finds and determines on the basis of substantial evidence that OWNER has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Planning Commission may recommend to the City Council to modify or terminate this Agreement.

(c) The OWNER may appeal a determination pursuant to paragraph (b) to the City Council in accordance with CITY'S rule for consideration of appeals in zoning matters generally.

6.2. Proceedings Upon Modification or Termination. If, upon a finding under Section 6.1.6(b), CITY determines to proceed with modification or termination of this Agreement, CITY shall give notice to the property OWNER of its intention so to do. The notice shall be given at least ten (10) calendar days prior to the scheduled hearing and contain:

6.2.1. The time and place of the hearing;

6.2.2. A statement as to whether or not CITY proposes to terminate or to modify this Agreement; and

6.2.3. Other information that CITY considers necessary to inform OWNER of the nature of the proceeding.

6.3. Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, OWNER shall be given an opportunity to be heard. The OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on OWNER. If the City Council finds, based upon substantial evidence in the administrative record, that OWNER has not

complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify this Agreement and impose those conditions to the action it takes as it considers necessary to protect the interests of CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.4. Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon written request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Planning Director or City Council.

7. DEFAULT AND REMEDIES.

7.1. Remedies in General. It is acknowledged by the parties that neither CITY nor OWNER would have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof, except as otherwise expressly provided in this Agreement. Except as provided in this Agreement, neither party shall be liable in damages to the other, or to any of its successors and assigns, or to any other person, and each party covenants not to sue for damages or claim any damages beyond that permitted in this Agreement.

7.2. Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of certain rights set forth in this Agreement and should be available for the following reasons:

7.2.1. Money damages are unavailable against CITY as provided in Section 7.1 above.

7.2.2 Due to the size, nature and scope of the Hotel Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Hotel Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Hotel Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

7.3. Release. Except for nondamage remedies, including the remedy of specific performance and judicial review as provided for in Sections 7.2 and 6.3, respectively, OWNER, for itself, its successors and assignees, hereby releases CITY, its officers, agents and employees

from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon CITY because it entered into this Agreement or because of the terms of this Agreement.

7.4. Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Subsection 6.3 herein, CITY may terminate for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

7.5. Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8. THIRD PARTY LITIGATION.

8.1. General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY'S determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

8.2. Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including reasonable attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. CITY shall defend, at its expense, including reasonable attorneys' fees, indemnify, and hold harmless OWNER, its agents, officers and employees from any claim, action or proceeding against OWNER, its agents, officers, or

employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. The parties shall promptly notify each other of any such claim, action or proceeding, and shall cooperate in the defense.

8.3. Indemnity. In addition to the provisions of Section 8.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, resulting from the negligence or willful misconduct of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER'S employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, completion, failure and conveyance of the public improvements, save and except to the extent of any claims for damages arising through the negligence or willful misconduct of CITY or any of its officers, employees, subcontractors and independent contractors. CITY shall cooperate with OWNER in the defense of any third party legal action.

8.4. Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any negligent act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to the industrial hygiene or to environmental conditions on, under or about the Property, not complying with applicable law including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged negligent act or omission. CITY shall cooperate with OWNER in the defense of any third party legal action.

8.5. Survival. The provisions of this Sections 8.1 through 8.5, inclusive, shall survive the termination of this Agreement.

9. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER'S sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the Mortgagees providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

9.1. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

9.2. The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of

any default by OWNER in the performance of OWNER'S obligations under this Agreement.

9.3. If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

9.4. Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER'S obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY'S performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

9.5. Notwithstanding anything to the contrary in this Agreement, it shall be a condition of OWNER'S obligations to develop, construct and operate the Hotel Project that OWNER obtains construction financing from a Mortgage on commercially reasonable terms and provisions that make the Hotel Project feasible as determined by OWNER in its good faith judgment.

10. MISCELLANEOUS PROVISIONS.

10.1. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the San Bernardino County Recorder by the City Clerk within the ten (10) days after CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

10.2. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the matters addressed in this Agreement, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

10.3. Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment

of the fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

10.4. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

10.5. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

10.6. Singular and Plural. As used herein, the singular of any word includes the plural.

10.7. Joint and Several Obligations. Subject to Section 2.4, if at any time during the term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided under Section 4 hereof.

10.8. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

10.9. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

10.10. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

10.11. Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, pandemics, strikes and other labor difficulties (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), means the (i) the unavailability of labor or supplies; a governmental moratorium or similar prohibition on construction; or a major disruption to the national, regional or international economies, capital markets and/or real estate markets or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years**.**

10.12. Mutual Covenants. The covenants contained herein are mutual covenants and also

constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

10.13. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

10.14. Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

10.15. Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

10.16. Hotel Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Hotel Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

10.17. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The City Manager may delegate his powers and duties under this Agreement to an Assistant City Manager or other management level employee of CITY.

10.18. Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

10.19. Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the Planning Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name,

residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

10.20. Estoppel Certificate. Within thirty (30) business days following a written request by any of the parties, the other party shall execute and deliver to the requesting party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party. OWNER shall pay to CITY all costs not to exceed $5,000, incurred by CITY in connection with the issuance of estoppel certificates under this Section 10.20 prior to CITY'S issuance of such certificates.

10.21 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

10.22 Implementation of Agreement. The City shall implement this Agreement through its City Manager (or his or her duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into amendments to this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or concept of the Project. All other material and/or substantive interpretations, waivers, or amendments shall require consideration, action and written consent of the City and/or City Council.

10.23 Prevailing Wage. OWNER, for itself, and shall pass such obligation down to its successor and assigns, agrees, covenants and warrants that the development of the Property, if any, shall comply with all applicable federal and state labor laws (including, without limitation, the requirement under California law to pay prevailing wages and hire apprentices, applicable state prevailing wage requirements pursuant to Labor Code Sections 1720 et seq. and 1770 et seq., and the regulations pursuant thereto, ("Prevailing Wage Laws")), and all obligations as set forth herein with respect to any work performed on the Property for the Hotel Project. CITY makes no representations concerning prevailing wages in compliance with California Labor Code Section 1770 et seq. OWNER acknowledges and agrees that it shall be responsible for reviewing the applicable laws and regulations with respect to the payment of prevailing wages and

complying therewith. OWNER shall be solely responsible for determining and effectuating compliance with such laws. OWNER shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law, with respect to the construction of improvements on the Property and the Hotel Project. OWNER shall indemnify, hold harmless and defends CITY, its officials, officers, employees, agents, from any and all claims, liabilities, penalties, damages, judgments, costs, expenses, and fees arising from, or out of, the acts or omissions of OWNER or any failure to comply with all applicable laws, rules or regulations pertaining to the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Hotel Project on the Property.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

SIGNATURE PAGE

TO DEVELOPMENT AGREEMENT NO. PDA _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

"CITY"

CITY OF ONTARIO, a California municipal corporation

By:_____

Scott Ochoa

City Manager

Date: _____

ATTEST:

_____

City Clerk, Ontario

APPROVED AS TO FORM:

BEST BEST & KRIEGER, LLP

_____

City Attorney

"OWNER"

DIVERSIFIED PACIFIC DEVELOPMENT GROUP, LLC

A California limited liability company

By: _____

Name:

Its: _____

Date: _____

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)

COUNTY OF_____)

On _____, 20_____, before me,_____,

Date *Insert Name and Title of the Officer*

personally appeared _____

Name(s) of Signer(s)

_____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____

Signature of Notary Public

Place Notary Seal Above

ACKNOWLEDGEMENT

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

STATE OF CALIFORNIA)

COUNTY OF_____)

On _____, 20_____, before me_____,

Date *Insert Name and Title of the Officer*

personally appeared _____

Name(s) of Signer(s)

_____, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____

Signature of Notary Public

Place Notary Seal Above

EXHIBIT "A"

TO DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION OF THE PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP NO. 5660, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 69 OF PARCEL MAPS, PAGES 76 THROUGH 78, INCLUSIVE, RECORDS OF SAID COUNTY AS AMENDED BY MAP RECORDED IN BOOK 80 OF PARCEL MAPS, PAGES 56 THROUGH 58, INCLUSIVE, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 0110-322-33-0-000

EXHIBIT "B"

TO DEVELOPMENT AGREEMENT

MAP SHOWING PROPERTY AND ITS LOCATION



EXHIBIT "C"

TO DEVELOPMENT AGREEMENT

EXISTING DEVELOPMENT APPROVALS

On February 25, 2025, the Planning Commission:

a) **Issued Resolution No. PC25-006 recommending City Council approve an Addendum to The Ontario Plan 2050 Supplemental Environmental Impact Report (SCH #2021070364).**

b) **Issued Resolution No. PC25-008 recommending City Council approval of the Empire Groves Specific Plan (PSP23-001).**

On April 1, 2025, the City Council:

a) **Issued Resolution No. _____ approving an Addendum to The Ontario Plan 2050 Supplemental Environmental Impact Report (State Clearinghouse No. 2021070364).**
b) **Issued Ordinance No. _____ approving the Empire Groves Specific Plan (PSP23-001).**
c) **Issued Ordinance No. _____ for Development Agreement (File No. PDA23-005)**
d) **Issued Resolution No. _____ Approving Development Plan (File No. PDEV23-039)**

EXHIBIT "D"

TO DEVELOPMENT AGREEMENT

EXISTING LAND USE REGULATIONS

The Ontario Plan 2050 – Multimodal Land Use Designation

The Ontario Development Code

The Empire Groves Specific Plan (Once Adopted)

EXHIBIT "E"

TO DEVELOPMENT AGREEMENT

DESCRIPTION OF REQUIRED IMPROVEMENTS

OWNER shall design, construct, and complete all improvements within the area shown on Exhibit "F" to operate the Property, including but not limited to sewer, potable water, recycled water, storm drain, fiber, and street improvements necessary to serve the Property except as described in this Agreement as an improvement to be installed by the CITY.

Improvements OWNER is required to construct will include the sewer connection into the existing City line in Holt Boulevard, potable and recycled water connections to existing CITY lines in Holt Boulevard and Guasti Road, and storm drain connection to existing CITY line south of Guasti Road.

Street improvements for Holt Boulevard are to be installed by CITY as described in Section 4.8.5.

Street improvements for Guasti Road are to be installed by OWNER or CITY as described in Section 4.8.4.

EXHIBIT "F"

TO DEVELOPMENT AGREEMENT

DEPICTION OF REQUIRED IMPROVEMENTS

EXHIBIT "F"

TO DEVELOPMENT AGREEMENT

DEPICTION OF REQUIRED IMPROVEMENTS

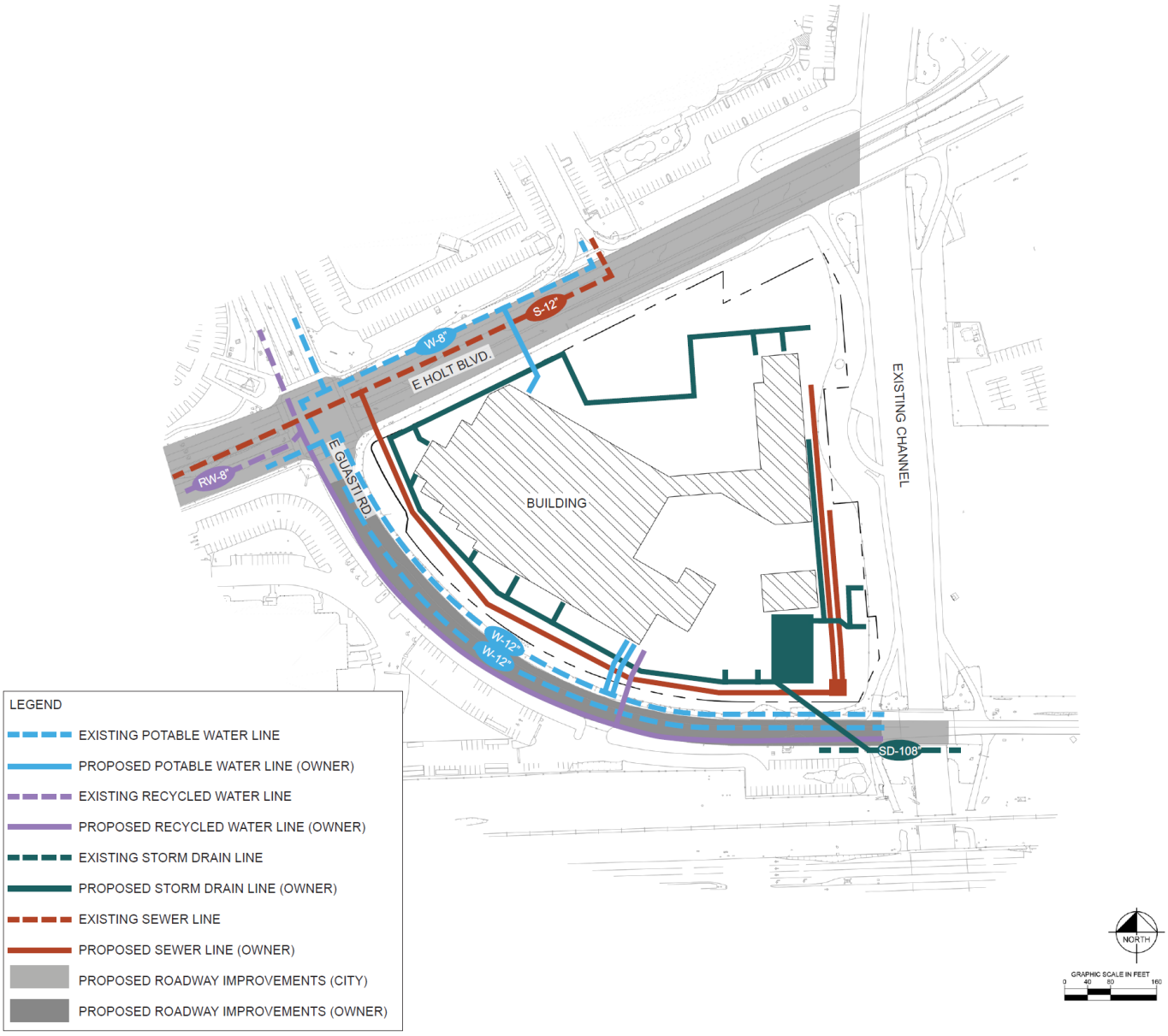


EXHIBIT “H-1”

DEPICTION OF SURROUNDING PROPERTY

EXHIBIT "H-1"
TO DEVELOPMENT AGREEMENT

DEPICTION OF SURROUNDING PROPERTY

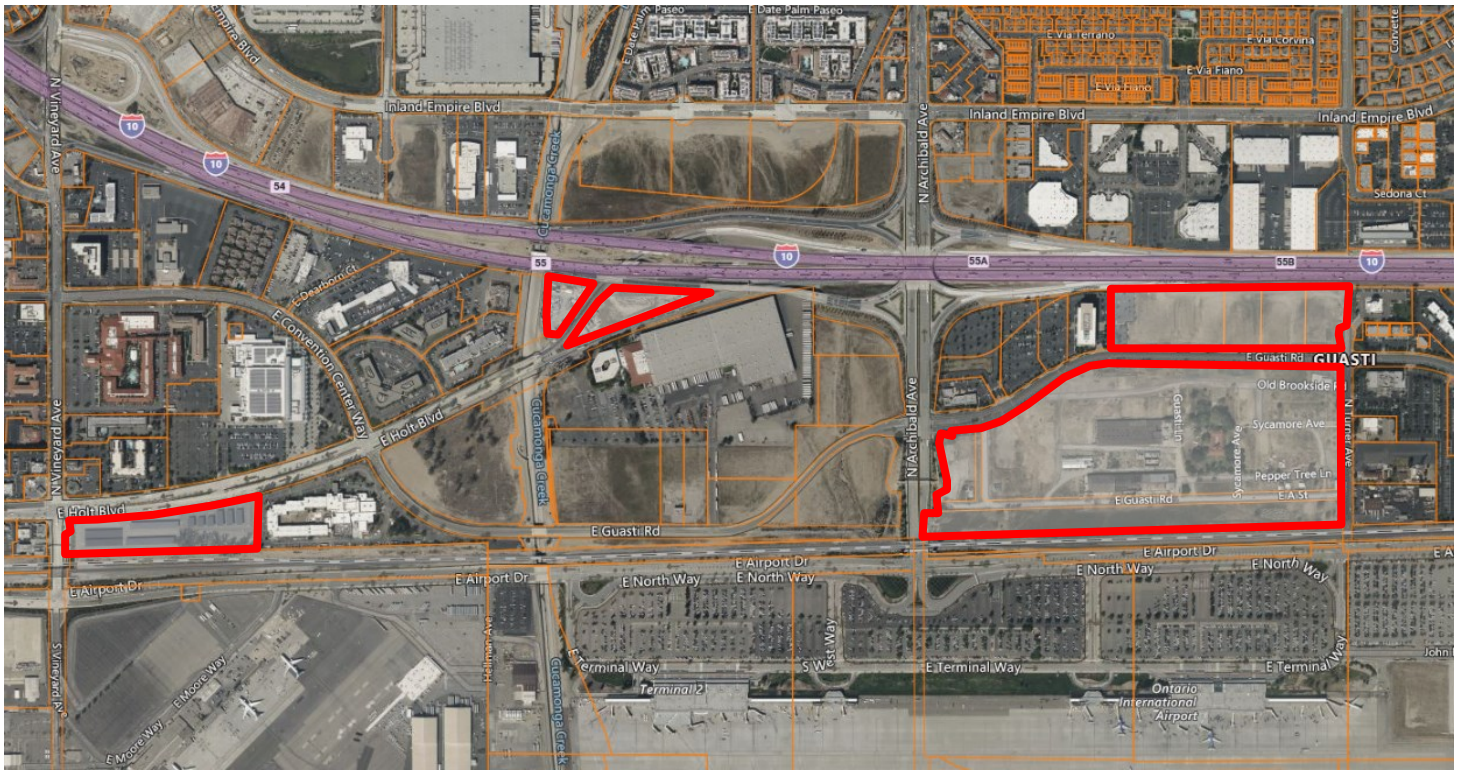


EXHIBIT "H-2"

DEPICTION OF MILLER PROPERTY

EXHIBIT "H-2"
TO DEVELOPMENT AGREEMENT

DEPICTION OF MILLER PROPERTY



EXHIBIT “I”

CONCEPTUAL DEPICTION OF CONVENTION CENTER EXPANSION

EXHIBIT "I"

TO DEVELOPMENT AGREEMENT

CONVENTION CENTER EXPANSION



EXHIBIT "J"

DEVELOPMENT IMPACT FEES IMPOSED BY THE CITY

General City (GC) Development Impact Fees (DIF) Effective 01/01/2023		
Per Unit: Commercial Lodging		
Land Use Category		
Police	$	358
Fire	$	299
Regional Streets	$	645
Local Streets	$	528
Regional Storm Drainage	$	21
Local Storm Drainage	$	404
Regional Water	$	730
Local Water	$	129
Regional Sewer	$	34
Local Sewer	$	302
Solid Waste	$	196
Gneral Failities	$	51
Library	$	-
Public Meetings	$	-
Aquatics	$	-
Parks	$	-
Total Per Commercial Lodging Unit	$	3,697
Total Commercial Lodging Units	$	600
Total Project DIF Required	$	2,218,200

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSP23-001, A SPECIFIC PLAN (EMPIRE GROVES) TO ESTABLISH THE LAND USE DISTRICT, DEVELOPMENT STANDARDS, GUIDELINES, AND INFRASTRUCTURE IMPROVEMENTS FOR THE DEVELOPMENT OF UP TO 600,000 SQUARE FEET OF HOSPITALITY AND COMMERCIAL LAND USES ON 10.43-ACRES OF LAND LOCATED ON THE SOUTHEAST CORNER OF GUASTI ROAD AND HOLT BOULEVARD AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 110-322-33

WHEREAS, DIVERSIFIED PACIFIC DEVELOPMENT GROUP, LLC ("Applicant") has filed an Application for the approval of a Specific Plan, File No. PSP23-001, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 10.43 acres of land generally located on southeast corner of Guasti Road and Holt Boulevard, within the proposed Empire Groves Specific Plan; and

WHEREAS, the properties to the north of the Project site are within the CCS (Convention Center Support Commercial) zoning district and are developed with offices and hotel. The property to the east is within the UC (Utilities Corridor) zoning district and is developed with a flood control channel. The property to the south and west is within the CCS (Convention Center Support Commercial) zoning district, and is developed with hotel; and

WHEREAS, the Empire Groves Specific Plan serves to implement the City's Policy Plan for the project site and provides zoning regulations for development of the Project site by establishing permitted land uses, development standards, infrastructure requirements, and implementation requirements for the development of 10.43 acres within the Specific Plan boundaries. The Empire Groves Specific Plan proposes a land use plan that includes one Planning Area for the Project site, the Hospitality Mixed Use (PA1); and

WHEREAS, the Hospitality Mixed-Use combines hotel uses, ancillary services and amenities with local-serving commercial uses on a single property. At buildout, the total development allowed for the project site will be 600,000 square feet; and

WHEREAS, the Hotel use is the primary component of Hospitality Mixed-Use and will occupy the majority of the FAR of the development (553,124 square feet). The hotel use includes 600 guest rooms, office space for hotel administration, and may also include ancillary uses such as restaurants, bars, lounges, day spas, gyms, ballrooms and meeting rooms; and

WHEREAS, the local-serving retail uses (46,876 square feet) will be stand-alone uses not affiliated with the hotel and these businesses may include a combination of coffee shops, restaurants and retail that complement the hotel and convention center; and

WHEREAS, in conjunction with the Project, the Applicant also filed an application for a Development Agreement (File No. PDA23-005) between the City of Ontario and Diversified Pacific Development Group, LLC to establish the terms and conditions for the associated Development Plan (File No. PDEV23-039); and

WHEREAS, on February 25, 2025, the Planning Commission conducted a public hearing and approved Resolution No. PC25-006, recommending the City Council approve a Resolution adopting an Addendum to the Ontario Plan 2050 Supplemental Environmental Impact Report (State Clearinghouse No. 2021070364), certified by the City Council on August 16, 2022, in conjunction with File No. PGPA20-002. The Addendum finds that the proposed project introduces no new significant environmental impacts. Furthermore, all mitigation measures previously adopted with the Certified Environmental Impact Report are incorporated into the Project by reference; and

WHEREAS, the City's "Local Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an initial study has been prepared to determine possible environmental impacts; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (ALUCP), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on February 25, 2025, the Planning Commission of the City of Ontario conducted a hearing to consider the SEIR Addendum and the Project, and concluded said hearing on that date, voting to issue Resolution No. PC25-006, recommending the City Council adopt the SEIR Addendum, and voting to issue Resolution No. PC25-008, recommending the City Council approve the Application; and

WHEREAS, on March 18, 2025, the City Council of the City of Ontario conducted a hearing to consider the SEIR Addendum and the Project, and continued said hearing to April 1, 2025, date; and

WHEREAS, as the first action on the Project, on April 1, 2025, the City Council approved a Resolution adopting an SEIR Addendum to a previous Certified EIR prepared pursuant to CEQA, the State CEQA Guidelines and the City of Ontario Local CEQA Guidelines, which indicated that all potential environmental impacts from the Project were less than significant or could be mitigated to a level of significance; and

WHEREAS, on April 1, 2025, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the previous Certified EIR and supporting documentation. Based upon the facts and information contained in the previous Certified EIR and supporting documentation, the City Council finds as follows:

(1) The environmental impacts of this project were reviewed in conjunction with an Addendum to TOP 2050 Supplemental Environmental Impact Report, certified by the City of Ontario City Council on August 16, 2022, in conjunction with File No. PGPA20-002.

(2) The Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(3) The City's "Guidelines for the Implementation of the California Environmental Quality Act (CEQA)" provide for the use of a single environmental assessment in situations where the impacts of subsequent projects are adequately analyzed. This Application introduces no new significant environmental impacts; and

(4) The Addendum contains a complete and accurate reporting of the environmental impacts associated with the Project, and reflects the independent judgment of the City Council; and

(5) There is no substantial evidence in the administrative record supporting a fair argument that the project may result in significant environmental impacts; and

(6) The proposed project will introduce no new significant environmental impacts beyond those previously analyzed in the Certified EIR, and all mitigation measures previously adopted by the Certified EIR, are incorporated herein by this reference.

SECTION 2: ***Additional Environmental Review Not Required.*** Based on the Addendum, all related information presented to the City Council, and the specific findings set forth in Section 1, above, the City Council finds that the preparation of a subsequent or supplemental Certified EIR is not required for the Project, as the Project:

(1) Does not constitute substantial changes to the Certified EIR that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

(2) Does not constitute substantial changes with respect to the circumstances under which the Certified EIR was prepared, that will require major revisions to the Certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

(3) Does not contain 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 Certified EIR was certified/adopted, that shows any of the following:

(a) The project will have one or more significant effects not discussed in the Certified EIR; or

(b) Significant effects previously examined will be substantially more severe than shown in the Certified EIR; or

(c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project, but the City declined to adopt such measures; or

(d) Mitigation measures or alternatives considerably different from those analyzed in the Certified EIR would substantially reduce one or more

significant effects on the environment, but which the City declined to adopt.

SECTION 3: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP; and

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 3, above, the City Council hereby concludes as follows:

(1) ***The proposed Specific Plan, or amendment thereto, is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050.*** The 10.43 Empire Groves Specific Plan is suitable for a hotel/commercial mixed-use development and is consistent with the goals and policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of TOP 2050.

(2) ***The proposed Specific Plan, or amendment thereto, would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*** The proposed Empire Groves Specific Plan is in conformance with the Land Use Policies and Goals of the Policy Plan and

will provide standards and guidelines for the harmonious development of the Project site, in a manner consistent with the Policy Plan. The Specific Plan is proposing hotel/commercial mixed-use development for the 10.43 acre site, which is what is mandated by the land use plan of the Policy Plan; therefore, the proposed land uses will not be detrimental to the public interest, health, safety, convenience, or general welfare of the City because it will provide land uses that are consistent with the existing and future development of the surrounding area.

(3) ***In the case of an application affecting specific property(ies), the proposed Specific Plan, or amendment thereto, will not adversely affect the harmonious relationship with adjacent properties and land uses.*** The proposed Specific Plan will establish a hotel/commercial land use, which aligns with the Project site and surrounding land uses planned in TOP 2050.

(4) ***In the case of an application affecting specific property(ies), the subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.*** Specific Plan will allow for hotel/commercial mixed-use on the subject site. When in conformance with the Specific Plan, the project site is suitable in size and shape, allows for sufficient access and availability of utilities to accommodate the anticipated development.

SECTION 5: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the City Council hereby APPROVES the herein described Specific Plan, attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are

severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 9: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 10: ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 15th day of April, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held April 1, 2025 and adopted at the regular meeting held April 15, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held April 15, 2025 and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

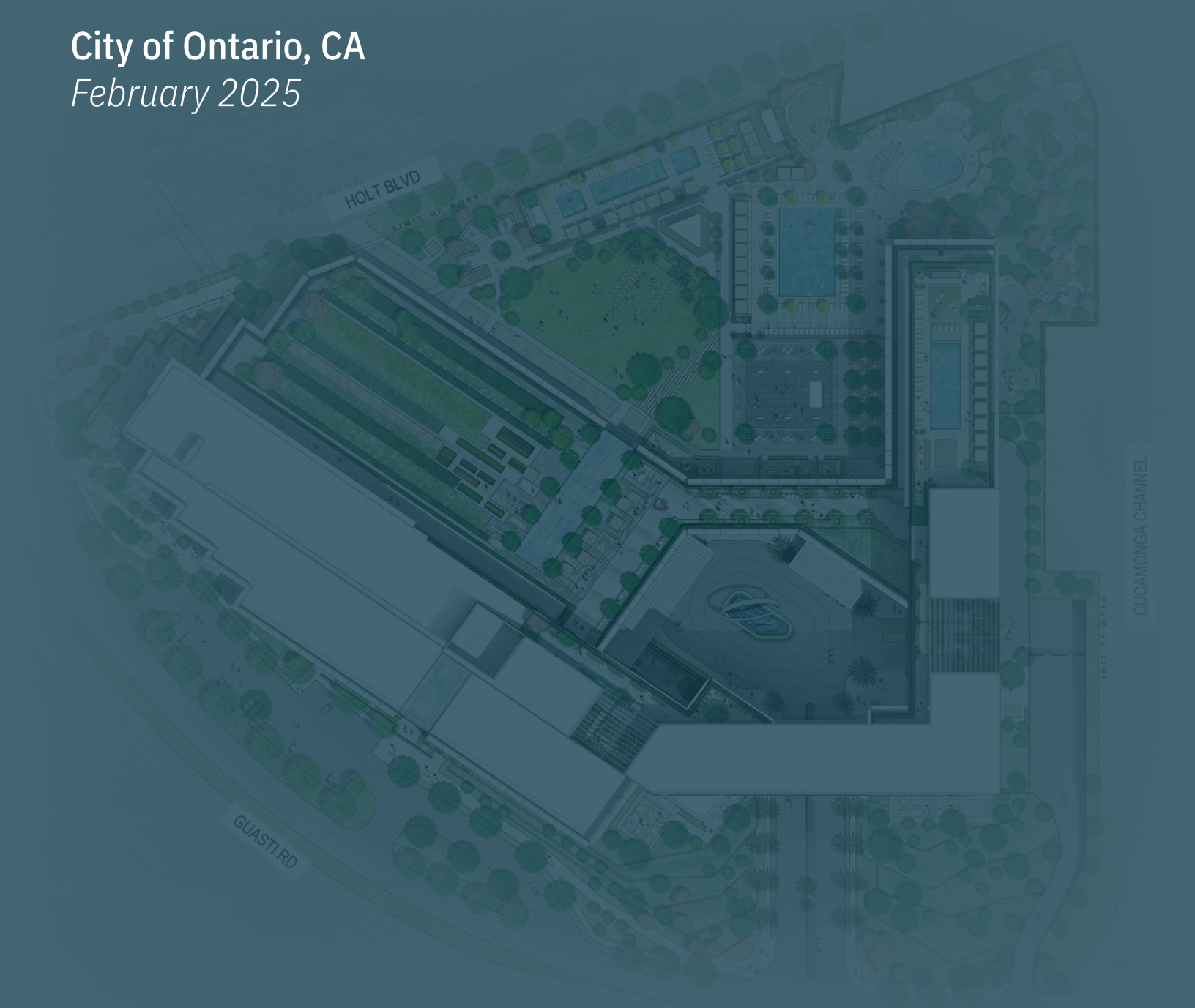
ATTACHMENT A:

File No. PSP23-001
Empire Groves Specific Plan

(Document follows this page)

Empire Groves
SPECIFIC PLAN

City of Ontario, CA
February 2025



DIVERSIFIED Pacific®

City Council

Mayor Paul S. Leon
Mayor Pro Tem Alan D. Wapner
Council Member Debra Porada
Council Member Jim W. Bowman
Council Member Daisy Macias

Development/Applicant Team

DIVERSIFIED Pacific®

Consultant Team

Michael Baker International
Kimley-Horn and Associates, Inc.
Gensler
Translutions, Inc.
SWA Group

City Staff

Rudy Zeledon, Executive Director, Community Development Agency
Henry K. Noh, Planning Director
David F. Eoff, Principal Planner
Lorena Mejia, Senior Planner

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01 | Introduction

1.1 Project Location

The Empire Groves Specific Plan (project) site is situated in the southeastern quadrant of the intersection of East Holt Boulevard and East Guasti Road in the City of Ontario. The Specific Plan Area is a triangular plot of land spanning 10.43 acres.

To the north, it is bounded by Holt Boulevard, while East Guasti Road runs along its southern and southwestern edges. The eastern boundary is defined by an existing flood channel and the Cucamonga Creek Trail. To the south of the site lies the Ontario International Airport, which is separated by East Guasti Road, Airport Drive, and a set of railroad tracks. The Specific Plan Area has direct access from Interstate 10 (I-10), situated to the north of the site.

Directly north of the Specific Plan Area, across East Holt Boulevard, is the Frontier Center office building and the Holiday Inn. To the northwest is the Ontario Convention Center, and to the west is the Ontario Gateway Hotel.

The regional project location is shown in **Figure 1**, while **Figure 2** provides the local context. There are several hotels, office buildings, and car dealerships within a 1-mile radius of the Specific Plan Area as seen in **Figure 3.** The Specific Plan Area assessor's parcel number is 11032233.

Figure 1: Regional Project Location

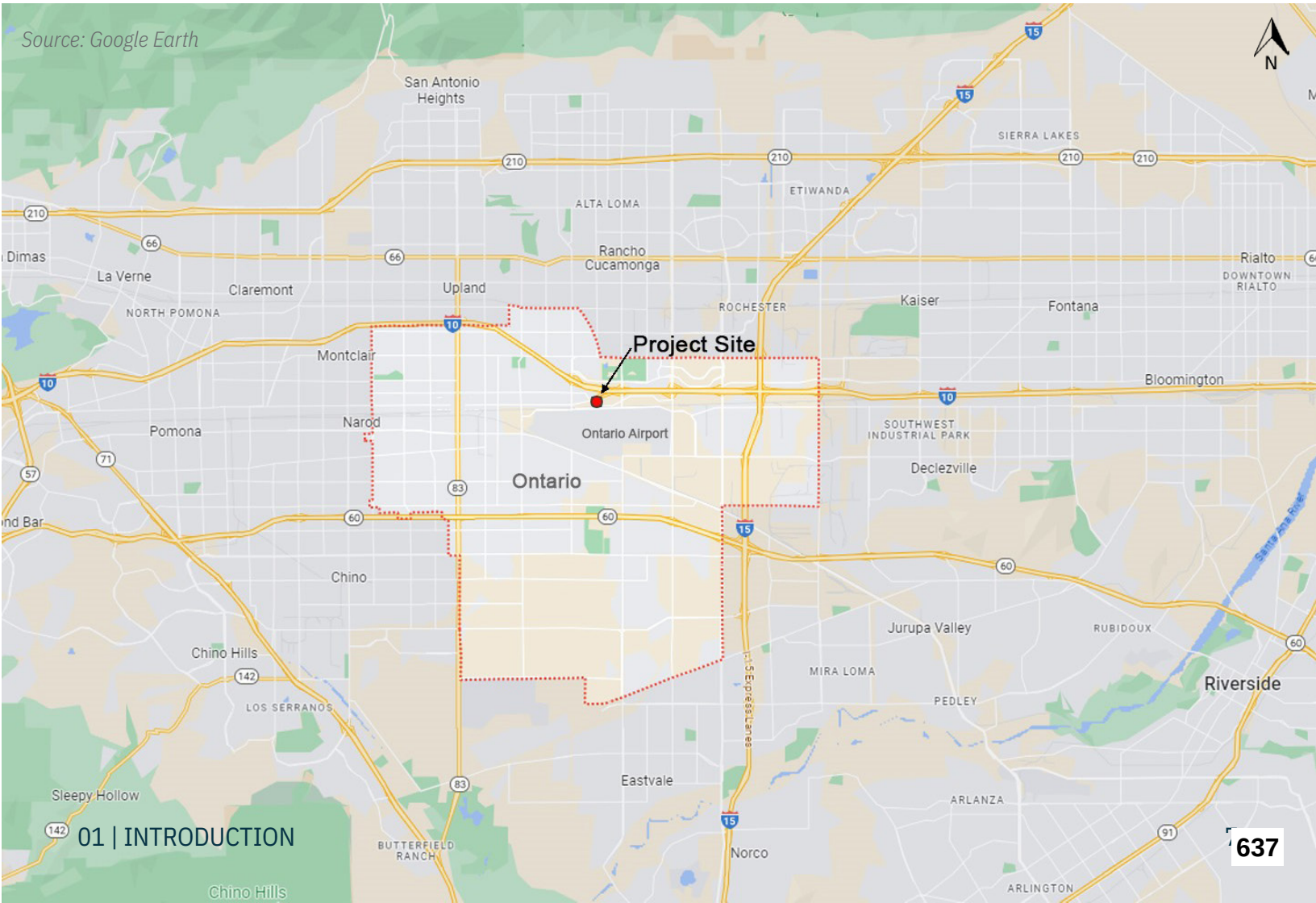
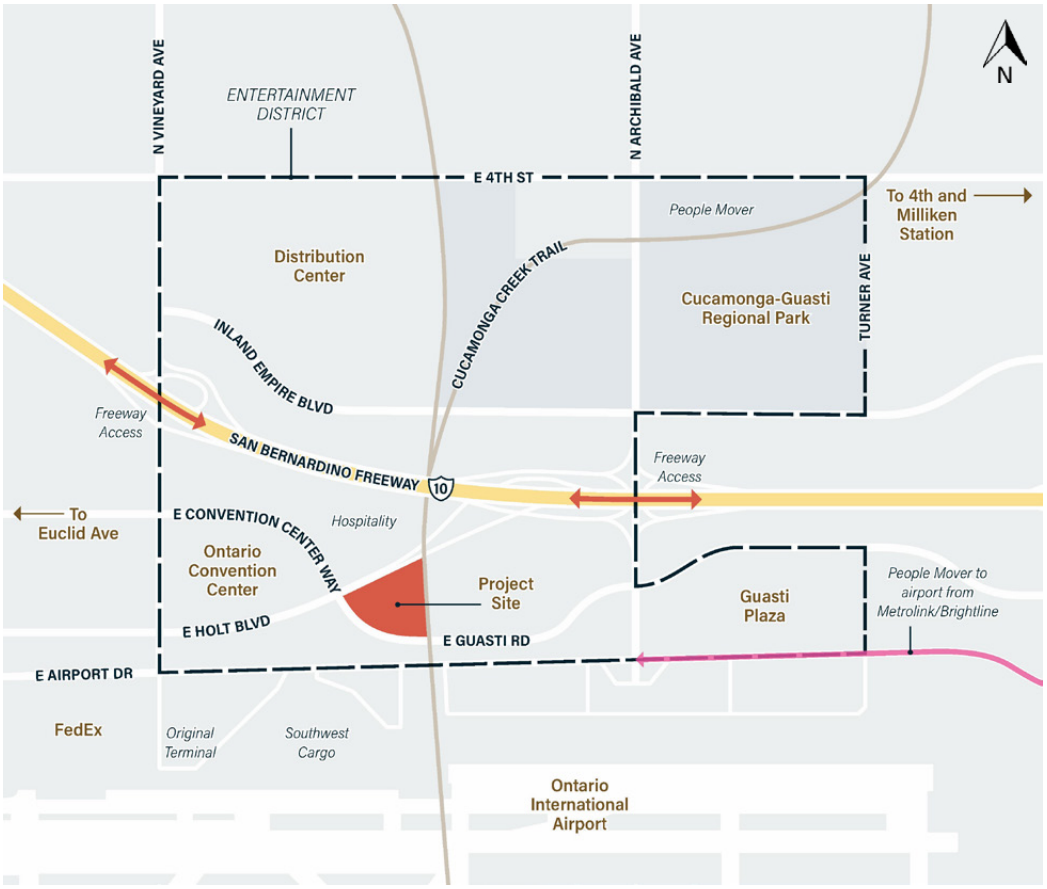


Figure 2: Project Location - Local Context



Source: City of Ontario

Figure 3: Vicinity Map



Source: Google Earth

1.2 The Vision

The vision of the project is as follows:

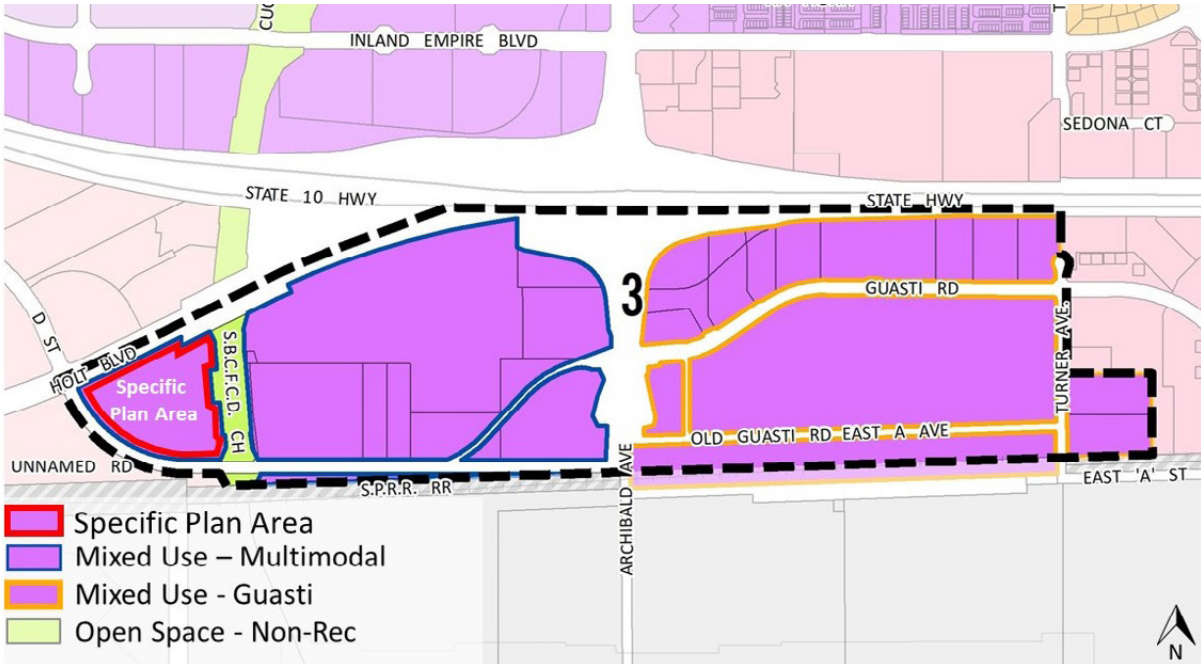
> ***"Establish a world-class hotel development that serves as a central hub, offering exceptional amenities, exclusive experiences, and a renowned brand. This hotel project will serve as a catalyst for the advancement of neighboring areas, fostering meaningful connections by promoting the revitalization of roadways and trails surrounding the Specific Plan Area."***

The Specific Plan Area is part of the Guasti District, according to the Community Design Element (CD-05 Guasti District Place Type) of the General Plan (also called The Ontario Plan). The district is envisioned to preserve and enhance the historic buildings as the focal point of a vibrant mixed-use area. The district will include intense office, commercial, and lodging uses along the I-10 corridor, and appropriately scaled residential, office, commercial, and lodging near the Guasti Village historic district core. The multimodal mixed-use area within the Guasti District is intended to leverage proximity to the future multimodal transportation center and link the Ontario Convention Center, Guasti compound , and Ontario International Airport through strong physical and visual design.

Further, the Guasti District is adjacent to the Entertainment District to the east, which is envisioned as a large-scale regional entertainment hub, leveraging attractions such as the Toyota Arena and Ontario Mills, and supported by a variety of retail and dining options alongside high-intensity office and residential development. This area will evolve into a walkable urban center through the addition of mixed-use infill development, a pedestrian-oriented road and trail network, key public realm improvements, and multiple transit options.

The critical infrastructure surrounding the Specific Plan Area provides connectivity between these districts and other parts of the City and includes easy access to I-10, major arterial streets, Ontario station, planned airport loop, existing BRT lines, Metrolink lines, and the airport. The development in the Specific Plan Area could spur future growth in the area and encourage further infrastructure investments and connectivity. Some ideas for infrastructure projects include the following:

Figure 4: Guasti District Extents - Community Design Element



Source: City of Ontario

- As a direct connection to the Convention Center and freeway, this high-traffic area could transform into a place to be enjoyed either by car or on foot, with interpretive/ kinetic art and grand gestures of innovative placemaking.

- Holt Boulevard could transform with the addition of tree-lined sidewalks, a landscaped median, outdoor seating areas, and kiosks. To enhance the area's appeal, digital beacons and adaptable signage within the median could create a distinct gateway effect.

- Guasti Road could be transformed into a multimodal roadway with sidewalks, and bike lanes. This road can also be used as an occasional pedestrian-only zone for pop-up events, markets, and street takeovers.

- A portion of the flood control channel could be re-imagined as a multimodal greenway that promotes outdoor activity. The greenway's potential is vast, with eight miles of northbound trail that end at the Rancho Cucamonga Creek trailhead.

Given the multitude of critical infrastructure components that could be implemented in the region, along with the visionary City planning efforts already in progress, this area is well-positioned for development projects that will optimize the region's potential for future growth.

1.3 Specific Plan Purpose

The Empire Groves Specific Plan establishes land use regulations, development standards, and design guidelines tailored to the unique goals of the hotel and retail development envisioned at this particular location. The Specific Plan defines the uses that are permitted and their locations, as well as design guidelines for buildings and related on-site improvements. The Specific Plan ensures that the area develops in a coordinated manner with adequate consideration of infrastructure, services, public safety, and project financing. The purpose of the Specific Plan is to:

- Provide a planning framework that responds to the physical and market-driven aspects of future development opportunities.

- Reclaim the site and transform it into a visually attractive living, working, and shopping environment.

- Determine the appropriate location, maximum intensity, and mix of uses through new development parameters.

- Encourage compatible land uses and interfaces with adjacent properties.

- Conform to state laws and local ordinances and policies for the preparation of specific plans.

1.4 Community Benefits

There are several community benefits to building a hotel complex with a retail component in the City of Ontario.

- Construction and operation of the hotel complex will create job opportunities for local residents, including positions in hospitality, retail, management, and maintenance.

- The inclusion of retail spaces can support local entrepreneurs and small businesses by providing them with platforms to showcase and sell their products or services.

- The development will generate tax revenue for the City, contributing to public funds for essential services like education, infrastructure, and public safety.

- A well-located and easily accessible hotel complex such as this will attract visitors and is a great candidate for hosting events and conferences, further benefiting local businesses and the economy.

The development of a hotel complex can also attract additional investment in the area, spurring further development and leading to improvements in local infrastructure, including road upgrades, sidewalks, and public transportation facilities, ultimately enhancing the overall cityscape as discussed in the Vision.

Public spaces within the complex can serve as gathering spots for residents and visitors, contributing to a sense of community. The presence of a well-maintained hotel complex can positively impact property values in the surrounding area.

1.5 California Environmental Quality Act Compliance

A CEQA analysis was conducted according to the City's Environmental Review Update Checklist Form for Projects with Previously Approved Environmental Documents to evaluate potential impacts resulting from the implementation of this Specific Plan. It was determined that the certified Final Environmental Impact Report (EIR) previously prepared to evaluate the General Plan update adequately covers this Specific Plan's potential impacts. Therefore, an Addendum to the Final EIR was determined to be the appropriate CEQA document to analyze this Specific Plan. The Addendum concluded that, since the General Plan update EIR was certified, there are no changes in the project, changes in circumstances under which the project is undertaken, and/or "new information of substantial importance" that would cause one or more significant effects.

1.6 Project Objectives

The Empire Groves Specific Plan reflects the City of Ontario's long-term objectives, which include the expansion of the City's economic base consistent with maintaining and enhancing the high quality of life for all residents. The following objectives, achieved through the implementation of the Specific Plan, have been identified as applicable to the project:

High-Quality Development: Implement high-quality development through the adoption of this Specific Plan that will provide a world-class hotel and local retail in this area.

Flexible Standards: Provide flexible standards that permit limited modifications between retail, restaurant, and hotel spaces that align with the ever-changing market conditions and allow for long-term financial stability.

Placemaking: Create a series of attractive, interconnected gathering spaces, including rooftop gardens, outdoor dining spaces, gardens, meadows, courtyards, pools, lounges, and other outdoor facilities to meet the recreational and social needs of visitors and guests.

Adequate Parking: Provide flexible parking standards to encourage parking facilities that sufficiently meet the parking demand for all uses at all times.

Reduce Per-Capita VMT: Design and locate new development adjacent to existing transportation infrastructure and services to reduce the need for vehicle trips and to minimize the distance of vehicle trips typically made by automobile.

1.7 Specific Plan Authority and Requirements

1.7.1 Authority

The California Government Code establishes the authority for a legislative body to adopt an ordinance or resolution requiring that a specific plan be prepared. As with general plans, the Planning Commission must hold a public hearing before the planning agency can recommend the adoption of a specific plan. The City Council may then adopt a specific plan by ordinance or resolution.

The Empire Groves Specific Plan is regulatory in nature and serves as zoning for the properties involved. Development plans, site plans, and tentative tract and parcel maps must be consistent with both the Empire Groves Specific Plan and the City of Ontario's General Plan, as amended.

The Empire Groves Specific Plan is prepared and established through the authority granted to the City of Ontario by the California Government Code, Title 7, Division 1, Chapter 3, Article 8, Sections 65450 through 65457 (Specific Plans). The City Code does not have any additional specific content requirements beyond that required by the Government Code.

1.7.2 Government Code Requirements

According to Section 65451, "a specific plan shall include a text and a diagram or diagrams which specify all of the following in detail:

- The distribution, location, and extent of the uses of land, including open space, within the area covered by the plan.
- The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.
- Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable.
- A program of implementation measures including regulations, public works projects, and financing measures necessary to carry out the project.
- The specific plan shall include a statement of the relationship of the specific plan to the general plan."

1.8 Relationship to Planning Documents

1.8.1 General Plan

In accordance with the California Government Code, the adoption and administration of specific plans are permitted as an implementation tool of a general plan. Specific plans must demonstrate consistency with the policies set forth in the general plan. An analysis of how the Empire Groves Specific Plan is consistent with the policies in the City's General Plan is contained in **Appendix A**. A General Plan Amendment will be requested as part of the project application to change the land use designation from Multimodal Mixed Use to a Specific Plan.

1.8.1.1 General Plan Policy Guidance

The following General Plan policies are useful in providing direction for the project and supporting the project objectives:

1.8.1.1.1 Land Use Element

Policy LU-1.1 Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, foster the development of transit, and support the expansion of the active and multimodal transportation networks throughout the City.

Policy LU-1.6 Complete Community. We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers, and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario.

Policy LU-2.11 Context-Aware Transitions and Connections. We require new development projects and land-planning efforts to provide context-aware and appropriate transitions and connections between existing and planned neighborhoods, blocks, sites, and buildings.

1.8.1.1.2 Mobility Element

Policy M-2.1 Active Transportation. We maintain our Active Transportation Master Plan to create

a comprehensive system of on- and off-street bikeways and pedestrian facilities that are safe, comfortable, and accessible and connect residential areas, businesses, schools, parks, and other key destination points.

Policy M-2.3 Pedestrian Walkways. We require streets to include sidewalks and visible crosswalks at major intersections where necessary to promote safe and comfortable mobility between residential areas, businesses, schools, parks, recreation areas, and other key destination points.

Policy M-2.4 Network Opportunities. We use public rights-of-way and easements such as, utility easements, levees, drainage corridors, road rights-of-way, medians, and other potential options to maintain and expand our bicycle and pedestrian network. In urban, mixed-use, and transit-oriented Place Types, we encourage the use of underutilized public and private spaces to expand our public realm and improve pedestrian and bicycle connectivity.

1.8.1.1.3 Housing Element

Policy H-2.3 Ontario Airport Metro Center. We foster a vibrant, urban, intense, and highly amenitized community in the Ontario Airport Metro Center Area through a mix of residential, entertainment, retail, and office-oriented uses.

1.8.1.1.4 Community Economics Element

Policy CE-1.8 Regional Attraction. We encourage the development and programming of regional, cultural, and entertainment destinations in Ontario.

Policy CE-2.1 Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.

1.8.1.1.5 Community Design Element

Goal CD-1 A dynamic, progressive city containing distinct and complete places that foster a positive sense of identity and belonging among residents, visitors, and businesses.

Policy CD-1.1 City Identity. We take actions that are consistent with the City being a leading urban center in Southern California while recognizing, enhancing, and preserving the character of our existing viable neighborhoods.

Goal CD-2 A high level of design quality resulting in neighborhoods, commercial areas, public spaces, parks, and streetscapes that are attractive, safe, functional, human- scale, and distinct.

Policy CD-3.1 Unique Identity. We promote development that heightens the unique character and identity of each Place Type by requiring compatible land uses and land planning, site design, and building design that promotes an active public realm.

Policy CD-3.4 Context-Aware and Appropriate Design. We require appropriate building and site design that complements existing development, respects the intent and identity of the Place Type, and provides appropriate transitions and connections between adjacent uses to ensure compatibility of scale, maintain an appropriate level of privacy for each use, and minimize potential conflicts.

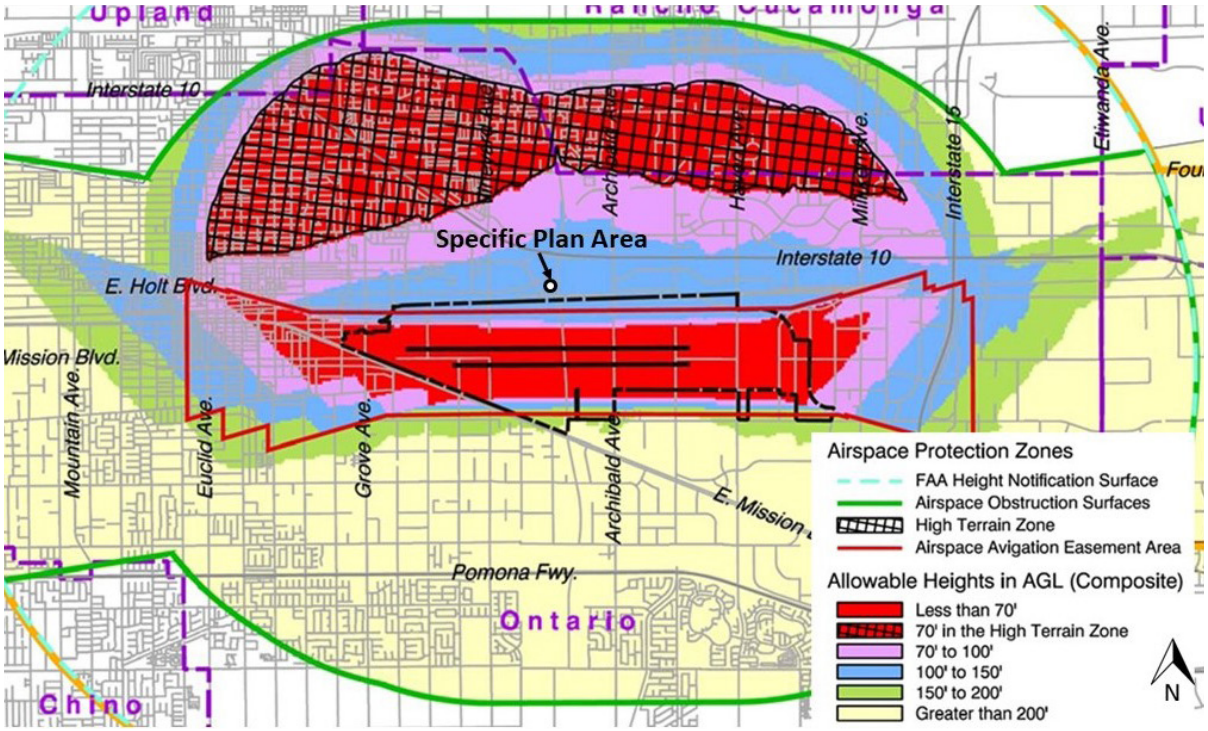
1.8.2 Zoning Code

Per the provisions of state law, the Specific Plan will establish the zoning and regulations for the site. In situations where the Specific Plan is silent, the City of Ontario's Zoning Code will prevail. The site is currently zoned as Specific Plan (SP) and will refer to this document for the development of the site.

1.8.3 Ontario Airport Land Use Compatibility Plan

The Ontario International Airport Land Use Compatibility Plan (ONT ALUCP) was adopted by the Ontario City Council on April 19, 2011. The basic function of the ONT ALUCP is to promote compatibility between ONT and the land uses that surround it. In accordance with state law, the ONT Airport Influence Area encompasses all lands that could be negatively impacted by ONT's present, or future aircraft operations or land uses that could negatively affect ONT's airport operations. The project area is located within the noise impact and airspace protection zones of the ONT ALUCP. All development proposals are required to be consistent with

Figure 5: Compatibility Policy Map - Airport Protection Zones



Source: Ontario International Airport Land Use Compatibility Plan, Policy Map 2-4

the Ontario International Airport Land Use Compatibility Plan policies and criteria.

In addition to safety and noise, the plan evaluates airspace protection compatibility to prevent creation of land use features that can be hazards to aircraft in flight and have the potential for causing an aircraft accident to occur. One such hazard is building height. To determine the allowable heights of future objects, the underlying ground elevation is compared with the elevation of the controlling portions of the Federal Aviation Regulations Part 77, Terminal Instrument Procedures, and One-Engine Inoperative surfaces. These are depicted as color bands in **Figure 5**. Each color band represents a range of distance, measured in vertical feet, between the ground and overlying surface.

The Specific Plan Area falls in an allowable height range of 100 to 150 feet. Based on the plan policies, the project proponent shall submit notification of the proposal to the Federal Aviation Administration, as required by the provisions of Federal Aviation Regulations Part 77, Subpart B, and by the California Public Utilities Code, Sections 21658 and 21659.

1.9 Specific Plan Organization

This Specific Plan is organized into the following six chapters.

Chapter 1 | Introduction

This chapter explains the role and function of specific plans. It articulates the vision and a synopsis of the community advantages that may accrue through the execution of this project. This chapter also delineates the Specific Plan's extent and authority, its adherence to the California Environmental Quality Act (CEQA), and its alignment with the City's General Plan and Zoning Ordinance, as well as the overarching guidance provided by General Plan policies. Moreover, this chapter establishes the groundwork for the subsequent chapters by elucidating the purpose and objectives of this Specific Plan.

Chapter 2| Existing Conditions

This chapter includes an analysis of the current conditions, encompassing the surrounding environment, land use, zoning, topography, geology, flooding, and noise levels.

Chapter 3| Development Plan

This chapter outlines the comprehensive land use framework, encompassing a summary of the project, and infrastructure plans, covering circulation, water supply, sewage, recycled water, and dry utilities.

Chapter 4| Development Standards

This chapter serves as the authoritative document that delineates the specific land use designations and regulatory guidelines for this Specific Plan. Upon the formal adoption of this Specific Plan, the provisions related to land use and development standards outlined in this chapter will assume the status of official zoning regulations for the designated area.

Chapter 5| Design Guidelines

This chapter outlines the fundamental guiding principles that underpin the architectural and urban design aspects of the Specific Plan. These guidelines are intended to provide a comprehensive framework for the aesthetic and functional aspects of the project, ensuring a harmonious and purposeful development that aligns with the overarching vision of the Specific Plan.

Chapter 6 | Implementation

This chapter outlines the guidelines for overseeing and administering the Specific Plan's development, encompassing procedures for amendments, the equivalency program, and the prioritization of implementation.

02

Existing Conditions

2.1 Existing Land Use

The Specific Plan Area is currently vacant land with no temporary or permanent structures. There is, however, some vegetation and trees on the site. **Figure 6** shows images of the existing site.

2.2 Existing General Plan Land Use

According to the City's General Plan Land Use Element, the Specific Plan Area has a Mixed Use–Multimodal land use (refer to **Figure 7**). The Specific Plan Area also falls in the Ontario Airport Metro Center Overlay (refer to **Figure 8**).

2.2.1 Multimodal Mixed-Use

The future multimodal transit station is under consideration within the Mixed-Use Area, which will link rail, regional, local, and airport transit. Intensive office, retail, and residential uses are envisioned to be integrated with the transit station. The transit center is envisioned as an iconic, convenient, and intuitively designed multimodal transportation center that will serve the City of Ontario and the region at large.

According to the General Plan full buildout summary, the total acreage under the Multimodal Mixed-Use Area (west of Archibald Avenue and south of I-10) is 72.56 acres, of which 10.43 acres fall in the Specific Plan Area. It is estimated that the entire Multimodal Mixed-Use area will absorb a total of 2,449,727 square feet of nonresidential development and will create 5,993 jobs. Of this, 553,124 square feet is allocated to lodging and the rest to retail and office development. The area will have an allowable density of 20.0 to 80.0 dwelling units per acre.

Figure 6: Existing Site Aerial and Context Photos

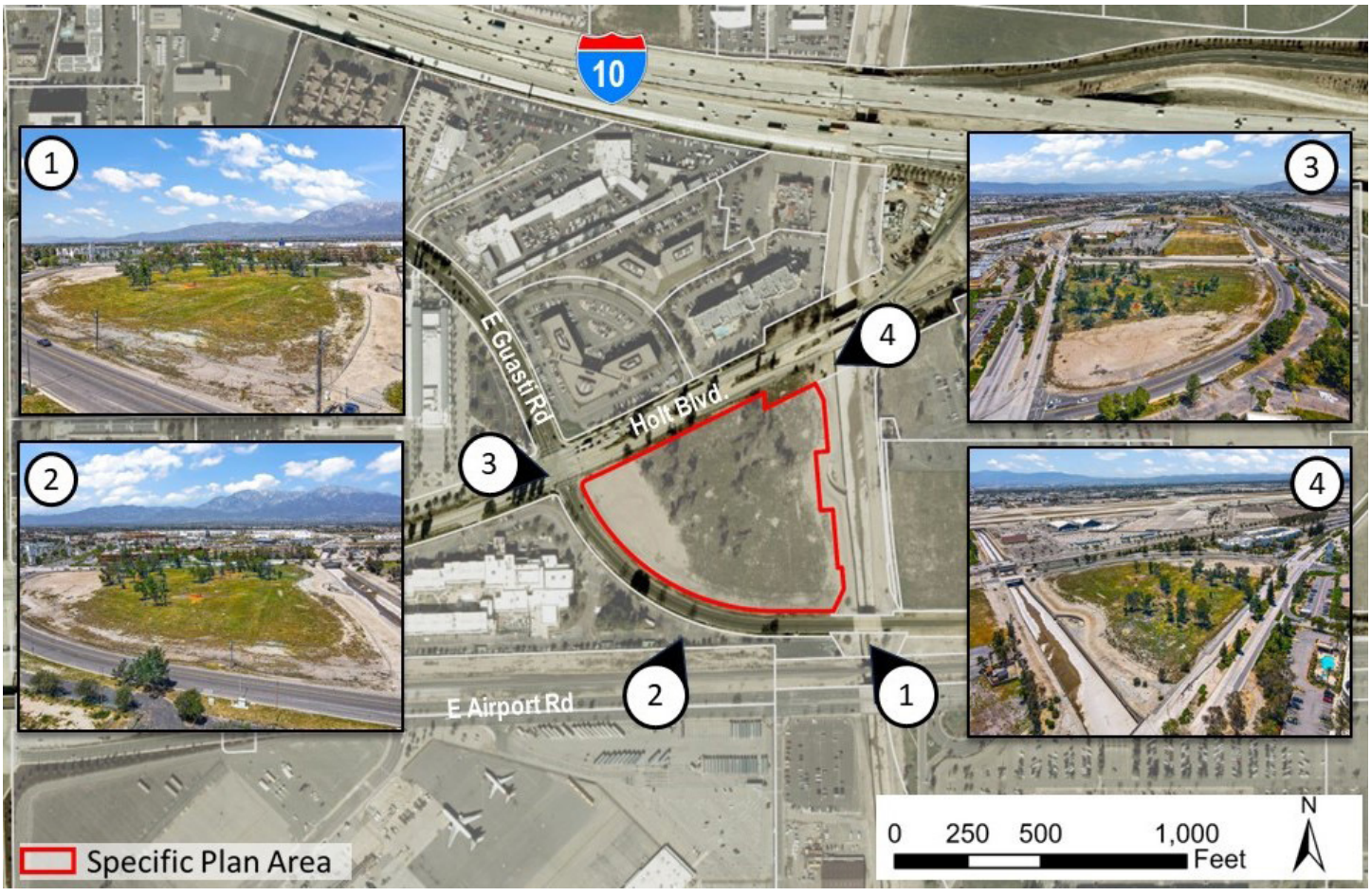
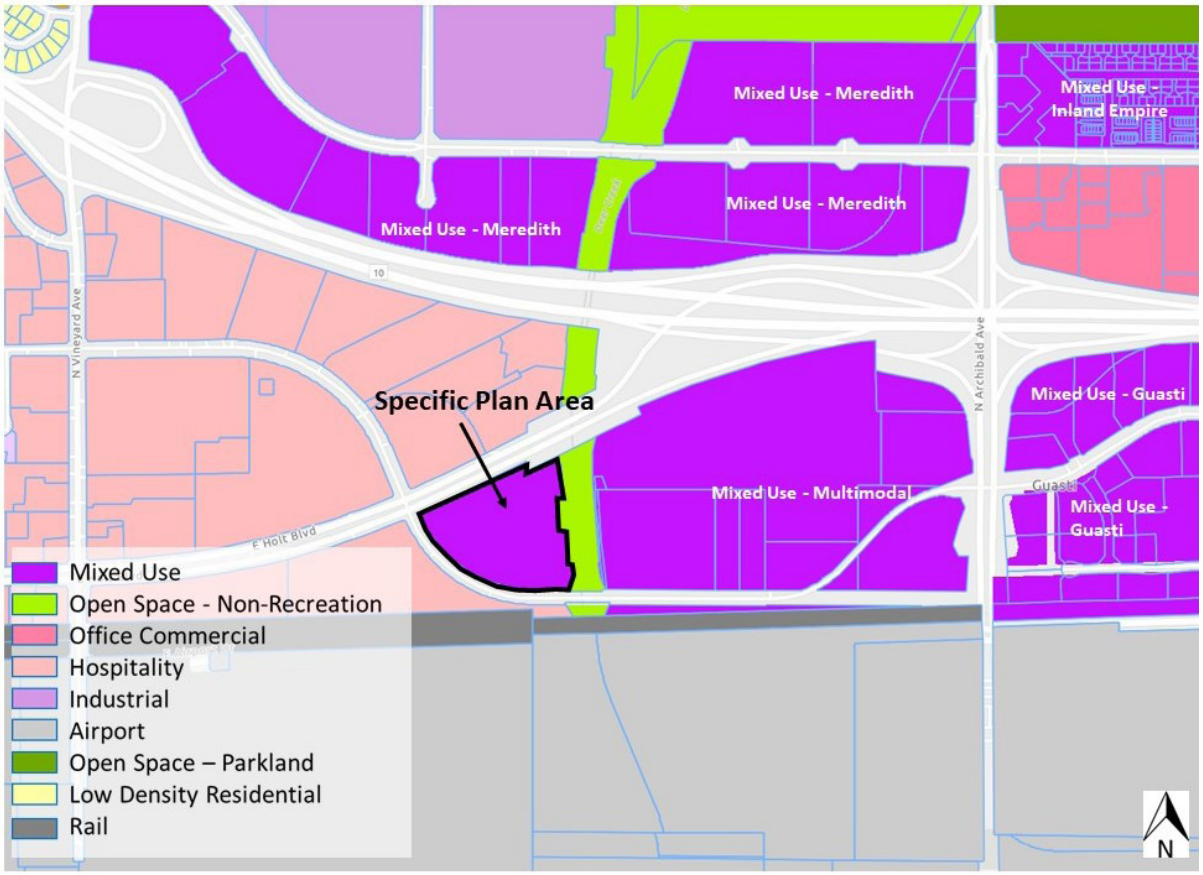
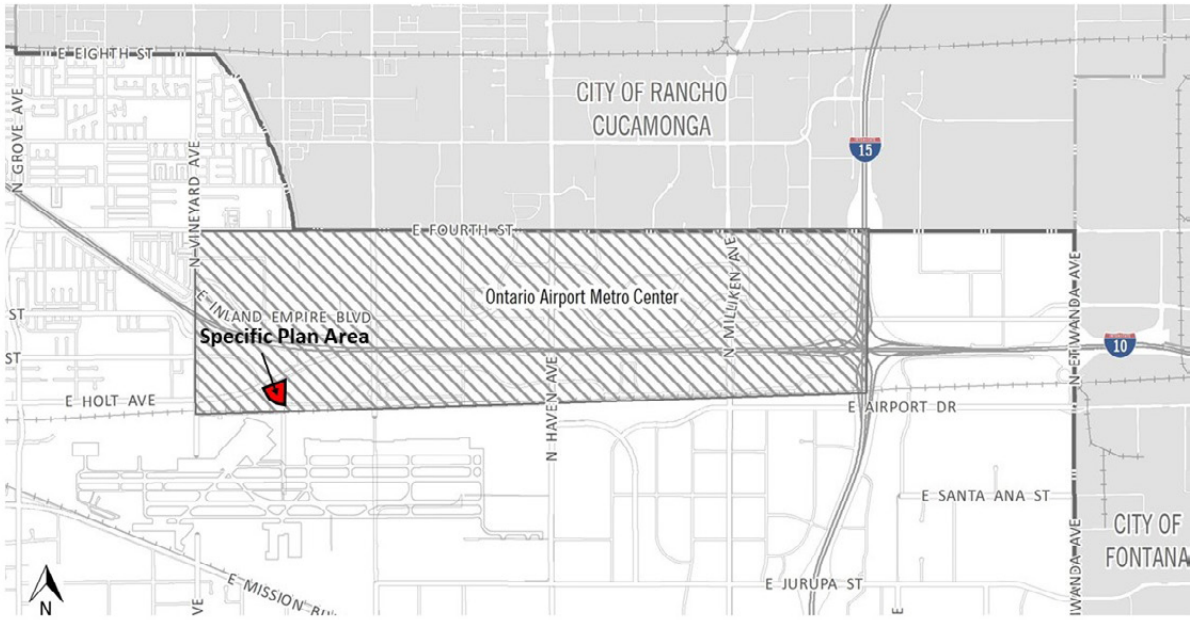


Figure 7: Existing General Plan Land Use



Source: City of Ontario

Figure 8: Existing Ontario Airport Metro Center Overlay



Source: City of Ontario

2.2.2 Ontario Airport Metro Center Overlay

The Ontario Airport Metro Center Overlay is envisioned as the most intensive area in the County with a vertical and horizontal mixture of regional-serving retail, office, restaurant, entertainment, cultural, and residential uses in low- to mid-rise buildings (i.e., 3-10 stories).

2.2.3 Surrounding Land Uses

The surrounding land uses include Hospitality (HOS) on the west with a floor area ratio (FAR) of 1:00; Mixed Use–Multimodal (MU-Multimodal) on the east of Specific Plan Area with a density of 20.0 to 80.0 dwelling units per acre and FAR of 1.0; Mixed Use - Meredith (MU-Meredith) in the north with a density of 14.0 to 125.0 dwelling units per acre and FAR of 3; and Airport (ARPT) in the south (refer to **Figure 7**).

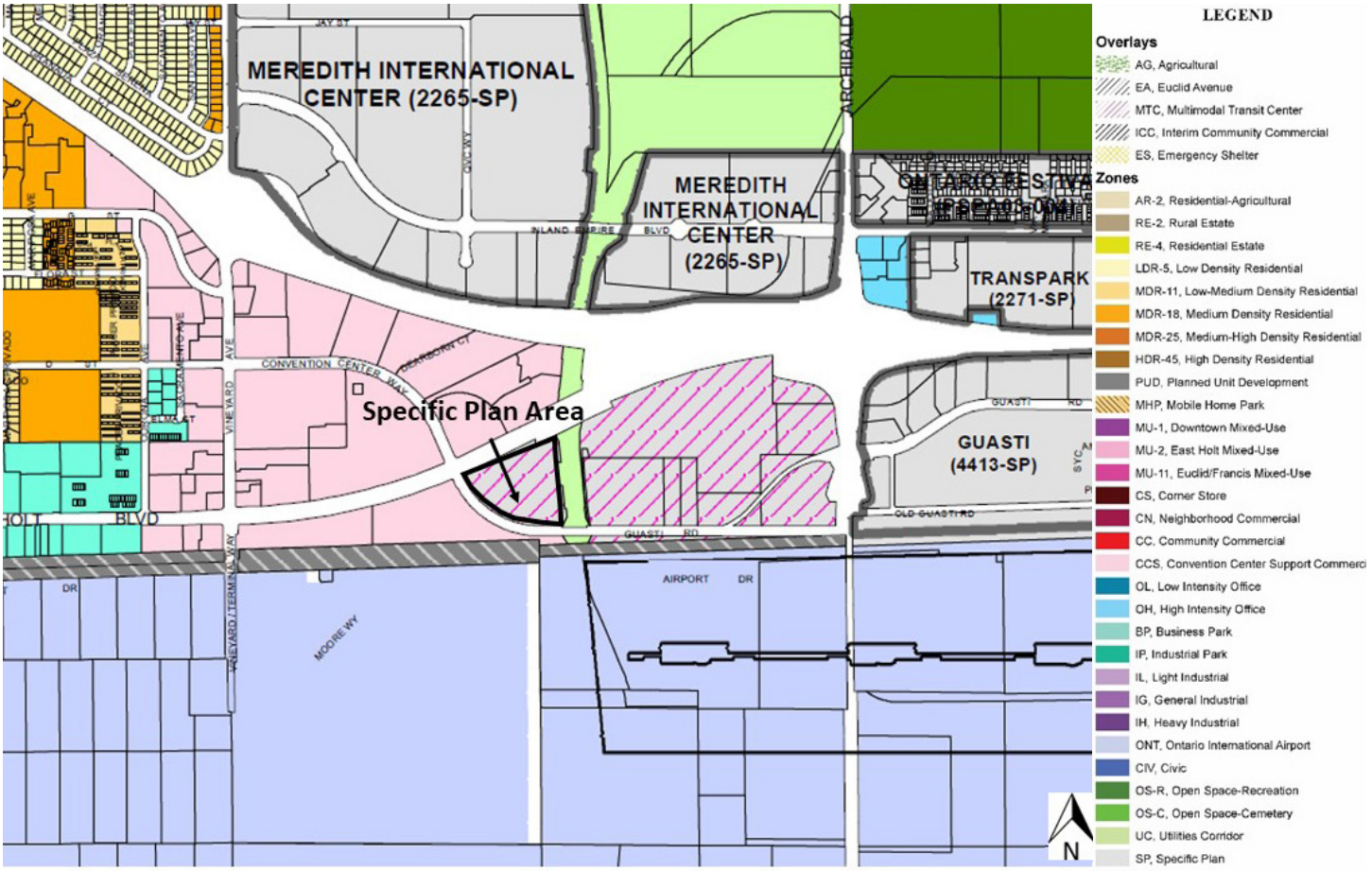
2.3 Existing Zoning

According to the City's Zoning Map, the existing zoning for the Specific Plan Area is a Specific Plan Zone with a Multimodal Transit Center overlay zone. Below are the descriptions of these zones.

2.3.1 SP (Special Plan) Zoning District

The SP zoning district is established to accommodate the adoption of specific plans pursuant to Exhibit LU-05 Overlay Areas (Additional Plans Map) of the Policy Plan component of The Ontario Plan. All land uses, activities, and facilities within the SP zoning district shall only be allowed pursuant to the applicable Specific Plan document.

Figure 9: Existing Zoning



Source: City of Ontario, The Ontario Plan 2050

2.3.2 MTC (Multimodal Transit Center) Overlay District

The Mhe MTC Overlay District was established to allow for the interim use of existing buildings located within the overlay district boundary (established pursuant to Paragraph 5.01.010.F.4 [MTC Overlay District] of the Development Code), while at the same time preserving the City's vision for development of a multimodal transit center and supporting mixed-use development. To this end, the below-listed land uses are permitted within existing buildings in the MTC Overlay District:

- General warehousing, storage, and distribution trades.
- Wholesale trades.
- Retail trades limited to 15 percent of the building's gross floor area or 8,000 square feet, whichever is less.
- Office administrative and business support services.
- Other uses approved by the Planning Director or his/her designee that are similar in nature to those uses listed above, provided all activities are wholly contained within the building and do not have the potential to negatively impact properties in the vicinity, or are inconsistent with the Vision and Policy Plan components of The Ontario Plan.

The Specific Plan Area is surrounded by parcels designated as a Specific Plan Zone with MTC overlay in the east and a CCS (Convention Center Support) Commercial Zone to the north, west, and south. Properties farther south are zoned RC (Railway Corridor) and Airport.

2.4 Topography

The Specific Plan Area is relatively flat with an approximately 1.25 percent slope from the north to the south (refer to **Figure 10**). The site elevation ranges from approximately 968 feet to 957 feet above mean sea level.

2.5 Geology and Soils

2.5.1 Fault Zones

The Specific Plan Area is not located within the boundaries of an earthquake fault zone for fault rupture hazards as defined by the Alquist-Priolo Earthquake Fault Zoning Act or identified in The Ontario Plan. The Alquist-Priolo Earthquake Fault Zoning Act is a California state law designed to reduce the risk of damage to building structures on or near active earthquake fault zones. The California Department of Conservation, in cooperation with local governments, is responsible for mapping the location of active earthquake fault zones. The act prohibits the construction of critical facilities (e.g., schools, and hospitals) and limits the construction of residential buildings within the mapped zones. The nearest earthquake fault zone is the Sierra Madre fault zone, which is more than 6 miles north of the Specific Plan Area. No other faults have been mapped in the City of Ontario, according to the City's General Plan.

2.5.2 Land Subsidence

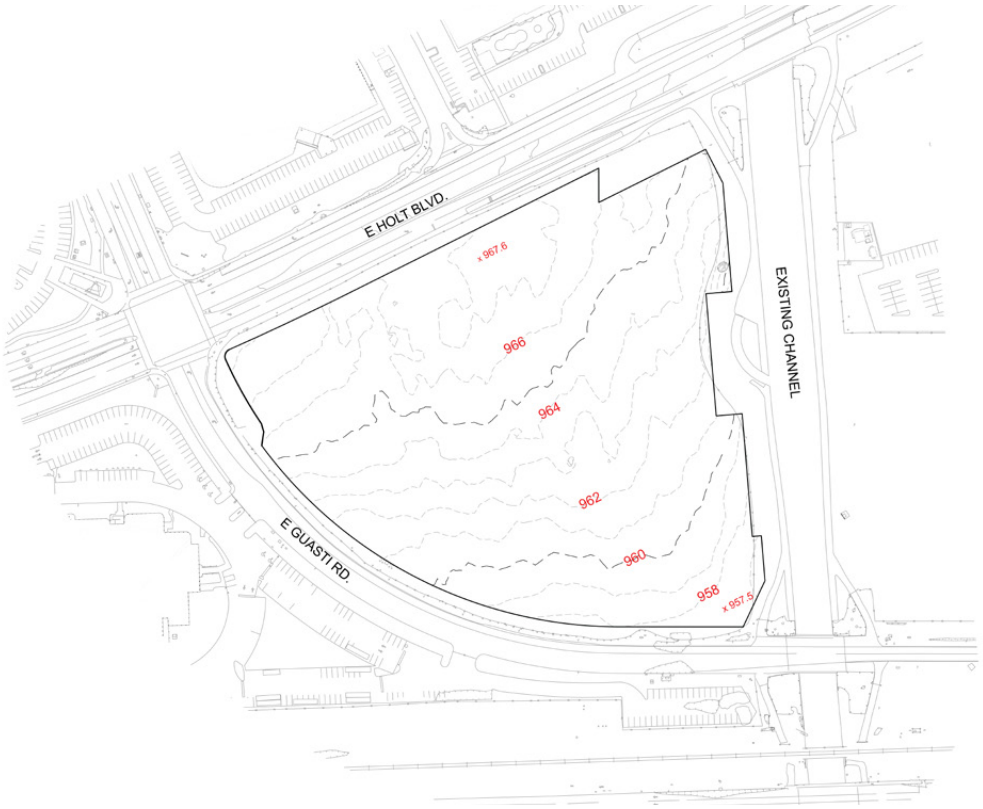
Land subsidence due to groundwater pumping is a gradual sinking or settling of the earth's surface caused by the excessive extraction of groundwater from underground aquifers. When groundwater is pumped from these aquifers at a rate faster than it can naturally be replenished, it creates a void or space underground.

Land subsidence due to groundwater pumping has been a long-standing issue in various parts of California, including Ontario. California's San Gabriel Valley, where Ontario is located, has experienced land subsidence as a result of excessive groundwater extraction for several decades. The entirety of the Specific Plan Area, similar to the majority of Ontario, is susceptible to land subsidence due to groundwater pumping.

2.5.3 Soils

The Specific Plan Area is underlain by Pleistocene/Holocene-aged Tujunga soils that typically develop from alluvial deposits, which are sediments carried and deposited by water,

Figure 10: Topography



often in areas near rivers, streams, or floodplains. The Tujunga soil series generally features a loamy texture, which means it has a balanced mixture of sand, silt, and clay. This texture is often suitable for agriculture and gardening. They usually have good to moderate drainage properties, making them suitable for a variety of land uses.

2.6 Flooding

2.6.1 FEMA Floodplain

The majority of the Specific Plan Area, as shown in **Figure 11**, is in a Federal Emergency Management Agency (FEMA) designated 500-year floodplain. The FEMA 500-year floodplain is a designated area that represents the land area at risk of flooding during a severe flood event with a 0.2 percent annual probability of occurrence, which is roughly equivalent to a 1-in-500 chance of occurring in any given year. This means that, on average, it has a low annual probability (0.2 percent) of occurring; such a flood might be expected to happen once every 500 years.

2.6.2 Dam Inundation

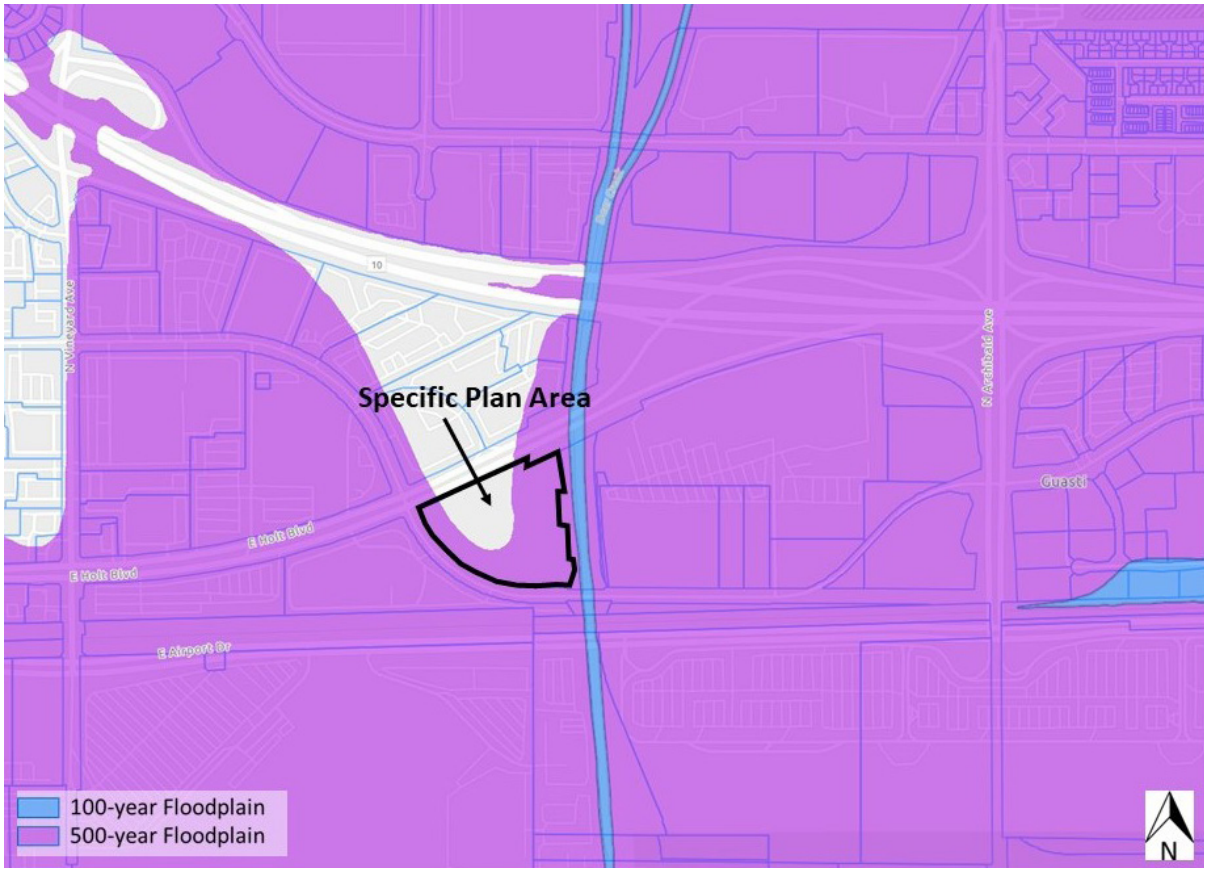
San Antonio Dam is an embankment flood control and debris dam on San Antonio Creek in San Bernardino County, California, about 5 miles (8.0 kilometers) north of Ontario. A potential breach of this dam could inundate most of the City, including the Specific Plan Area (refer to **Figure 12**). The reservoir behind the dam is usually dry but can fill up after large flooding events. The dam is owned by the US Army Corps of Engineers, Los Angeles District. The City periodically coordinates with the dam owners to monitor the condition of the dam.

2.6.3 Existing Storm Water and Drainage

The site is located immediately west of the Cucamonga Creek Channel. This fully improved facility provides regional flood control and storm conveyance to the surrounding area.

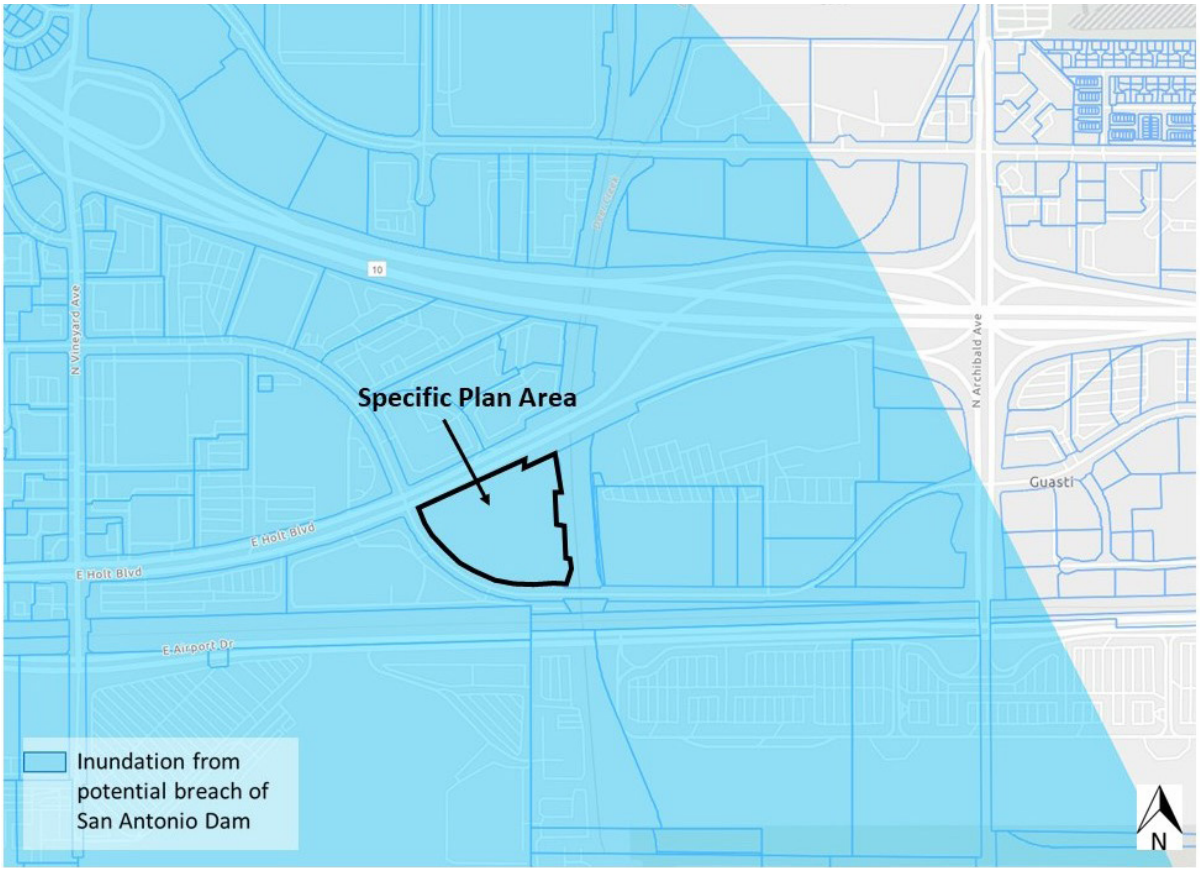
A 108" diameter storm drain extends westerly from the Cucamonga Creek Channel just south of Guasti Road. This facility provides storm conveyance for the adjacent property.

Figure 11: Floodplain



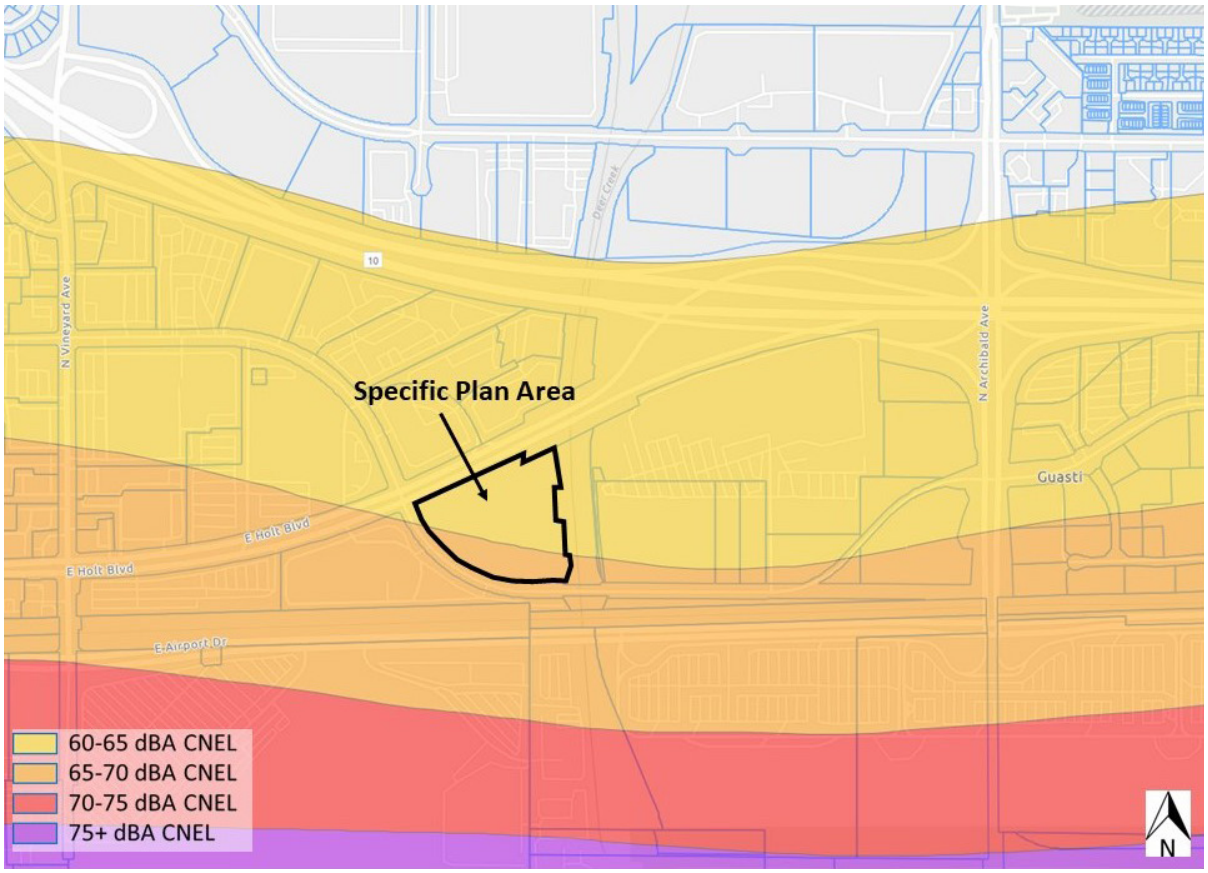
Source: City of Ontario, The Ontario Plan 2050, Safety Element

Figure 12: Dam Inundation



Source: City of Ontario, The Ontario Plan 2050, Safety Element

Figure 13: Noise Levels from Ontario Airport



Source: City of Ontario, The Ontario Plan 2050, Safety Element

The City of Ontario Master Plan of Drainage indicates a future 60" Storm Drain will be constructed within Holt Boulevard along the project frontage.

2.6.4 Existing NPDES Compliance

The project site is currently vacant / undeveloped and not subject to NPDES compliance.

2.7 Noise Levels

The City's Zoning Code provides exterior noise standards for the allowed equivalent noise levels for lodging facilities to be up to 70 dbA. The equivalent noise level is a measure used to represent a constant noise level over a specified period, usually one hour. It is a way of expressing a varying noise environment as a single, constant level for ease of comparison. The General Plan update also provides the existing noise level contours from traffic, railroad, and airport, all of which are within acceptable ranges. Noise from Ontario Airport is shown in **Figure 13**.

03 | Development Plan

3.1 Introduction

The Development Plan provides for the development of vibrant communities that allow for a variety of lodging, commercial, entertainment, and open space opportunities that expand the Guasti area and strengthen the City of Ontario's economy. To achieve this, this Specific Plan encourages a variety of complementary land uses and community-accessible amenities and services to establish the Specific Plan Area as a key activity node.

This chapter provides the framework to guide the development in the Specific Plan Area and identifies the land uses, circulation, and infrastructure that implement the vision of the Empire Groves Specific Plan. It is important to note that even though the discussion and exhibits in this chapter are intended to guide development within the Specific Plan Area, the exhibits provided herein are conceptual in nature and may change, subject to the requirements in this Specific Plan.

3.2 Land Use Plan

The Specific Plan consists of one planning area (PA1)–Hospitality Mixed Use (refer to **Figure 14**).

3.2.1 Hospitality Mixed-Use

Hospitality Mixed-Use refers to a development that combines hotel uses, ancillary services and amenities with local-serving commercial uses within a single property. The allowable uses are listed in **Table 3**.

Integrating hotel uses with local-serving retail offers several benefits including, increased foot traffic, enhances guest experiences, and stronger community engagement. Additionally, it can lead to economic benefits and greater sustainability and efficiency. Hotels focus on providing hospitality and amenities for guests, while local-serving retail emphasizes practicality and convenience for both visitors and local residents. Combined, these uses create a dynamic, mutually beneficial environment that enhances the appeal and functionality of both. The area allotted to each use can be found in **Table 1.**

3.2.1.1 Hotel Uses (553,124 SF)

Hotel use is the primary component of Hospitality Mixed-Use and should occupy the majority of the FAR of the development. This includes guest rooms, office space

Figure 14: Land Use Map



Table 1: Buildout of Empire Groves Specific Plan

AREAS	TOTAL SQUARE FEET	NOTES
Hotel Use	553,124	See chapter 3.2.1.1 and Table 3 for details.
Local-Serving Retail	46,876	See chapter 3.2.1.2 and Table 3 for details.
Total Square Feet	600,000	
Note: The project FAR is based on gross project acreage of 10.43. Covered outdoor areas are calculated towards FAR but not towards parking calculation. Utility areas and parking are not calculated towards FAR and include all areas below grade, including parking, central plant, transformer yard, bicycle parking, main electrical/emergency/generator rooms, loading docks, trash rooms, vertical shafts, and stairs as well as spaces above grade including mechanical rooms, vertical shafts, and parking.		

Figure 15: Street Plan



Source: City of Ontario, The Ontario Plan 2050, Mobility Element

for hotel administration, (MAX SF-basic lodging 553,124SF) and may also include restaurant(minimal SF), bars, lounges, day spas, gyms, ballrooms, meeting rooms, and more (see **Table 3**).

At buildout, the total development for the project area will be approximately 600,000 square feet. **Table 1** provides the maximum buildout for each use.

3.2.1.2 Local-Serving Retail Uses (46,876 SF)

Local-serving retail, on the other hand, caters to the daily needs of the local community as well as the hotel use. These businesses may include coffee shops, restaurants, retail, print shops, laundry or tailoring services and similar types of uses (see Table 3). These types of uses can benefit shoppers visiting the surrounding area as well as nearby residents who can access these services by foot.

3.3 Circulation and Access

3.3.1 Vehicular Circulation in the Vicinity

The Circulation Plan complements the Land Use Plan by linking the hotel and retail uses to adjacent land uses and is designed to enhance connectivity and facilitate the movement of various transportation modes. Located south of the San Bernardino Freeway (I-10), the Specific Plan Area is generally bounded by Holt Boulevard to the north, East Guasti Road to the south and southwest, and hotel and light industrial uses to the west and east, respectively.

Holt Boulevard and East Guasti Road provide connections to I-10, which would be the primary regional access point to the Specific Plan Area. These thoroughfares also provide connectivity to Archibald Avenue and North Vineyard Avenue, located a block away to the east and west of the Specific Plan Area, respectively, and permit easy access to the airport to the south of the Specific Plan Area.

3.3.1.1 Potential Roadway Improvements in the Vicinity

While not a part of the Specific Plan, potential roadway improvements in the vicinity could enhance and stimulate future development of the area and improve connectivity between the Guasti District and Airport Metro/Entertainment District in the east as well as with the airport. **Figure 15**, Street Plan of the Mobility Element from The Ontario Plan 2050, reflects the city's vision for developing a comprehensive, multimodal transportation network. This network is designed to meet the mobility needs of residents, visitors, and businesses while maintaining a high quality of life.

Holt Boulevard: Holt Boulevard is a major connector and can be envisioned as a gateway to the Guasti District, as reflected in **Figure 17**. It currently has three lanes on the north side and two lanes on the south side of the roadway. A lane drops from each side as one travels east past the Holt Boulevard and Guasti Road intersection. The roadway has wide medians. It may be improved to make it visually appealing by adding attractive landscaping and shaded trees within the median and on the edges of the roadway. The existing sidewalks could be widened and enhanced, and gaps could be filled with new sidewalks for easier and continuous pedestrian access. Holt Boulevard along the project frontage is an on-ramp entrance for Interstate 10. Required roadway improvements associated with this development will need to be coordinated with the California Department of Transportation (Caltrans). Proposed final roadway design will be subject to City review and approval.

East Guasti Road: East Guasti Road provides ample right-of-way for improvements, as reflected in **Figure 16.** Proposed improvements from Holt Avenue to the east side of the bridge over the Cucamonga Creek include a four-lane roadway, a landscaped median, and a new sidewalk on the northeast side. Final roadway design and limits will be subject to the City's review and approval. There is an existing sidewalk on the southwest side that

covers roughly half of the total frontage, and the entire southwest side of the roadway is existing, while the northeast side is proposed. Additional roadway improvements could include a bike lane and sidewalk with shaded trees, complementing the future development of the area and connecting the Guasti District with the Airport Metro/Entertainment District.

Airport Drive: The Guasti District has many hotels and lodging facilities. A major part of the clientele comes from the airport, south of the Specific Plan Area. The district acts as the gateway to the City from the airport. Hence, investing in Airport Drive improvements and establishing better connectivity with the area north of the airport will both enhance the travel experience for visitors and help with future investments in the area. Airport Drive currently has three lanes in each direction with a median and a sidewalk on the south side of the roadway. The north side is bordered by railroad

Figure 16: Street Section: East Guasti Road

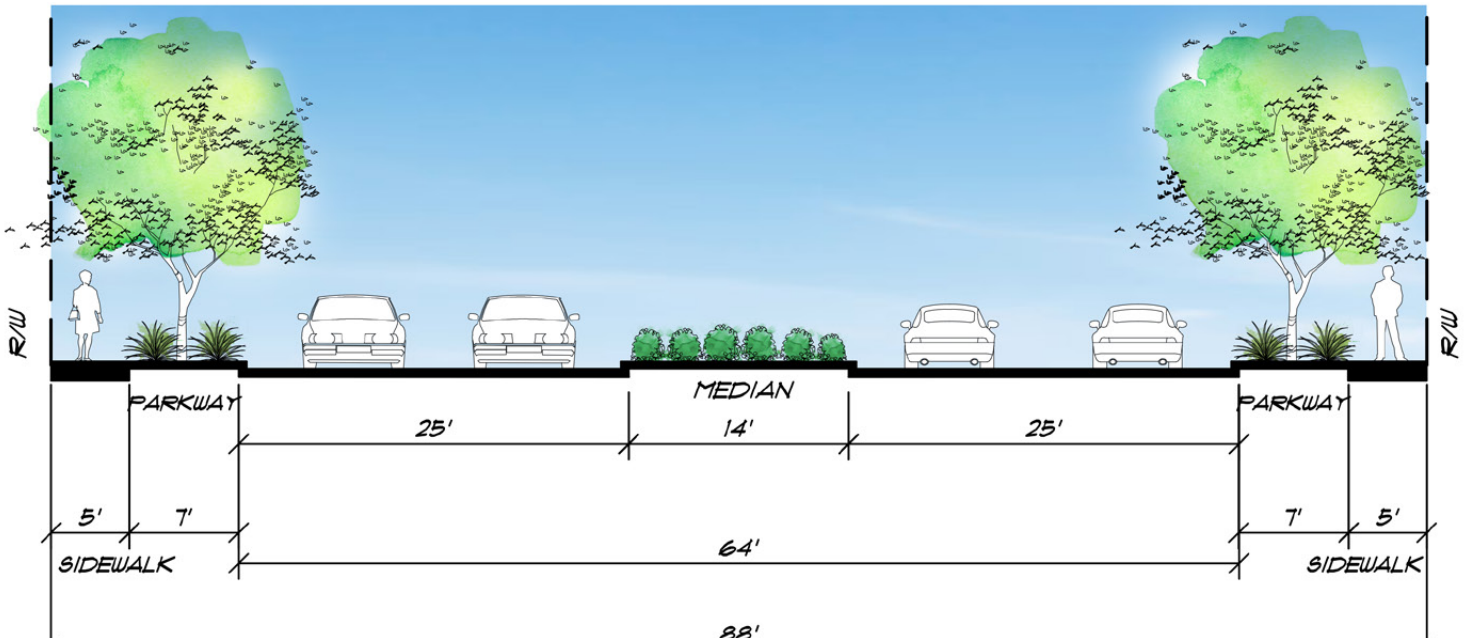
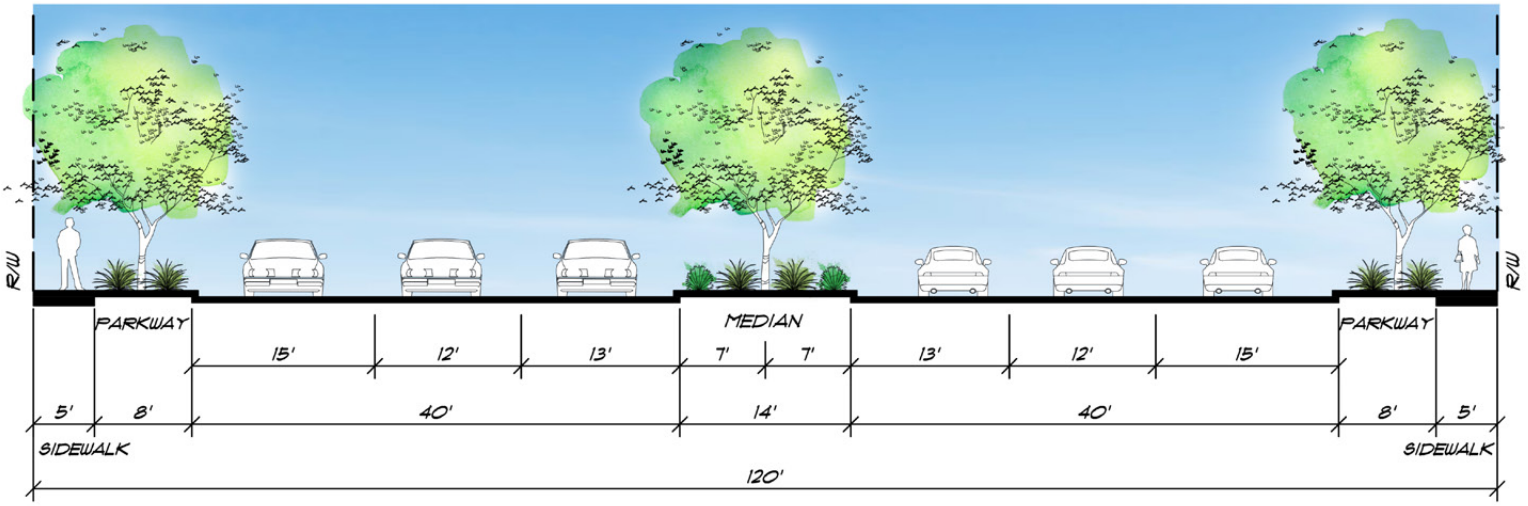


Figure 17: Street Section: Holt Boulevard and Bridge



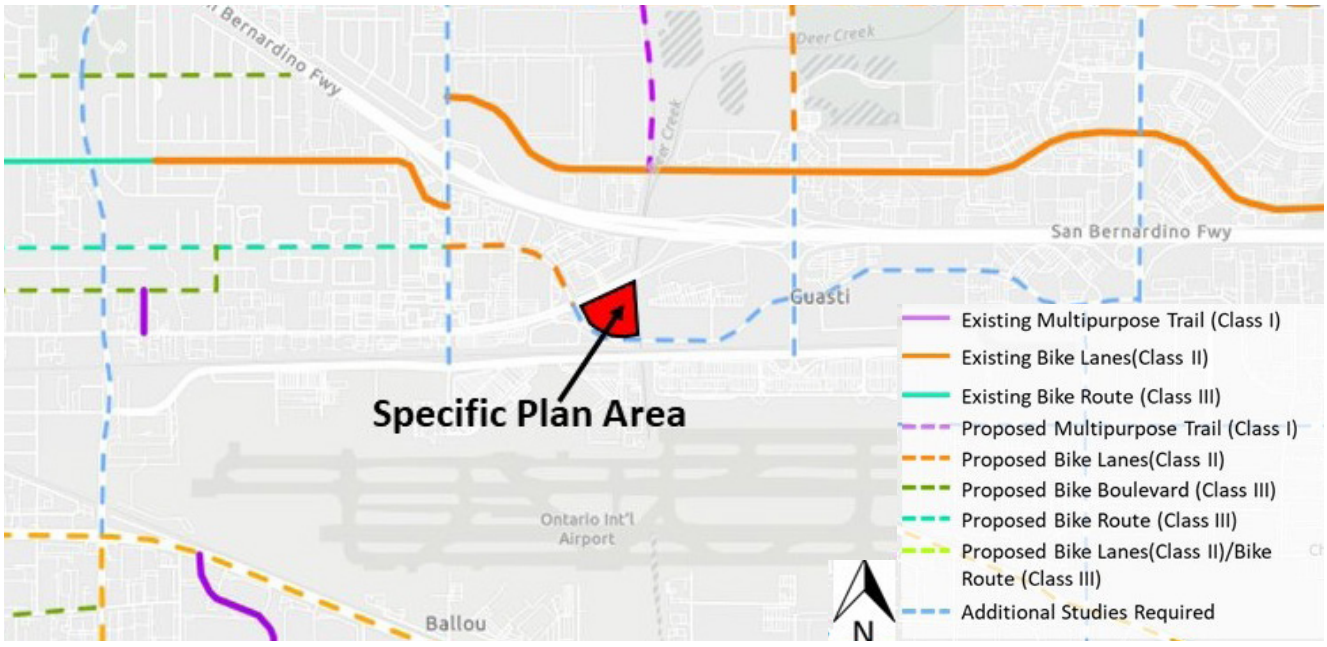
tracks. Enhancements could include adding landscaping to the median and sidewalks and filling any gaps in the sidewalks. Adding landscaping as a buffer between the railroad tracks and the roadway will add to the visual appeal of the roadway. In addition, pedestrian bridges could be added to connect the airport to the Guasti District.

3.3.2 Non-motorized Circulation in the Vicinity

The City is in the process of drafting its Active Transportation Master Plan. However, the City's General Plan Mobility Element provides insights into the current and proposed bike facilities in the City, as shown in **Figure 18.** There are several existing bike facilities north of the Specific Plan Area. These include bike lanes along the Ontario Mills Parkway and Del Norte Avenue. There are several proposed facilities in the vicinity of the Specific Plan Area, including along Guasti Road, Archibald Avenue, and Vineyard Avenue. A proposed multipurpose trail is contemplated along Cucamonga Creek that will eventually connect to the regional trail system. However, the trail currently terminates at the Ontario Mills Parkway. If extended to Guasti Road, this trail can become an important non-motorized link between the Guasti District and the rest of the City.

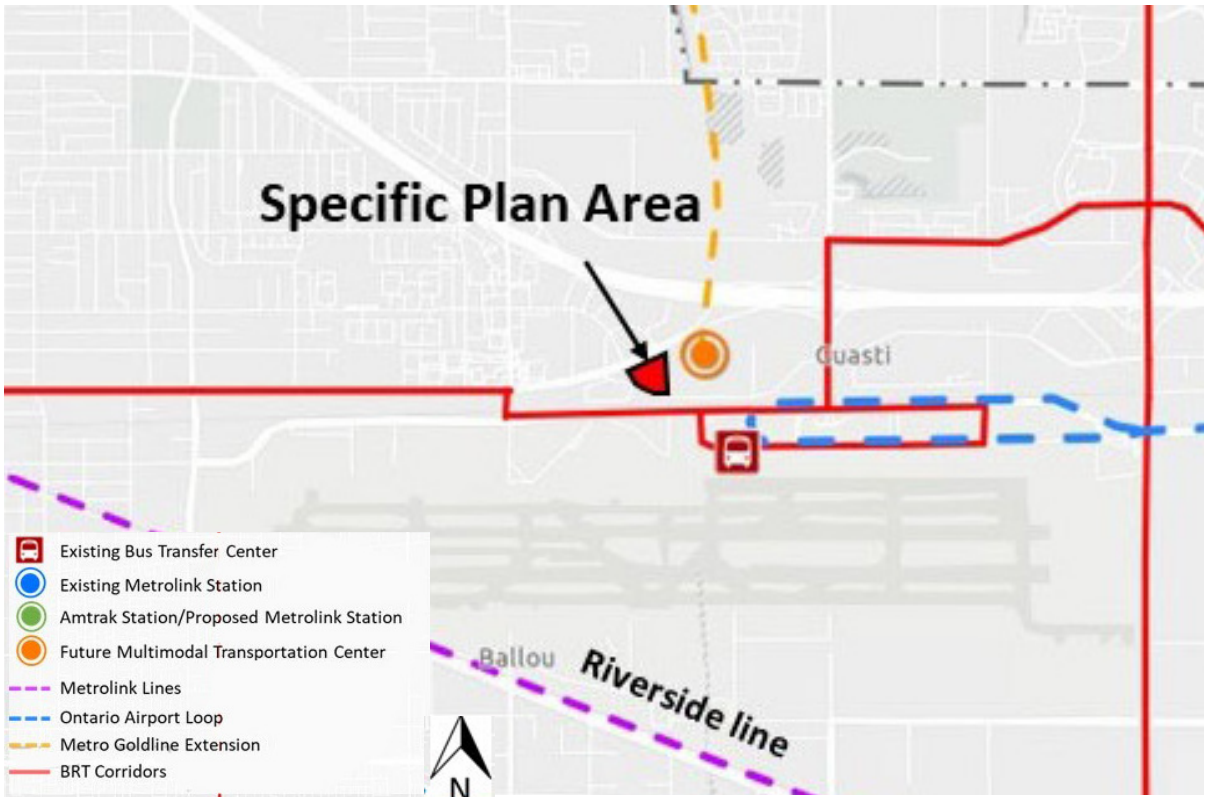
The pedestrian circulation around the Specific Plan Area is provided by sidewalks that currently have gaps at certain locations. The development of the Specific Plan Area will include sidewalks around the site and development of a plaza at the intersection of Holt Boulevard and Guasti Road. However, to enhance pedestrian connectivity, it is essential to envision the roadways in the vicinity with wider, shaded sidewalks, as described above in *Potential Roadway Improvements in the Vicinity* and reflected in **Figures 16 and 17**.

Figure 18: Multipurpose Trails and Bikeways



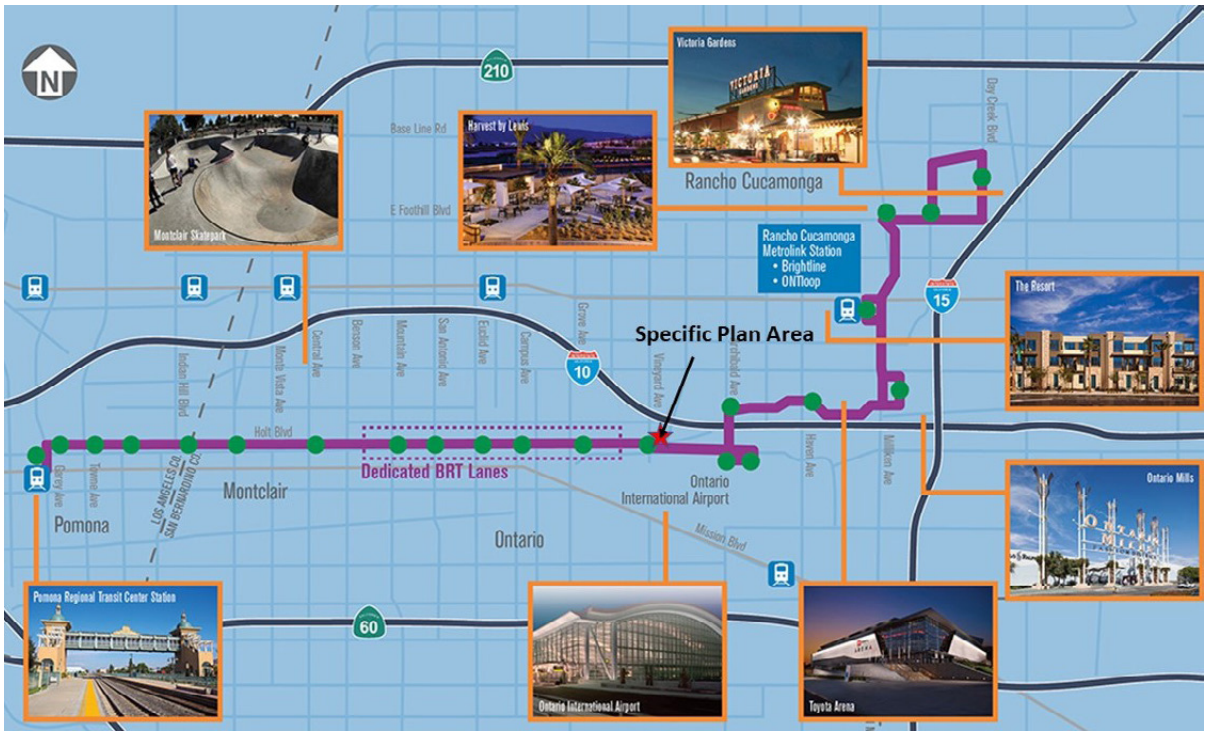
Source: City of Ontario, The Ontario Plan 2050, Mobility Element

Figure 19: Transit Access



Source: City of Ontario, The Ontario Plan 2050, Mobility Element

Figure 20: BRT Route



Source: Guida Geospatial Solutions; San Bernardino County Transportation Authority (SBCTA), West Valley Connector Project, Phase 1.

3.3.3 Transit Access

The Specific Plan Area enjoys ample access to a variety of transit facilities (see **Figure 19**).

Metrolink and Amtrak Stations: Two Metrolink lines serve the Specific Plan Area. South of the site is the Riverside Line, which provides east–west service between downtown Los Angeles and Riverside. North of the site is the San Bernardino Line, which provides east–west commuter rail service between downtown Los Angeles and San Bernardino.

The East Ontario Metrolink Station provides access to the Riverside Line and is the nearest Metrolink station to the Specific Plan Area, approximately 11 minutes by car. This station is on East Francis Street and can be reached via South Haven Avenue. The Ontario Station, an Amtrak station, is approximately 8 minutes away by car from the Specific Plan Area. It is also a proposed Metrolink station for the Riverside Line. This station is on East Emporia Street and can be conveniently reached by taking Euclid Avenue via East Transit Street.

Several stations are located north of the Specific Plan Area along the San Bernardino Line. The closest ones are the Rancho Cucamonga and Upland Stations.

BRT Routes: The West Valley Connector Bus Rapid Transit (BRT), which is under construction, is managed by the San Bernardino County Transit Authority. Phase I of the project is 19 miles and will upgrade a portion of existing Route 61, which runs along Holt Boulevard, adding approximately 3.5 miles as center-running, dedicated bus-only lanes (see **Figure 20**). There will be 21 stations in Phase I that will provide an improved transit connection to ONT and help build transit connectivity by linking ONT, two Metrolink lines (San Bernardino and Riverside), and multiple major activity centers along the route, including Ontario Mills and Victoria Gardens. Headways will be 10 minutes in the peak commute period and 15 minutes off-peak, providing a high level of service to the community.

It will traverse Airport Drive with its nearest station to the Specific Plan Area situated at the junction of Vineyard Avenue and Holt Boulevard. Although there are stations along Airport Drive, they are presently inaccessible due to a railroad between the Specific Plan Area and Airport Drive. A potential pedestrian bridge linking Guasti Road to Airport Drive would establish a direct and convenient route from Airport Drive to the Specific Plan Area.

Ontario Airport Loop: The Ontario Airport Loop project is a proposed tunnel to ONT that will feature a bi-directional system where passengers traveling to and from ONT will be transported in autonomous, zero-emission vehicles on an "on-demand" basis between the Cucamonga Metrolink Station and airport terminals. The project is considering the possibility of utilizing an elevated loop system to traverse Airport Drive, with potential stops along this route.

Metro Gold Line Extension: The current Metro Gold Line extension will reach San Bernardino County with new stations in the cities of Glendora, San Dimas, La Verne, Pomona, Claremont, and Montclair. The current terminus planned for Montclair, however, is just 6 miles short of ONT—a critical airport and economic driver for San Bernardino, Riverside, and parts of Los Angeles Counties. Metro Rail from Glendora to Pomona is currently under construction and is expected to be completed by 2025. Extension of the rail service further east from Pomona to Montclair is expected to be completed by 2028.

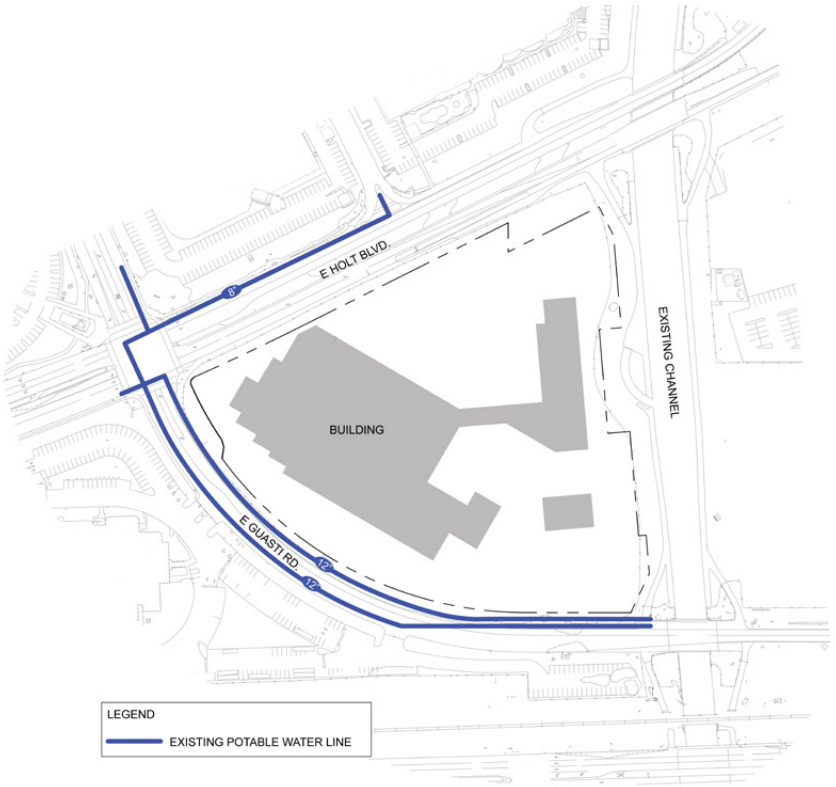
3.4 Infrastructure Plan

3.4.1 Potable Water

The City's ultimate potable water system will consist of five pressure zones. The Specific Plan Area is located within the 1212 Pressure Zone.

Water service to the Specific Plan Area will be provided by the City. Currently, there are water mains in the vicinity of the Specific Plan Area. There is an existing 12-inch water main in Guasti Road along the project frontage, and an existing 8-inch water main in Holt Boulevard along the project frontage, both available for connection. The future potable water system to serve the City is shown in **Figure 21**. Sizing and alignment of the potable water lines will be consistent with the City of Ontario Potable Water System Master Plan and/or a City-approved hydraulic analysis.

Figure 21: Specific Plan Area Potable Water Plan



3.4.2 Sewer

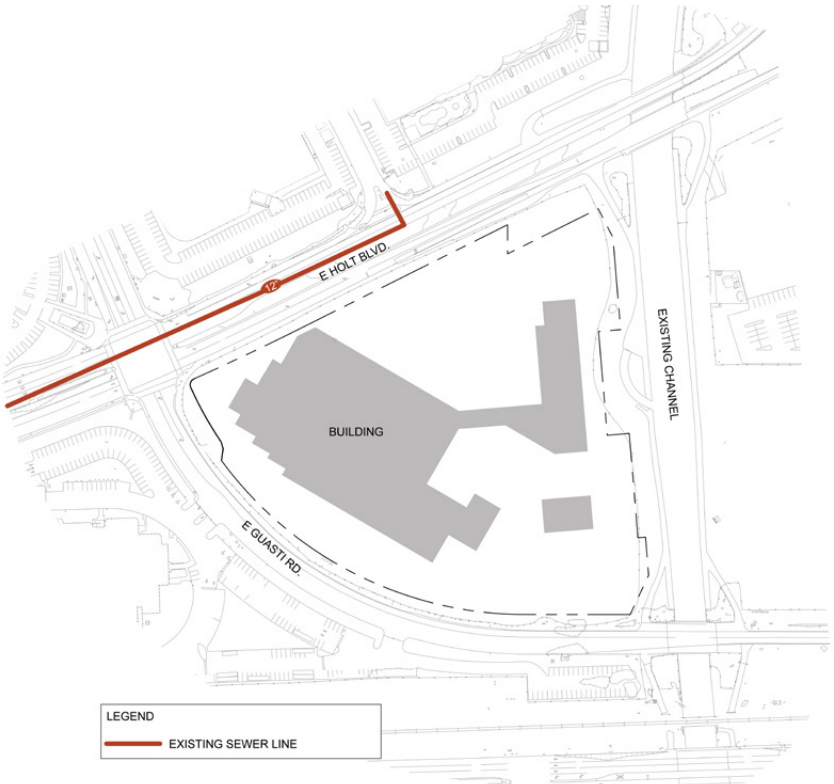
The project will connect to existing sewer mains. Sewer mains are maintained by the City of Ontario and wastewater is treated at the Inland Empire Utilities Agency (IEUA) Treatment Plant. Several regional trunk sewers collect sewage generated in the city and transport it to IEUA's Regional Plant No. 1 and Regional Plant No. 5 for treatment. The City of Ontario is divided into eight major sewersheds. The Specific Plan Area is in Sewershed 3. Sewage is collected by the City's system and generally flows from north to south towards the IEUA Upland Interceptor. The City's Sewer Master Plan is currently being updated.

All required sewer infrastructure will be consistent with the approved master plan. There is an existing sewer main located in Holt Boulevard available for connection. The sizing and alignment of existing and proposed sewer lines are shown in **Figure 22.** Sizing and alignment of the sewer lines will be consistent with the City of Ontario Sewer Master Plan and/or a City-approved hydraulic analysis.

3.4.3 Recycled Water Plan

Currently, there are recycled water mains in the vicinity of the Specific Plan Area, with a point of connection located at the intersection of Guasti Road and Holt Boulevard. Recycled water is provided to the City by the IEUA from its four wastewater reclamation plants. The entire

Figure 22: Specific Plan Area Sewer Plan



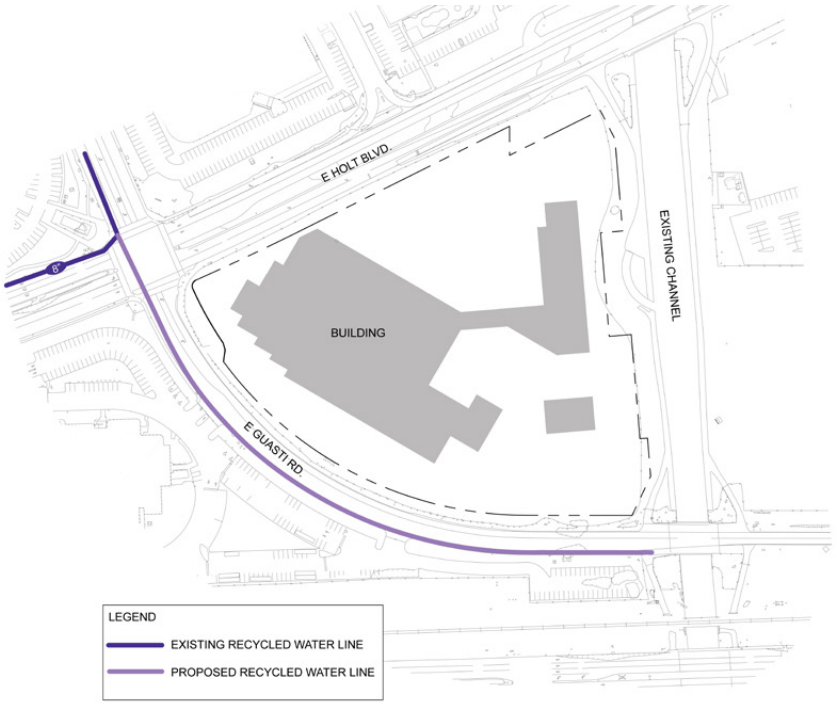
Specific Plan Area is within the City's master-planned 1299 Pressure Zone.

Recycled water infrastructure improvements for the Specific Plan Area require the planning, design, and construction of a 1299 Pressure Zone Recycled Water Master Plan main, which includes installing an 8-inch recycled water main in Guasti Road that connects to the 8-inch recycled water main in Convention Center Way, north of Holt Boulevard, and extends south in Guasti Road, ending east of the Cucamonga Creek Channel. The sizing and alignment of existing and proposed recycled water lines are shown in **Figure 23.** Sizing and alignment of the recycled water lines will be consistent with the City of Ontario Recycled Water System Master Plan and/or a City-approved hydraulic analysis.

3.4.4 Stormwater/Drainage NPDES Compliance

Drainage within the project area will be conveyed via a system of on-site drains to the southeast corner of the site where it will enter a series of underground detention / infiltration chambers. These chambers will provide attenuation of peak flows as well as detaining stormwater for infiltration/treatment as required by the most current San Bernardino County Area-Wide MS4 permit. Flows exceeding the required treatment volume will be conveyed southeasterly across Guasti Road to the existing 108" storm drain pipe, which in-turn conveys flows to Cucamonga Creek.

Figure 23: Specific Plan Area Recycled Water Plan



All Priority Land Use (PLU) areas within the Specific Plan Area shall comply with the statewide Trash Provisions adopted by the State Water Resources Control Board (SWRCB) and trash requirements in the most current San Bernardino County Area-Wide MS4 Permit.

Activities resulting in one acre or more land disturbances are required to obtain coverage under the Construction General Permit (CGP). The owner is the legally responsible person (LRP) of the site and shall have a Stormwater Pollution Prevention Plan (SWPPP) developed and submitted through the SMARTS website at https://smarts.waterboards.ca.gove/smarts/faces/SwSmartslogin.xhtml.

3.4.5 Dry Utilities

Electricity: Southern California Edison provides electricity to the Specific Plan Area and maintains aboveground power lines within the area. During construction, electrical lines will be placed underground. Utilities and maintenance facilities for the hotel will be installed on the first level of below-grade parking at the northern portion of the site.

Natural Gas: The Southern California Gas Company provides natural gas to the Specific Plan Area. As required, additional points of connection to existing gas lines will be provided.

Telephone: Telephone service is offered regionally by telecommunications providers, such as AT&T and Verizon. Infrastructure supporting telephone services will be provided and installed along with other utilities.

Cable: Cable television services are provided to the Specific Plan Area by local area cable providers, such as Time Warner Cable. Infrastructure supporting cable television services will be provided and installed along with other utilities.

Solid Waste Collection: Solid waste collection service will be contracted by the applicant with the City of Ontario Integrated Waste Division. All solid waste collected on-site will be required to comply with federal, state, and local regulations.

Fiber Optic: Fiber Optic broadband communication service will be offered to the Specific Plan area by Ontario Fiber. Infrastructure supporting fiber optic service will be installed.

3.5 Community Services

3.5.1 Fire Protection Services

The Specific Plan Area is served by the Ontario Fire Department. The nearest fire stations to the site are Fire Station No. 8 and Fire Station No. 10. Both fire stations are located within 5 miles from the Specific Plan Area, and each house an engine company and paramedic.

The applicant will work with the Ontario Fire Department, the Ontario Police Department, Public Works, and other City departments to provide appropriate access to the Specific Plan Area in a satisfactory manner that is feasible.

3.5.2 Police Services

The Ontario Police Department provides police protection services in the City of Ontario and will serve the Specific Plan Area. The main police station is located at 2500 S. Archibald Avenue, approximately 5.3 miles south of the Specific Plan Area.

04 | Development Standards

4.1 Introduction

Development standards provide the zoning regulations for the Specific Plan Area, while the design guidelines provide design guidance. It is important to make a clear distinction between the two. Development standards are mandatory and are generally quantitative, objective, and measurable in nature, and use the word "shall." Design guidelines are suggestions and are generally qualitative and subjective in nature. They generally use the words "should" or "may."

4.2 Development Standards

4.2.1 Site Development

4.2.1.1 Setbacks

Building setbacks for the Specific Plan Area are shown in **Table 2**.

Projections and Elements into Setbacks:

- Architectural projections and overhangs may encroach into a setback up to a maximum of 3 feet. However, any such overhang or projection that is permanent in nature should have a minimum overhead clearance of 12 feet. With the exception of balconies which shall be allowed to encroach up to 5'. However, architectural projections shall not encroach into the public right- of-way.

- Landscape and hardscape design elements and features such as trees, benches, trellises, fountains, planter boxes, shade structures, fountains, movable/fixed seating, seating walls and steps, boundary walls, and fences are allowed in setback areas. However, at least 6 feet of clear space must be maintained for pedestrian movement.

- Outdoor eating areas are allowed within the setback areas. (Note: the setbacks are from ROW, there is pedestrian movement in the ROW already contemplated)

4.2.1.2 Height

The maximum building height will be regulated by Federal Aviation Administration and the Ontario International Airport Land Use Compatibility Plan, (ONT ALUCP). The allowable building heights for the Specific Plan boundary range from 110 to 140 feet in height. Any structure that is over 90 feet in height will be required to file an FAA Form 7460-1, Notice of Proposed Construction or Alteration and receive a determination of "No Hazard" consistent with the policies and criteria of the ONT ALUCP.

4.2.1.3 Floor Area Ratio

The Multimodal Mixed-use Area, which encompasses the Specific Plan Area, allows for approximately 553,000 square feet of lodging and 1.9 million square feet of office/retail (refer to **2.2.1, Multimodal Mixed-Use** section). The Specific Plan Area plans to use a portion of this allocated square footage for the development of Hospitality Mixed-Use in the project area (refer to **Table 1**).

The total FAR of the entire Multimodal Mixed-Use District shall not exceed 1.0.

- FAR is the ratio of a building's total floor area to the size of the piece of land upon which it is built.

- The FAR excludes soft and hard landscaped areas, subterranean parking, mechanical equipment areas, vertical shafts, and utility areas.

- The FAR includes covered outdoor areas.

4.2.1.4 Lot Coverage

The total lot coverage should not exceed 40 percent of the land area.

Table 2: Building Setbacks

SETBACKS TO PROPERTY BOUNDARY	MINIMUM SETBACK
Guasti Road	Building - 10 feet; Parking - 5 feet
Holt Boulevard	Building - 5 feet; Parking - 5 feet
Cucamonga Channel-Interior Setback	Building 10 feet; Parking - 5 feet
Note: Balconies that are considered private open space, (see section 4.2.4.2 Private Open Spaces below) shall be allowed to encroach up to 5'. Landscaping and water features for passive and active recreational activities are allowed in the setback areas. Temporary structures such as gazebos and other shade structures are also allowed in setback areas.	

4.2.2 Land Use Matrix

Table 3 lists allowable uses for Hotel and Local-Serving Retail, indicating which uses are permitted (P), and conditional review (C) within the Hospitality Mixed Use of the Specific Plan.

- Permitted Use (P) can be established as primary or secondary use without requiring discretionary approval. This includes ancillary or accessory uses that are typically incidental to the main use on the premises.
- Conditionally Permitted Use (C) is permitted upon the approval of a Conditional Use Permit by the Zoning Administrator.
- A land use not listed in Table 3 shall be considered a prohibited land use. For land uses similar to those listed in Table 3, but not expressly stated in this Specific Plan, the Planning Director or his/her designee shall be granted the authority to make a determination of the applicability of similar land uses.

4.2.3 Utilities

4.2.3.1 Mechanical Equipment

- Rooftop mechanical equipment shall be securely fastened to the roof and fully screened with architectural elements consistent with the overall design of the development.

4.2.4 Open Spaces

4.2.4.1 Public Open Spaces

Public open spaces include any sidewalk, landscaping, plaza areas, patios, decks, water features, or other passive recreational areas open to public.

- Public gathering spaces shall be accessible to adjacent uses and from public sidewalks.

4.2.4.2 Private Open Spaces

Private open spaces include any sidewalk, walkways, landscaped areas, plaza areas, water features, balconies, patios, decks and other active or passive recreational areas open only to the users of the development.

Legend: Permitted Use (P), Conditional Use Permit (C)

Table 3: Allowable Land Uses

HOSPITALITY MIXED-USES	ALLOWABLE USES	NOTES
Hotel Uses		
ATM	P	
Automobile Rental and Leasing Services	C	▪ No on-site vehicle storage allowed.
Banquet Halls and Conference Facilities	P	
Business Center	P	
Cafés and Restaurants (Alcohol sales not permitted)	P	▪ Includes Bakeries and Coffee Shops.
Cafés and Restaurants (Alcohol sales permitted)	C	▪ Includes Bakeries and Coffee Shops.
Child Day Care facilities	C	
Convenience Stores (Alcohol sales not permitted)	P	▪ Includes Sundry Shops. ▪ Catered towards guests.
Convenience Stores (Alcohol sales permitted)	C	▪ Includes Sundry Shops. ▪ Catered towards guests.
Day Spa and Massage studio	C	
Fitness Center and Gym	P	
Florist and Gift Shop	P	
Guest Services	P	▪ Includes Concierge, Baggage, and Valet Services.
Hotel Administrative Offices	P	
Hotel Lodging	P	
Live Entertainment	C	▪ Includes Night Clubs, Dancing, VIP Rooms, and Similar Uses.
Lounges and Bars	C	▪ Includes Lounges, Bars, or Rooftop Bars.
Outdoor Dining Areas (Alcohol sales not permitted)	P	
Outdoor Dining Areas (Alcohol sales permitted)	C	
Wireless Telecommunications Facilities	C	▪ Includes integrated building design. ▪ Must be Roof-Mounted. ▪ See Chapter 5.03.420 for Development Code.

Legend: Permitted Use (P), Conditional Use Permit (C)

HOSPITALITY MIXED-USES	ALLOWABLE USES	NOTES
Local-Serving Retail (Typical with Hospitality Mixed-Use)		
Antique Stores	P	
Art Gallery	P	▪ Includes Art Galleries or Art Supply Stores.
Banking/ATM	P	
Automobile Rental and Leasing Services	C	▪ No on-site vehicle storage allowed.
Beauty Services	P	▪ Includes Barber Shops, Beauty Salons, Nail Salons, Tanning Salons, and other similar uses.
Beauty Supply Store	P	
Bicycle/Segway Rentals	P	▪ Includes e-Bicycle and e-scooter Rentals or similar personal recreation devices.
Boutique or Specialty Wines and Liquor Stores	C	
Brew Pub and Micro-brewery	C	
Business Center	P	▪ Includes Mail/Shipping services, e.g. Fed Ex, UPS, and Amazon Locker.
Cafés and Restaurants (Alcohol sales not permitted)	P	▪ Includes Bakeries and Coffee Shops.
Cafés and Restaurants (Alcohol sales permitted)	C	▪ Includes Bakeries and Coffee Shops.
Clothing and Accessory Stores	P	
Convenience Stores (Alcohol sales not permitted)	P	▪ Includes Sundry Shops. ▪ Catered towards guests.
Convenience Stores (Alcohol sales permitted)	C	▪ Includes Sundry Shops. ▪ Catered towards guests.
Fast-Food Restaurants	P	▪ Drive-throughs not allowed.
Fitness Studio	C	
Food Kiosk	P	▪ Includes two or more food or beverage concession stands that operate together as a commercial establishment.
General Office	P	▪ Includes office spaces related to Administrative and Support Services, Retail, Finance and Insurance Offices, Management of Companies and Enterprises, Travel agency/arrangements, and Professional Services.

- Private open spaces can be located on upper floors and rooftop.

- Balconies, if provided, shall have a minimum area of 30 square feet and a minimum dimension of 5 feet length and width.

- As noted above in Table 2: Building Setbacks, balconies shall be allowed to encroach a maximum 5 feet into a required front, side, or rear yard setback.

4.2.4.3 Applicable to Both Public and Private Open Spaces

- Pedestrian zones designed to enhance access to outdoor public amenities must be identifiable by using robust, easy-to-maintain surface materials, such as decorative pavers or other comparable architectural enhancements.

- Pedestrian areas should be compliant with the Americans with Disabilities Act.

- Alternative sidewalk materials within public right-of-way and for sidewalks used for public access shall be subject to City review and approval.

4.2.5 Parking

4.2.5.1 Off-Street Parking

- 1.5 parking spaces per every 1,000 square feet of Hospitality Mixed-Use development shall be provided. Utility areas, parking, and covered outdoor areas shall be excluded from parking calculations.

- Up to 100 percent of parking can be provided as valet parking by a hospitality mixed use project.

- Off-street parking design standards and parking lot lighting shall comply with Sections 6.03.045 and 6.03.050 of the Ontario Development Code, respectively.

- Parking spaces specifically designated and conveniently located for fuel-efficient vehicles shall be provided in conjunction with development projects pursuant to current regulations contained in CALGreen (California Code of Regulations Title 24, Part 11).

- A parking analysis shall be provided with the entitlement package.

- Spillover parking may be provided off-site no more than one-half mile away from the development's main entrance. Parking analysis and an agreement with locations shall be provided.

- All parking facilities must have clearly designated markings for individual parking stalls, drive aisles, approach lanes, and maneuvering areas to facilitate efficient traffic flow.

- Digital parking guidance signs shall be installed for hotel parking to indicate the location of available parking spaces by level and assist in directing vehicles to available parking spaces.

4.2.5.2 Bike Parking

- Bicycle parking facilities, including bicycle racks, lockers, and other secure facilities, shall be provided in conjunction with development projects pursuant to current regulations contained in CALGreen (California Code of Regulations Title 24, Part 11).

- All bicycle parking facilities shall have lighting that provides high visibility. Lighting shall be maintained in operational condition at all times.

4.2.5.3 Loading

- Off-street loading standards shall comply with Section 6.03.055 of the Ontario Development Code.

- Each off-street loading space and its access shall be designed to avoid undue interference with the public use of streets and private drives and shall not be part of the off-street parking area required for each particular use.

- Loading areas shall be screened, enclosed, and/or located appropriately to minimize potential nuisances, such as odor and noise.

- Loading areas shall be clearly marked as being distinct from required parking spaces and aisles.

05

Design Guidelines

5.1 Introduction

These guidelines establish a clear set of qualitative guiding principles that form a basis for the City of Ontario to review the Specific Plan project. The guidelines serve two primary purposes:

1. To establish high-quality design for new development.

2. To facilitate the design review and planning approval process relative to building configuration and architecture that is appropriate for this development.

The guidelines are not intended as a literal requirement; instead, they serve as a framework for the design review process and cover key elements including building mass, entrances, façade design and composition, roof forms, materials, and colors. The City shall use the guidelines as part of the formal design review process, and qualitative findings shall be made by the decision-making body demonstrating such compliance.

5.2 Design Guidelines

5.2.1 Massing and Elevation Treatment

- Building facades should avoid a continuous single plane and break monotony by using at least two planes.

- The bottom levels and the top two levels may be treated differently in architectural style compared to other floors to break the monotony of elevation. See example in **Figure 24**.

- Vertical elements should be used to provide rhythm and continuity between the floors. See example in **Figure 25**.

Figure 24: Elevation Treatment



Figure 25: Vertical Elements Providing Continuity and Rhythm



- To achieve good building articulation, beyond the building facade and diversity of planes, there should be at least one additional color and one additional material across an elevation.

- To minimize heat gain, shading devices should be provided for glazed surfaces, particularly on the east, south, and west sides of the building. Shading can take the form of recessed windows using colonnade-type structure or devices fixed to the exterior wall that are harmonious with the building materials or color.

- Building massing shall consist of a mix of building heights and incorporate vertical plane breaks, changes in building/ridge height, or other accent roof forms to create visual interest.

- Free-standing architectural treatment may be used in front of the building walls to create layering.

- When used, parapet walls shall incorporate side/rear elevation returns to preclude an unfinished, "false front" appearance.

- Exposed downspouts and overflow holes on building front facades are prohibited.

- All rooftop mounted equipment shall be screened from public view using materials complementary to those used on the main structure (see Subsection 6.C.1.f, Functional Elements).

5.2.2 Elevation Material

- The elevation materials should be durable and require low maintenance.

- As far as possible, materials should be selected that can be reused or recycled easily at the end of their lives using existing recycling systems.

- Efficient and right-sized building design

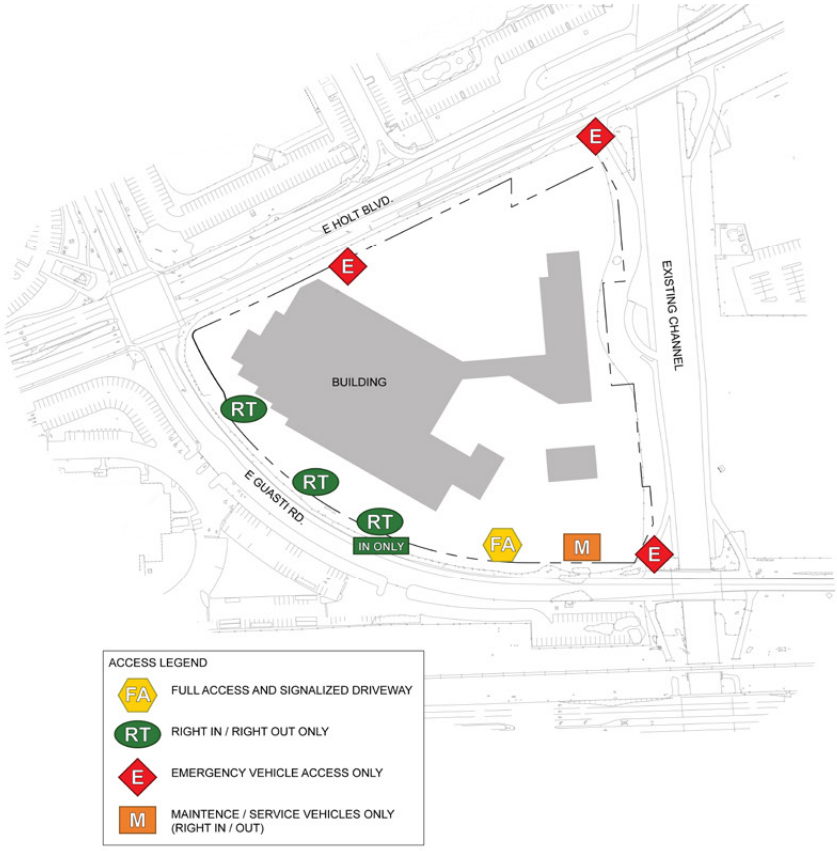
should be used to minimize wastage of materials.

5.2.3 Site Planning and Circulation

The following site planning and circulation design guidelines for hospitality mixed use promote aesthetic quality, efficient land use, and public safety. See **Figure 26** for an example illustrating safe ingress and egress options, including designated entrances for emergency vehicle and separate delivery access. The final improvement plans reflecting the location and details of these improvements will be reviewed and approved by the City Engineer.

- Service and delivery/loading zones should be separated from visitor, guest and customer parking, and pedestrian walkways where feasible. This helps reduce the risk of accidents by keeping heavy vehicles and delivery activities away from areas where pedestrians and regular vehicles are present.
- Ensure that all areas are accessible to emergency vehicles and personnel, with clearly marked routes and entrances.
- The main access to the hotel as well as to the hotel parking (basement levels 1 and 2) is from Guasti Road. The main access to the hotel will be full access with a traffic signal.
- Additional right-of-way may be required to accommodate an additional left turn and right turn lanes at intersection based on required queue lengths per the Traffic Impact Analysis/Specific Plan EIR.
- Additional traffic signals may be required based on locations of future access points and as identified in the Traffic Impact Analysis/Specific Plan EIR.

Figure 26: Site Access



5.2.4 Landscape Guidelines

The landscape will play an important role at many levels, primarily to soften transitions from the ground plane to the vertical plane; offer screening from the adjacent neighborhood; and add color and texture to the development. Examples of landscaping can be seen in **Figure 27** and **Figure 28.**

Below are general landscape guidelines.

- Standards for the provision and maintenance of landscaping within the Specific Plan Area shall comply with Section 6.05.010: *Landscape Design Principles*, Section 6.05.045: *Landscape Development Standards*, and Section 6.05.050: *Landscape Maintenance* of the Ontario Development Code.
- Trees and plant material should either be native to Southern California or adaptive and from regions with similar climates.
- Invasive plant species should be prohibited.
- All plants should be water-conserving, drought-tolerant plants to the maximum extent practical
- Trees, shrubs, hedges, and deciduous vines should be used to minimize solar heat gain during the summer and maximize heat gain during the winter.
- Tree branches should be pruned to at least 7 feet from the ground for street trees.
- Landscaping should not obstruct pedestrian movements and should be designed in a way so as not to block visibility of businesses and signage.
- Landscaping should not obstruct the sightlines of motorist or pedestrians.

5.2.4.1 Paving Materials

Paving materials contribute significantly to the overall outdoor experience. The style of landscape, maintenance requirements, and the specific purpose of the paved area should be considered when selecting paving materials.

- Paving materials should complement the architectural style as well as elevation materials of the building.
- Paving materials should serve both functionality and aesthetics. For example, slip-resistant concrete, decorative pavers, decomposed granite, or natural stone may work well in walkways and garden paths while bluestone, brick, or colored concrete may be more welcoming for a patio.
- Materials should be chosen that withstand weather conditions, foot traffic, and other wear.
- A combination of paving materials should be used to identify and define pedestrian paths and to provide variety. Changes in paving materials should be employed to demarcate areas, for example, to separate pedestrian walkways from other gathering spaces.

Examples of paving materials are shown in **Figure 29**.

5.2.3.2 Planting Materials

- Landscaping in the project area shall be done in accordance with Section 6.05—Landscaping, of the Ontario Development Code.
- All landscaping in the Specific Plan Area must be drought tolerant and California friendly.
- **Figure 30**, **Figure 31**, and **Figure 32** show examples of appropriate planting materials that may be used for landscape improvements within the Specific Plan Area.

5.2.5 Lighting

Effective site lighting is crucial for ensuring safety, enhancing visibility, and promoting energy efficiency in various environments. The following guidelines outline best practices for implementing a comprehensive lighting strategy that addresses these goals. Adherence to these principles helps create well-lit, secure, and aesthetically pleasing spaces that meet the needs of all users.

Figure 27: Specific Plan Area Landscaping Examples



Figure 28: Rooftop Landscaping Elements

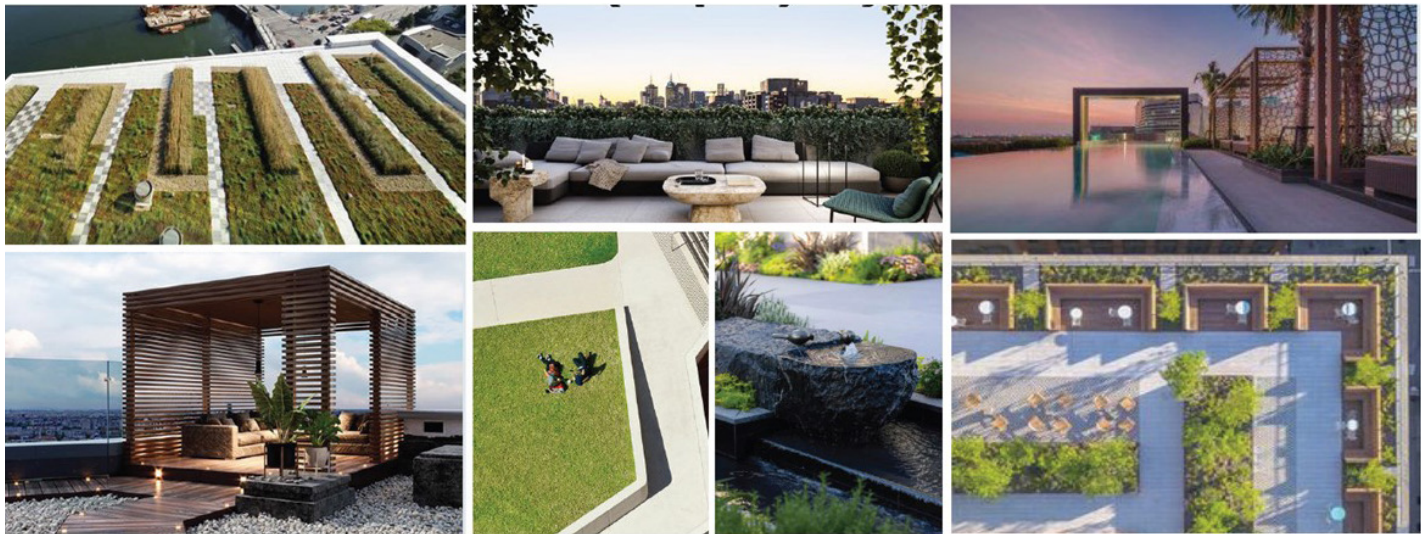


Figure 29: Examples of Paving Materials



Granite Paver
Large format dimensional
Color: Beige, Light Gray, Dark Gray Black
Finish: Flamed



Granite Cobblestone
Size: 4" x 4"
Pedestrian & vehicular thickness
Color: Dark Gray, Gray, Brown
Tumbled finish



Cast in Place Concrete
Fine aggregate
Color: Beige, Warm Gray,Light Gray, Gray,Medium Gray
Finish: Flamed
Finish: topcast #3



Sandstone Pavers
Large format dimensional Natural stone
Color: Light Cream, Light Gray
Finish: Sandblasted



Limestone Pavers
Large format dimensional
Natural stone
Color: "Desert White"
Finish: Sandblasted



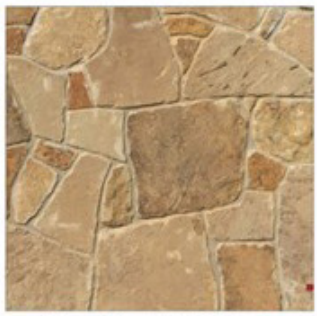
Asphalt



Travertine Pavers
Large format dimensional
Natural stone
Finish: Flamed



Limestone Pavers
Large format dimensional Natural stone
Color: Light Gray, Gray
Finish: Antique surface finish



Sandstone Flagstone
Natural stone
Color: Buff



Decomposed Granite
Stabilized
"Palm Springs Gold"



Large Aggregate Cast In Place Concrete
Color: Gray
Finish: Exposed Aggregate



Wood Decking
Modified Ash or Pine wood
Locally sourced



Encaustic Concrete
Pattern: Diagonal
Color: Gray, Light Gray



Crushed Stone
"Apache Sunset"

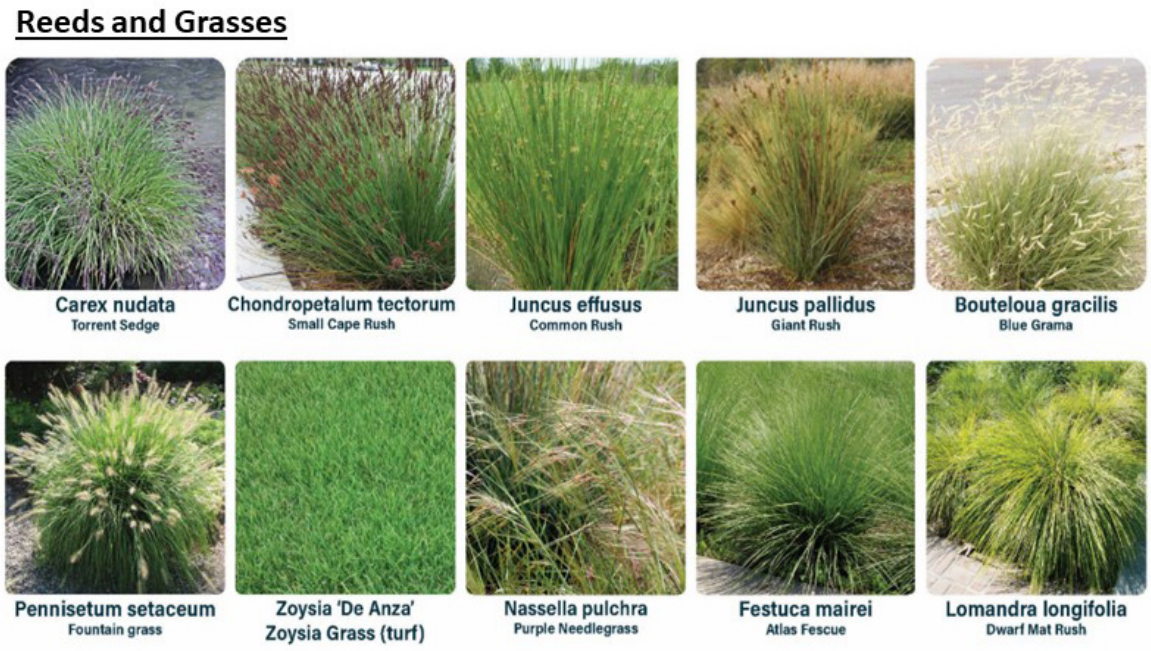
Figure 30: Shrubs and Ground Cover Palette



Figure 31: Evergreen, Deciduous, Flowering, and Palm Tree Palette



Figure 32: Reeds and Grasses Palette



The design, technology, and required photometrics will be determined during the final design stage. The fixture style, color and material should be decided in conjunction with other elements, such as benches and waste receptacles, to create a coordinated look and feel within the development. Below are some guidelines for selection and placement of lighting fixtures.

- Uniform lighting distribution should be employed to reduce dark spots and improve overall visibility.
- Adequate lighting should be provided along pathways, walkways, and pedestrian areas to ensure safe navigation. Use of low, bollard-type lighting and/or landscape accent lighting is encouraged, especially in pedestrian areas.
- Lighting should be provided in all parking, vehicular, and pedestrian circulation areas, and loading and storage areas.
- Site lighting should not be directed off-site. Light spill to the neighboring areas should be minimized where feasible.
- Shielded fixtures that minimize sky glow, glare, and light trespass should be used. While up-lighting may be allowed to accentuate certain architectural features and landscaping, care should be taken to make sure that such features minimize sky glow.
- Lighting fixtures should complement the façade and be of a style that suits the architectural style of the building.
- The use of energy-efficient light-emitting diode (LED) lighting fixtures should be considered to reduce energy consumption and maintenance costs.
- Motion sensors should be installed where appropriate to activate lighting only when needed, promoting energy conservation.
- Lighting provision during project construction should be in accordance with Ontario Municipal Code, Title 4, Chapter 11, Section 4-11.11, *Construction site security provisions.*

5.2.6 Sign Program

Informational signs may be installed throughout the Specific Plan Area to provide information about the businesses, such as development name, logo, conference center, and retail uses as well as for general advertising or marketing purposes. Other directional and wayfinding signage may be provided in addition to informational signs. Below are the signage guidelines to assist with the review and approval of proposed project signage. An exhibit detailing the locations and types of signs will be required as part of the review and approval process for the project's sign program which shall comply with Chapter 8 of the City of Ontario's Development Code, as further outlined in Chapter 5.2.6.2 Sign Program Approval Process, herein.

Digital Advertising Signs are allowed integrated into the design of the building. The Digital Advertising Signs may display products, brands, and businesses associated with the commercial uses in the development as well as offsite advertisements, City sponsored events, and public service announcements. An approved Development Agreement or Master Sign Program and user agreement shall be required in accordance with the Ontario Development Code to establish development standards for design, approved content, sign area, location and use.

5.2.6.1 Signage Guidelines

- Signage may display messages or images utilizing a series or grid of lights that may be changed by electronic means, including cathode ray, LED display, plasma screen, liquid crystal display (LCD), LED embedded, architectural glass fiber optic, or other electronic media or technology.
- Signs may be illuminated by external and/or internal light sources.
- Use of exposed neon lighting and fiber optics shall be prohibited.
- Signage colors, materials, and finishes shall complement those used on the architecture on-site.
- No sign shall be installed, relocated, or maintained so as to prevent entry or exit out of any door.
- No sign installation shall create a safety hazard by obstructing views of pedestrian and vehicular traffic.
- Any sign installation in a pedestrian pathway shall leave a clear 5-foot space for pedestrian movement.
- No signs shall be located within a required easement unless an encroachment permit has been authorized by the affected utility.
- No sign shall obstruct access to fire hydrants, fire department connection, or fire department access roads.
- Signs that audibly advertise, identify, or provide direction to a use or activity are prohibited.
- Signs exhibiting or displaying content of an obscene, indecent, or immoral nature or unlawful activity are prohibited.
- Entry monument signage may be used to identify each development in the Specific Plan Area. Entry monuments shall be designed in accordance with City of Ontario Traffic and Transportation Guidelines for monument placement.
- Signage shall be employed to identify a center and tenants within a center, direct vehicular traffic, and provide on-site wayfinding for pedestrians.
- Each business is permitted one wall sign on each side that is visible from the street, size and placement of these signs will be reviewed as part of the sign program approval process.

5.2.6.2 Sign Program Approval Process

The developer will submit a sign program for projects in the Specific Plan Area in accordance with City requirements. The discretionary approval of a sign program will be in accordance with the of the City of Ontario Development Code.

Deviations from the sign program may be allowed to accommodate the design guidelines in Section 5.2.5 Signage Guidelines of this document.

The developer will provide the following to the City:

1. Completed sign program application and filing fee.

2. Three copies of the sign program. The sign program shall be prepared in 8½" X 11" or 11" X 17" format, and shall include the following:

   a. A master plan, drawn to scale, delineating the site proposed to be included in the sign program and the general location of all signs.

   b. Drawings indicating the exterior surface details of all buildings within the site upon which wall signs, directory signs, or projecting signs are proposed to be located.

   c. Proposed color schemes of the signs.

5.2.7 Privacy and Security Screening

Privacy screening or fencing is designed to shield a property from external view, preventing onlookers from seeing into private spaces of the development. They are intended to safeguard a property by preventing unauthorized entry, trespassing, or intrusion.

- Peripheral walls and fences shall comply with Section 6.02.025 of the Ontario Development Code.

- Landscape screening, walls, or fencing shall be a minimum of 6 feet and a maximum of 8 feet high.

- Walls should use brick, slump stone, tile, textured concrete, stucco on masonry, or steel framing that is complementary to the building materials used in the façade of the building. Plain concrete block walls (i.e., precision block) or chain-link fencing with inserts are not permitted.

- Landscape hedges should be at least 2 feet wide.

- Wall, wrought iron, tubular steel fencing, or other transparent type of fencing or walls should use decorative columns, pilasters, or other architectural elements to provide relief and break the monotony.

- All non-transparent perimeter walls and/or fences should be treated with anti-graffiti paint or vines on the roadside and should incorporate landscaping whenever possible.

06 | Implementation

6.1 Applicability

The provisions and regulations contained in this Specific Plan provide the standards for land uses and development located within the Specific Plan Area. The Specific Plan supersedes otherwise applicable City of Ontario development standards and regulations unless stated otherwise in this document. Whenever the provisions and development standards contained in the Specific Plan conflict with those contained in the City of Ontario Zoning Code, the provisions of the Specific Plan shall take precedence. Where the Specific Plan does not address such provisions, the City of Ontario Zoning Code shall apply.

6.2 Severability

In the event that any provision of this Specific Plan or its application to any person or circumstance is held to be invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed separate, distinct, and independent, and shall not affect the validity of the remaining provisions of this Specific Plan or applications thereof, which can be implemented without the invalid provision or application.

6.3 Interpretation

The Planning Director or his/her designee is authorized by the City of Ontario to interpret, administer, and enforce the provisions of the Empire Groves Specific Plan. The provisions of this Specific Plan shall be interpreted in a manner consistent with the goals, policies, purpose, and intent established in the Empire Groves Specific Plan.

6.4 Development Review

The procedures and regulatory provisions necessary to administer the development review procedures for applicable properties, structures, and uses located within the Empire Groves Specific Plan Area shall be subject to the requirements as set forth herein and in accordance with Chapter 6.0: Development and Subdivision Regulations of the City of Ontario Development Code.

The Specific Plan is reviewed by the Planning Director or his/her designee and Development Advisory Board. Any suggested revisions will be discussed and made as appropriate. It will then be reviewed by the City of Ontario Planning Commission and approved and adopted by the City Council. Once adopted, the Empire Groves Specific Plan forms the legal framework for the evaluation of development applications.

6.5 Financing

All on-site improvements will be undertaken and financed by the developer. The costs for related off-site improvements shall be the responsibility of either the developer or the City as defined further in the conditions of approval and Development Agreement.

6.6 Maintenance Responsibilities

Maintenance of all improvements within the Specific Plan Area, including private/quasi-public open space and recreation facilities; private driveways; circulation; landscape; and WQMP, BMPs, and private drainage infrastructure (underground infiltration chambers and CDS Units) will be the responsibility of the applicant. Maintenance of the public ROW including sidewalk areas in the immediate vicinity of the Specific Plan Area will also be the responsibility of the City.

6.7 Specific Plan Amendments

Amendments to the Empire Groves Specific Plan may be requested by the applicant or by the City at any time pursuant to Section

65453(a) of the California Government Code. Amendments shall be processed pursuant to the provisions of the Government Code for specific plan amendments. In the event the proposed amendment requires supplemental environmental analysis pursuant to CEQA, the applicant will be responsible for preparation of the necessary CEQA documentation. Below are the processes of minor and major amendments to this Specific Plan.

6.7.1 Minor Amendments

Minor amendments to the development standards and design guidelines of a Specific Plan are permitted under City of Ontario Municipal Code Sec. 4.02.080. These amendments require a discretionary review process, which can be initiated by either the developer or the City of Ontario. Approval may be granted by the Planning Director or their designee, as specified in the Ontario Development Code, Division 2.02, Table 2.02.1, (Section B, item 12). Any modifications must align with the intent of the originally approved Specific Plan, be in substantial conformance with it, and not be detrimental to public health, safety, and welfare. No further approval will be necessary.

Some examples of minor amendments are listed below.

- Changes to Specific Plan boundary, provided the total acreage of the affected area does not increase or decrease the total acreage by more than 15 percent.
- Additions, deletions, or modifications to Table 3, Allowable Uses, which lists the permitted and conditionally permitted uses in the Specific Plan Area, provided the Planning Director determines the changes to be consistent with the objectives and intent of the Specific Plan and therefore minor.
- Minor adjustments to design guidelines including conceptual architecture, landscape, signage, and lighting.
- Minor adjustments to landscape materials, wall materials, wall alignment, entry design and streetscape design that are consistent with the conceptual design set forth in the specific plan's development standards and design guidelines.
- Revisions to infrastructure facility sizing and precise location for dry utilities, water, sewer, and storm drainage improvements subject to approval of the City Engineer.
- Revisions to roadway alignments when the change results in a centerline shift of less than 250 feet.
- Other adjustments or revisions of similar nature to those listed above that do not substantially change the intent or character of the Specific Plan and are deemed minor by the Planning Director.

6.7.2 Major Amendments

Specific amendments that are more substantial in nature than minor adjustments and include changing any regulation, general provision, procedure, or other provision will be considered a major adjustment to the Specific Plan and shall be subject to a formal Specific Plan Amendment application process pursuant to Section 4.01.035 of the Ontario Development Code and California Government Code Section 65450, et seq.

If the proposed amendment requires supplemental environmental analysis pursuant to CEQA, the applicant shall adhere to the City's adopted procedures and CEQA Guidelines.

6.8 CEQA Review

City of Ontario is defined as the lead agency under CEQA based on its authority to approve the Empire Groves Specific Plan. Prior to an approval of a project within the Specific Plan Area, the City Council will be required to certify the associated environmental document.

California Public Resources Code Section 21081.6 also requires public agencies to adopt a Mitigation Monitoring and Reporting Program to ensure that mitigation measures are implemented. Prior to a Certification of Occupancy for any building located within the Specific Plan Area, the Planning Director or his/her designee, as appropriate, shall confirm that applicable mitigation measures have been implemented in accordance with the approved plans.

APPENDIX

A

Consistency with General Plan Update

Appendix A: General Plan Consistency Analysis

Land Use Element		
GOAL LU-1	**A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.**	
Policies		
LU-1.1	Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned infrastructure, foster the development of transit, and support the expansion of the active and multimodal transportation networks throughout the City. (Link to Mobility Element Policies M2-M-2.1, M3-M-3.3; Community Design Element Image and Identity Section; Community Design Policies CD-3.1, CD-3.3, CD-3.6)	Consistent: The Specific Plan is in a planned growth area (Guasti District) per the General Plan.
LU-1.2	Sustainable Community Strategy. We integrate state, regional, and local Sustainable Community/Smart Growth principles into the development and entitlement process.	Consistent: The Specific Plan integrates many sustainable and smart growth strategies. It supports multimodal transportation in the area.
LU-1.3	Adequate Capacity. We require adequate infrastructure and services for all development.	Consistent: Adequate existing infrastructure is available for the Specific Plan.
LU-1.4	Multimodal Mobility. We require development and urban design, where appropriate, that reduces reliance on the automobile and capitalizes on active transportation, transit, electric vehicles, and multimodal transportation opportunities (Link to Mobility Element Policies M-2.1, M-3.3; Community Design Element Policy CD-2.6, CD-3.1, CD-3.3, CD3.6).	Consistent: The Specific Plan is a mixed-use plan. It supports multimodal transportation planning projects in the area. It includes provisions for bicycle parking, electric vehicle charging stations, and other amenities.
LU-1.5	Jobs-Housing Balance. We coordinate land use, infrastructure, and transportation planning and analysis with regional, county, and other local agencies to further regional and subregional goals for jobs-housing balance. (Link to Community Economics Element Policy CE-1.1; Mobility Element Policy M-1.6)	Consistent: The Specific Plan is a mixed-use plan with Hotel and Local Serving Retail uses and will contribute to a substantial number of jobs in the area which leads to jobs-housing balance.
LU-1.6	Complete Community. We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers, and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario. (Link to Community Economics Element Complete Community Section; Community Design Element Urban, Mixed Use, and Transit-oriented Place Types Section)	Consistent: The Specific Plan is primarily commercial and does not include housing. However, it is designed to create job opportunities for residents within the City. This approach contributes to the development of complete communities by fostering local employment and supporting the overall economic growth of the area.

LU-1.7	Revenues and Costs. We require future amendments to our Land Use Plan to be accompanied by analyses of fiscal impacts. (Link to Community Economics Policy CE-3.2)	Consistent: The Specific Plan will be financed by the developer.
GOAL LU-2	**Compatibility between a wide range of uses and resultant urban patterns and forms.**	
Policies		
LU-2.1	Land Use Decisions. We minimize adverse impacts on adjacent properties when considering land use and zoning requests.	Consistent: The Specific Plan will not have any adverse impacts on the adjacent properties. It will contribute positively as the adjacent properties include a conference center, airport, and other hotel properties that are complementary to this development.
LU-2.2	Buffers. We require new uses to provide mitigation or buffers between existing uses where potential adverse impacts could occur. Additional mitigation is required when new uses could negatively impact environmental justice areas. (Link to Community Design Element)	Consistent: Although this area is classified as an environmental justice area according to Cal Enviroscreen 4.0, it is not residential. The high pollution burden, largely due to the nearby airport, contributes to its high score. The Specific Plan incorporates sustainable strategies and is a mixed-use plan. It supports multimodal transportation projects in the area and includes provisions for bicycle parking, electric vehicle charging stations, and other amenities.
LU-2.3	Hazardous Uses. We regulate the development of industrial and similar uses that use, store, produce, or transport toxic substances, air emissions, other pollutants, or hazardous materials. (Link to Safety Element Hazardous Materials & Waste Section, including Policies S-6.4 and S-6.5)	Consistent: There are no hazardous materials stored, produced, or transported to the site. Standard cleaning and laundry services for the hotel are provided.
LU-2.4	Regulation of Nuisances. We regulate the location, concentration, and operation of potential nuisances.	N/A
LU-2.5	Regulation of Uses. We regulate the location, concentration, and operation of uses that have impacts on surrounding land uses.	N/A
LU-2.6	Infrastructure Compatibility. We require infrastructure to be aesthetically pleasing and in context with the community character.	Consistent: The Specific Plan will add new sidewalks and landscaping along Holt Boulevard and Guasti Road, a corner plaza at the intersection and the entrance court with heavy landscaping, all of which will contribute to the aesthetically pleasing surroundings.
LU-2.7	Inter-jurisdictional Coordination. We maintain an ongoing liaison with ONT, Caltrans, Public Utilities Commission, the railroads, and other agencies to help minimize impacts and improve the operations and aesthetics of their facilities.	N/A
LU-2.8	Transitional Areas. We require development in transitional areas to protect the quality of life of current residents.	N/A
LU-2.9	Methane Gas Sites. We require sensitive land uses and new uses on former dairy farms or other methane-producing sites be designed to minimize health risks.	N/A

LU-2.10	Sensitive Uses. We monitor and share information with the community about stationary and non-stationary emission sources. We encourage siting and design of facilities to minimize health and safety risks on existing and proposed sensitive uses, especially in environmental justice areas.	N/A
LU-2.11	Context-Aware Transitions and Connections. We require new development projects and land-planning efforts to provide context-aware and appropriate transitions and connections between existing and planned neighborhoods, blocks, sites, and buildings. (Link to Community Design Element Policies CD-1.1, CD-1.3, CD-3.4)	Consistent: The Specific Plan complements the adjacent properties, including a conference center, airport, and other hotel properties. Therefore, the proposed development is context-aware with appropriate transitions and connections.
GOAL LU-3	**Staff, regulations and processes that support and allow flexible response to conditions and circumstances in order to achieve the Vision.**	
Policies		
LU-3.1	Development Standards. We maintain clear development standards which allow flexibility to achieve our Vision and provide objective standards that ensure predictability and deliver the intended physical outcomes. (Link to Community Design Element Design Quality and Urban, Mixed Use, and Transit-oriented Place Types Sections)	Consistent: The development standards chapter provides mandatory provisions that are intended to achieve the vision of the Specific Plan and provide for objective standards that are measurable. The design guidelines however are not mandatory and provide flexibility.
LU-3.2	Design Incentives. We offer design incentives to help projects achieve the Vision. (Link to Community Design Element)	N/A
LU-3.3	Land Use Flexibility. We consider uses not typically permitted within a land use category if doing so improves livability, reduces vehicular trips, creates community gathering places and activity nodes, and helps create identity.	Consistent: The Specific Plan development standards include bicycle facilities and includes bike rentals as a permitted use that may aid in the reduction of vehicular trips. The Specific Plan is a mixed-use development and provides for local serving retail and restaurants that will also help reduce trips. The Local Serving Retail area has a public plaza and outdoor seating which contributes to community gathering places. The hotel features gathering areas and landscaping both within and around the property, enhancing the overall appeal of the area.
GOAL LU-4	**Development that provides short-term value only when the opportunity to achieve our Vision can be preserved.**	
Policies		
LU-4.1	Commitment to Vision. We are committed to achieving our Vision but realize that it may take time and several interim steps to get there.	Consistent: The plan is consistent with Guasti District's vision within the Ontario Plan.

LU-4.2	Interim Development. We allow development in urban, mixed use, and transit-oriented Place Types that is not immediately reflective of our ultimate Vision for the Place Type, provided it can be modified or replaced when circumstances are right to support development aligned with the Place Type Vision. We will not allow development that impedes, precludes, or compromises our ability to achieve our Vision. (Link to Community Economics Element Policy CE-2.3; Community Design Element Policy CD-1.2; Community Design Element Urban, Mixed Use, and Transit-oriented Place Types section).	Consistent: The Specific Plan is a mixed-use plan with Hotel and Local Serving Retail uses and transit- supportive use.
LU-4.3	Infrastructure Timing. We require that the necessary infrastructure and services be in place prior to or concurrently with development.	Consistent: The necessary infrastructure and services either exist or will be in place to support development within the Specific Plan.
LU-4.4	Shared Infrastructure. We encourage and facilitate the use of shared infrastructure (including shared or managed parking) in urban, mixed use, and transit-oriented Place Types. (Link to Community Design Element Policy CD-3.6)	Consistent: The Specific Plan is a mixed-use plan with Hotel and Local Serving Retail uses and transit- supportive use. The parking areas are shared. The ULI shared parking analysis has provided on-site parking for the entire development. The plaza area at the intersection of Holt Boulevard and Guasti Road is a public plaza.
GOAL LU-5	**Integrated airport systems and facilities that minimize negative impacts to the community and maximize economic benefits.**	
Policies		
LU-5.1	Coordination with Airport Authorities. We collaborate with FAA, Caltrans Division of Aeronautics, airport owners, neighboring jurisdictions, and other shareholders in the preparation, update, and maintenance of airport-related plans.	Consistent The Specific Plan is consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan. The Specific Plan includes uses compatible with surrounding land uses and adjacent properties.
LU-5.2	Airport Planning Consistency. We coordinate with airport authorities to ensure The Ontario Plan is consistent with state law, federal regulations, and/or adopted master plans, and airport land use compatibility plans for ONT and Chino Airport.	Consistent: The Specific Plan is consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan. The Specific Plan includes uses compatible with surrounding land uses and adjacent properties.
LU-5.3	Airport Impacts. We work with agencies to maximize resources to mitigate the impacts and hazards related to airport operations – their homes.	Consistent: The Specific Plan is consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan. The Specific Plan includes uses compatible with surrounding land uses and adjacent properties.
LU-5.4	ONT Growth Forecast. We support and promote an ONT that accommodates 30 million annual passengers and 1.6 million tons of cargo per year, as long as the impacts associated with that level of operations are planned for and mitigated.	N/A
LU-5.5	Airport Compatibility Planning for ONT. We create and maintain the Airport Land Use Compatibility Plan for ONT.	Consistent: The Specific Plan is consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan.

LU-5.6	Alternative Process. We fulfill our responsibilities and comply with state law with regard to the Alternative Process for proper airport land use compatibility planning.	Consistent: The Specific Plan is consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan.
LU-5.7	ALUCP Consistency with Land Use Regulations. We comply with state law that requires general plans, specific plans, and all new development to be consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan for any public-use airport.	Consistent: The Specific Plan is consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan. The allowable height is within the range (100' to 150') as prescribed by Airport Land Use Compatibility Plan.
LU-5.8	Chino Airport. We will support the creation and implementation of the Airport Land Use Compatibility Plan for Chino Airport.	N/A
Housing Element		
GOAL H-1	**Stable neighborhoods of quality housing, ample community services and public facilities, well-maintained infrastructure, and public safety that foster a positive sense of identity.**	
Policies		
H-1.1	Housing Rehabilitation. We support the rehabilitation, maintenance, and improvement of single-family, multiple-family, and mobile homes through code compliance, removal of blight where necessary, and provision of rehabilitation assistance where feasible.	N/A: The Specific Plan is a mixed-use plan with Hotel and Local Serving Retail uses. It does not include housing.
H-1.2	Neighborhood Conditions. We direct efforts to improve the long-term sustainability of neighborhoods through comprehensive planning, provision of neighborhood amenities, rehabilitation and maintenance of housing, and community building efforts.	Consistent: The Specific Plan has a Local Serving Retail component with a public plaza that will contribute to neighborhood amenities. Development within the Specific Plan will contribute to a substantial number of jobs in the area and lead to jobs-housing balance and community building efforts.
H-1.3	Community Amenities. We shall provide adequate public services, infrastructure, open space, parking and traffic management, pedestrian, bicycle, and equestrian routes and public safety for neighborhoods consistent with City master plans and neighborhood plans.	Consistent: The Specific Plan has a Local Serving Retail component with a public plaza that will contribute to neighborhood amenities. The Specific Plan will create a pedestrian realm with wide, buffered, and landscaped sidewalks that will contribute to pedestrian safety.
H-1.4	Historical Preservation. We support the preservation and enhancement of residential structures, properties, street designs, lot configurations, and other reminders of Ontario's past that are considered to be local historical or cultural resources.	N/A: There are no local historical or cultural resources within the Specific Plan.
H-1.5	Neighborhood Identity. We strengthen neighborhood identity through creating parks and recreational outlets, sponsoring neighborhood events, and encouraging resident participation in the planning and improvement of their neighborhoods.	Consistent: The hotel is envisioned to be a world-class hotel with high aesthetic value creating identity for the neighborhood. Additionally, it will provide paid event space in the form of banquet halls as well as restaurants. Additionally, it includes a public plaza in the Local Serving Retail portion of the Specific Plan.

GOAL H-2	**Diversity of types of quality housing that are affordable to a range of household income levels, accommodate changing demographics, and support and reinforce the economic sustainability of Ontario.**	
Policies		
H-2.1	Corridor Housing. We revitalize transportation corridors by encouraging the production of higher density residential and mixed-uses that are architecturally, functionally, and aesthetically suited to corridors.	N/A: The Specific Plan is a commercial mixed-use plan with Hotel and Local Serving Retail uses. It does not include a residential component. However, development within the Specific Plan will contribute to a substantial number of jobs in the area and lead to jobs-housing balance.
H-2.2	Historic Downtown. We foster a vibrant historic downtown through facilitating a wide range of housing types and affordability levels for households of all ages, housing preferences, and income levels.	N/A: The Specific Plan is a commercial mixed-use plan with Hotel and Local Serving Retail uses. It does not include a residential component.
H-2.3	Ontario Airport Metro Center. We foster a vibrant, urban, intense, and highly amenitized community in the Ontario Airport Metro Center Area through a mix of residential, entertainment, retail, and office-oriented uses.	The Specific Plan is within the Ontario Airport Metro Center and provides for a commercial mixed-use development with Hotel and Local Serving Retail.
H-2.4	Ontario Ranch. We support a premier lifestyle community in the Ontario Ranch, distinguished by diverse housing, highest design quality, and cohesive and highly amenitized neighborhoods.	N/A: The Specific Plan is a commercial mixed-use plan with Hotel and Local Serving Retail uses. It does not include a residential component.
H-2.5	Housing Design. We require architectural excellence through adherence to City design guidelines, thoughtful site planning, environmentally sustainable practices, and other best practices.	N/A: The Specific Plan is a commercial mixed-use plan with Hotel and Local Serving Retail uses It does not include a residential component.
H-2.6	Infill Development. We support the revitalization of neighborhoods through the construction of higher-density residential developments on underutilized residential and commercial sites.	N/A: The Specific Plan is a commercial mixed-use plan with Hotel and Local Serving Retail uses It does not include a residential component.
GOAL H-3	**A City regulatory environment that balances the need for creativity and excellence in residential design, flexibility and predictability in the project approval process, and the provision of an adequate supply and prices of housing.**	
Policies		
H-3.1	Incentives. We maintain incentive programs that can be offered to projects that provide benefits to the community such as exceptional design quality, economic advantages, environmental sustainability, or other benefits that would otherwise be unrealized.	N/A
H-3.2	Flexible Standards. We allow flexibility in the application of residential and mixed-use development standards in order to gain benefits such as exceptional design quality, economic advantages, sustainability, or other benefits that would otherwise be unrealized.	Consistent: The development standards for mixed-use development are flexible and provide for high quality development.
H-3.3	Development Review. We maintain a residential development review process that provides certainty and transparency for project stakeholders and the public, yet allows for the appropriate review to facilitate quality housing development.	N/A

H-3.4	Financial Incentives. We consider financial incentives to facilitate and encourage the production, rehabilitation or improvement of housing, or provision of services where such activity furthers housing and community-wide goals.	N/A
GOAL H-4	**Increased opportunities for low- and moderate-income households and families to afford and maintain quality ownership and rental housing opportunities, including move-up opportunities. Inclusive communities, racial equity, fair housing choice, and access to opportunity.**	
Policies		
H-4.1	Preservation of Affordable Apartments. We strive to facilitate the preservation of the affordability of publicly assisted apartments for lower-income households through financial assistance, technical assistance, rehabilitation, and collaborative partnerships.	N/A
H-4.2	Homeownership Opportunities. We increase and expand homeownership rates for lower- and moderate-income households by offering financial assistance, low-interest loans, and educational resources, and by working in collaboration with partnerships.	N/A
H-4.3	Rental Assistance. We support the provision of rental assistance for individuals and families earning extremely low, very low, and low income with funding from the state and federal government.	N/A
H-4.4	Mixed-income Housing. We encourage the integration of affordable housing in the Ontario Ranch, Ontario Airport Metro Center Area, and existing neighborhoods.	N/A
H-4.5	Collaborative Partnerships. We support collaborative partnerships of nonprofit organizations, affordable housing developers, major employers, and for-profit developers to produce affordable housing.	N/A
H-4.6	Fair Housing. We further fair housing by prohibiting discrimination in the housing market, lifting barriers that restrict access to housing, and providing education, support, and enforcement services to address discriminatory practices.	N/A
GOAL H-5	**A full range of housing types and community services that meet the special housing needs for all individuals and families in Ontario, regardless of income level, age, or other status.**	
Policies		
H-5.1	Senior Housing. We support the development of accessible and affordable senior housing and provide financial assistance for seniors to maintain and improve their homes.	N/A
H-5.2	Family Housing. We support the development of larger rental apartments that are appropriate for families with children, including, as feasible, the provision of services, recreation, and other amenities.	N/A

H-5.3	Disabled People. We increase the supply of permanent, affordable, and accessible housing for people with disabilities, and provide assistance to allow them to maintain and improve their homes.	N/A
H-5.4	Homeless People. We partner with nonprofit partners to provide emergency shelters, transitional housing, permanent supportive housing, and supportive services for people who are homeless.	N/A
H-5.5	Supportive Services. We financially support organizations, as feasible, that provide support services that meet the needs of those with special needs and further the greatest level of independence.	N/A
H-5.6	Partnerships. We collaborate with nonprofit organizations, private developers, employers, government agencies, and other interested parties to develop affordable housing and provide support services.	N/A
Parks and Recreation Element		
GOAL PR-1	**A system of safe and accessible parks that meets the needs of the community.**	
Policies		
PR-1.1	Access to Parks. In all new residential development areas, we strive to provide a park and/or recreational facility within walking distance (¼ mile) of every residence and prioritize the establishment of parks in environmental justice areas that do not have adequate access to parks.	N/A: The Specific Plan is a commercial mixed-use plan with Hotel and Local Serving Retail uses. Although this area is classified as an environmental justice area according to Cal Enviroscreen 4.0, it is not residential and does not include a residential component. However, the plan encourages the improvement of and connection to Cucamonga Creek Trail and improvements of Holt Boulevard and Guasti Road which will contribute to the safe and comfortable mobility between the Specific Plan and surrounding uses.
PR-1.2	Adjacency to Schools. We examine locating parks adjacent to school sites to promote joint-use opportunities.	N/A: The Specific Plan does not include a residential component so there is no impact on the location of schools.
PR-1.3	Funding. We shall seek outside, one-time sources of funding for capital improvements and reserve ongoing City funds primarily for operations and maintenance.	N/A
PR-1.4	Joint-use Opportunities. In areas where there is a need but no City recreational facility, we explore joint-use opportunities. (e.g., school sites).	N/A
PR-1.5	Acreage Standard. We strive to provide 5 acres of parkland (public and private) per 1,000 residents.	Consistent. The Specific Plan contributes to both public and private open space. Please see below for the Public/Private landscape area breakdown: - Level 1: Public landscape (not including driveways):28,621 sq ft; Private - landscape:205,335 sq ft - Level 3: Private landscape: 57,365 sq ft - Level 9: Private landscape: 32,119 sq ft

PR-1.6	Private Parks. We expect development to provide a minimum of 2 acres of developed private park space per 1,000 residents.	Consistent. The Specific Plan contributes to both public and private open space. Please see below for the Public/Private landscape area breakdown: - Level 1: Public landscape (not including driveways):28,621 sq ft; Private - landscape:205,335 sq ft - Level 3: Private landscape: 57,365 sq ft - Level 9: Private landscape: 32,119 sq ft
PR-1.7	Special Needs/Universal Design. We attempt to provide recreational opportunities at parks for people of all ages and abilities.	Consistent. The Specific Plan aims to design all public realm and open space facilities with Universal Design standards.
PR-1.8	Renovation. We examine renovating existing facilities prior to building replacement facilities.	N/A: This is a new development Specific Plan.
PR-1.9	Phased Development. We require parks be built in new communities before a significant proportion of residents move in.	N/A: The Specific Plan does not have a residential component
PR-1.10	Master Plans for Individual Park Facilities. We require an individual park master plan for parks in excess of 10 acres.	N/A
PR-1.11	Environmental Function of Parks. We require new parks to meet environmental management objectives.	N/A: The development is not a parks project.
PR-1.12	Trails. We promote connections between parks and local trails including those managed by other public agencies.	N/A: The development is not a parks project, but the Specific Plan is supportive of connections to the Cucamonga Creek Trail.
PR-1.13	Equestrian Trails. We require the design, construction, and maintenance of equestrian trails in Rural Residential designated areas.	N/A
PR-1.14	Multi-family Residential Developments. We require that new multi-family residential developments of five or more units provide recreational facilities or open space, in addition to paying adopted impact fees.	N/A: The development is not a residential project.
PR-1.15	Trail Connectivity. We strengthen and improve equestrian, bike, and multipurpose trail connections within the City and work to improve trail connections into adjacent jurisdictions.	Consistent: The development is supportive of connections to the Cucamonga Creek Trail.
PR-1.16	Equestrian Master Plan. We use Homer Briggs Park as the primary focal point for the development of a Master Plan of Equestrian Trails in the Rural Residential area.	N/A
GOAL PR-5	**A range of recreational programs provided by public, private, and nonprofit organizations that meet the needs of the community's varied interests, age groups, and abilities.**	
Policies		
PR-2.1	Participation. We program park facilities to maximize utilization and participation, while considering park size, location, and population served.	N/A: The development is not a parks project.

PR-2.2	Needs Assessment. We track the needs and priorities for recreational programming and look for ways to meet demand.	N/A: The development is not a parks project.
PR-2.3	Community Involvement. We involve the local community in planning programs for neighborhood and community park facilities.	N/A: The development is not a parks project.
PR-2.4	Access to Programs. We provide a range of recreational and physical exercise programs that are accessible to residents of all income levels throughout the community and prioritize establishing and maintaining equitable access for residents in environmental justice areas.	N/A: Although this area is classified as an environmental justice area according to Cal Enviroscreen 4.0, it does not include residential and is not a parks project. However, the Specific Plan incorporates sustainable strategies and public open space. The plan also encourages the improvement of and connection to Cucamonga Creek Trail. Additionally, public realm improvements of the sidewalk areas and edge friction elements such as curbs, street trees, lighting, etc. along Holt Boulevard and Guasti Road contribute to walkability and connectivity to surrounding areas.
PR-2.5	Partnerships. We partner with local and regional agencies, nonprofit organizations, and the private sector to provide a comprehensive range of recreational programs.	N/A
PR-2.6	Crime Deterrents. We promote and participate in recreational programming as part of our crime prevention effort.	N/A
Environmental Resources Element		
GOAL ER-1	**A reliable and cost-effective system that permits the City to manage its diverse water resources and needs.**	
Policies		
ER-1.1	Local Water Supply. We increase local water supplies to reduce our dependence on imported water. New and redevelopment projects are aligned with our available water supply and/or to enhance our available water supply.	Consistent: Development within the Specific Plan is consistent with General Plan and will not impose water demand beyond that analyzed in the General Plan.
ER-1.2	Matching Supply to Use. We match water supply and quality to the appropriate use.	N/A
ER-1.3	Conservation and Sustainable Water Supply. We work with regional water providers and users to conserve water and ensure sustainable local water supplies as more frequent droughts reduce long term local and regional water availability	N/A
ER-1.4	Supply-Demand Balance. We require that available water supply and demands be balanced.	Consistent: Development within the Specific Plan is consistent with General Plan and will not impose water demand beyond that analyzed in the General Plan.
ER-1.5	Water Resource Management. Environmental justice areas are prioritized as we coordinate with local agencies to protect water quality, prevent pollution, address existing contamination, and remediate contaminated surface water and groundwater.	N/A

ER-1.6	Urban Run-off Quantity. We encourage the use of low impact development strategies, including green infrastructure, to intercept run-off, slow the discharge rate, increase infiltration, and ultimately reduce discharge volumes to traditional storm drain systems.	Consistent: Development within the Specific Plan will use native or drought-tolerant landscaping techniques and will incorporate LID where feasible.
ER-1.7	Urban Run-off Quality. We require the control and management of urban run-off, consistent with Regional Water Quality Control Board regulations.	Consistent: Development within the Specific Plan will use native or drought-tolerant landscaping techniques and will incorporate LID where feasible.
ER-1.8	Wastewater Management. We require the management of wastewater discharge and collection consistent with waste discharge requirements adopted by the Regional Water Quality Control Board.	Consistent: Development within the Specific Plan will be consistent waste discharge requirements adopted by the Regional Water Quality Control Board.
GOAL ER-2	**A cost effective, integrated waste management system that meets or exceeds state and federal recycling and waste diversion mandates.**	
Policies		
ER-2.1	Waste Diversion. We shall meet or exceed AB 939 requirements.	Consistent: Development within the Specific Plan will comply with state requirements.
ER-2.2	Hazardous and Electronic Wastes. We prohibit the disposal of hazardous and electronic waste into the municipal waste stream pursuant to state law.	Consistent: Development within the Specific Plan will comply with state requirements.
ER-2.3	Purchase Products Made from Recycled Materials. We purchase recycled-content products where it is cost effective.	Consistent: Development within the Specific Plan will purchase products made from recycled materials where feasible ensuring competitiveness in the market or adherence to industry standards.
GOAL ER-3	**Cost-effective and reliable energy system sustained through a combination of low impact buildings, site and neighborhood energy conservation, and diverse sources of energy generation that collectively helps to minimize the region's carbon footprint.**	
Policies		
ER-3.1	Conservation Strategy. We require conservation as the first strategy to be employed to meet applicable energy-saving standards.	Consistent: Development within the Specific Plan will aim to conserve energy to the extent feasible based on market competitiveness and industry standards.
ER-3.2	Green Development– Communities. We encourage the use of the LEED Neighborhood Development rating system, or similar mechanism, to guide the planning and development of all new communities.	Consistent: Development within the Specific Plan will use many sustainable practices such as shared parking, drought-tolerant landscaping, transit-supportive design, mixed-use development, pedestrian support, electric charging stations, bike parking facilities, provision of open spaces, heat island reduction, light pollution reduction, enhanced indoor air quality strategies, low-emitting materials, daylighting, and other techniques that are consistent with the LEED Neighborhood Development rating system.

ER-3.3	Building and Site Design. We require new construction to incorporate energy efficient building and site design strategies, which could include appropriate solar orientation, maximum use of natural daylight, passive solar, and natural ventilation.	Consistent: The building maximizes the site's potential for appropriate solar orientation, maximum use of natural daylight, passive solar, and natural ventilation. The main façade of the building is on the south which receives maximum sunlight. Being a hotel with a double-loaded corridor, the rooms are also oriented toward the north. Vertical architectural fin walls are used for solar control as well as architectural element.
ER-3.4	Green Development– Public Buildings. We require all new and substantially renovated City buildings in excess of 10,000 square feet achieve a LEED Silver Certification standard, as determined by the U.S. Green Building Council.	N/A: The Specific Plan is not a City building.
ER-3.5	Fuel-Efficient and Alternative Energy Vehicles and Equipment. We require purchase and use vehicles and equipment that are fuel efficient and meet or surpass state emissions requirements and/or use renewable sources of energy.	Consistent: Any new vehicles owned for the use of the hotel will meet or surpass state emissions requirements and/or use renewable sources of energy.
ER-3.6	Generation- Renewable Sources. We promote the use of renewable energy sources (e.g., solar, wind, biomass) in public and private sector development.	Consistent: Development within the Specific Plan will consider using renewable energy sources.
GOAL ER-4	**Improved indoor and outdoor air quality and reduced locally generated pollutant emissions.**	
Policies		
ER-4.1	Land Use. We reduce GHG and other local pollutant emissions through compact, mixed use, and transit-oriented development and development that improves the regional jobs-housing balance.	Consistent: The Specific Plan is a mixed-use development with a hotel and retail area and will contribute to a substantial number of jobs in the area and lead to a jobs-housing balance.
ER-4.2	Sensitive Land Uses. We prohibit the future siting of sensitive land uses within the distances defined by the California Air Resources Board for specific source categories, without sufficient mitigation.	N/A
ER-4.3	Greenhouse Gases (GHG) Emissions Reductions. We will reduce GHG emissions in accordance with regional, state, and federal regulations.	Consistent: The Specific Plan is a mixed-use development with a hotel and retail area. It is transit supportive as it is located in the vicinity of Metrolink and Amtrak Stations and BRT route. It encourages active transportation by providing an enhanced public realm and bike facilities. The plan encourages the improvement of and connection to Cucamonga Creek Trail. The land uses allow for bike rental and repair facilities in the Local Serving Retail area. It also has an electric charging station in the parking areas. All of the above contribute to the lowering of GHG.

ER-4.4	Indoor Air Quality. We will comply with State Green Building Codes relative to indoor air quality. We seek funding to improve indoor air quality for households with poor indoor air quality, with priority for lower income households in environmental justice areas.	Consistent: The indoor building materials will comply with State Green Building Codes.
ER-4.5	Transportation. We promote mass transit and non-motorized mobility options (walking, biking) to reduce air pollutant emissions.	Consistent: The Specific Plan is a mixed-use plan with hotel and retail uses. It is transit-supportive as it is located in the vicinity of Metrolink and Amtrak Stations and BRT route. It encourages active transportation by providing an enhanced public realm and bike facilities. The plan encourages the improvement of and connection to Cucamonga Creek Trail. The land uses allow for bike rental in the Local Serving Retail area. It also has an electric charging station in the parking areas. All of the above contribute to reducing air pollutant emissions.
ER-4.6	Particulate Matter. We support efforts to reduce particulate matter to meet State and Federal Clean Air Standards.	Consistent: The development will comply with State and Federal Clean Air Standards.
ER-4.7	Other Agency Collaboration. We collaborate with other agencies within the South Coast Air Basin to improve regional air quality at the emission source, with a particular focus on sources that affect environmental justice areas in Ontario.	N/A
ER-4.8	Tree Planting. We protect healthy trees within the City and plant new trees to increase carbon sequestration and help the regional/local air quality. We expand the tree canopy in environmental justice areas to enhance air quality and reduce the “heat island” effect.	Consistent: The Specific Plan includes a number of new trees (See landscaping concepts) that will contribute to enhancing air quality and reducing the “heat island” effect.

ER-4.9	New Localized Air Pollution Sources Near Existing Sensitive Receptors. We require new developments to conduct a Health Risk Assessment for land uses that generate more than 100 trucks per day or 40 trucks per day by trucks operating transportation refrigeration units (TRU's) within 1,000 feet from sensitive land uses (California Health and Safety Code § 42705.5(a)(5)). If the health risk assessment determines the new development poses health hazards that increase the incremental cancer risk above the threshold established by the South Coast Air Quality Management District (AQMD), we will only approve permits upon the condition that adequate mitigation measures are proposed and implemented for potential impacts on the sensitive uses around the site and along the route within Ontario taken by the trucks to and from freeways. We require new developments that must perform a health risk assessment to conduct additional public outreach by sending notifications in multiple languages to all residents living within 500 feet and encourage hosting a public meeting.	N/A
GOAL ER-5	**Protected high value habitat and farming and mineral resource extraction activities that are compatible with adjacent development.**	
Policies		
ER-5.1	Habitat Conservation Areas. We support the protection of biological resources through the establishment, restoration, and conservation of high-quality habitat areas.	N/A: There are no biological resources within the Specific Plan.
ER-5.2	Entitlement and Permitting Process. We comply with state and federal regulations regarding protected species.	N/A: There are no protected species within the Specific Plan.
ER-5.3	Right to Farm. We support the right of existing farms to continue their operations within the Ontario Ranch.	N/A
ER-5.4	Transition of Farms. We protect both existing farms and sensitive uses around them as agricultural areas transition to urban uses.	N/A
ER-5.5	Mining Operations. We prohibit future mining operations where the resource extraction activities are incompatible with existing or proposed adjacent land uses.	N/A

Community Economics Element		
GOAL CE-1	**A complete community that provides for all incomes and stages of life.**	
Policies		
CE-1.1	Jobs-Housing Balance. We pursue improvement to the Inland Empire's balance between jobs and housing by promoting job growth that reduces the regional economy's reliance on out-commuting.	Consistent: The Specific Plan includes hotel and retail uses that will contribute to a substantial number of jobs in the area and lead to jobs-housing balance.
CE-1.2	Jobs and Workforce Skills. We use our economic development resources to: 1. attract jobs suited for the skills and education of current and future City residents; 2. work with regional partners to provide opportunities for the labor force to improve its skills and education; and 3. attract businesses that increase Ontario's stake and participation in growing sectors of the regional and global economy. (Link to Social Resources Policy SR-2.2)	Consistent: The Specific Plan includes hotel, and retail uses that will contribute to a substantial number of jobs in the area for residents and attract businesses in the Local Serving Retail as well as within the hotel.
CE-1.3	Regional Approach to Workforce Development. We work with our partners to provide workforce training and development services throughout the region, recognizing that Ontario employers rely on workers living outside of the City.	N/A
CE-1.4	Business Retention and Expansion. We continuously improve two-way communication with the Ontario business community and emphasize customer service to existing businesses as part of our competitive advantage.	Consistent: The development owners and operators will be open to two-way communication with the City.
CE-1.5	Business Attraction. We proactively attract new and expanding businesses to Ontario in order to increase the City's share of growing sectors of the regional and global economy.	Consistent: The Specific Plan is a hotel and retail plan that will attract businesses in the Local Serving Retail as well as within the hotel.
CE-1.6	Diversity of Housing. We collaborate with residents, housing providers, and the development community to provide housing opportunities for every stage of life; we plan for a variety of housing types and price points to encourage the development of housing supportive of our efforts to attract business in growing sectors of the community while being respectful of existing viable uses.	N/A: The Specific Plan does not include a residential component.
CE-1.7	Retail Goods and Services. We seek to ensure a mix of retail businesses that provide the full continuum of goods and services for the community.	Consistent: The Specific Plan is a mixed-use development with a hotel and retail component.

CE-1.8	Regional Attraction. We encourage the development and programming of regional, cultural, and entertainment destinations in Ontario.	N/A
CE-1.9	Regional Leadership. We provide leadership for public, quasi-public, and private-sector partners that help Ontario and its residents and businesses realize our goals and achieve our Vision.	N/A
CE-1.10	Life-Long Education. We work with our partners who provide life-long learning to ensure that our residents and workforce have access to education at all stages of life.	N/A
CE-1.11	Socioeconomic Trends. We continuously monitor, plan for, and respond to changing socioeconomic trends.	N/A
CE-1.12	Circulation. We continuously plan and improve public transit and non-vehicular circulation for the mobility of all, including those with limited or no access to private automobiles. (Link to Mobility Element Public Transit Section)	Consistent: The Specific Plan is transit-supportive and located in the vicinity of Metrolink and Amtrack stations as well as along the future BRT route.
CE-1.13	Safety and Security. We invest in public safety and communicate our successes because the perception and reality of safety and security are necessary prerequisites for private investment and economic growth.	Consistent: The Specific Plan will incorporate industry-standard safety and security measures.
GOAL CE-2	**A City of distinctive neighborhoods, districts, corridors, and centers where people choose to be.**	
Policies		
CE-2.1	Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community. (Link to Community Design Element)	Consistent: The design guidelines for mixed-use development aim to provide for high-quality development that is aesthetically pleasing and creates a unique identity.
CE-2.2	Development Review. We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional, and sustainable places that will compete well with their competition within the region.	Consistent: The design guidelines for mixed-use development aim to provide for high-quality development that is aesthetically pleasing and creates a unique identity. The standards and concept plans also provide sustainable strategies and functional spaces.
CE-2.3	Interim Development. We require interim development that does not reflect the long-term Vision, be limited in scale of development so that the investment can be sufficiently amortized to make Vision-compatible redevelopment financially feasible.	N/A
CE-2.4	Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.	Consistent: The design guidelines for mixed-use development aim to provide for high-quality development that is aesthetically pleasing and creates a unique identity.

CE-2.5	Private Maintenance. We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values. (Link to Community Design Element Policy CD-5.1)	Consistent: Development of private property within the Specific Plan will be privately maintained.
CE-2.6	Public Maintenance. We require the establishment and operation of maintenance districts or other vehicles to fund the long-term operation and maintenance of the public realm whether on private land, in rights-of-way, or on publicly-owned property. (Link to Community Design Element Policy CD-5.1)	N/A
GOAL CE-3	**Decision-making deliberations that incorporate the full short-term and long-term economic and fiscal implications of proposed City Council actions.**	
Policies		
CE-3.1	Fiscal Impact Disclosure. We require requests for City Council action to disclose the full fiscal impacts, including direct and indirect costs.	N/A
CE-3.2	General Plan Amendments. We require those proposing General Plan amendments to disclose reasonably foreseeable impacts through a fiscal analysis.	Consistent: There are no foreseen fiscal impacts on the City. All on-site improvements will be undertaken and financed by the developer. The costs for related off-site improvements shall be the responsibility of either the Developer or the City as defined further in the conditions of the approval and Development Agreement.
CE-3.3	Long-Term Funding Disclosure. We require those requesting City support or funding for projects or programs to disclose if and how they can be continued without further City support.	Consistent: There are no foreseen fiscal impacts on the City. All on-site improvements will be undertaken and financed by the developer. The costs for related off-site improvements shall be the responsibility of either the Developer or the City as defined further in the conditions of the approval and Development Agreement.
CE-3.4	Improving Fiscal Decision-Making. We periodically assess the accuracy of projections for staff time and City resources and use the assessment results to improve our fiscal decision-making process.	N/A
CE-3.5	Sustainable Development. We recognize impacts to municipal finances as an element of sustainability, and we require claims of sustainability to assess fiscal impacts.	N/A
CE-3.6	Fully Funded Liability. We require long-term liabilities, such as retiree medical benefits, employee accrued leave balances, and self-insured liability claims to be fully funded to ensure sound, long-term fiscal health.	Consistent. All long-term liabilities will be in accordance with industry standard.
CE-3.7	Programmatically Balanced Budget. We require that the annual budget include appropriations allocated in a manner to meet the goal of the programmatically balanced budget.	N/A

CE-3.8	Budget Margins. We require that the adopted budget for revenue and expenditures reflect sufficient budget margins to minimize negative impacts to City services due to economic uncertainties.	N/A
CE-3.9	Complete Comparative Context. We require that our annual budget process provide the complete comparative context for proposed new and increased funding so decision makers can fully understand the trade-offs among budget choices.	N/A
Safety Element		
GOAL S-1	**Minimized risk of injury, loss of life, property damage, and economic and social disruption caused by earthquake-induced and other geologic hazards.**	
Policies		
S-1.1	Implementation of Regulations and Standards. We require that all new habitable structures be designed in accordance with the most recent California Building Code adopted by the City, including provisions regarding lateral forces and grading.	Consistent: Development within the Specific Plan will comply with California Building Code adopted by the City, including provisions regarding lateral forces and grading.
S-1.2	Entitlement and Permitting Process. We follow state guidelines and the California Building Code to determine when development proposals must conduct geotechnical and geological investigations.	Consistent: Development within the Specific Plan will comply with California Building Code adopted by the City, including provisions regarding lateral forces and grading.
S-1.3	Continual Update of Technical Information. We maintain up-to-date California Geological Survey seismic hazard maps.	N/A
S-1.4	Seismically Vulnerable Structures. We conform to state law regarding unreinforced masonry structures and coordinate with not-for-profits to facilitate seismic retrofits in environmental justice areas and for low-income households.	N/A
GOAL S-2	**Minimized risk of injury, loss of life, property damage and economic and social disruption caused by flooding and inundation hazards.**	
Policies		
S-2.1	Entitlement and Permitting Process. We require hydrological studies prepared by a state-certified engineer when new development is located in a 100-year or 500-year floodplain to assess the impact that the new development will have on the flooding potential of existing development down-gradient.	TBD
S-2.2	Floodplain Mapping. We require any new development partially or entirely in 100-year flood zones to provide detailed floodplain mapping for 100- and 200-year storm events as part of the development approval process.	N/A: The Specific Plan is not in the 100-year flood zones.

S-2.3	Facilities that Use Hazardous Materials. We comply with state and federal law and do not permit facilities using, storing, or otherwise involved with substantial quantities of onsite hazardous materials to be located in the 100-year flood zone or 500-year flood zone unless all standards of elevation, floodproofing, and storage have been implemented to the satisfaction of the Building Department.	N/A: There are no hazardous materials stored, produced, or transported to the site.
S-2.4	Prohibited Land Uses. We prohibit the development of new essential and critical facilities in the 100-year floodplain and discourage the development of new essential and critical facilities in the 500-year floodplain unless all standards of elevation and flood proofing demonstrate that a facility can be safe and operational during a flood event, implemented to the satisfaction of the Building Department.	N/A
S-2.5	Stormwater Management. We maintain the storm drain system to convey a 100-year storm, when feasible, and encourage environmental site design practices to minimize flooding and increase groundwater recharge, including natural drainage, green infrastructure, and permeable ground surfaces. (Link to Environmental Resources Element)	N/A: The Specific Plan is not in the 100-year flood zones.
S-2.6	Use of Flood Control Facilities. We encourage joint use of flood control facilities as open space or other types of recreational facilities.	Consistent: The Specific plan is located immediately west of the Cucamonga Creek Channel. This fully improved facility provides regional flood control and storm conveyance to the surrounding area. A portion of the flood control channel could be re-imagined as a multimodal greenway that promotes outdoor activity.
S-2.7	Collaboration Between Agencies. Collaborate with the San Bernardino County Flood Control District and other state and federal agencies to maintain flood-control infrastructure to minimize flood damage.	N/A
GOAL S-3	**Reduced risk of death, injury, property damage and economic loss due to fires, accidents and normal everyday occurrences through prompt and capable emergency response.**	
Policies		
S-3.1	Prevention Services. We proactively mitigate or reduce the negative effects of fire, hazardous materials release, and structural collapse by implementing the regularly adopted California Fire Code and California Building Code.	Consistent: Development within the Specific Plan will comply with California Fire Code and California Building Code adopted by the City.
S-3.2	Community Outreach. We provide education to local schools and community groups to promote personal and public safety.	N/A

S-3.3	Fire and Emergency Medical Services. We maintain sufficient fire stations, equipment and staffing to respond effectively to emergencies and meet the needs of the community and state requirements.	N/A

S-3.4	Special Team Services. We maintain effective special rescue services.	N/A
S-3.5	Emergency Notifications. We maintain a public alert notification system that efficiently conveys information about imminent, developing, ongoing, and concluding emergency events to residents and visitors, working with network providers that translate information into other languages.	N/A
S-3.6	Interagency Cooperation. In order to back up and supplement our capabilities to respond to emergencies, we participate in the California Fire Rescue and Mutual Aid Plan.	N/A
S-3.7	Water Supply and System Redundancy. We monitor our water system to manage and ensure adequate firefighting water supplies.	N/A
S-3.8	Fire Prevention through Environmental Design. We require new development to incorporate fire prevention consideration in the design of streetscapes, sites, open spaces, and buildings. (Link to Community Design Element)	Consistent: Development within the Specific Plan will incorporate fire prevention considerations in the design of streetscapes, sites, open spaces, and buildings. See landscape plan concepts.
S-3.9	Resource Allocation. We analyze fire data to evaluate the effectiveness of our fire prevention and reduction strategies and allocate resources accordingly.	N/A
GOAL S-4	**An environment where noise does not adversely affect the public's health, safety, and welfare.**	
Policies		
S-4.1	Noise Mitigation. We utilize the City's Noise Ordinance, building codes, and subdivision and development codes to mitigate noise impacts.	Consistent: Development within the Specific Plan is allowed equivalent noise levels within 70 dbA per the City's Zoning Code for exterior noise standards for lodging facilities.
S-4.2	Coordination with Transportation Authorities. We collaborate with airport owners, FAA, Caltrans, SBCTA, SCAG, neighboring jurisdictions, and other transportation providers in the preparation and maintenance of, and updates to transportation-related plans to minimize noise impacts and provide appropriate mitigation measures.	N/A
S-4.3	Airport Noise Mitigation. We aggressively pursue funding and utilize programs to reduce effects of aircraft noise in impacted areas of our community.	N/A
S-4.4	Truck Traffic. We manage truck traffic to minimize noise impacts on sensitive land uses.	N/A
S-4.5	Roadway Design. We design streets and highways to minimize noise impacts.	N/A

S-4.6	Airport Noise Compatibility. We utilize information from Airport Land Use Compatibility Plans to prevent the construction of new noise-sensitive land uses within airport noise impact zones.	N/A
S-4.7	Rail Noise Mitigation. We require residential and mixed use development of vibration-sensitive uses in areas within 200 feet of rail to evaluate for indoor vibration levels and mitigate any exceedances of the Federal Transit Administration vibration-annoyance criteria.	N/A
GOAL S-5	**Minimize the risk of injury, property damage, and economic loss resulting from windstorms and wind-related hazards.**	
Policies		
S-5.1	Dust Control Measures. We require the implementation of Best Management Practices for dust control at all excavation and grading projects.	Consistent: Development within the Specific Plan requires little to no grading. However, Best Management Practices will be implemented for dust control.
S-5.2	Grading in High Winds. We prohibit excavation and grading during strong wind conditions, as defined by the Building Code.	Consistent: Development within the Specific Plan requires little to no grading. Grading during strong wind conditions will be prohibited, as defined by the Building Code.
S-5.3	Public Safety Power Shutoffs. We coordinate with utility companies to minimize service interruptions, such as Public Safety Power Shutoffs, before, during, and after windstorms and wind-related hazards.	N/A
GOAL S-6	**Reduced potential for hazardous materials exposure and contamination.**	
Policies		
S-6.1	Disclosure and Notification. We enforce disclosure laws that require all users, producers, and transporters of hazardous materials and wastes to clearly identify the materials that they store, use, or transport.	N/A
S-6.2	Response to Hazardous Materials Releases. We respond to hazardous materials incidents and coordinate these services with other jurisdictions.	N/A
S-6.3	Safer Alternatives. We minimize our use of pesticides and other hazardous materials by choosing non-toxic alternatives that do not pose a threat to the environment, especially when it could affect public park facilities and open spaces.	Consistent: Safer non-toxic alternatives will be used for the maintenance of landscaped areas within the Specific Plan.
S-6.4	Safe Storage and Maintenance Practices. We require that the users of hazardous materials be adequately prepared to prevent and mitigate hazardous materials releases.	N/A

S-6.5	Location of Hazardous Material Facilities. We regulate facilities that will be involved in the production, use, storage, or disposal of hazardous materials, pursuant to federal, state, county, and local regulations, so that impacts to the environment and sensitive land uses are mitigated. We prohibit new hazardous waste facilities in close proximity to sensitive land uses and environmental justice areas.	N/A
S-6.6	Location of Sensitive Land Uses. We prohibit new sensitive land uses from locating within airport safety zones and near existing sites that use, store, or generate large quantities of hazardous materials. (Link to Land Use Element)	N/A
S-6.7	Household Hazardous Waste. We support the proper disposal of household hazardous substances.	N/A
S-6.8	Mitigation and Remediation of Groundwater Contamination. We actively participate in local and regional efforts directed at both mitigating environmental exposure to contaminated groundwater and taking action to clean up contaminated groundwater once exposure occurs.	N/A
S-6.9	Remediation of Methane. We require development to assess and mitigate the presence of methane, per regulatory standards and guidelines.	N/A
GOAL S-7	**Residential neighborhoods, commercial areas, and industrial districts that are kept safe through a multi-faceted approach of prevention, suppression, and community involvement in public safety.**	
Policies		
S-7.1	Police Unit Response. We respond to calls for service in a timely manner.	N/A
S-7.2	Community Oriented Problem Solving (C.O.P.S.). We support and maintain the mission of COPS to identify and resolve community problems.	N/A
S-7.3	Prevention Services. We provide crime prevention programs targeted to youth, parents, seniors, businesses, and neighborhoods.	N/A

S-7.4	Crime Prevention through Environmental Design (CPTED). We require new development to incorporate CPTED in the design of streetscapes, sites, open spaces, and buildings.	Consistent: CPTED techniques are implemented in the Specific Plan. These include but not limited to the following: - Design public spaces, such as lobbies, and entrances, to maximize visibility. - Use landscaping and lighting strategically to eliminate hiding spots and create clear sightlines. - Limit access points to the hotel and use controlled entry systems. - Use fencing, gates, and other barriers to control access to the property. - Use design elements, such as changes in paving materials or landscaping, to delineate different areas. -Provide well-lit pathways and amenities that encourage guests to use outdoor spaces. -Use clear and informative signage to guide guests and staff around the property.
S-7.5	Interdepartmental Coordination. We utilize all City departments to help reduce crime and promote public safety.	N/A
S-7.6	Partnerships. We partner with other local, state, and federal law enforcement agencies and private security providers to enhance public safety services in Ontario.	N/A
S-7.7	Resource Allocation. We analyze crime data to evaluate the effectiveness of crime prevention and reduction strategies and allocate resources accordingly.	N/A
S-7.8	Social Services. We support behavioral health and social services as part of the public safety solution.	N/A
GOAL S-8	**Disaster resilient, prepared community through effective emergency/disaster preparedness, response, mitigation, and recovery.**	
Policies		
S-8.1	State and Federal Mandates. We maintain emergency management programs that meet the requirements of the State of California Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS).	N/A
S-8.2	Emergency Management Plans. We maintain, update, and adopt the Emergency Operations Plan (EOP) and incorporate, by reference the City's Hazard Mitigation Plan (HMP).	N/A
S-8.3	Emergency/Disaster Training Exercises. We conduct training and exercises to prepare for and evaluate emergency/disaster response and recovery procedures.	N/A

S-8.4	Interagency Collaboration. We maintain partnerships, including automatic aid agreements, with fire protection, police and sheriff departments, and emergency management agencies in San Bernardino and Riverside County to strengthen emergency response.	N/A
S-8.5	Interdepartmental Coordination. We utilize all City departments to help support emergency/disaster preparedness, response, mitigation, and recovery.	N/A
S-8.6	Community Outreach. We provide education to the community to promote personal, family, and community emergency preparedness to both natural and human-generated hazards.	N/A
S-8.7	Extreme Heat and Air Quality. We work to ensure that all community members are informed about and have access to community cooling centers and clean air centers during extreme heat events or wildfires, with a focus on serving environmental justice communities. We support the development of extreme heat emergency response policies and practices to address these critical health risks in the community.	N/A
S-8.8	Regional Partnerships for Climate Adaptation. We partner with local governments in San Bernardino County, Riverside County, and Inland Southern California Climate Collaborative to develop regional climate change adaptation strategies and programs.	N/A
S-8.9	Backup Power in Critical Facilities. We require backup power be maintained in critical facilities. We encourage backup power solutions that include renewable energy components.	N/A
GOAL S-9	**Incorporate energy efficient practices and renewable energy systems to improve air quality, comfort, and energy reliability during temporary power outages.**	
Policies		
S-9.1	Solar Energy. We support and may incentivize the installation of residential and commercial solar panels and battery storage systems that can provide electricity during power outages.	N/A
S-9.2	Renewable Energy. Renovate existing city-owned facilities and plan future facilities to include renewable energy generation capacity and battery storage as part of an effort to make public facilities and services greener and more resilient to power outages.	N/A
S-9.3	Energy Efficiency Retrofits. We support and may incentivize retrofits to residential and commercial buildings that improve energy efficiency and insulation from extreme temperatures, giving priority towards low-income applicants.	N/A

Mobility Element		
M-1	**A system of roadways that meets the mobility needs of a dynamic and prosperous Ontario.**	
	Policies	
M-1.1	Roadway Design and Maintenance. We require our roadways to: 1. Comply with federal, state, and local design and safety standards; 2. Meet the needs of multiple transportation modes and users; 3. Handle the capacity envisioned in the City of Ontario Master Plan of Streets and Highways; 4. Be maintained in accordance with best practices; 5. Be compatible with the streetscape and surrounding land uses; and 6. Promote the efficient flow of all modes of traffic through the implementation of intelligent transportation systems and travel demand management strategies. (Link to Community Design Element Policies CD-2.5, CD-2.6, CD-2.16, CD-3.3)	N/A: There are no roadways proposed within the Specific Plan other than the entranceway and access to the basement. These are designed with best practices in mind that promote the efficient flow of traffic.
M-1.2	Mitigation of Impacts. We require development to mitigate its traffic impacts.	Consistent: Traffic impacts will be mitigated based on a development agreement with the City.
M-1.3	Agency Coordination on Roadway Improvements. We work with Caltrans, SBCTA, and others to identify, fund, and implement needed improvements to roadways when necessary. We work with neighboring jurisdictions to promote regional connectivity, access, and meet operational level of service standards at the City limits.	N/A
M-1.4	Complete Streets. We work to provide a complete, balanced, context-aware, multimodal transportation network that meets the needs of all users of streets, roads, and highways, including motorists, pedestrians, bicyclists, children, persons with disabilities, seniors, movers of commercial goods, and users of public transportation. We prioritize implementation of complete streets improvements in environmental justice areas to facilitate opportunities for residents to use active transportation systems.	N/A: There are no roadways proposed within the Specific Plan other than the entranceway and access to the basement. These are designed with best practices in mind that promote efficient traffic flow and allow for pedestrian movement. The Specific Plan also improves the pedestrian realm along Holt Boulevard and Guasti Road which will contribute to complete street.

M-1.5	Level of Service. Maintain a peak hour Level of Service (LOS) E or better at all intersections. Maintain Level of Service D or better on arterial streets in the City. Develop and maintain a list of locations where LOS E or LOS F are considered acceptable and would be exempt from this level of service policy. Considerations for LOS exemption include being restricted by environmental constraints, lacking available right-of-way, deterring an increase in VMT, or degrading other modes of travel (such as bicycle or pedestrian infrastructure).	Consistent: Traffic impacts will be mitigated based on a development agreement with the City.
M-1.6	Reduce Vehicle Miles Traveled. We will strive to reduce VMT through a combination of land use, transportation projects, travel demand management strategies, and other trip reduction measures in coordination with development projects and public capital improvement projects.	Consistent: The Specific Plan is a mixed-use development with a hotel and retail area. It is transit supportive as it is located in the vicinity of Metrolink and Amtrak Stations and BRT route. It encourages active transportation by providing an enhanced public realm and bike facilities. The plan encourages the improvement of and connection to Cucamonga Creek Trail. The Local Serving Retail allows for bike rentals . The Specific Plan Development Standards call for electric charging stations in the parking areas. All of the above contribute to the lowering of VMT.
M-2	**A system of trails and corridors that facilitate and encourage active modes of transportation.**	
Policies		
M-2.1	Active Transportation. We maintain our Active Transportation Master Plan to create a comprehensive system of on- and off-street bikeways and pedestrian facilities that are safe, comfortable, and accessible and connect residential areas, businesses, schools, parks, and other key destination points.	Consistent: The plan encourages active transportation by providing an enhanced public realm and bike facilities. The plan encourages the improvement of and connection to Cucamonga Creek Trail.
M-2.2	Bicycle System. We provide off-street multipurpose trails and Class II bikeways as our preferred paths of travel and use the Class III for connectivity in constrained circumstances. When truck routes and bicycle facilities share a right-of-way, we prefer Class I or Class IV bicycle facilities. We require new development to include bicycle facilities, such as bicycle parking and secure storage areas.	Consistent: The plan encourages active transportation by providing an enhanced public realm and bike facilities. The plan encourages the improvement of and connection to Cucamonga Creek Trail.
M-2.3	Pedestrian Walkways. We require streets to include sidewalks and visible crosswalks at major intersections where necessary to promote safe and comfortable mobility between residential areas, businesses, schools, parks, recreation areas, and other key destination points. (Link to Community Design Policy CD-3.3)	Consistent: There are no roadways proposed within the Specific Plan other than the entranceway and access to the basement. These are designed with best practices and features that allow for pedestrian movement. The Specific Plan also improves the pedestrian realm along Holt Boulevard and Guasti Road which will contribute to the safe and comfortable mobility between the Specific Plan and surrounding uses.

M-2.4	Network Opportunities. We use public rights-of-way and easements such as, utility easements, levees, drainage corridors, road rights-of-way, medians, and other potential options to maintain and expand our bicycle and pedestrian network. In urban, mixed- use, and transit-oriented Place Types, we encourage the use of underutilized public and private spaces to expand our public realm and improve pedestrian and bicycle connectivity. (Link to Community Design Element Urban, Mixed Use, and Transit-oriented Place Types Section)	Consistent: The Specific Plan is transit-supportive and located in the vicinity of Metrolink and Amtrack stations as well as along the future BRT route.
M-3	**A public transit system that is a viable alternative to automobile travel and meets basic transportation needs of the transit-dependent.**	
	Policies	
M-3.1	Transit Partners. We maintain a proactive working partnership with transit providers to ensure that adequate public transit service is available, cost-efficient, and convenient, particularly for residents in environmental justice areas.	N/A
M-3.2	Alternative Transit Facilities at New Development. We require new development adjacent to an existing or planned transit stop to contribute to the creation of transit facilities, such as bus shelters, transit bays and turnouts, and bicycle facilities, such as secure storage areas.	N/A: While the Specific Plan is in the vicinity of the Metrolink and Amtrack stations, it is not adjacent to these facilities. The same goes with the BRT route. The plan does provide for bike parking.
M-3.3	Transit-Oriented Development. We may provide additional development-related incentives to those inherent in the Land Use Plan for projects that promote transit use and reduce vehicle miles traveled.	Consistent: The Specific Plan is a mixed-use development with a hotel and retail area. The future multimodal transit station is under consideration within the Mixed-Use Area, which will link rail, regional, local, and airport transit. The Specific Plan is transit-supportive and contributes to the lowering of VMT.
M-3.4	Bus Rapid Transit (BRT) Corridors. We work with regional transit agencies to implement BRT service and reduce vehicle miles traveled by targeting destinations and corridors with the highest number of potential riders.	N/A
M-3.5	Light Rail. We support extension of the Metro Rail Gold Line to Ontario, and will work to secure station locations at the proposed multimodal transit center.	N/A
M-3.6	Metrolink Expansion. We advocate expansion of Metrolink service to include the Downtown and the multimodal transit center.	N/A
M-3.7	High Speed Rail. We encourage the development of high-speed rail systems that would enhance regional mobility in Southern California and serve the City of Ontario.	N/A

M-3.8	Feeder Systems. We work with regional transit agencies to secure convenient feeder service from the Metrolink station and the proposed multimodal transit center to employment centers in Ontario.	N/A
M-3.9	Ontario Airport Metro Center Circulator. We will explore development of a convenient mobility system, including but not limited to shuttle service, people mover, and shared car system, for the Ontario Airport Metro Center.	N/A
M-3.10	Multimodal Transportation Center. We intend to ensure the development of a multimodal transportation center near ONT airport to serve as a transit hub with amenities for transit riders, pedestrians, and bicyclists transitioning to local buses, BRT, the Gold Line, high-speed rail, the proposed Ontario Airport Metro Center Circulator, and other future transit modes. We support locations for the multimodal transportation center that are north of ONT airport, between Vineyard Avenue and Interstate 15.	N/A
M-3.11	Transit and Community Facilities. We require the future development of community-wide serving facilities to be sited in transit-ready areas that can be served and made accessible by public transit. Conversely, we plan (and coordinate with other transit agencies to plan) future transit routes to serve existing community facilities.	N/A
M-4	**An efficient flow of goods through the City that maximizes economic benefits and minimizes negative impacts.**	
	Policies	
M-4.1	Truck Routes. We designate and maintain a network of City truck routes that provide for the safe and efficient transport of goods while minimizing negative impacts on local circulation and noise-sensitive land uses, as shown on Exhibit M-04, Truck Routes. We will minimize conflicts on truck routes through the design and implementation of buffers between travel lanes and pedestrian and bicycle facilities on designated truck routes.	N/A
M-4.2	Regional Participation. We work with regional and subregional transportation agencies and adjacent cities to plan and implement goods movement strategies, including regional truck routes, plans and projects that improve mobility, support the efficient movement of goods, and minimize negative environmental impacts. (Link to Environmental Resources Policy ER-4.3)	N/A
M-4.3	Railroad Grade Separations. We eliminate at-grade rail crossings identified on Exhibit M-01, Roadway Classifications.	N/A

M-4.4	Environmental Considerations. We support both local and regional efforts to reduce/eliminate the negative environmental impacts of goods movement through the planning and implementation of truck routing and the development of a plan to evaluate the future needs of clean fueling/recharging and electrified truck parking.	N/A
M-4.5	Air Cargo. We support and promote a ONT airport that accommodates 1.6 million tons of cargo per year, as long as the impacts associated with that level of operations are planned for and mitigated.	N/A
GOAL M-5	**A proactive leadership role in helping identify and facilitate implementation of strategies that address regional transportation challenges.**	
Policies		
M-5.1	Regional Leadership. We maintain a leadership role to help identify and implement potential solutions to long-term regional transportation problems.	N/A
M-5.2	Land Use Compatibility with Regional Transportation Facilities. We work with ONT, railroads, Caltrans, SBCTA, and other transportation agencies to minimize impacts.	N/A
Community Design Element		
GOAL CD-1	**A dynamic, progressive city containing distinct and complete places that foster a positive sense of identity and belonging among residents, visitors, and businesses.**	
Policies		
CD-1.1	City Identity. We take actions that are consistent with the City being a leading urban center in Southern California while recognizing, enhancing, and preserving the character of our existing viable neighborhoods.	Consistent: The Specific Plan is a mixed-use development with hotel and Local Serving Retail uses. The design standards within the Specific Plan aim to provide for high-quality development that is aesthetically pleasing and contributes to City identity.
CD-1.2	Place Types. We establish Place Types in urban, mixed use, and transit-oriented areas to foster the City's identity as a premier community and require new development within each Place Type to incorporate prescribed urban patterns, forms, and placemaking priorities. (Link to Community Design Element Urban, Mixed Use, and Transit-oriented Place Types Section)	Consistent: The Specific Plan is a mixed-use development with hotel and Local Serving Retail uses. The design standards within the Specific Plan aim to provide for high-quality development that is aesthetically pleasing and contributes to City identity. The concept plans and elevations are contemporary and aesthetically pleasing. The public plaza and public realm along Holt Boulevard and Guasti Road contribute to public placemaking whereas the private open space and recreational areas contribute to placemaking elements within the development. The signage, lighting, landscaping, and paving standards aim to contribute to placemaking.

CD-1.3	Existing Neighborhoods. We require the existing character of viable residential and non-residential neighborhoods be preserved, protected, and enhanced.	N/A
CD-1.4	Transportation Corridors. We will enhance our major transportation corridors within the City through landscape, hardscape, signage and lighting. The extent of enhancement should be appropriate to the use, type, and context of each corridor.	Consistent: The Specific Plan includes a public plaza and public realm along Holt Boulevard and Guasti Road which contribute to public placemaking and enhancement of these corridors.
CD-1.5	View Corridors. We require all major north-south streets be designed and redeveloped to feature views of the San Gabriel Mountains, which are part of the City's visual identity and a key to geographic orientation. Such views should be free of visual clutter, including billboards and may be enhanced by framing with trees.	N/A
GOAL CD-2	**A high level of design quality resulting in neighborhoods, commercial areas, public spaces, parks, and streetscapes that are attractive, safe, functional, human- scale, and distinct.**	
Policies		
CD-2.1	Quality Building Design and Architecture. We encourage all development projects to convey visual interest and character through: 1. Building volume, massing, and height to provide context-appropriate scale and proportion; 2. A true architectural style which is carried out in plan, section, and elevation through all aspects of the building and site design and appropriate for its setting; and 3. Exterior building materials that are articulated, high quality, durable, and appropriate for the architectural style.	Consistent: The development standards and design guidelines chapters in the Specific Plan document discuss massing, architecture, materials, and related topics. The elevation rendering shows a high-quality design with contemporary architecture and high-quality materials (refer to the material palette in the design guidelines). Digital illumination is also used to provide a cutting edge to the architecture of the building. There is a regularity in architecture through the use of architectural fins that create vertical elements, and they are intercepted by horizontal elements forming a grid-like pattern.

CD-2.2	Neighborhood Design. We create distinct residential neighborhoods that promote a sense of community and identity by emphasizing access, connectivity, livability, and social interaction through such elements as: 1. A pattern of smaller, walkable blocks that promote activity, safety, and access to nearby amenities and services; 2. Varied parcel sizes and lot configurations to accommodate a diversity of housing types; 3. Traffic calming measures to slow traffic and promote walkability while maintaining acceptable traffic flows and emergency evacuation access; 4. Floor plans that encourage views onto the street and de-emphasize the visual and physical dominance of garages (introducing the front porch as the "outdoor living room"), as appropriate; and 5. Landscaped parkways, with sidewalks separated from the curb and designed to maximize safety, comfort, and aesthetics for all users.	Consistent: The Specific Plan includes a public plaza and public realm improvements of the sidewalk areas and edge friction elements such as curbs, street trees, lighting, etc. along Holt Boulevard and Guasti Road contributing to walkability and traffic calming. These also maximize safety, comfort, and aesthetics for all users. The hotels have windows looking onto Guasti Road and Holt Boulevard that provide views of the street. Parking is provided underground.
CD-2.3	Commercial Areas. We desire commercial areas and centers to be distinctive, pedestrian friendly, functional, and vibrant with a range of businesses, places to gather, and connectivity to the neighborhoods they serve.	Consistent: The Specific Plan includes a public plaza and public realm improvements of the sidewalk areas and edge friction elements such as curbs, street trees, lighting, etc. along Holt Boulevard and Guasti Road which contribute to walkability and traffic calming. These also maximize safety, comfort, and aesthetics for all users.
CD-2.4	Urban, Mixed Use, and Transit-oriented Areas. We establish Place Types to require mixed use, urban, and transit-oriented areas to be designed and developed as pedestrian oriented areas that are integrated with adjacent neighborhoods and promote a vibrant, comfortable, and functional environment, as defined for each Place Type. (Link to Community Design Element Urban, Mixed Use, and Transit-oriented Place Types Section)	Consistent: The Specific Plan includes a public plaza and public realm improvements of the sidewalk areas and edge friction elements such as curbs, street trees, lighting, etc. along Holt Boulevard and Guasti Road which contribute to walkability and traffic calming. These also maximize safety, comfort, and aesthetics for all users.
CD-2.5	Streetscapes. We design new and, when necessary, retrofit existing streets to improve walkability, bicycling and transit integration, strengthen connectivity, and enhance community identity through improvements to the public right-of-way such as sidewalks, street trees, parkways, curbs, street lighting and street furniture.	Consistent: The Specific Plan includes a public plaza and public realm improvements of the sidewalk areas and edge friction elements such as curbs, street trees, lighting, etc. along Holt Boulevard and Guasti Road which addresses this policy.

CD-2.6	Connectivity. We promote development of local street patterns, multimodal networks, and connected public spaces that create and unify neighborhoods, rather than divide them, and create cohesive and continuous corridors, rather than independent "islands" through the following means: 1. Local street networks that provide access both between subdivisions and within neighborhoods and discourage through traffic; 2. A local street system that is logical and understandable for the user. A grid system is preferred to avoid circuitous and confusing travel paths between internal neighborhood areas and adjacent arterials and to provide adequate emergency and evacuation access; and 3. Pedestrian and bicycle networks that provide convenient access to neighborhoods and nearby destinations, such as schools, parks, other public spaces, commercial areas, and transit stops.	Consistent: The Circulation Plan complements the Land Use Plan by linking the hotel and retail uses to adjacent land uses and is designed to enhance connectivity and facilitate the movement of various transportation modes. Additionally, the development of the Specific Plan Area will include sidewalks around the site and development of a plaza at the intersection of Holt Boulevard and Guasti Road.
CD-2.7	Sustainability. We collaborate with the development community to design and build neighborhoods, streetscapes, sites, outdoor spaces, landscaping, and buildings to reduce energy demand through solar orientation, maximum use of natural daylight, passive solar and natural ventilation, building form, mechanical and structural systems, building materials, and construction techniques.	Consistent: The Development Standards and Design Guidelines within the Specific plan include many sustainable practices such as shared parking, drought-tolerant landscaping, transit-supportive design, mixed-use development, pedestrian support, electric charging stations, bike parking facilities, provision of open spaces, heat island reduction, light pollution reduction, enhanced indoor air quality strategies, low-emitting materials, daylighting, and so on that are consistent with Sustainable design.
CD-2.8	Safe Design. We incorporate defensible space design into new and existing developments to ensure the maximum safe travel and visibility on pathways, corridors, and open space and at building entrances and parking areas by avoiding physically and visually isolated spaces, maintaining visibility and accessibility, and using lighting.	Consistent: All outdoor spaces, including entrances and parking areas, are designed to ensure maximum visibility and adequate lighting. This includes both public and private areas. Review the parking and lighting standards and guidelines within the Specific Plan.
CD-2.9	Landscape Design. We encourage durable, sustainable, and drought-tolerant landscaping materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits.	Consistent: The Specific Plan includes many sustainable practices to the extent possible including drought-tolerant landscaping, low-emitting materials, paving materials, reduced heat island effect, daylighting, and other techniques. A variety of paving materials are used as shown in the paving palette in design guidelines to delineate and define spaces both public and private.

CD-2.10	Parking Areas. We require all development, including single-family residential, to minimize the visual impact of surface, structured, and garage parking areas visible from the public realm in an aesthetically pleasing, safe and environmentally sensitive manner. Examples include: 1. Surface parking: Shade trees, pervious surfaces, urban run-off capture and infiltration, and pedestrian paths to guide users through the parking field. 2. Structured parking: facade articulation, screening, appropriate lighting, and landscaping. 3. Garage parking: providing access to single-family residential garages through alley access, recessing garages from the frontage to emphasize front doors or active living spaces.	N/A: The Specific Plan does not include residential. The parking is provided underground.
CD-2.11	Entry Statements. We encourage the inclusion of amenities, signage, and landscaping at the entry to neighborhoods, commercial centers, mixed use areas, industrial developments, and public places that reinforce them as uniquely identifiable places.	Consistent: The Specific Plan entrance is designed with attractive landscaping that features terraced planting, an entry canal water feature, an attractive entranceway, an arrival court with sculpture, and outdoor dining spaces. The local retail area includes a plaza, an attractive landscaping buffer, and outdoor dining spaces.
CD-2.12	Site and Building Signage. We encourage the use of sign programs that utilize complementary materials, colors, and themes. Project signage should be designed to effectively communicate and direct users to various aspects of the development and complement the character of the structures.	Consistent: The Specific Plan sign program is well-defined in in the development standards and provides for the size, location, and themes of the signage. The signage will be made of durable materials and will be complementary to the building design.
CD-2.13	Entitlement Process. We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits.	N/A
CD-2.14	Availability of Information. We provide easy access to information for developers, builders and the public about design quality, construction quality, and sustainable building practices.	N/A
CD-2.15	Leverage Professional and Trade Organizations. We support excellence in design and construction quality through collaboration with trade and professional organizations that provide expertise, resources and programs for developers, builders, and the public.	N/A
CD-2.16	Transit Stops. We require transit stops be conveniently located, well lit, safe, and clearly accessible to pedestrians, bicyclists, and people of all abilities.	N/A

GOAL CD-3	Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.	
	Policies	
CD-3.1	Unique Identity. We promote development that heightens the unique character and identity of each Place Type by requiring compatible land uses and land planning, site design, and building design that promotes an active public realm.	Consistent: The design guidelines for mixed-use development aim to provide for high-quality development that is aesthetically pleasing and contributes to the City's identity. The concept plans and elevations are contemporary and aesthetically pleasing. The public plaza and public realm along Holt Boulevard and Guasti Road contribute to public placemaking whereas the private open space and recreational areas contribute to placemaking elements within the development. The signage, lighting, landscaping, and paving standards aim to contribute to placemaking.
CD-3.2	Comfortable, Human-Scale Public Realm. We require that public spaces, including streets, parks, and plazas on both public and private property be designed to maximize safety, comfort and aesthetics and connect to the citywide pedestrian, vehicular, and bicycle networks.	Consistent: The Specific Plan includes a public plaza and public realm improvements of the sidewalk areas and edge friction elements such as curbs, street trees, lighting, etc. along Holt Boulevard and Guasti Road contribute to walkability and traffic calming. These also maximize safety, comfort, and aesthetics for all users.
CD-3.3	Complete and Connected Network. We require that pedestrian, vehicular, and bicycle circulation on both public and private property be coordinated to provide connections internally and externally to adjacent neighborhoods and properties (existing and planned) through a system of local roads and trails that promote walking and biking to nearby destinations (including existing and planned parks, commercial areas, and transit stops) and are designed to maximize safety, comfort, and aesthetics.	Consistent: The Specific Plan encourages active transportation by providing an enhanced public realm and bike facilities, including bike rentals as an allowable use in the Local Serving Retail area. The plan encourages the improvement of and connection to Cucamonga Creek Trail. The Specific Plan also improves the pedestrian realm along Holt Boulevard and Guasti Road. The public plaza and public realm improvements of the sidewalk areas and edge friction elements such as curbs, street trees, lighting, etc. along Holt Boulevard and Guasti Road contribute to walkability. All of the above encourage physical activity.
CD-3.4	Context-Aware and Appropriate Design. We require appropriate building and site design that complements existing development, respects the intent and identity of the Place Type, and provides appropriate transitions and connections between adjacent uses to ensure compatibility of scale, maintain an appropriate level of privacy for each use, and minimize potential conflicts.	Consistent: The Specific Plan is consistent with General Plan Update- The Ontario Plan's "Guasti District".
CD-3.5	Active Frontages. We create lively pedestrian streetscapes by requiring primary building, business, and residential entrances, outdoor dining, and storefronts be located on ground floors adjacent to sidewalks or public spaces and designed to maximize safety, comfort, aesthetics, and the intended functionality (as defined by the Place Type).	Consistent: The Specific Plan includes a public plaza and public realm improvements of the sidewalk areas encourage active use. There are outdoor dining areas both for the restaurants within the Hotel overlooking Guasti road and for restaurants within the Local Serving Retail areas.

CD-3.6	Managed Infrastructure. We collaborate with developers and property owners to facilitate development that realizes the envisioned character and functionality of the Place Type through the use of green and shared infrastructure within each Place Type.	Consistent: The Specific Plan encourages the improvement of and connection to Cucamonga Creek Trail. The Specific Plan also improves the pedestrian realm along Holt Boulevard and Guasti Road. The public plaza and public realm improvements of the sidewalk areas and edge friction elements such as curbs, street trees, lighting, etc. along Holt Boulevard and Guasti Road contribute to walkability.
GOAL CD-4	**Historic buildings, streets, landscapes, and neighborhoods, as well as the story of Ontario's people, businesses, and social and community organizations, have been preserved and serve as a focal point for civic pride and identity.**	
Policies		
CD-4.1	Cultural Resource Management. We update and maintain an inventory of historic sites and buildings, professional collections, artifacts, manuscripts, photographs, documents, maps, and other archives.	N/A
CD-4.2	Collaboration with Property Owners and Developers. We educate and collaborate with property owners and developers to implement strategies and best practices that preserve the character of our historic buildings, streetscapes, and unique neighborhoods.	N/A
CD-4.3	Collaboration with Outside Agencies. We pursue opportunities to team with other agencies, local organizations, and nonprofits in order to preserve and promote Ontario's heritage.	N/A
CD-4.4	Incentives. We use the Mills Act and other federal, state, regional and local programs to assist property owners with the preservation of select properties and structures.	N/A
CD-4.5	Adaptive Reuse. We actively promote and support the adaptive reuse of historic sites and buildings to preserve and maintain their viability.	N/A
CD-4.6	Promotion of Public Involvement in Preservation. We engage in programs to publicize and promote the City's and the public's involvement in preservation efforts.	N/A
CD-4.7	Public Outreach. We provide opportunities for our residents to research and learn about the history of Ontario through the Planning Department, the Ontario Museum of History and Art, and the Robert E. Ellingwood Model Colony History Room.	N/A
GOAL CD-5	**A sustained level of maintenance and improvement of properties, buildings, and infrastructure that protects the property values and encourages additional public and private investments.**	
Policies		

CD-5.1	Maintenance of Buildings and Property. We require all public and privately-owned buildings and property (including trails and easements) to be properly and consistently maintained.	Consistent: Maintenance of all improvements within the Specific Plan site, including private/quasi-public open space and recreation facilities, private driveways, circulation, and landscape, will be the responsibility of the applicant. Maintenance of the sidewalk areas in the immediate vicinity of the Specific Plan site will also be the responsibility of the applicant.
CD-5.2	Maintenance of Infrastructure. We require the continual maintenance of infrastructure.	Consistent: Maintenance of all improvements within the Specific Plan, including private/quasi-public open space and recreation facilities, private driveways, circulation, and landscape, will be the responsibility of the applicant. Maintenance of the sidewalk areas in the immediate vicinity of the Specific Plan will also be the responsibility of the applicant.
CD-5.3	Improvements to Property & Infrastructure. We provide programs to improve property and infrastructure.	Consistent: Maintenance of all improvements within the Specific Plan, including private/quasi-public open space and recreation facilities, private driveways, circulation, and landscape, will be the responsibility of the applicant. Maintenance of the sidewalk areas in the immediate vicinity of the Specific Plan will also be the responsibility of the applicant.
CD-5.4	Neighborhood Involvement. We encourage active community involvement to implement programs aimed at the beautification and improvement of neighborhoods.	N/A
Social Resources Element		
GOAL SR-1	**Residents have access to information, services and goods that improve their health and wellbeing.**	
Policies		
SR-1.1	Partnering for Healthcare. We work with healthcare providers, and local, regional, state, and federal agencies to attract and retain a diversity of affordable, quality healthcare and facilities for the entire community.	N/A
SR-1.2	Nutrition Choices. We support the promotion of equitable access to affordable healthy food choices in the community, including community gardens, farmers markets, and cooking classes.	N/A
SR-1.3	Health Education. We promote equitable access to health education, including disease prevention, mental health, nutrition, and physical fitness.	N/A

SR-1.4	Physical Activity. We encourage activities and community design that improve the physical fitness of our community members, with an emphasis on the provision of activities and facilities in environmental justice areas.	Consistent: The Specific Plan is a mixed-use development with a hotel and retail area and encourages active transportation by providing an enhanced public realm and bike facilities. The plan encourages the improvement of and connection to Cucamonga Creek Trail. The Local Serving Retail allows for bike rentals The Specific Plan also improves the pedestrian realm along Holt Boulevard and Guasti Road. All of the above encourage physical activity.
GOAL SR-2	**A range of educational and training opportunities for residents and workers of all ages and abilities that improves their life choices and provides a skilled workforce for our businesses.**	
Policies		
SR-2.1	Educational Partners. We partner with educational institutions throughout the region in order to expand the range and quality of educational offerings available to the community.	N/A
SR-2.2	Workforce Training. We will work with industrial organizations, businesses, and educational institutions to create opportunities for workforce training.	N/A
SR-2.3	Joint Use of Facilities. We partner with public and private educational institutions to jointly use facilities for both City and educational purposes.	N/A
SR-2.4	Access to Schools. We work with local and regional partners to improve the safety in and around schools and to improve access for citizens of all ages and abilities to schools and community services, such as after school and other programs.	N/A
SR-2.5	School Facilities. We plan and coordinate with school districts for designing and locating school facilities to meet the City's goals, such as for health, walkability, and safety and to minimize impacts to existing neighborhoods.	N/A
SR-2.6	Language. We promote broad outreach in languages used by the community for proposed projects that could negatively affect environmental justice areas.	N/A
SR-2.7	Community Engagement. We promote targeted outreach and education to historically underrepresented groups to encourage meaningful participation in decision-making process for projects whose outcomes will affect land use in environmental justice areas.	N/A
GOAL SR-3	**A range of community and leisure programs and activities provided by public, private, and nonprofit organizations that meet the needs of the community's varied interests, age groups and abilities.**	
Policies		

SR-3.1	Partnerships. We partner with local and regional agencies, nonprofit organizations, and the private sector to provide a comprehensive range of community activities and events to citizens.	N/A
SR-3.2	Needs Assessment. We track the needs and priorities for community services and look for ways to meet demands and avoid duplication of offerings.	N/A
SR-3.3	Program Outreach. We promote information about leisure activities, classes, special events, and other services and activities to our community.	N/A
SR-3.4	Community Events. We plan and actively participate in regularly scheduled community events and seasonal or yearly citywide events.	N/A
SR-3.5	Community Activities as Crime Deterrents. We promote and participate in community activities as part of our crime prevention efforts. (Link to Safety Element Policy S-7.3)	N/A
GOAL SR-4	**City libraries that connect community members of all ages and abilities to a broad range of programs, communication, and informational resources.**	
Policies		
SR-4.1	Community Needs. We identify and monitor community needs for library services, technology, and facilities, and tailor them to effectively meet those needs.	N/A
SR-4.2	Interagency Coordination. We leverage relationships with outside agencies, educational institutions, and neighboring jurisdictions to share library resources to the benefit of Ontario residents.	N/A
SR-4.3	Library Outreach. We outreach to the community to increase the patronage of the library.	N/A
SR-4.4	Coordination with Other Community Services. We coordinate library programs with other recreational and community programs and facilities.	N/A
SR-4.5	Focal Points of the Community. We design and program Ontario's libraries as focal points of community engagement, including public outreach and community events.	N/A
SR-4.6	Robert E. Ellingwood Model Colony History Room. We work with the Ontario Museum of History and Art in order to collect, preserve, and display artifacts and images from Ontario's heritage and connect the City's past to the present through the History Room.	N/A
GOAL SR-5	**Local heritage, entertainment, and cultural experiences that enrich the lives of Ontario's residents, workers, and visitors and serve to attract residents and businesses to the City.**	
Policies		

SR-5.1	Provision of Entertainment and Culture. We support equitable access to a range of entertainment and cultural experiences such as public art, exhibitions, and performances.	N/A
SR-5.2	Local Heritage Education. We partner with educational providers to promote culture and heritage. (Link to Community Design Element, Historic Preservation Section).	N/A
SR-5.3	Public Art. We encourage public art in buildings, parks, open spaces, and other public and private spaces.	N/A
SR-5.4	Private-Public Sector Events. We partner with private and nonprofit sectors to provide and promote participation in cultural activities including fairs, festivals, and other events geared to neighborhoods, the City as a whole, and the region.	N/A
SR-5.5	Promotion of Ontario Artists and Musicians. We promote awareness of entertainment and culture produced in Ontario.	N/A

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **CONSENT CALENDAR**
Department: Financial Services Prepared By: Stephanie Castro Department: Prepared By: Matthew Hernandez Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Claudia Hernandez, Matthew Hernandez Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 21

SUBJECT: **AUTHORIZATION TO ESTABLISH AND IMPLEMENT A REDEMPTION PROGRAM FOR UNUSED NEW MODEL COLONY DEVELOPMMMENT IMPACT FEE (DIF) CERTIFICATES IN ACCORDANCE WITH UNDERLYING AGREEMENTS AND APPLICABLE LAW**

RECOMMENDATION: That the City Council, by minute action, authorize the City Manager or his designee(s) to establish and implement an administrative program under which unused and/or unredeemed DIF certificates for public infrastructure built to support the development in the Ontario Ranch area may be redeemed by bona fide certificate holders in amounts supported by verified documentary evidence and applicable requirements of law and contract.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods
Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch

FISCAL IMPACT: This program will not have any fiscal impact on the City's General Fund. The City will be using available funds from various Development Impact Fee (DIF) categories paid by Developers whose projects are actively utilizing Infrastructure (Streets, Storm Drains, Water, Sewer, and Fiber Optics) constructed by NMC Builders and its members.

BACKGROUND & ANALYSIS:

The City uses the DIF Program in accordance with Ordinance Nos. 2779 and 2780 to collect DIF from Developers to fund public infrastructure identified in The Ontario Plan ("TOP 2050") necessary for future Residential and Non-Residential projects. The fees collected are based on a legally required studies to estimate the cost of these projects to allow the City to construct necessary infrastructure

without impacting the current residents service. The study and its fees are updated from time to time to ensure that the City does not burden its current operations, nor risk residents' current services. The City partnered with NMC Builders, LLC and its members to construct Streets, Storm Drains, Water, Sewer, and Fiber Optics on behalf of the City. Those Developers who chose not to construct paid an in-lieu fee owed to the City. The development and implementation of this proposed program, as allowed by applicable law and the underlying agreements, will refine the DIF credit exchange process to allow for more timely returns or redemptions.

STAFF RECOMMENDATION/MOTION REQUESTED: That the City of Ontario, through the City Manager or his designee(s), establish and implement an administrative program under which unused and/or unredeemed DIF certificates for public infrastructure may be redeemed by bona fide certificate holders, in accordance with applicable law and agreements.

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **PUBLIC HEARINGS**
Department: Planning Prepared By: Edmelynne V Hutter Staff Member Presenting: Rudy Zeledon, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 22

SUBJECT: **A PUBLIC HEARING TO CONSIDER A PLANNED UNIT DEVELOPMENT (FILE NO. PUD24-002) FOR A DEVELOPMENT PLAN TO CONSTRUCT 144-UNIT MULTIPLE-FAMILY RESIDENTIAL APARTMENT COMPLEX**

RECOMMENDATION: That the City Council introduce and waive further reading of an Ordinance Approving a Planned Unit Development, File No. PUD24-002, establishing development standards and guidelines to facilitate the development of a 144-unit residential apartment project.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: There is not a direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS:

The Ontario Plan 2050 (TOP 2050) and associated Environmental Impact Report analyzed and established guidelines for development of the Project site, which is within the Mixed Use - Holt Boulevard Land Use designation, and that approval of a Planned Unit Development (PUD) is required for new developments.

On November 14, 2022, the Ontario Housing Authority and Applicant, National CORE, entered into an Exclusive Negotiating Agreement regarding the potential development of an affordable housing development known as Vista Verde II, a multiple-family apartment complex. In continuation of the process, on December 17, 2024, the City Council approved a Disposition and Development Agreement (DDA) and Grant Agreements with the Applicant to facilitate the development of the subject affordable housing development.

On December 13, 2024, the Applicant submitted applications for a Planned Unit Development (File No. PUD24-002) to establish development standards and regulations for the Holt + Allyn Planned Unit Development area and Development Plan (File No. PDEV24-028) to facilitate the construction of 144-unit multiple-family affordable housing development.

On February 25, 2025, the Planning Commission adopted a Resolution recommending the City Council approve the Planned Unit Development. The Planning Commission backup is attached to this report.

The Project site is 5.73 acres and located near the northeast corner of East Holt Boulevard and Allyn Avenue, within the MU-6 (East Holt Mixed Use) zoning district and currently vacant. The Project site is surrounded by residential uses, commercial uses, and vacant land. The Project site is also located along the SBCTA West Valley Connector route on Holt Boulevard.

The Holt + Allyn Planned Unit Development (PUD) will facilitate the future construction of the 144-unit affordable housing development. Consistent with TOP 2050, the PUD allows for a residential density range of 14.0 to 40.0 du/ac, and the related Development Plan proposes a 4-story apartment community with a density of 25.1 du/ac. The proposed PUD also includes reduced parking ratio requirements that reflect the needs of households that are anticipated to reside there. In addition, the Applicant states that vehicle parking will be actively managed and monitored as part of its property management operations.

Overall, the proposed PUD will establish development standards and design guidelines that promote projects that are consistent with TOP 2050, establish a sense of place and identity along the Holt Boulevard Corridor, and achieve high-density residential developments while maintaining high quality design and construction.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the City Council finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP.

HOUSING ELEMENT COMPLIANCE: The Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Project site is one of the properties listed in the Housing Element Sites contained in Tables B-1 and B-2 (Housing Element Sites Inventory) of the Housing Element Technical Report. The Housing Element Sites Inventory designates the site for 108 units in the very low/low-income category; however, the proposed Project includes 144 units in the very low/low-income category, exceeding the originally anticipated number. The Housing Element Sites Inventory will be amended to reflect this change.

ENVIRONMENTAL REVIEW: The Project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15183 (Projects Consistent with a Community Plan or Zoning) of the CEQA Guidelines. The Project qualifies for an exemption because the following findings can be made:

1. The Project is consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified.
2. There are no Project specific effects which are peculiar to the Project or its site, and which the

TOP 2050 Supplemental EIR failed to analyze as significant effects.

3. There are no potentially significant off-site and/or cumulative impacts which the TOP 2050 Supplemental EIR failed to evaluate.
4. There is no substantial new information which results in more severe impacts than anticipated by the TOP 2050 Supplemental EIR.
5. The Project will undertake feasible mitigation measures specified in the TOP 2050 Supplemental EIR.

CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION AGENDA REPORT

February 25, 2025

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Email: PlanningDirector@OntarioCA.gov

FILE NOS: PUD24-002 & PDEV24-028

SUBJECT: A public hearing to consider a Planned Unit Development to create development standards and design guidelines, and a Development Plan, to facilitate the construction of 144-unit Multiple-family Residential Apartment Complex on approximately 5.73 acres of land located at the Northeast Corner of East Holt Boulevard and Allyn Avenue within the MU-6 (East Holt Boulevard Mixed Use) zoning district. **Submitted by National CORE. City Council action is required for PUD24-002.**

PROPERTY OWNER: Ontario Housing Authority

RECOMMENDED ACTION: That the Planning Commission consider and adopt a Resolution recommending the City Council approve a Planned Unit Development, File No. PUD24-002, and consider and adopt a Resolution approving a Development Plan, File No. PDEV24-028, pursuant to the facts and reasons contained in the staff report and attached Resolutions, and subject to the conditions of approval appended to the attached Resolutions as Attachment A.

BACKGROUND: On January 27, 2010, the Ontario City Council certified The Ontario Plan Environmental Impact Report in conjunction with File No. PGPA06-001 (City Council Resolution No. 2010-006), and on August 16, 2022, the Ontario City Council certified The Ontario Plan 2050 Update Supplemental Environmental Impact Report in conjunction with File No. PGPA20-002 (City Council Resolution No. 2022-129). The Ontario Plan and associated Environmental Impact Report analyzed the Project site and established guidelines for development, including but not limited to, general land use (Mixed Use; 14.0 du/ac to 40.0 du/ac and maximum FAR (2.0 FAR for office, 1.0 FAR for retail)).

The TOP 2050 Policy Plan specifies that the Mixed Use – Holt Boulevard area is to be implemented through the approval of a Planned Unit Development (PUD) prior to the development of properties within the area.

On November 14, 2022, the Ontario Housing Authority and Applicant entered into an Exclusive Negotiating Agreement regarding the potential development of an affordable housing development known as Vista Verde II, a multiple-family apartment complex with associated improvements and amenities. In continuation of the process, on December 17, 2024, the City Council approved a Disposition and Development Agreement (DDA)

Case Planner:	Edmelynne V. Hutter
Planning Director Approval:	
Submittal Date:	12/13/2024

Hearing Body	*Date*	*Decision*	*Action*
DAB	2/19/2025	Approval	Recommend
PC	2/25/2025		Final/ Recommend
CC	4/15/2025		1st Reading

with the Applicant to facilitate the development of the subject affordable housing development.

On December 13, 2024, in association with the DDA, the Applicant submitted applications for a Planned Unit Development (File No. PUD24-002) to establish development standards and regulations for the Holt + Allyn Planned Unit Development area and Development Plan (File No. PDEV24-028) to facilitate the development of the proposed 144-unit multiple-family affordable housing development.

On February 19, 2025, the Development Advisory Board conducted a public hearing regarding File No. PDEV24-028 and adopted a Decision recommending the Planning Commission approve the Development Plan.

PROJECT SETTING: The Project site consists of 5.73 acres of land located near the northeast corner of East Holt Boulevard and Allyn Avenue, approximately 140 feet east of the intersection, within the MU-6 (East Holt Mixed Use) zoning district, which is depicted in Exhibit A: Project Location Map. The Project site encompasses five vacant parcels located at 905, 935, 947 and 957 East Holt Blvd. The parcels were previously developed with commercial and residential uses.

The Project site is surrounded by residential uses, commercial uses, and vacant land. The Project site is also located along the SBCTA West Valley Connector route on Holt Boulevard, the improvements of which are under construction (see Exhibit G: Site Photos). The existing surrounding land uses, zoning, and Policy Plan (general plan) and specific plan land use designations are summarized in Table 1: Surrounding Zoning & Land Uses.

PROJECT ANALYSIS:

(1) Planned Unit Development (File No. PUD24-002)

The Applicant is proposing the Holt + Allyn Planned Unit Development (PUD) to facilitate the construction of the 144-unit affordable housing development. The purpose and objective of the PUD is to establish development and design guidelines that would promote development projects that are consistent with TOP 2050, establish a sense of place and identity along the Holt Boulevard Corridor, provide a connection between the Downtown Mixed-Use area and the Ontario Airport Metro Center, achieve high-density residential developments while maintaining high quality design and construction, and encourage clustering of structurers to preserve the maximum amount of continuous open space.

A PUD is comparable to a Specific Plan in that it sets development regulations that are unique to a specific area. On the other hand, it is unlike a Specific Plan in that a PUD is typically intended to apply to a single development project or several interrelated projects that would function as a single, comprehensive project.

(a) Land Use and Development Regulations — Consistent with the requirements of the MU-6 (East Holt Mixed Use) zoning district, the Holt + Allyn PUD allows for residential uses at a density of 14.0 to 40.0 du/ac. Non-residential uses are generally allowed within the MU-6 (East Holt Mixed Use) zoning district. However, this particular PUD area primarily anticipates residential uses, as an affordable housing development, and that any nonresidential uses would be ancillary and supportive in nature to the residential use.

In alignment with development standards and existing and future development in the area, the maximum building height allowed in the PUD is 50 feet. The building setback requirements are 0 FT from Holt Boulevard, 5 Ft from interior property lines, and 10 FT between parking spaces and living areas. Building-to-building separation requirements are a minimum 15 FT. These proposed standards are compatible with the TOP 2050 vision for the Mixed Use – Holt Boulevard area as a corridor and connection to other parts of the City.

(b) Architectural Character — As all sides of buildings will be visible from the public street, common access drives, common parking areas or adjacent parcels, the PUD requires that the architectural treatments be carried around to all sides of the buildings, providing full 360-degree architecture. Furthermore, all towers and raised elements will be finished on all sides to appear as three-dimensional features, and buildings will feature articulated walls with offsets of at least two feet in depth. In addition, the PUD promotes the use of enhanced materials, such as precast concrete or tile, for use as base treatments and to highlight architectural features.

(c) Landscaping and Drainage — A conceptual landscape plan is required to be submitted with the Development Plan application. Broad canopy shade trees are to be used to reduce heat gain on buildings, paving and parking areas. The PUD also requires the use of drought-tolerant plant materials and a water efficient irrigation system with weather-based controllers. Furthermore, landscape areas may incorporate vegetated swales for storm water infiltration and retention basins or dry wells as may be needed. Overall, projects within the PUD area are expected to provide landscaping designs that enhance the project aesthetics and outdoor experiences for residents, employees and visitors.

(d) Off-Street Parking and Circulation —

(i) Parking – The parking requirements within the PUD account for multiple factors including recent legislation, best practices in the region, affordable housing component, and proximity to transit. Parking requirements are summarized in Table 3: Parking Summary.

Previous studies of households within affordable housing developments have supported the conclusion that the parking needs in an affordable housing project are less than market-rate projects. In addition, existing projects within the City, including Vista Verde I,

were developed with reduced parking requirements and no concerns about parking supply have been identified.

(ii) Access – The PUD specifies that primary project access to the site will be provided at a central, gated vehicular access point from Holt Boulevard. A secondary driveway for emergency vehicle access will also be provided near the west boundary of the PUD/project area.

(iii) Circulation – The PUD provides for safe vehicular and pedestrian circulation throughout the project site by promoting separate pedestrian and vehicular paths and drives.

(iv) Access to Mass Transit – Existing bus stops are located on Holt Boulevard for Omnitrans Route 61, with nearby transfer stops for Routes 83, 87 and 380. Additionally, the future West Valley Connector Bus Rapid Transit (BRT) line which is currently under construction on Holt Boulevard, will provide additional transit options for the public.

(2) Development Plan (File No. PDEV24-028)

(a) Site Design/Building Layout — The Project site is irregular in shape and spans approximately 630 FT wide, along Holt Boulevard, and between 304 FT to 476 FT deep. The Project site comprises five parcels, which will require a subdivision or lot line adjustments to combine the parcels into one. The Project is designed with two four-story apartment buildings containing a total of 144 dwelling units. Each building will offer floor plans with 1, 2, and 3 bedrooms and 1 to 2 bathrooms. The 1-Bedroom units are 512 SF and 513 SF, the 2-Bedroom units are 750 SF and the 3-Bedroom units are 1,009 SF and 1,023 SF in area (see Table 4: Dwelling Unit Statistics). The overall density of the Project is 25.1 dwelling units/acre (du/ac), which complies with the TOP 2050 density range of 14.0 to 40.0 du/ac.

Building A, Building B, and the common open space amenities are located in the south portion of the Project site and parking lot areas are located in the north portion (see Exhibit C: Site Plan). The buildings are setback between 20 FT and 30 FT from Holt Boulevard. The parking lot comprises uncovered parking spaces, carports and landscaped areas. The Project's main entrance is located between Buildings A and B and will be gated. Another gated access point is located in the southwest corner of site and is designated for emergency ingress and egress.

Building A is located on the southwest section of the Project site and is configured in a U-shape, with the west, east and south sections of the building connected by open air walkways at each floor. Building A will have 91 dwelling units and will also include management offices, a mail room, bicycle parking, a laundry facility, recreation room computer lab, warming kitchen, and flexible activity room. The open central area of

Building A will have community amenities such as a swimming pool with lounge deck and shower facilities, outdoor gym, dog park, picnic tables, parking lot and landscape areas.

Building B is located in the southeast area and is L-shaped. Like Building A, the two sections of the building are connected by open air walkways at each floor. Building B is designed with 53 dwelling units. The open spaces on the east side of the building will provide a children's playground, teen space and BBQ area, parking lot and storm water detention basin.

(b) Site Access/Circulation — The Project site has multiple pedestrian and vehicular access points. The main vehicular access, which is 58 FT wide, is located on Holt Blvd. between Buildings A and B, approximately 500 FT east of the intersection of Holt Avenue and Bon View Avenue/Allyn Avenue. This entry will be gated and is designed with a 24 FT-wide ingress lane, 26 FT-wide egress lane, enhanced paving, and a median planter with a call box. The security gate is located approximately 100 FT from the front property line and the drive lanes have enough width for two vehicles each, which provides ample room for vehicle queueing.

Another gated vehicular access point is located at the southwest corner of the site and is intended for emergency vehicle ingress and egress.

The main interior circulation comprises of the entry drive located between Buildings A and B and the connecting east-west drive that also serves as a fire lane. This east-west drive provides connections to the parking lots and the emergency access lane to the west.

Pedestrian access is provided at multiple points along Holt Boulevard. Each building provides a main entry that is centrally located along the south elevations and are connected to the public sidewalk via walkways. These entries are designed with enhanced paving, seating and bicycle parking. In addition, secondary pedestrian paths are provided near the gated vehicular access points.

In addition, the Project's location on Holt Boulevard coincides with the West Valley Connector Bus Rapid Transit line currently being constructed by San Bernardino County Transportation Authority. This bus route is designed with dedicated bus lanes to offer faster transit service than previously provided. The Project location is situated between two stops for the West Valley Connector route. One bus stop is located west of the Project, at Campus Avenue and Holt Boulevard, which is 0.3 miles from the proposed Project. Another bus stop is located east, at Grove Avenue and Holt Boulevard, and is 0.4 miles from the Project. Both locations are walking distance and offer convenient and viable transportation options.

(c) Parking — The Project requires 222 vehicle parking spaces as specified in the proposed Holt + Allyn Planned Unit Development, and proposes 224 spaces, which exceeds the minimum parking required for the Project.

The Project will provide 130 covered parking spaces (i.e. carports with solar panels), and 94 uncovered spaces. Each apartment unit will have an assigned parking space and the unassigned spaces will be used for residential, visitor, and staff parking.

All parking spaces will be located behind gates and fencing and will not be readily visible from the Holt Boulevard. The off-street parking calculations for the Project are summarized in Table 3: Parking Summary.

The Project will also provide secure bicycle parking in each building, and outdoor bike racks among the common open space areas.

(d) Architecture — The Applicant has proposed an adaptive Mission-Spanish architectural style (see Exhibit E: Elevations). The adaptive component of the architectural design incorporates traditional Mission-Spanish design elements while accommodating the 4-story building massing and large street frontage.

- Arched thresholds;
- S-type clay roofing;
- Precast stone cornice and wall base;
- Decorative wrought iron details, railings, gates; and
- Decorative tile.

The south elevation of Buildings A and B are approximately 266 FT and 165 FT wide, respectively, and highly visible from Holt Boulevard. Given the high profile and visibility of the Project, the Applicant has designed these elevations to have visual interest through the use of architectural popouts and step backs, tower elements, arches, wrought iron detail, balconies, trellises, precast stone wall base and cornices, color blocking, and decorative tile. The proposed balcony design, which is also applied throughout the Project interior, incorporates several of these design elements, resulting in an architectural feature that breaks up the building mass and provides visual interest.

(e) Landscaping — The project proposes landscaping throughout the site, including the full length of the Holt Boulevard frontage, project perimeter, off-street parking areas, and throughout the stormwater retention areas (see Exhibit F: Landscape Plan). A variety of planting materials are proposed, including trees, shrubs, grasses, and groundcovers, as follows:

- Trees: Marina strawberry, Western redbud, California sycamore, and Coast live oak
- Shrubs: Powis castle artemisia, Yarrow, Bottle brush little john
- Grasses: Dear grass, Pine muhly, Reed grass
- Ground Covers: Chalk sticks, Alum root hybrid

(f) Open Space/Amenities — Each unit is designed with private open space, as a patio or balcony, and directly accessed from the apartment unit and are approximately 60 SF or larger.

The associated draft Holt + Allyn Planned Unit Development requires a minimum 15 percent of the total lot area be designed for common open space, which calculates to 37,440 SF. Overall, the Project provides about 46,045 SF of common open space, or 18 percent of the total lot area.

As proposed, the Development Plan offers a variety of common open space areas designed for a range of households and ages. The proposed 5,965 SF pool area at Building A will offer showers, lounge chairs, tables and chairs, benches, and a BBQ grill. The surrounding area will also include a 1,324 SF outdoor gym and 910 SF fenced pet area. In addition, the passive open space area, which includes landscaping and walkways, provides an additional 10,678 SF of common open space. The open space adjacent to Building B provides a BBQ and Teen Area that is 2,223 SF, a children's playground area that is 1,662 SF, and a passive open space that is roughly 11,270 SF. Other passive open space areas include the front yard landscape areas, which total 12,013 SF.

Interior common space areas are also offered. Building A includes a 907 SF activity room, 1,141 SF recreation room, 540 SF conference room, and lounge areas. All common areas are available to all the residents.

(g) Signage — All Project signage is required to comply with sign regulations provided in Ontario Development Code Division 8.1. Prior to the issuance of a Building Permit for the installation of any new on-site signage, the Applicant is required to submit Sign Plans for Planning Department review and approval. Approval of a master sign program is required prior to the issuance of sign permits.

(h) Utilities (drainage, sewer) — Public utilities (water and sewer) are available to serve the Project. Furthermore, the Applicant has submitted a Preliminary Water Quality Management Plan (PWQMP), which establishes the Project's compliance with storm water discharge/water quality requirements. The PWQMP includes site design measures that capture runoff and pollutant transport by minimizing impervious surfaces and maximizes low impact development (LID) best management practices (BMPs), such as retention and infiltration, biotreatment, and evapotranspiration. The PWQMP proposes the use of a detention basin. Any overflow drainage will be conveyed to the public street by way of parkway drains and culverts.

PUBLIC NOTIFICATION: The subject application was advertised as a public hearing in at least one newspaper of general circulation in the City of Ontario (the Inland Valley Daily Bulletin newspaper). In addition, notices were mailed to all owners of real property located within a minimum of 300 feet of the exterior boundaries of the property that is the subject of the hearing, as shown on the records of the County Assessor.

CORRESPONDENCE: As of the preparation of this Agenda Report, Planning Department staff has not received any written or verbal communications from the owners or

occupants of properties surrounding the Project site or from the public in general, regarding the subject application.

AGENCY/DEPARTMENT REVIEWS: Each City agency/department has been provided the opportunity to review and comment on the subject application and recommend conditions of approval to be imposed upon the application. At the time of the Resolution preparation, recommended conditions of approval were provided and are appended to the attached Resolutions as Attachment A.

AIRPORT LAND USE COMPATIBILITY PLAN (ALUCP) COMPLIANCE: The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

On April 19, 2011, the City Council of the City of Ontario approved and adopted the ONT ALUCP, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Planned Unit Development and the decision-making body for the Development Plan, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the Planning Commission finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP.

COMPLIANCE WITH THE ONTARIO PLAN: The proposed Project is consistent with the principles, goals and policies contained within the Vision, Governance, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan (TOP). More specifically, the goals and policies of TOP that are furthered by the proposed Project are as follows:

(1) City Council Goals

- Invest in the Growth and Evolution of the City's Economy
- Operate in a Businesslike Manner
- Focus Resources in Ontario's Commercial and Residential Neighborhoods
- Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

(2) Vision

Distinctive Development that integrates our varied and diverse focal points, districts, centers, corridors, and neighborhoods to provide a feeling of coherence without sacrificing uniqueness.

Commercial and Residential Development

- Development quality that is broadly recognized as distinctive and not exclusively tied to the general suburban character typical of much of Southern California.

- A demonstrated ability to attract housing in pursuit of our acknowledged responsibility to balance housing with the job growth that drives our quality of life.

- Distinctive and well-maintained neighborhoods that offer exceptional variety in lifestyles, with convenient access to schools, recreation and cultural facilities, places of worship, places of employment and shopping.

(3) Governance

Decision Making

Goal G1: Sustained decision-making that consistently moves Ontario towards its Vision by using The Ontario Plan as a framework for assessing choices.

- G1-1 Consistency with Policies. We require that staff recommendations to the City Council be consistent with adopted City Council Priorities (Goals and Objectives) and The Policy Pan.

- G1-2 Long-term Benefit. We require decisions to demonstrate and document how they add value to the community and support the Ontario Vision.

(4) Policy Plan (General Plan)

Land Use Element

Goal LU-1 Balance: A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.

- LU-1.1 Strategic Growth. We concentrate growth in strategic locations that help create place and identity, maximize available and planned

infrastructure, foster the development of transit, and support the expansion of the active and multimodal transportation networks throughout the City.

- LU-1.6 Complete Community. We incorporate a variety of land uses and building types in our land use planning efforts that result in a complete community where residents at all stages of life, employers, workers, and visitors have a wide spectrum of choices of where they can live, work, shop and recreate within Ontario.

Goal LU-2 Compatibility: Compatibility between a wide range of uses and a resultant urban patterns and forms.

- LU-2.1 Land Use Decisions. We minimize adverse impacts on adjacent properties when considering land use and zoning requests.

- LU-2.5 Regulation of Uses. We regulate the location, concentration, and operation of uses that have impacts on surrounding land uses.

- LU-2.6 Infrastructure Compatibility. We require infrastructure to be aesthetically pleasing and in context with the community character.

- LU-2.11 Context-Aware Transitions and Connections. We require new development projects and land-planning efforts to provide context-aware and appropriate transitions and connections between existing and planned neighborhoods, blocks, sites, and buildings.

Goal LU-3 Flexibility: Staff, regulations and processes that support and allow flexible response to conditions and circumstances in order to achieve the Vision.

- LU-3.1 Development Standards. We maintain clear development standards which allow flexibility to achieve our Vision and provide objective standards that ensure predictability and deliver the intended physical outcomes.

Goal LU-5 Airport Planning: Integrated airport systems and facilities that minimize negative impacts to the community and maximize economic benefits.

- LU-5.7 ALUCP Consistency with Land Use Regulations. We comply with state law that requires general plans, specific plans, and all new development to be consistent with the policies and criteria set forth within an Airport Land Use Compatibility Plan for any public-use airport.

Housing Element

Goal H-1 Neighborhoods & Housing: Stable neighborhoods of quality housing, ample community services, and public facilities, well-maintained infrastructure, and public safety that foster a positive sense of identity.

- H-1.2 Neighborhood Conditions. We direct efforts to improve the long-term sustainability of neighborhoods through comprehensive planning, provision of neighborhood amenities, rehabilitation and maintenance of housing, and community building efforts.

Goal H-2 Housing Supply & Diversity: Diversity of types of quality housing that are affordable to a range of household income levels, accommodate changing demographics, and support and reinforce the economic sustainability of Ontario.

- H-2.1 Corridor Housing. We revitalize transportation corridors by encouraging the production of higher density residential and mixed-uses that are architecturally, functionally, and aesthetically suited to corridors.

- H-2.5 Housing Design. We require architectural excellence through adherence to City design guidelines, thoughtful site planning, environmentally sustainable practices, and other best practices.

- H-2.6 Infill Development. We support the revitalization of neighborhoods through the construction of higher-density residential developments on underutilized residential and commercial sites.

Community Economics Element:

Goal CE-1 Complete Community: A complete community that provides for all incomes and stages of life.

- CE-1.1 Jobs-Housing Balance. We pursue improvement to the Inland Empire's balance between jobs and housing by promoting job growth that reduces the regional economy's reliance on out-commuting.

- CE-1.6 Diversity of Housing. We collaborate with residents, housing providers, and the development community to provide housing opportunities for every stage of life; we plan for a variety of housing types and price points to encourage the development of housing supportive of our efforts to attract business in growing sectors of the community while being respectful of existing viable uses.

Goal CE-2 Placemaking: A City of distinctive neighborhoods, districts, corridors, and centers where people choose to be.

- CE-2.1 Development Projects. We require new development and redevelopment to create unique, high-quality places that add value to the community.

- CE-2.2 Development Review. We require those proposing new development and redevelopment to demonstrate how their projects will create appropriately unique, functional, and sustainable places that will compete well with their competition within the region.

- CE-2.4 Protection of Investment. We require that new development and redevelopment protect existing investment by providing architecture and urban design of equal or greater quality.

- CE-2.5 Private Maintenance. We require adequate maintenance, upkeep, and investment in private property because proper maintenance on private property protects property values.

Mobility Element

Goal M-1 Roadway System: A system of roadways that meets the mobility needs of a dynamic and prosperous Ontario.

- M-1.4 Complete Streets. We work to provide a complete, balanced, context-aware, multimodal transportation network that meets the needs of all users of streets, roads, and highways, including motorists, pedestrians, bicyclists, children, persons with disabilities, seniors, movers of commercial goods, and users of public transportation. We prioritize implementation of complete streets improvements in environmental justice areas to facilitate opportunities for residents to use active transportation systems.

Goal M-2 Active Transportation: A system of trails and corridors that facilitate and encourage active modes of transportation.

- M-2.3 Pedestrian Walkways. We require streets to include sidewalks and visible crosswalks at major intersections where necessary to promote safe and comfortable mobility between residential areas, businesses, schools, parks, recreation areas, and other key destination points.

Community Design Element

Goal CD-1 Image & Identity: A dynamic, progressive city containing distinct and complete places that foster a positive sense of identity and belonging among residents, visitors, and businesses.

- CD-1.2 Place Types. We establish Place Types in urban, mixed use, and transit-oriented areas to foster the City's identity as a premier community and require new development within each Place Type to incorporate prescribed urban patterns, forms, and placemaking priorities.

- CD-1.4 Transportation Corridors. We will enhance our major transportation corridors within the City through landscape, hardscape, signage and lighting. The extent of enhancement should be appropriate to the use, type, and context of each corridor.

Goal CD-2 Design Quality: A high level of design quality resulting in neighborhoods, public spaces, parks, and streetscapes that are attractive, safe, functional, human-scale, and distinct.

- CD-2.1 Quality Building Design and Architecture. We encourage all development projects to convey visual interest and character through:

  1. Building volume, massing, and height to provide context-appropriate scale and proportion;

  2. Exterior building materials that are articulated, high quality, durable, and appropriate for the architectural style.

- CD-2.4 Urban, Mixed Use, and Transit-oriented Areas. We establish Place Types to require mixed use, urban, and transit-oriented areas to be designed and developed as pedestrian oriented areas that are integrated with adjacent neighborhoods and promote a vibrant, comfortable, and functional environment, as defined for each Place Type.

- CD-2.8 Safe Design. We incorporate defensible space design into new and existing developments to ensure the maximum safe travel and visibility on pathways, corridors, and open space and at building entrances and parking areas by avoiding physically and visually isolated spaces, maintaining visibility and accessibility, and using lighting.

- CD-2.9 Landscape Design. We encourage durable, sustainable, and drought-tolerant landscaping materials and designs that enhance the aesthetics of structures, create and define public and private spaces, and provide shade and environmental benefits.

- CD-2.10 Parking Areas. We require all development, including single-family residential, to minimize the visual impact of surface, structured, and garage parking areas visible from the public realm in an aesthetically pleasing, safe and environmentally sensitive manner. Examples include:

1. Surface parking: Shade trees, pervious surfaces, urban run-off capture and infiltration, and pedestrian paths to guide users through the parking field.

- CD-2.11 Entry Statements. We encourage the inclusion of amenities, signage, and landscaping at the entry to neighborhoods, commercial centers, mixed use areas, industrial developments, and public places that reinforce them as uniquely identifiable places.

- CD-2.13 Entitlement Process. We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits.

Goal CD-3 Urban, Mixed Use, and Transit-Oriented Place Types: Vibrant urban environments that are organized around intense buildings, pedestrian and transit areas, public plazas, and linkages between and within developments that are conveniently located, visually appealing and safe during all hours.

- CD-3.1 Unique Identity. We promote development that heightens the unique character and identity of each Place Type by requiring compatible land uses and land planning, site design, and building design that promotes an active public realm.

- CD-3.2 Comfortable, Human-Scale Public Realm. We require that public spaces, including streets, parks, and plazas on both public and private property be designed to maximize safety, comfort and aesthetics and connect to the citywide pedestrian, vehicular, and bicycle networks.

- CD-3.4 Context-Aware and Appropriate Design. We require appropriate building and site design that complements existing development, respects the intent and identity of the Place Type, and provides appropriate transitions and connections between adjacent uses to ensure compatibility of scale, maintain an appropriate level of privacy for each use, and minimize potential conflicts.

- CD-3.5 Active Frontages. We create lively pedestrian streetscapes by requiring primary building, business, and residential entrances, outdoor dining, and storefronts be located on ground floors adjacent to sidewalks or public spaces and designed to maximize safety, comfort, aesthetics, and the intended functionality (as defined by the Place Type).

Goal CD-5 Protection of Investment: A sustained level of maintenance and improvement of properties, buildings, and infrastructure that protects property values and encourages additional public and private investments.

- CD-5.1 Maintenance of Buildings and Property. We require all public and privately-owned buildings and property (including trails and easements) to be properly and consistently maintained.

- CD-5.2 Maintenance of Infrastructure. We require the continual maintenance of infrastructure.

HOUSING ELEMENT COMPLIANCE: The Project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Project site is one of the properties listed in the Housing Element Sites contained in Tables B-1 and B-2 (Housing Element Sites Inventory) of the Housing Element Technical Report. The Housing Element Sites Inventory designates the site for 108 units in the very low/low-income category; however, the proposed Project includes 144 units in the very low/low-income category, exceeding the originally anticipated number. The Housing Element Sites Inventory will be amended to reflect this change.

ENVIRONMENTAL REVIEW: The Project is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15183 (Projects Consistent with a Community Plan or Zoning) of the CEQA Guidelines. The Project qualifies for an exemption because the following findings can be made:

1. **The Project is consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified**. The Project site is within the Holt Boulevard Mixed Use Area as designated by TOP 2050 and would contain 144 residential units across two buildings. This is consistent with the uses analyzed in the TOP 2050 Supplemental EIR and allowed by the Holt Boulevard Mixed Use Area designation.

2. **There are no Project specific effects which are peculiar to the Project or its site, and which the TOP 2050 Supplemental EIR failed to analyze as significant effects.** The subject property is similar to other properties in the area, including its land use designation and zoning. The property does not support any peculiar environmental features, and the Project would not result in any peculiar effects. The TOP 2050 anticipated the proposed development on the project site and Project impacts were adequately analyzed by the TOP 2050 Supplemental EIR. The TOP 2050 Supplemental EIR identified three environmental impact areas for which mitigation measures were required to reduce potential environmental impacts to a less than significant level: (1) cultural resources; (2) geology and soils; and (3) tribal cultural resources. The proposed project will be required to comply with these mitigations where applicable. The TOP 2050 Supplemental EIR also identified that the TOP 2050 would result in significant and unavoidable environmental impacts that could not be avoided or reduced to less than significant levels through mitigation measures. These include: (1) air quality; (2) cultural resources; (3) noise; (4) transportation. The proposed project will not create additional

significant or unavoidable impacts that were not already addressed through the TOP 2050 Supplemental EIR.

3. **There are no potentially significant off-site and/or cumulative impacts which the TOP 2050 Supplemental EIR failed to evaluate.** The Project is consistent with the land use characteristics of the development considered by the TOP 2050 Supplemental EIR and would represent a small part of the growth that was forecasted for build-out of the TOP 2050. The TOP 2050 Supplemental EIR considered the incremental impacts of the Project, and no new Project-specific impacts are anticipated. Therefore, the Project would not result in any potentially significant cumulative impacts which were not previously evaluated in the TOP 2050 Supplemental EIR.

4. **There is no substantial new information which results in more severe impacts than anticipated by the TOP 2050 Supplemental EIR**. No new information has been identified which would result in a determination that the Project would have a more severe impact than anticipated by the TOP 2050 Supplemental EIR.

5. **The Project will undertake feasible mitigation measures specified in the TOP 2050 Supplemental EIR**. The Project will undertake feasible mitigation measures specified in the TOP 2050 Supplemental EIR and subsequently adopted by the City. These TOP 2050 Supplemental EIR mitigation measures will be undertaken through Project design, compliance with regulations and ordinances, the Project's conditions of approval, and City permit processing.

TECHNICAL APPENDIX:

Table 1: Surrounding Zoning and Land Uses

	Existing Land Use	***Policy Plan Designation***	***Zoning Designation***	***Specific Plan Land Use***
Site	Vacant	Mixed-Use – Holt (MU-Holt)	MU-6 (East Holt Mixed Use)	N/A
North	Residential	Mixed-Use – Holt (MU-Holt)	MU-6 (East Holt Mixed Use)	N/A
South	Vacant, Residential	Business Park (BP)	IP (Industrial Park)	N/A
East	Commercial Service, Residential	Mixed-Use – Holt (MU-Holt)	MU-6 (East Holt Mixed Use)	N/A
West	Retail, Residential	Mixed-Use – Holt (MU-Holt)	MU-6 (East Holt Mixed Use)	N/A

Table 2: General Site & Building Statistics

Item	***Required Min./Max. (per TOP 2050 and PUD24-002)***	***Provided (Ranges)***	***Meets Y/N***
Project area (in acres):	N/A	5.73	N/A
Maximum project density (dwelling units/ac):	40.0 du/ac	21.5 du/ac	Y
Front yard setback (in FT):	0 FT	20 FT to 30 FT	Y
Interior Property LIne setback (in FT):	5 FT	57 FT to 231 FT	Y
Parking setback (in FT):	5 FT	5 FT	Y
Building to Building setbacks (in FT):	30 FT	86 FT	Y
Maximum dwelling units/building:	14.0 to 40.0 DU/AC 1.0 F.A.R. max – retail 2.0 F.A.R. - office	25.1 DU/AC No retail/office	Y
Maximum height (in FT):	50 FT	50 FT	Y
Open space – private:	60 SF	60 SF	Y
Open space – common:	15 % of total lot area	18 % of total lot area	Y

Table 3: Parking Summary

Type of Use	*No. Units*	*Parking Ratio*	*Spaces Required*	*Spaces Provided*
1-Bedroom	13	1.0 space per unit	13	224
2-Bedroom	68	1.3 spaces per unit	88.4	
3-Bedroom	63	1.7 spaces per unit	107.1	
Visitor Parking	--	0.075 spaces per unit	10.8	
Staff Parking	--	Based on employees onsite	3	
TOTAL	**144**		**222**	**224**

Table 4: Dwelling Unit Statistics:

Unit Type	*Unit Size (in SF)*	*No. Bedrooms*	*No. Bathrooms*	*Private Open Space (in SF)*	*No. Unit Types*
1 Bedroom	512 SF; 513 SF	1	1	60 SF - 116 SF	13
2 Bedroom	750 SF	2	1	60 SF - 97 SF	68
3 Bedroom	1,009 SF; 1,021 SF	3	2	60 SF - 97 SF	63

Exhibit A: PROJECT LOCATION MAP



Exhibit B: Holt + Allyn Planned Unit Development

HOLT + ALLYN PLANNED UNIT DEVELOPMENT

FILE NO: PUD24-002
DRAFT: DECEMBER 2024
REVISED: JANUARY 2025



PREPARED BY:

National Community Renaissance ®
9692 Haven Avenue, Suite 100
Rancho Cucamonga, CA 91730

ONYX ARCHITECTS
316 N. Sierra Madre Blvd.
Pasadena, CA 91107

Exhibit C: SITE PLAN

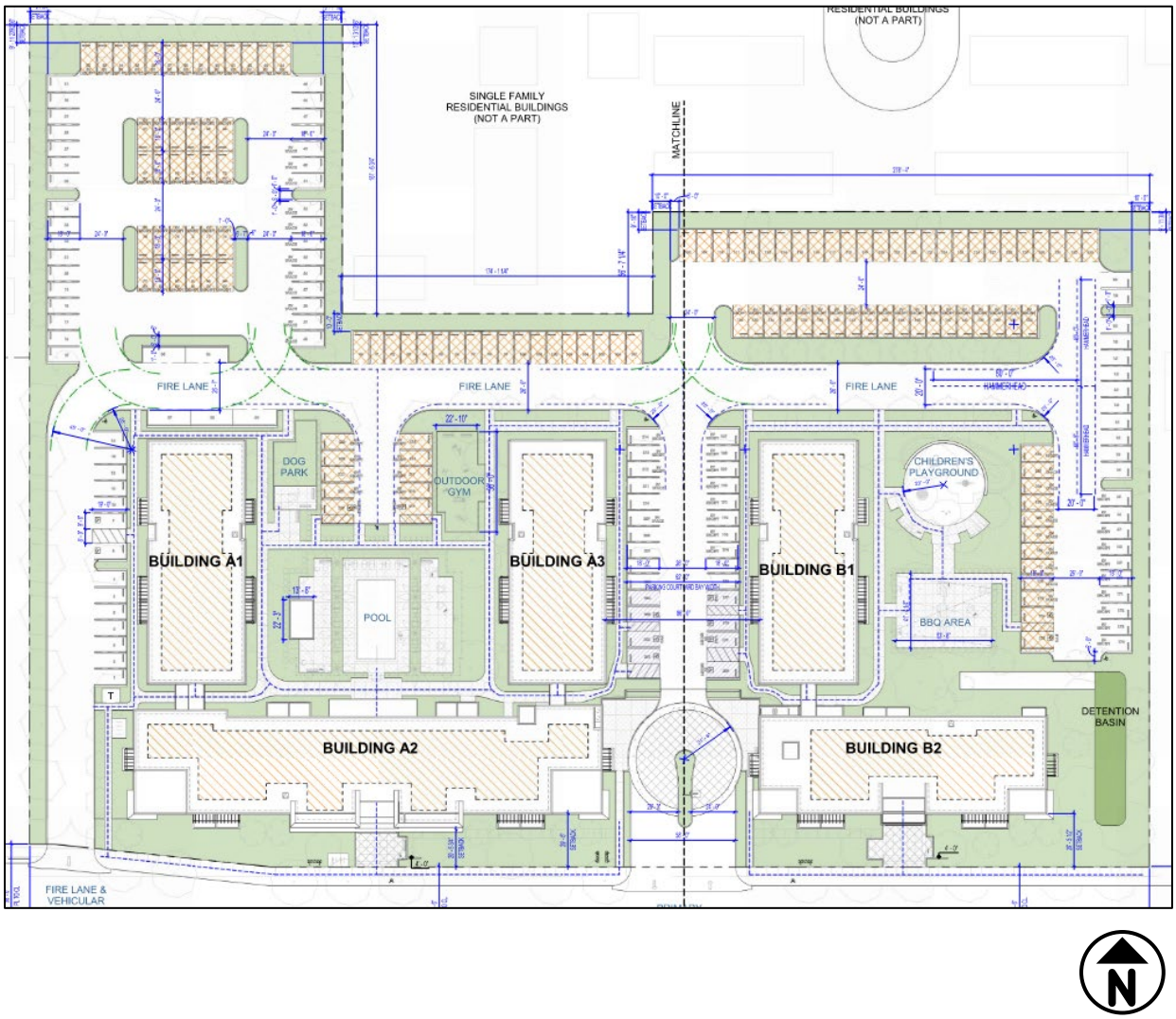
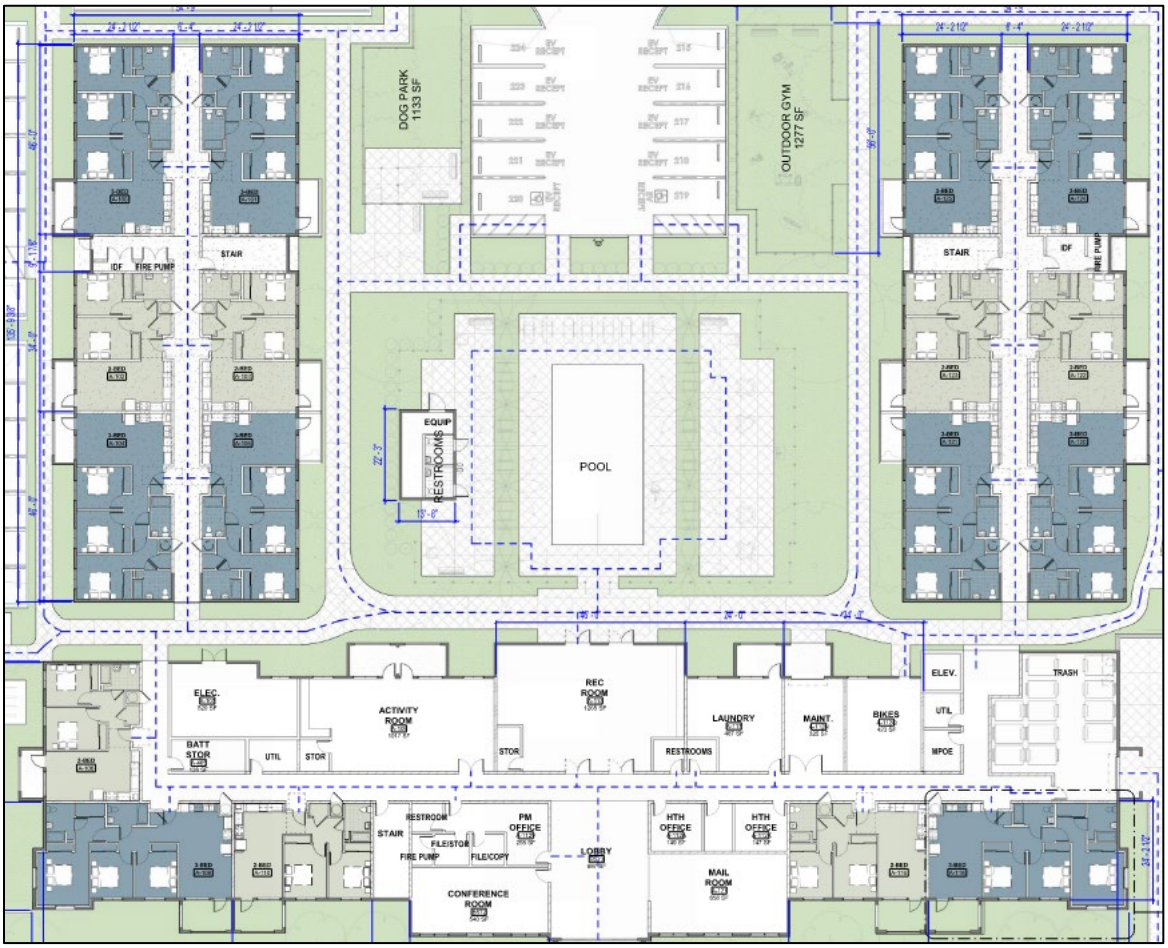


Exhibit D: FLOOR PLAN



Building A – 1st Floor

Exhibit D: FLOOR PLAN (cont.)



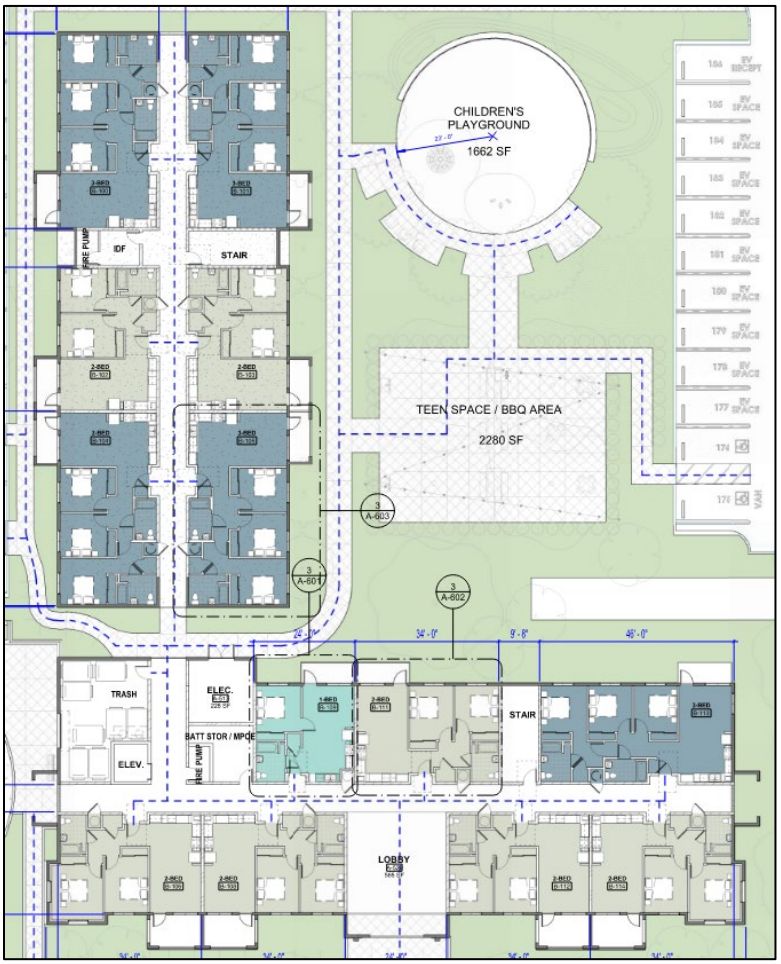
Building A – 2nd Floor

Exhibit D: FLOOR PLAN (cont.)



Building A – 3rd & 4th Floors

Exhibit D: FLOOR PLAN (cont.)



Building B – 1st Floor

Exhibit D: FLOOR PLAN (cont.)



Building B – 2nd Floor

Exhibit D: FLOOR PLAN (cont.)



Building B – 3rd & 4th Floor

Exhibit E: EXTERIOR ELEVATIONS



Building A Elevations

Exhibit E: ELEVATIONS (cont.)



Building B Elevations

Exhibit F: LANDSCAPE PLAN



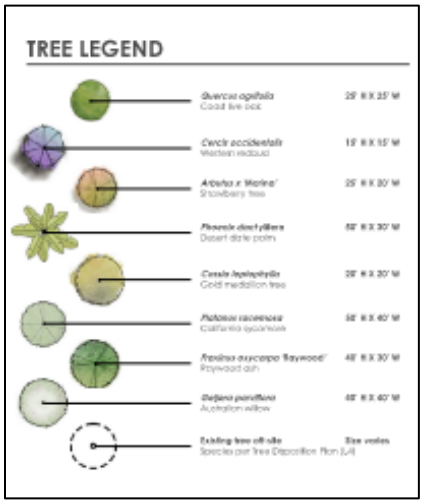
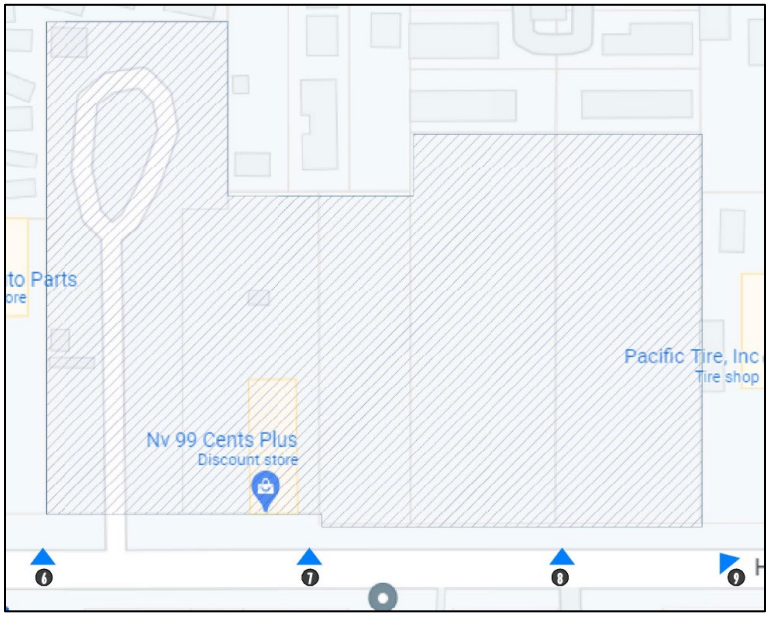


Exhibit G: SITE PHOTOS





❻ E HOLT BLVD



❼ E HOLT BLVD



❽ E HOLT BLVD



❾ E HOLT BLVD

Attachment A:
Resolution for File No. PUD24-002
Holt + Allyn Planned Unit Development

(Document to follow this page)

RESOLUTION NO. PC25-004

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, RECOMMENDING THE CITY COUNCIL APPROVE FILE NO. PUD24-002, A PLANNED UNIT DEVELOPMENT TO CREATE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES FOR A 144-UNIT MULTIPLE-FAMILY APARTMENT PROJECT ON 5.73 ACRES OF LAND LOCATED NEAR THE NORTHEAST CORNER OF EAST HOLT BOULEVARD AND ALLYN AVENUE, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1048-481-06, 1048-481-07, 1048-481-08, 1048-481-28, 1048-481-29

WHEREAS, NATIONAL CORE ("Applicant") has filed an Application for the approval of a Planned Unit Development, File No. PUD24-002, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 5.73 acres of land generally located near the northeast corner of East Holt Boulevard and Allyn Avenue, approximately 140 feet east of the intersection, within the MU-6 (East Hold Mixed Use) zoning district, and is presently vacant; and

WHEREAS, the property to the north of the Project site is within the MU-6 (East Holt Mixed Use) zoning district, and is developed with residential uses. The property to the east is within the MU-6 (East Holt Mixed Use) zoning district, and is developed with commercial and residential uses. The property to the south is within the IP (Industrial Park) zoning district, and is developed with residential uses and vacant land. The property to the west is within the MU-6 (East Holt Mixed Use) zoning district, and is developed with retail and residential uses; and

WHEREAS, on January 27, 2010, the Ontario City Council certified The Ontario Plan Environmental Impact Report in conjunction with File No. PGPA06-001 (City Council Resolution No. 2010-006), and on August 16, 2022, the Ontario City Council certified The Ontario Plan 2050 Update Supplemental Environmental Impact Report in conjunction with File No. PGPA20-002 (City Council Resolution No. 2022-129). The Ontario Plan and associated Environmental Impact Report analyzed the Project site and established guidelines for development, including but not limited to, general land use (Mixed Use – Holt (MU-Holt), which stipulates 14.0 to 40.0 du/ac, 2.0 FAR for office uses, and 1.0 FAR for retail uses); and

WHEREAS, on December 17, 2024, the Ontario Housing Authority approved a Disposition and Development Agreement with the Applicant to facilitate the development of the subject affordable housing development; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act, commencing with Public Resources Code Section 21000 (hereinafter referred to as "CEQA"); and

WHEREAS, the Project is exempt from CEQA through Section 15183, and the application of that exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 153183.3; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and make recommendation to the City Council on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan 2050, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (hereinafter referred to as "ALUCP"), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on February 25, 2025, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND RESOLVED by the Planning Commission of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the recommending authority for the Project, the Planning Commission has reviewed and

considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the Planning Commission, the Planning Commission finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The proposed Development Plan is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15183 (Project Consistent with a Community Plan or Zoning) of the CEQA Guidelines and meets all of the following conditions:

(a) ***The Project is consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified***. The Project site is within the Holt Boulevard Mixed Use Area as designated by TOP 2050 and would contain 144 residential units across two buildings. This is consistent with the uses analyzed in the TOP 2050 Supplemental EIR and allowed by the Holt Boulevard Mixed Use Area designation.

(b) ***There are no Project specific effects which are peculiar to the Project or its site, and which the TOP 2050 Supplemental EIR failed to analyze as significant effects*.** The subject property is similar to other properties in the area, including its land use designation and zoning. The property does not support any peculiar environmental features, and the Project would not result in any peculiar effects. The TOP 2050 anticipated the proposed development on the project site and Project impacts were adequately analyzed by the TOP 2050 Supplemental EIR. The TOP 2050 Supplemental EIR identified three environmental impact areas for which mitigation measures were required to reduce potential environmental impacts to a less than significant level: (1) cultural resources; (2) geology and soils; and (3) tribal cultural resources. The proposed project will be required to comply with these mitigations where applicable. The TOP 2050 Supplemental EIR also identified that the TOP 2050 would result in significant and unavoidable environmental impacts that could not be avoided or reduced to less than significant levels through mitigation measures. These include: (1) air quality; (2) cultural resources; (3) noise; (4) transportation. The proposed project will not create additional significant or unavoidable impacts that were not already addressed through the TOP 2050 Supplemental EIR.

(c) ***There are no potentially significant off-site and/or cumulative impacts which the TOP 2050 Supplemental EIR failed to evaluate*.** The Project is consistent with the land use characteristics of the development considered by the TOP 2050 Supplemental EIR and would represent a small part of the growth that was forecasted for build-out of the TOP 2050. The TOP 2050 Supplemental EIR considered

the incremental impacts of the Project, and no new Project-specific impacts are anticipated. Therefore, the Project would not result in any potentially significant cumulative impacts which were not previously evaluated in the TOP 2050 Supplemental EIR.

(d) ***There is no substantial new information which results in more severe impacts than anticipated by the TOP 2050 Supplemental EIR*.** No new information has been identified which would result in a determination that the Project would have a more severe impact than anticipated by the TOP 2050 Supplemental EIR.

(e) ***The Project will undertake feasible mitigation measures specified in the TOP 2050 Supplemental EIR*.** The Project will undertake feasible mitigation measures specified in the TOP 2050 Supplemental EIR and subsequently adopted by the City. These TOP 2050 Supplemental EIR mitigation measures will be undertaken through Project design, compliance with regulations and ordinances, the Project's conditions of approval, and City permit processing; and

(3) The application of the exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

(4) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the recommending body for the Project, the Planning Commission finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Project site is one of the properties listed in the Housing Element Sites contained in Tables B-1 and B-2 (Housing Element Sites Inventory) of the Housing Element Technical Report. The Housing Element Sites Inventory designates the site for 108 units in the very low/low-income category; however, the proposed Project includes 144 units in the very low/low-income category, exceeding the originally anticipated number. The Housing Element Sites Inventory will be amended to reflect this change.

SECTION 3: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

(1) On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace protection, and overflight impacts of current and future airport activity. As the recommending body for the Project, the Planning Commission has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the Planning Commission therefore finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP; and

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the Planning Commission during the above-referenced hearing, and upon the specific findings set forth in the Sections above, the Planning Commission hereby concludes as follows:

(1) ***The proposed PUD, or amendment thereto, is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan 2050.*** The proposed Project is located within the Mixed Use – Holt Boulevard land use district of the Policy Plan Land Use Map, and the MU-6 (East Hold Mixed Use) zoning district. The development standards and conditions under which the proposed project will be constructed and maintained, is consistent with goals, policies, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.

(2) ***The proposed PUD, or amendment thereto, would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*** The Planning Commission has required certain safeguards, and has required certain changes, which have been established to ensure that: [i] the purposes of the Planned Unit Development are maintained; [ii] the project will not endanger the public health, safety or general welfare; [iii] the project will not result in any significant environmental impacts; [iv] the project will be in harmony with the area in which it is located; and [v] the project will be in full conformity with the Vision, City Council Priorities and Policy components of The Ontario Plan 2050.

(3) ***In the case of an application affecting specific property(ies), the proposed PUD, or amendment thereto, will not adversely affect the harmonious relationship with adjacent properties and land uses.*** A thorough review and analysis

of the proposed project and its potential to adversely impact properties surrounding the subject site was completed by City staff. As a result of this review, certain design considerations were incorporated into the project to mitigate the identified impacts to an acceptable level, including the use of the upgraded materials, the inclusion of certain architectural design elements on building exteriors, intensified landscape elements, and decorative hardscape elements.

(4) ***In the case of an application affecting specific property(ies), the subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.*** In preparing the proposed PUD, a thorough review and analysis of the proposed project and the project site's physical suitability for the proposed project was completed, included analysis of the project size, shape, intensity of development, building height, building setbacks, site access, site landscaping and drainage, fences and walls, vehicle circulation, pedestrian connections, availability of mass transit, necessary street dedication and easements, public right-of-way improvements, availability of utilities and other infrastructure needs, off-street parking and circulation, building orientation and streetscapes, architectural character, building materials and color, and site signage.

(5) ***The proposed PUD is superior to that which could be obtained through the application of the Development Code or a specific plan.*** The proposed PUD addresses aspects of the project that are specifically related to the Development Plan proposed in conjunction with PUD application, including necessary building setbacks, site access points, off-street parking and site circulation, and architectural character.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, the Planning Commission hereby RECOMMENDS THE CITY COUNCIL APPROVES the herein described Planned Unit Development, attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

- - - - - - - - - - - - - -

The Secretary Pro Tempore for the Planning Commission of the City of Ontario shall certify as to the adoption of this Resolution.

I hereby certify that the foregoing Resolution was duly and regularly introduced, passed and adopted by the Planning Commission of the City of Ontario at a regular meeting thereof held on the 25th day of February 2025, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairman

ATTEST:

Henry K. Noh
Planning Director and
Secretary to the Planning Commission

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, Gwen Berendsen, Secretary Pro Tempore of the Planning Commission of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. PC25-004, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on February 25, 2025, by the following roll call vote, to wit:

AYES: DeDiemar, Gage, Lampkin, Ricci

NOES: None

ABSENT: Anderson

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

File No. PUD24-002
Holt + Allyn Planned Unit Development

(Departmental conditions of approval to follow this page)

HOLT + ALLYN PLANNED UNIT DEVELOPMENT

FILE NO: PUD24-002
DRAFT: DECEMBER 2024
REVISED: JANUARY 2025









PREPARED BY:

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1 INTRODUCTION

1.1 OVERVIEW

The Holt + Allyn Planned Unit Development (PUD) is intended to function as a set of planning and design principles, development regulations, and performance standards to guide and govern the development of five parcels bounded by Holt Boulevard to the south and residential parcels along Nocta Street to the north and Allyn Avenue to the west [see Exhibit 1-1, Project Location Map]. The project site is envisioned to accommodate a high-quality residential use development on the parcels that face Holt Boulevard. The Holt + Allyn Planned Unit Development (PUD) will replace the existing zone district designations and zoning standards that apply to the affected properties. Unless otherwise defined herein, definitions and interpretations contained in the Development Code shall apply. City Staff and private developers will rely on this PUD to determine whether precise plans for development ("Development Plans") will adequately meet the City's land use and design objectives.

Located near the northeast corner of East Holt Boulevard and North Allyn Avenue, the 5.73-acre site is situated along the Holt Boulevard Corridor and within the East Holt Boulevard Mixed Use Area. Through these designations, the Ontario Plan seeks to encourage the redevelopment of Holt Boulevard into medium-density residential uses integrated with commercial, workplace, and urban facades.

EXHIBIT 1-1: PROJECT LOCATION MAP



PUD Area

2 PROJECT OBJECTIVES

2.1 GENERAL PLAN CONSISTENCY

Within the Ontario Policy Plan (General Plan) the Holt + Allyn PUD site is designated Mixed Use – Holt Blvd. The Ontario Plan describes the Mixed-Use – Holt Blvd designations as "a low-rise (3-5 stories) intensification of the Holt Corridor. The intent is to create identity and place, connect the corridor to Downtown, and connect the Downtown to the Ontario Airport Metro Center." Within the community design element, the Policy Plan envisions all corridors to carry unique identities with infill development; create comfortable, safe, human-scale public realms, including pedestrian paths, such as sidewalks that provide access to new housing, and meet mobility needs of residents, transit riders, workers and visitors; complete and connect mobility networks for convenient bicycle travel; accentuate the linear nature of the corridor by providing seamless transitions from less intense residential neighborhoods to higher density infill sites; and enable and promote human activity through activated street frontages.

The Holt + Allyn Apartments are consistent with the principles, goals, and policies contained within the components that make up the Ontario Policy Plan, including (1) Vision, (2) Policy Plan, (3) Implementation Programs, and (4) City Council Priorities. The policies implemented by this PUD are as follows:

1. VISION

On February 13, 2007, the Ontario City Council adopted The Ontario Vision. The central theme that motivates the Vision is – *"A sustained, community-wide prosperity which continuously adds value and yields benefits."* Everything the City does and every action the City takes is done with

this simple yet comprehensive theme in mind, from the design quality of the built environment, to the intent of designing socio-economic programs, to the way in which its leaders govern as a community. In discussing a Vision that would endure for the lifetime of The Ontario Plan (30 years or more), the City Council recognized that there are four components that serve as the basic building blocks that set the foundation for a unified and prosperous community. These foundational blocks must be expressed and widely accepted throughout the Plan's lifetime. They are:

1. A **Dynamic Balance** that enables our community to confront the continued vigorous growth of the region and technological change with confidence and a sense of opportunity.

2. A **Prosperous Economy** that sustains the perception and reality of prosperity across our entire community that positively impacts all the people of Ontario and is broadly – though not uniformly – shared.
3. **Distinctive Development** that integrates our varied and diverse focal points, districts, villages, and neighborhoods to provide a feeling of coherence without sacrificing uniqueness.

4. **Recognized Leadership** in local governance that stimulates excellence and serves to unify the people of Ontario in support of best practices in conducting public endeavors.

The Holt + Allyn PUD will implement the Ontario Vision in ways that will further the City's desire to be a sustainable and prosperous community.

RESIDENTIAL DEVELOPMENT

- The PUD allows for the development of multifamily housing on a site near schools, recreation, and cultural facilities, places of worship, places of employment and shopping, and a future high-quality public transportation line.

- The development standards encourage multifamily residential development, further diversifying the City's housing stock and balancing the City's jobs-to-housing ratio that is essential to maintain quality of life within the community.

- The PUD encourages a comprehensive and diverse housing stock that offers broad choices for the diverse workforce and local families, by introducing new affordable multifamily housing units.

DEVELOPMENT QUALITY

- The PUD requires a well-designed project with high-quality materials that complement the existing neighborhood and will enhance the distinctive architectural styles within the City.

- The development standards require future projects to consider the existing built environment and open spaces, ensuring careful attention to detail at every scale, including public and private spaces and structures.

MOBILITY

- The PUD is located along the future West County Connector bus rapid transit (BRT) line currently under construction and encourages higher-density development near high-frequency transportation facilitating an exceptional degree of movement and connectivity.

- Within the development standards, proposed projects will provide features and amenities to encourage the use of alternative forms of transportation including bicycles, buses, and walking.

PUBLIC SAFETY

- The PUD will ensure that the project is integrated into the existing neighborhood and that connections are made to residential neighborhoods, schools, parks, community centers, and cultural facilities in the surrounding area.

LEISURE AND CULTURAL ACTIVITIES

- The PUD will require recreational amenities, community facilities, and programs that offer ample recreation and cultural involvement by a diverse resident population.

RESOURCE CONSERVATION AND ENHANCEMENT

- The location of the PUD on the future West County Connector line provides a unique opportunity to reduce vehicle trips and air pollutants, resulting in improved air quality in Ontario and the region.

2. POLICY PLAN

Goal LU1: Balance. A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.

- The PUD allows for the development of a multifamily residential project on infill parcels preserving open space and ensuring access to necessary services and infrastructure. The proposed project will be affordable to households earning less than 60 percent of the area median income (AMI) which will provide opportunities for lower-income families to live close to work, commute via public transportation, and maintain a decent quality of life. The

PUD will also encourage sustainable development practices and LEED certification within all applicable projects.

Goal LU2: Compatibility. Compatibility between a wide range of uses.

- The PUD evaluates the existing uses surrounding the property and buffers new development through setbacks and step backs.

Goal LU3: Flexibility. Staff, regulations, and processes that support and allow flexible responses to conditions and circumstances to achieve the Vision.

- The establishment of the PUD allows for clear development standards that allow flexibility to achieve the Ontario Vision, improve livability, reduce vehicular trips, create community gathering places and activity nodes, and help create identity.

Goal H1: Neighborhoods + Housing Development Standards. Stable neighborhoods of quality housing, ample community services and public facilities, well-maintained infrastructure, and public safety that foster a positive sense of identity

- The PUD will improve the long-term sustainability of neighborhoods through comprehensive planning, provision of neighborhood amenities, rehabilitation and maintenance of housing, and community-building efforts. The PUD will also ensure that adequate public services, infrastructure, open space, parking, traffic management, pedestrian, and bicycle routes, as well as public safety related to the project are consistent with the City's master and neighborhood plans.

Goal H2: Housing Supply & Diversity. Diversity of types of quality housing that are affordable to a range of household income levels, accommodate changing demographics and support and reinforce the economic sustainability of Ontario.

- The PUD will revitalize the Holt Boulevard corridor, in conjunction with the construction of the West County Connector by encouraging the production of higher density residential uses that are architecturally, functionally, and aesthetically suited to corridors. The PUD also encourages infill development on a vacant parcel that is identified within the City's 2021-2028 Housing Element as an opportunity site to meet the City's Regional Housing Needs Allocation (RHNA). A proposed project on the site will be affordable to households earning less than 60 percent of the area median income (AMI) which will provide opportunities for lower income families to live close to work, commute via public transportation, and maintain a decent quality of life.

Goal H4: Housing Assistance. Increased opportunities for low and moderate-income households and families to afford and maintain quality ownership and rental housing opportunities, including move-up opportunities.

- The PUD is a collaborative partnership with a nonprofit affordable housing developer to produce affordable housing and supports the City's goal to provide rental assistance for individuals and families earning extremely low, very low, and low income with funding from the state and federal government.

Goal H5: Special Needs Housing. A full range of housing types and community services that meet the special housing needs for all individuals and families in Ontario, regardless of income level, age, or other status.

- The PUD allows for and encourages the development of larger rental apartments that are appropriate for families with children, including, as feasible, the provision of supportive services, recreation, and other amenities.

3. HOUSING ELEMENT PRINCIPLES

This PUD furthers the City of Ontario Housing Element by implementing core principles included therein, such as:

- Providing a range of housing for all income levels is essential to a complete community.
- Affordable, quality housing helps attract and retain a qualified workforce and supports a prosperous local economy.

4. CITY COUNCIL PRIORITIES

The Holt + Allyn PUD is consistent with the City Council's desire to:

- Invest in the Growth and Evolution of the City's Economy.
- Focus Resources in Ontario's Commercial and Residential Neighborhoods
- Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

5. IMPLEMENTATION

The Holt + Allyn PUD implements the Ontario Plan as the PUD is a public-private partnership proposing a multifamily Development Project on a site identified within the City's Housing Element land inventory and furthers the City's goal to apply for funding from the Affordable Housing Sustainable Communities (AHSC) Program to connect housing and transit to reduce greenhouse gas emissions.

2.2 CENTER CITY REDEVELOPMENT PLAN OBJECTIVES

The Center City Project Area encompasses the historic Euclid Avenue District, including parts of East Holt Boulevard. Ontario's City Hall and surrounding Civic Center, Senior Center, Main Library, the Museum of History and Art, Ontario Town Square, and the Law School of the University of La Verne are all within the Center City project area. Development within the downtown area is designed to create an immediate and positive identity transforming the vicinity into a comfortable place to stroll and be seen. Along the Holt Boulevard Corridor and surrounding neighborhoods, the PUD encourages the development of low-rise buildings that include both residential and a mixture of retail uses to maximize the economic vitality of the community and create an urban environment where residents can live and work in Ontario. It also seeks to boost commercial activity by increasing the supply of housing and improving aesthetics on major corridors such as Holt Boulevard.

The goals of the Center City Project include:

- Improving aesthetics along major corridors.
- Promoting the creation of a mixed-use urban village in the Civic Center area; and
- Preserving the City's historic commercial structures, neighborhoods, and housing stock.

This PUD furthers each of those goals by laying the foundation for catalytic redevelopment along the East Holt Boulevard corridor – a connecting arterial into the City's downtown core.

2.3 PUD DISTRICT PURPOSE AND OBJECTIVES

The purpose of the Holt + Allyn PUD as part of the MU-6 (East Holt Mixed-Use) District is to secure the residential uses of the general plan; promote high-quality design standards in urban design; encourage the development of mixed-use residential communities, all while establishing regulations and standards appropriate to the specific need for affordable housing for working families in the area.

The intent of the Holt + Allyn PUD is to:

- Promote development projects that are consistent with The Ontario Plan and Policy Plan.
- Establish a sense of place and identity along the Holt Boulevard Corridor and provide a connection between the Downtown Mixed-Use Area and the Ontario Airport Metro Center.
- Achieve high-density residential development or mixed-use development, and diversification of housing types, while maintaining high quality in design and construction.

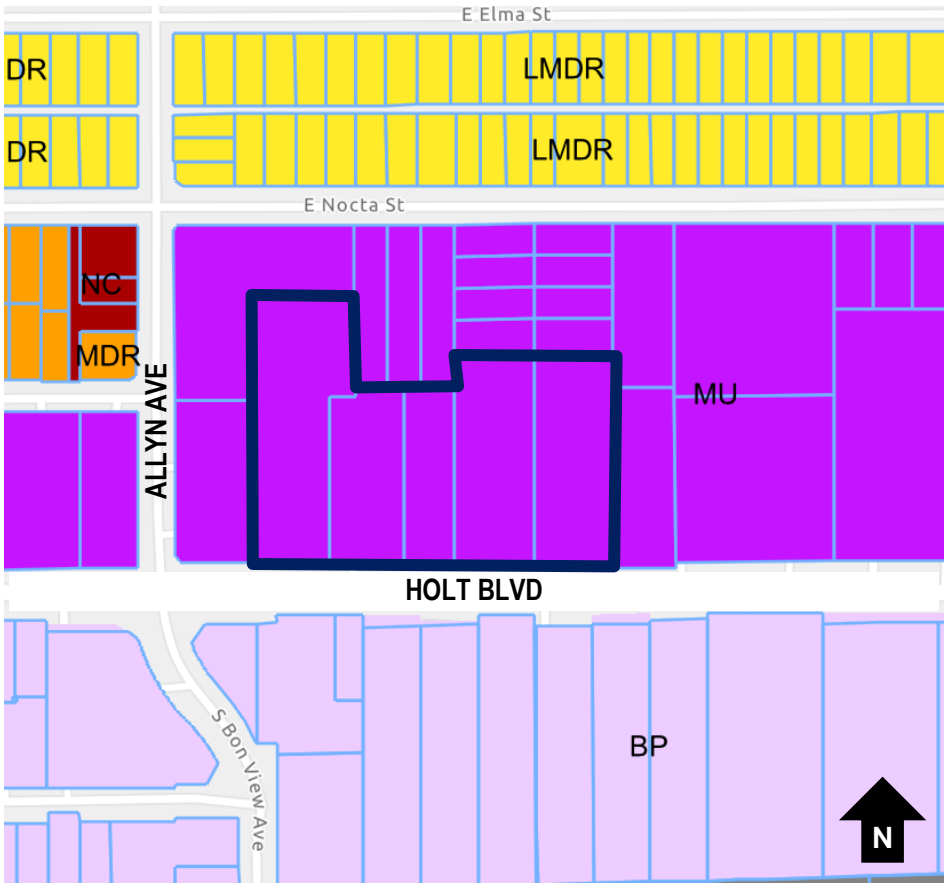
- Encourage clustering of structures to preserve a maximum amount of continuous open space.

3 LAND USE PLAN

3.1 LAND USE DESIGNATION

The Holt + Allyn Planned Unit Development (PUD) includes 5 parcels that are designated Mixed Use (MU) within the Ontario Plan and MU-6 in the City's Zoning Map. The MU-6 zoning district was established to accommodate the intensification of the East Holt Boulevard Corridor with low-rise (up to 5 stories) buildings accommodating a mix of retail and office uses at a development intensity of up to 2.0 FAR and 1.0 FAR, respectively, and residential uses at a density of 14 to 40 DU/AC. The MU-6 zoning district intends to create identity and place along the East Holt Boulevard Corridor and provide a connection between the Downtown Mixed-Use Area and the Ontario Airport Metro Center. The MU-6 zoning district is consistent with and implements the East Holt Mixed Use Area land use designation of the Policy Plan component of The Ontario Plan.

EXHIBIT 3-1: LAND USE DISTRICT MAP



Project Area: Mixed Use (MU)

Adjacent Uses:

- Business Park (BP)
- Low Medium Density Residential (LMDR)
- Medium Density Residential (MDR)
- Neighborhood Commercial (NC)
- Mixed Use (MU)

3.2 PERMITTED USES

Holt + Allyn Planned Unit Development does not deviate from the residential permitted uses outlined in Table 5.02-1, *Land Use Matrix* of the City of Ontario Development Code, as summarized in Table 3-1. For a full listing of uses please refer to the Ontario Development Code.

TABLE 3-1, CITY OF ONTARIO LAND USE MATRIX

Land Uses	MU-6
Mixed Use Developments	P
Multiple Family Dwellings	P
Senior Citizen Housing Developments	C
Single-Family Dwellings	P
Single Room Occupancy Facilities	---
Supportive Housing	---
Work/Live Units	C

"P" – Per section 5.02-1 of the Ontario Zoning Code, **Permitted** shall mean the land use, activity, or facility within the specified district is permitted by right of bring in the proper zoning district, and is subject to each Development Code provision applicable to the specified zoning district and the standards for specific uses, activities, and facilities contained in division 5.03 (Standards for Specific Uses, Activities, and Facilities) of the City's Development Code.

"C" (Conditionally Permitted) shall mean the land use, activity, or facility within the specified zoning district is subject to the granting of a Conditional Use Permit pursuant to Section 4.02.025 (Conditional Use Permits) of this Development Code, and is subject to each Development Code provision applicable to the specified zoning district and the standards for specific uses, activities, and facilities contained in Division 5.03 (Standards For Specific Uses, Activities and Facilities).

"---" (Prohibited) shall mean the land use, activity, or facility within the specified zoning district is expressly prohibited and shall not be allowed within the specified zoning district unless changed by Development Code Amendment.

4 DEVELOPMENT REGULATIONS AND DESIGN STANDARDS

4.1 BUILDING INTENSITY

Residential land uses within the Holt + Allyn Planned Unit Development will be consistent with the Mixed Use-6 (MU-6) zoning district allowing for residential uses at a density of 14 to 40 dwelling units per acre (DUA) or non-residential development at an FAR of up to 2.0.

4.2 BUILDING HEIGHT

Development within the Holt + Allyn Planned Unit Development will be consistent with the Mixed Use-6 zoning district, which allows for a maximum of fifty feet (50') in height consistent with the City of Ontario General Plan.

To further the City's low-rise mixed use building typology along the East Holt Boulevard corridor, higher density dwellings can be accommodated to increase the supply of housing, foster integrated residential and retail use communities, and increase pedestrian activity. Within the PUD area, multiple family developments should not exceed five stories or 50 feet, for locations within 100 feet of less intense development patterns (existing or planned). In sites where there are vacant adjacent uses zoned for single family development, building height must also not exceed 50 feet or the height of adjacent residential dwellings, whichever is greater.

4.3 BUILDING SETBACKS

Within the Holt + Allyn Planned Unit Development the buildings will comply with the building setback requirements as set forth in Table 4-1 (Minimum Building Setbacks). All setbacks shall be measured from the ultimate property lines after all dedications to develop streets to the ultimate right-of-way width. Placement of buildings, structures, fences, walls, utility facilities, yards, etc. will be based on the street rights-of-way and property line dimensions. Allowable encroachments in yards include (maximum 6' high) property line fences and gates, landscaping, paving, and public utilities.

TABLE 4.1: MINIMUM BUILDING SETBACKS

SETBACK	DISTANCE
1. Minimum Setbacks from Public Street Property Lines / Urban (25 du/ac or greater)	
• Holt Boulevard	0 feet
2. Minimum Setbacks from Interior Project Boundary Property Line	5 feet
3. Minimum Setbacks from Parking Spaces to Living Areas	10 feet

4.4 BUILDING SEPARATION

Within the Holt + Allyn Planned Unit Development the buildings will comply with the building separation requirements as set forth in Table 4-2 (Minimum Building Separation) and are consistent with or are more than the requirements outlined in Table 6.01-3, *Multiple-Family Residential Development Standards*, in the City of Ontario Development Code.

TABLE 4.2: MINIMUM SEPARATION BETWEEN DETACHED BUILDINGS

LOCATION	DISTANCE
Dwelling Front to Front, Rear or Side	< 2-Stories: 25 FT; > 3 Stories: 30 FT
Dwelling Side to Side	< 2-Stories: 25 FT; > 3 Stories: 30 FT
Dwelling Side to Rear	15 FT
Dwelling Rear to Rear	20 FT

4.5 BUILDING ORIENTATION

Building orientation should be designed to minimize noise impacts, aid in property site safety, create proper accessibility to site amenities and parking and maximize views from residential units. Design should also be crafted in a way that creates sound spaces, improving site safety. By blending residential and on-site community amenities, the design of the development project should promote increased walkability. Whenever feasible, Development Projects should locate building edges near the property line along Holt Boulevard to strengthen and define the urban edge and encourage pedestrian activity. Development Projects should create interest and interact with the streetscape through active uses, such as a community center, lobby, offices, and other related uses.

4.5.1 EXTERIOR

A. Orientation towards the exterior of the project area shall be carefully evaluated to ensure a proper relationship.

4.5.2 INTERIOR

A. Buildings should be clustered in a way that creates defensible spaces providing views of interior open spaces and amenities. For units without garage spaces, buildings shall be oriented to create minimal distances from assigned parking spaces to primary or secondary residential unit entries.

4.6 BUILDING TYPES

Within the Holt + Allyn Planned Unit Development the buildings that result in a density of more than 25 units per acre are Urban. For Urban building types the following requirements apply.

4.6.1 MASSING INCREMENTS

Along front and side elevations that face public streets and are longer than 100 feet shall require a minimum of two distinct massing increments. Individual massing increments shall be differentiated from one another using at least one of the following:

- vary parapet height by at least 3 feet, increase number of stories;
- set back upper floor;
- set the upper floor or multiple floors back at least 15 feet from façade; or
- set the entire façade back at least 10 for every 20 feet and/or by incorporating a tower element.

Massing increments that have distinct facades shall appear as distinct buildings and a massing increment design may be repeated on the same project elevation.

Buildings within the PUD area are distinct from one another, have articulation every 100 feet and have incorporated tower elements along Holt Boulevard.

4.6.2 FACADES - BUILDING BASE

Separate the building base from the rest of the façade for at least 12 feet (fewer than 5 stories) using at least one of the following strategies: provide a string course at the top of the first story, specify base material different from the rest of façade, specify body colors different from rest of façade or provide a ground floor Arcade or Gallery.

Buildings within the PUD area provide a base height of 12 feet and include a string course at the top of the first story.

4.6.3 FACADES - BUILDING BODY

The body of the building consists of the façade of all floors located above base and shall be designed as follows: windows shall be organized in bays, bands, curtain wall, and grid of windows and each massing increment must contain its entire façade composition without elements overlapping the division between increments.

4.6.4 FACADES - FENESTRATION DESIGN

Fenestration design addresses the percentage of window and door openings for ground floors and upper floors and glazing transparency. The ground floors of the building along the front lot line will have approximately 35 percent glazing transparency. All other frontages will have approximately 25 percent glazing transparency. For the upper floors of the building, 15 percent glazing transparency will be provided.

Additionally, ground floor windows shall be no higher than 3 feet above the adjacent grade and ground-floor bathroom windows are prohibited on facades that face front lot line.

4.7 ARCHITECTURAL CHARACTER

Due to the size and scale of the PUD project area, many of the buildings' elevations may be visible from the public street, common access drives, common parking areas, or adjacent parcels. As

such, architectural treatments should be carried around to the visible portions of all sides of the buildings. All towers or raised elements should be fully finished on all sides to appear as three-dimensional features.

Development types with densities of greater than 25 dwelling units per net acre shall be characterized as "urban" in their architectural character, as described below. Developments with densities lower than 25 dwelling units per net acre that include more than 5 units shall be characterized as "neighborhood" styles and shall carry the architectural character and are subject to the design requirements outlined in Section 2.2.2 of the Ontario Objective Design Standards. The development shall be designed with a Mission-Spanish architectural style.

Influenced by Spanish/Mediterranean and early Californian styles in the late 19th and early 20th centuries, the Spanish Colonial Revival style is asymmetrically arranged and includes low-pitched roofs covered with S-type clay red roofing tiles, wooden frames with stucco siding, and arches above doors, porch entries, and main windows.

4.7.1 FORM AND MASSING

The following form and massing requirements apply to the Mission-Spanish architectural style

A. Asymmetrical façade/elevations.
B. Three or more roof planes.
C. A minimum of 50 percent of the units shall have balconies or window treatments (such as shutters or awnings).
D. Entrances are recessed a minimum 12 inches.

4.8 MATERIALS AND DETAILING

A variety of durable high-quality materials with a range of textures and patterns that are naturally inherent in the materials should be used. Furthermore, building envelopes will be designed to prioritize meeting and exceeding energy efficiency goals to achieve a Zero Net Energy property. This includes everything from the types of windows, window frames, doors, fenestration percentage, and building exterior specs that will be utilized. Along nonresidential locations with street frontages, vinyl, fiberglass, or aluminum-clad windows shall be utilized to meet the California Energy Code and will resemble wood-framed windows. Alternative wood materials might also be used for window and door trims but will resemble wood to achieve architectural goals. The proposed color scheme for developments within the PUD area should complement surrounding uses with warmer and neutral tones and accent features to create a cohesive design. The development design will use various architectural strategies to create visual interest and fit the

context of its surroundings. This may include varying parapet heights and increasing stories or towers to create aesthetic appeal for the vertical components of the building. Designs should be divided into a base and body with varying design elements utilizing materials or window treatments to break up the massing of the façade. Balconies, awnings, and elements facing the street frontage should adhere to defined standards within this PUD, such as front lot line setbacks. Balconies and entry features along the building frontage must align with the architectural character of the building. Other features are described in greater detail below.

4.8.1 MATERIALS AND COLORS

A. Roof tiles shall use terracotta, brown earth tones, or rustic red color palettes.
B. White, cream, or tan stucco wall with (20/30) textured finish (i.e., hand troweled)
C. Wood-like materials (i.e., Alumawood or similar product) shall be used as secondary wall material for the following and similar elements:
    A. Posts and exposed beams.
    B. Railing, spindles, and grille work.
    C. Shutters, window frames, and doors.
D. If windows have shutters, the shutters' color shall match the accent color that is used for doors or decorative trim.
E. A minimum of 1 wrought-iron element (such as railings, hardware, and gates) shall be used.

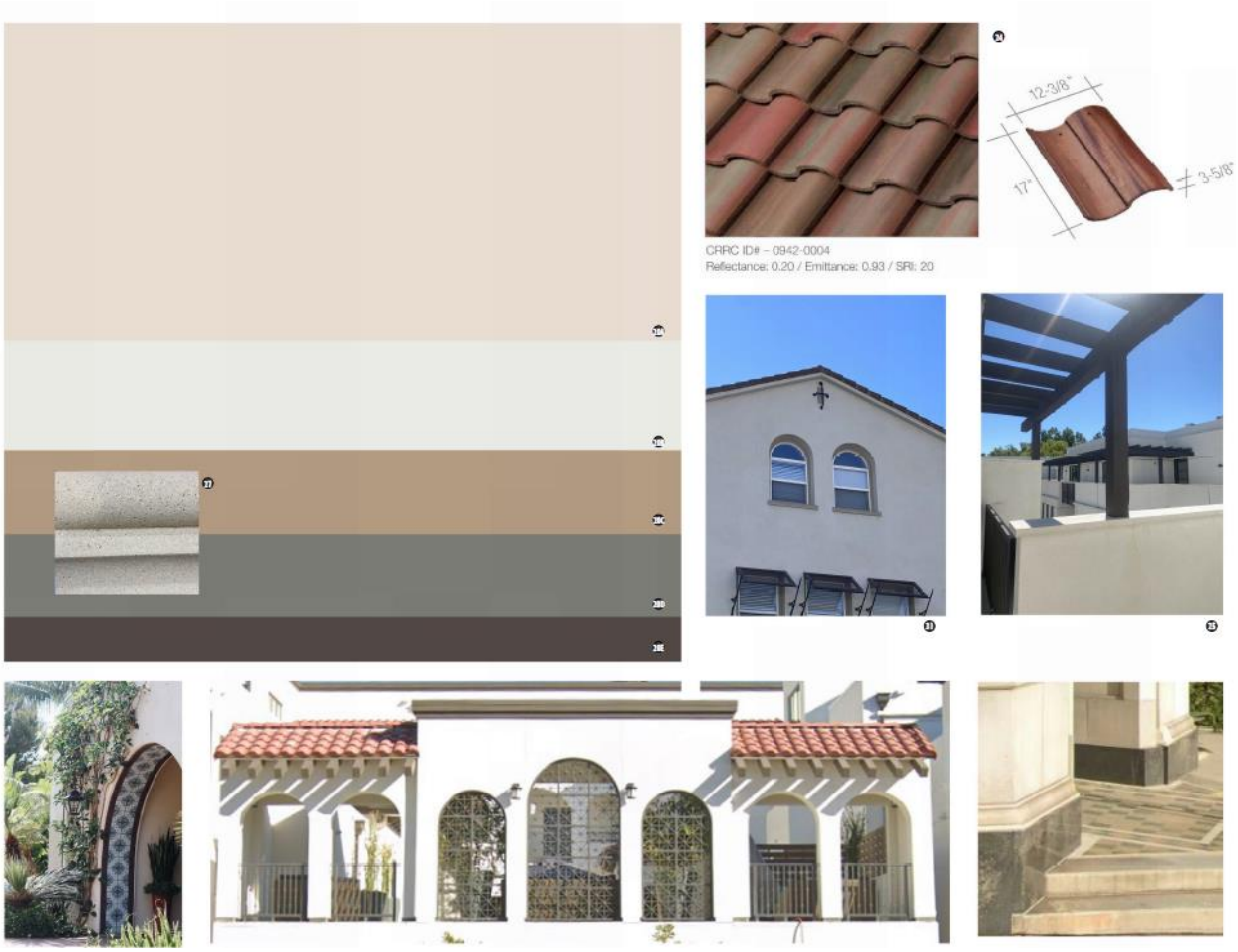
The following sample building materials proposed are illustrated on the south building elevations:



*Proposed color and materials details.

4.8.2 DOORS AND WINDOWS

A. Accent windows shall be a minimum of ten percent of the total windows.
B. The primary facade shall include a minimum of one arched element.
C. All primary entrance-door surrounds shall be banded with ceramic tile, molded plaster, or painted accents.
D. Vinyl or vinyl-clad windows are permitted if they are a dark color that is complementary or typical of the architectural style of the building.



E. Windows are not required to be recessed to ensure the long-term viability of the building envelope and prevent water intrusion.
F. Door and window trim may include wood, faux wood (i.e., Alumawood) cast stone, pre-cast concrete, glass fiber, reinforced concrete, and cement fiber board.

4.8.3 ROOF

A. A flat roof is proposed to meet the requirements of Title 24 and maximize solar PV arrays onsite.
B. When a flat roof is used, it shall be screened by a parapet that is an extension of the wall plane or by a modified Mansard roof.
C. Red, fired, clay tile roofs. Tile types include both Spanish (S-shaped) and Mission (half-cylinder) or concrete S 2-piece roof tiles.

4.8.4 DECORATIVE DETAILS

All residential projects 4 stories and taller shall provide a minimum of 5 of the following:

- Entry/front porch or patio;
- Decorative tiles;
- Clay tile vents;
- Wrought-iron balcony railings or support brackets;
- Dark-metal light fixture and hardwares;
- Paired wood (or wood simulated) garage doors with iron hardware,
- Verandas, pergolas, or arcades,
- Exterior stairs, and/or
- Awnings with metal spear supports.

4.9 STORAGE

Lockable private storage space for each residential unit may be provided within a storage building or a space directly accessible from the dwelling, such as an exterior closet accessed from a patio or balcony if screened from public view. Storage is not required but can be provided if feasible.

4.10 OPEN SPACE

To enhance the quality of life for residents, areas for physical activity, relaxation, and social engagement, common open spaces shall be provided to foster a sense of community and cohesion. Two types of open space are required, private and common open space. These open space areas are for the use of the on-site residents and their guests. Required street setback areas are not counted towards common open space requirements.

4.10.1 PRIVATE OPEN SPACE

Private open space shall be provided for each residential unit in order to provide private outdoor areas that can be enjoyed for exclusive use by the occupant of the residential unit and their guests. Types of areas considered private open space include balconies, decks, and enclosed patios and yards. A minimum of 60 square feet of private open space shall be provided for each residential unit.

4.10.2 COMMON OPEN SPACE

Common open space shall be provided to allow for both passive and active types of recreation, along with site landscape amenities. These areas are for use by project residents and their guests and may include indoor recreational facilities. The amount of required common open space shall be a minimum of 15% of the total lot area and include at least one of the following landscaped open space types: forecourt of 15 by 15 feet, side garden, 20 by 30-foot interior court, and passages between buildings.

Areas not considered common open space include: [1] parking lots; [2] walkways along or between buildings; [3] parking lot landscaping; [4] street setback areas; and [5] other areas not intended for active or passive recreation.

4.11 PARKING STANDARDS

Given the PUD area's location along a major transportation corridor, with access to multiple bus lines and the upcoming West Valley Connector BRT line, future projects should consider a parking ratio that is below the parking standards included in the City of Ontario Zoning Code. Based on recent legislation, best practices in the region, and the PUD location and proximity to transit, a Development Plan that proposes multifamily residential development that has affordability restrictions in place will be required to provide parking based on the following ratios:

TABLE 4-3: REQUIRED PARKING

UNIT SIZE/USE	REQUIRED PARKING RATIO	PARKING REQUIRED
1 bedroom unit/studio	1.0 spaces per unit	13 spaces
2-bedroom unit	1.3 spaces per unit	88.4 spaces
3-bedroom unit	1.7 spaces per unit	107.1 spaces
Visitor parking	0.075 spaces per unit	10.8 spaces
Staff parking	--	3 spaces
TOTAL		**222.3 spaces**

Market-rate residential projects or mixed-use projects that do not require affordability restrictions on housing units are subject to the City of Ontario parking standards as shown in the Municipal Code.

A proposed Development Plan may propose secure resident and guest parking within the PUD site in conformance with the standards listed above. To ensure future residential parking is controlled, the Development Project will ensure that a parking management plan is in place by a property manager upon development completion.

In no event shall street parking be allowed on Holt Boulevard. Should adjacent parcels with complementary residential uses be developed in the future, shared parking strategies shall be allowed under this PUD so long as a parking management plan is in place and updated to meet all onsite parking needs.

4.12 PARKING DESIGN

Parking shall be designated in compliance with the applicable standards in Division 6.03 (Off-Street Parking and Loading) of the Ontario Development Code and the City's Objective Design and Development Standards. The development proposes the development of approximately 239 surface parking spaces. Surface parking will comply with the following standards:

4.12.1 SURFACE PARKING LAYOUT

A. Setbacks. Surface parking lots adjacent to public or private streets shall include a landscaped and irrigated setback a minimum of 5 feet in width measured from the property line, or aligned with the building façade, whichever is greater.

B. Orientation. Surface parking lots shall be located at the rear, side, or internal lot lines and away from the front lot line.

4.12.2 SURFACE PARKING SCREENING

A. Street-adjacent parking lots shall be screened from view by a low wall or hedge no higher than 3 feet in height.

B. Views from neighboring properties shall be screened with trees and shrubs.

4.12.3 SURFACE PARKING LOT DESIGN

A. Landscape. Landscaping materials shall be applied in compliance with the applicable objective parking lot landscape standards contained in Ontario Development Code Section 6.05.030

4.12.4 SURFACE PARKING ACCESSORY STRUCTURES

A. All accessory structures, including carports, if used, shall match the architectural style and/or colors of the project buildings.

4.13 EQUIPMENT SCREENING

All roof-mounted and ground-mounted equipment shall be fully screened from a view of the public street and adjacent developments. The location of items shall be designed to allow screening with landscape materials, walls, architectural features, parapet walls, etc. Screening should be designed in a way that seamlessly integrates screening within a proposed Development Project.

4.14 FENCES AND WALLS

Fences and walls for a proposed Development Project shall be made of decorative materials that are compatible with the overall architectural character of the development within the PUD area. All fences and walls shall be in scale with the development to fulfill such needs as screening and security. Fences, walls, and hedges within the PUD area shall comply with Engineering Corner Sight Distance Standards and other applicable standards. All decorative walls, monuments, and other similar features shall not encroach into the public street right-of-way. Within the PUD area, fences and walls shall be limited to a maximum of six feet (6') in height within the interior, rear, and front entry areas consistent with the requirements of the Mixed Use-6 land use district.

4.15 SIGNS

Signs must comply with the City of Ontario Development Code and be coordinated through a comprehensive sign program.

4.16 SERVICE FACILITIES

Service facilities such as trash enclosures and parking areas shall be designed, located, and oriented to have a minimal visual impact on the development frontage within the PUD area. Trash enclosures shall be designed to coordinate with the architecture, colors, and materials of the development and shall be located to provide adequate access for trash pickup without encroaching into access drives or landscaped areas. Trash enclosures shall be designed and constructed with a solid roof cover which shall also be designed to match the architecture of the development.

5 CIRCULATION & INFRASTRUCTURE

5.1 VEHICLE CIRCULATION

Proposed Development Projects within the PUD area are required to provide adequate vehicle connections from potential buildings to the public street. Primary access to a future Development Project shall be provided through at least one central fifty-seven (57') foot gated vehicular access point. A secondary twenty-six-foot (26') driveway for emergency vehicle access shall be provided off Holt Boulevard at the western end of the PUD area. Within the PUD area, drive aisles are two-way and a minimum of twenty-six feet (26') wide to ensure adequate emergency vehicle access.

5.2 PEDESTRIAN CONNECTIONS

Proposed Development Projects within the PUD area will be required to provide adequate pedestrian connections from residential buildings to the public street. This can be achieved through pedestrian gates along street frontages and/or access gates near driveways.

5.3 MASS TRANSIT

The proposed Development Project within the PUD area should encourage the use of existing bus stops by providing pedestrian connections to east and westbound destinations through [Omnitrans 61] with bus stops located on the northeast corner of Holt Boulevard and Allyn Avenue as well as

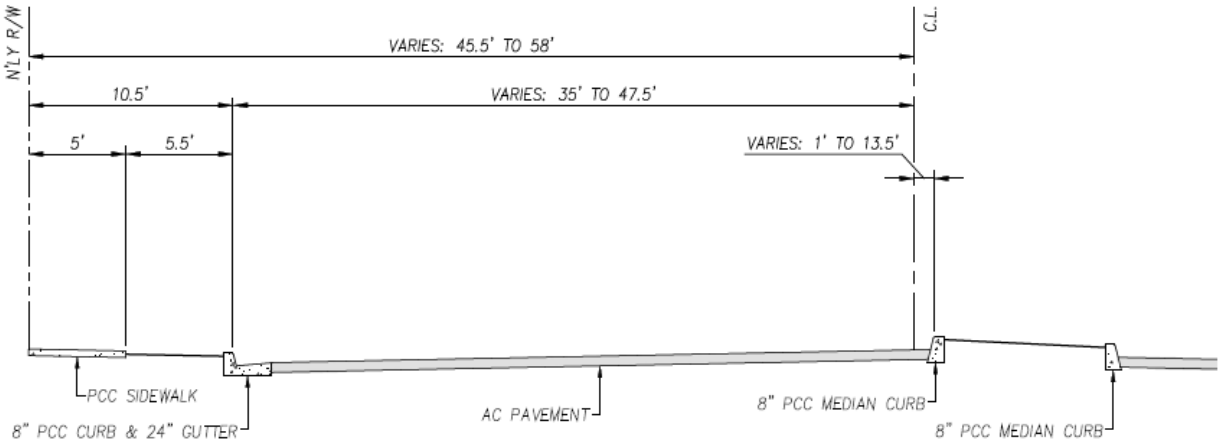
the southeast corner of Holt Boulevard and Bon View Avenue. The PUD site is also roughly 0.4 miles from the anticipated West Valley Connector stop at the corner of Grove Avenue and Holt Boulevard.

5.4 STREET DEDICATIONS AND EASEMENTS

Proposed Development Projects within the PUD area shall dedicate right-of-way (ROW) along all street frontages as necessary to increase the right-of-way to ultimate width with a modified parkway section (Holt Boulevard) consistent with the West Valley Connector Bus Rapid Transit (BRT) line. Widths along the Holt Boulevard frontage will vary from approximately 58 feet at the western boundary tapering to approximately 45 feet for the majority of the site frontage.

Development projects will accommodate the required ultimate right-of-way for Holt Boulevard to ensure that the proposed right-of-way Holt Boulevard can accommodate the development of the West Valley Connector BRT line.

EXHIBIT 5-1: HOLT BOULEVARD TYPICAL ROW



TYPICAL SECTION
HOLT BOULEVARD
SCALE: 1"=6'

5.5 PUBLIC RIGHT-OF-WAY IMPROVEMENTS

As development projects are proposed within the PUD area, prospective developers are responsible for improving the public right-of-way to be consistent with the City's General Plan and Municipal Code. Public right-of-way improvements are required to include but are not limited to the following: street pavement, curb & gutter, parkway landscaping, parkway irrigation, raised landscape median with irrigation on Holt Boulevard, public sidewalks, traffic signage and striping, streetlights, bus stop, bus shelter, and amenities. The extent of the required improvements shall be determined for each development plan. At a minimum, the improvements shall incorporate all items along the street frontages of the properties to be developed with proper transitioning of the entire block frontage if not being installed simultaneously. Improvements along the street frontage for the entire block may be required at the time of the development plan review.

5.6 INFRASTRUCTURE

Water service for the PUD site will be provided by the existing 12-inch water line in Holt Boulevard. Wastewater flows for the PUD will also be designed to connect to the existing 30-inch sewer line in Holt Boulevard. On-site stormwater drainage facilities shall be provided to capture and infiltrate a 2-year, 1-hour storm event, consistent with the San Bernardino County Stormwater Program's Water Quality Management Plan (WQMP) requirements for new development projects. Stormwater capture and infiltration facilities may include the utilization of vegetated swales, depressed landscaped basins, pervious concrete pavement, or underground stormwater detention/retention/infiltration vaults. The existing Master Plan storm drain at Virginia Avenue and Holt Boulevard is built to the ultimate requirement; consequently, additional storm drain system extensions are not necessary. All building roof and paved area runoff shall be directed into depressed landscaped swales, trenches, or basins, within the development, to comply with the requirement to capture and infiltrate the 2-year, 1-hour storm event runoff. All proposed Development Plans are required to prepare a Preliminary Water Quality Management Plan. All Priority Land Use (PLU) areas shall comply with the statewide Trash Provisions adopted by the State Water Resources Control Board (SWRCB) and trash requirements in the most current San Bernardino County Area-Wide MS4 Permit.

Sewer mains in Nocta Street and Allyn Avenue will need to be installed per City Standards and Guidelines to accommodate the project. All existing unused sewer lines traversing the project site as well as any unused manholes on the project site will be abandoned per the City's Standards. In instances where sewer lines are abandoned, the PUD requires that any adjacent properties impacted be reconnected to sewer mains along Nocta Street and Allyn Avenue.

Utility lines (electric, communications, TV, etc.) located onsite that are currently overhead will be placed underground unless they run along a property line that would allow them to remain and would not impact the proposed housing development and/or it is determined to be financially or physically infeasible and/or requires approval or access from neighboring property owners. The existing overhead utility lines and utility poles along the eastern, northern, and western edges of the site may remain in place with appropriate setbacks and easements.

Street lighting shall be installed along the public right-of-way off Holt Boulevard in line with City of Ontario Standards. The type of street lighting will be determined at the time of development plan review.

5.7 LANDSCAPING + DRAINAGE PLAN

A conceptual landscape plan and preliminary drainage plan shall be submitted with each Development Plan proposed within the Holt + Allyn Planned Unit Development area. The plan shall specify all landscape and hardscape elements for the development site and indicate how the improvements will coordinate with the other sites within the PUD. The landscape plans and/or civil plans shall show the location of all ground-mounted utility structures such as transformers, backflow prevention devices, trash enclosures, and HVAC equipment, and indicate the methods for screening these items. All utility structures and equipment shall be screened from view of the public streets and adjacent developments.

Water conservation shall be provided through drought-tolerant plant species, hydro zones, water-efficient irrigation, and weather-based controllers. Landscaped areas may be used for stormwater infiltration through vegetated swales, detention or retention basins, or dry wells as needed with the use of appropriate planting materials. Broad canopy shade trees shall be used to reduce heat gain on buildings, paving, and parking areas. The plan shall identify all existing trees on site and preserve them where possible. The landscape design shall meet the requirements of the Landscape Development Standards and shall create well-functioning spaces within a sustainable design.

Within the PUD area, the building façade shall be complemented by a curated planting palette along the building frontage. Additionally, in conformance with the BRT Plans, the right-of-way widths fronting the building will meet the Holt Blvd parkway (landscape + sidewalk) of ten and a half feet (10.5') width. Parkway landscaping and irrigation, although within the public right-of-way, will be installed and maintained by each development. Additionally, trees along street frontages shall comply with the variety, size, and spacing as directed by the City of Ontario Master Street Tree Plan.

6 ADMINISTRATION

6.1 ITEMS NOT ADDRESSED IN PUD

Any terms, requirements, or regulations not addressed within the PUD document shall be governed by the City of Ontario Development Code, the regulations of the General Mixed-Use zones, and City Standards.

6.2 DEVELOPMENT APPLICATIONS

Development Plans for projects within the Holt + Allyn PUD area, along with fees and other required items, shall be submitted for review and approval per the requirements contained in Article 8 of the City of Ontario Development Code and the General Application.

6.3 ADMINISTRATIVE EXCEPTIONS

Deviation from the development standards set forth in this document may be granted up to a maximum of ten percent (10%) by the Zoning Administrator. Any deviations from the City of Ontario's development standards will be considered an incentive/concession in lieu of a variance.

6.4 AMENDMENTS TO THE PUD

Any amendments to the PUD document are subject to the Ontario Development Code Section 4.01.030.

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PUD24-002, A PLANNED UNIT DEVELOPMENT TO CREATE DEVELOPMENT STANDARDS AND DESIGN GUIDELINES FOR A DEVELOPMENT PLAN TO CONSTRUCT 144-UNIT MULTIPLE-FAMILY RESIDENTIAL APARTMENT COMPLEX ON APPROXIMATELY 5.73 ACRES OF LAND LOCATED NEAR THE NORTHEAST CORNER OF EAST HOLT BOULEVARD AND ALLYN AVENUE WITHIN THE MU-6 (EAST HOLT MIXED USE) ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1048-481-06, 1048-481-07, 1048-481-08, 1048-481-28, 1048-481-29

WHEREAS, National CORE ("Applicant") has filed an Application for the approval of a Planned Unit Development, File No. PUD24-002, as described in the title of this Ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to 5.73 acres of land generally located near the northeast corner of East Holt Boulevard and Allyn Avenue, approximately 140 feet east of the intersection, within the MU-6 (East Hold Mixed Use) zoning district, and is presently vacant; and

WHEREAS, the property to the north of the Project site is within the MU-6 (East Holt Mixed Use) zoning district, and is developed with residential uses. The property to the east is within the MU-6 (East Holt Mixed Use) zoning district, and is developed with commercial and residential uses. The property to the south is within the IP (Industrial Park) zoning district, and is developed with residential uses and vacant land. The property to the west is within the MU-6 (East Holt Mixed Use) zoning district, and is developed with retail and residential uses; and

WHEREAS, on January 27, 2010, the Ontario City Council certified The Ontario Plan Environmental Impact Report in conjunction with File No. PGPA06-001 (City Council Resolution No. 2010-006), and on August 16, 2022, the Ontario City Council certified The Ontario Plan 2050 Update Supplemental Environmental Impact Report in conjunction with File No. PGPA20-002 (City Council Resolution No. 2022-129). The Ontario Plan and associated Environmental Impact Report analyzed the Project site and established guidelines for development, including but not limited to, general land use (Mixed Use – Holt (MU-Holt), which stipulates 14.0 to 40.0 du/ac, 2.0 FAR for office uses, and 1.0 FAR for retail uses); and

WHEREAS, on December 17, 2024, the Ontario Housing Authority approved a Disposition and Development Agreement with the Applicant to facilitate the development of the subject affordable housing development; and

WHEREAS, the Application is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"); and

WHEREAS, the Project is exempt from CEQA through Section 15183, and the application of that exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 153183.3; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the City Council the responsibility and authority to review and act on the subject Application; and

WHEREAS, the Project has been reviewed for consistency with the Housing Element of the Policy Plan component of The Ontario Plan 2050, as State Housing Element law (as prescribed in Government Code Sections 65580 through 65589.8) requires that development projects must be consistent with the Housing Element, if upon consideration of all its aspects, it is found to further the purposes, principals, goals, and policies of the Housing Element; and

WHEREAS, the Project is located within the Airport Influence Area of Ontario International Airport ("ONT"), which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and is subject to, and must be consistent with, the policies and criteria set forth in the Ontario International Airport Land Use Compatibility Plan (ALUCP), which applies only to jurisdictions within San Bernardino County, and addresses the noise, safety, airspace protection, and overflight impacts of current and future airport activity; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on February 25, 2025, the Planning Commission of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date, voting to issue Resolution No. PC25-004 recommending the City Council approve the Application; and

WHEREAS, on April 15, 2025, the City Council of the City of Ontario conducted a hearing to consider the Project, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

(1) The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and

(2) The proposed Development Plan is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15183 (Project Consistent with a Community Plan or Zoning) of the CEQA Guidelines and meets all of the following conditions:

(a) ***The Project is consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified***. The Project site is within the Holt Boulevard Mixed Use Area as designated by TOP 2050 and would contain 144 residential units across two buildings. This is consistent with the uses analyzed in the TOP 2050 Supplemental EIR and allowed by the Holt Boulevard Mixed Use Area designation.

(b) ***There are no Project specific effects which are peculiar to the Project or its site, and which the TOP 2050 Supplemental EIR failed to analyze as significant effects*.** The subject property is similar to other properties in the area, including its land use designation and zoning. The property does not support any peculiar environmental features, and the Project would not result in any peculiar effects. The TOP 2050 anticipated the proposed development on the project site and Project impacts were adequately analyzed by the TOP 2050 Supplemental EIR. The TOP 2050 Supplemental EIR identified three environmental impact areas for which mitigation measures were required to reduce potential environmental impacts to a less than significant level: (1) cultural resources; (2) geology and soils; and (3) tribal cultural resources. The proposed project will be required to comply with these mitigations where applicable. The TOP 2050 Supplemental EIR also identified that the TOP 2050 would result in significant and unavoidable environmental impacts that could not be avoided or reduced to less than significant levels through mitigation measures. These include: (1) air quality; (2) cultural resources; (3) noise; (4) transportation. The proposed project will not create additional significant or unavoidable impacts that were not already addressed through the TOP 2050 Supplemental EIR.

(c) ***There are no potentially significant off-site and/or cumulative impacts which the TOP 2050 Supplemental EIR failed to evaluate*.** The Project is consistent with the land use characteristics of the development considered by the TOP 2050 Supplemental EIR and would represent a small part of the growth that was forecasted for build-out of the TOP 2050. The TOP 2050 Supplemental EIR considered the incremental impacts of the Project, and no new Project-specific impacts are anticipated. Therefore, the Project would

not result in any potentially significant cumulative impacts which were not previously evaluated in the TOP 2050 Supplemental EIR.

(d) ***There is no substantial new information which results in more severe impacts than anticipated by the TOP 2050 Supplemental EIR*****.** No new information has been identified which would result in a determination that the Project would have a more severe impact than anticipated by the TOP 2050 Supplemental EIR.

(e) ***The Project will undertake feasible mitigation measures specified in the TOP 2050 Supplemental EIR*****.** The Project will undertake feasible mitigation measures specified in the TOP 2050 Supplemental EIR and subsequently adopted by the City. These TOP 2050 Supplemental EIR mitigation measures will be undertaken through Project design, compliance with regulations and ordinances, the Project's conditions of approval, and City permit processing; and

(3) The application of the exemption is not barred by one of the exceptions set forth in CEQA Guidelines Section 15300.2; and

(4) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Housing Element Compliance.*** Pursuant to the requirements of California Government Code Chapter 3, Article 10.6, commencing with Section 65580, as the decision-making body for the Project, the City Council finds that based on the facts and information contained in the Application and supporting documentation, at the time of Project implementation, the project is consistent with the Housing Element of the Policy Plan (General Plan) component of The Ontario Plan. The Project site is one of the properties listed in the Housing Element Sites contained in Tables B-1 and B-2 (Housing Element Sites Inventory) of the Housing Element Technical Report. The Housing Element Sites Inventory designates the site for 108 units in the very low/low-income category; however, the proposed Project includes 144 units in the very low/low-income category, exceeding the originally anticipated number. The Housing Element Sites Inventory will be amended to reflect this change.

SECTION 3: ***Airport Land Use Compatibility Plan ("ALUCP") Compliance.*** The California State Aeronautics Act (Public Utilities Code Section 21670 et seq.) requires that an Airport Land Use Compatibility Plan be prepared for all public use airports in the State; and requires that local land use plans and individual development proposals must be consistent with the policies set forth in the adopted Airport Land Use Compatibility Plan.

On April 19, 2011, the City Council of the City of Ontario approved and adopted the Ontario International Airport Land use Compatibility Plan, establishing the Airport Influence Area for Ontario International Airport, which encompasses lands within parts of San Bernardino, Riverside, and Los Angeles Counties, and limits future land uses and development within the Airport Influence Area, as they relate to noise, safety, airspace

protection, and overflight impacts of current and future airport activity. As the decision-making body for the Project, the City Council has reviewed and considered the facts and information contained in the Application and supporting documentation against the ONT ALUCP compatibility factors, including [1] Safety Criteria (ONT ALUCP Table 2-2) and Safety Zones (ONT ALUCP Map 2-2), [2] Noise Criteria (ONT ALUCP Table 2-3) and Noise Impact Zones (ONT ALUCP Map 2-3), [3] Airspace protection Zones (ONT ALUCP Map 2-4), and [4] Overflight Notification Zones (ONT ALUCP Map 2-5). As a result, the City Council, therefore, finds and determines that the Project, when implemented in conjunction with the conditions of approval, will be consistent with the policies and criteria set forth within the ONT ALUCP; and

SECTION 4: ***Concluding Facts and Reasons.*** Based upon the substantial evidence presented to the City Council during the above-referenced hearing, and upon the specific findings set forth in Section 1 through 3, above, the City Council hereby concludes as follows:

(1) ***The proposed PUD, or amendment thereto, is consistent with the goals, policies, plans and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.*** The proposed Project is located within the Mixed Use – Holt Boulevard land use district of the Policy Plan Land Use Map, and the MU-6 (East Hold Mixed Use) zoning district. The development standards and conditions under which the proposed project will be constructed and maintained, is consistent with goals, policies, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan.

(2) ***The proposed PUD, or amendment thereto, would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.*** The City Council has required certain safeguards, and has required certain changes, which have been established to ensure that: [i] the purposes of the Planned Unit Development are maintained; [ii] the project will not endanger the public health, safety or general welfare; [iii] the project will not result in any significant environmental impacts; [iv] the project will be in harmony with the area in which it is located; and [v] the project will be in full conformity with the Vision, City Council Priorities and Policy components of The Ontario Plan 2050.

(3) ***In the case of an application affecting specific property(ies), the proposed PUD, or amendment thereto, will not adversely affect the harmonious relationship with adjacent properties and land uses.*** A thorough review and analysis of the proposed project and its potential to adversely impact properties surrounding the subject site was completed by City staff. As a result of this review, certain design considerations were incorporated into the project to mitigate the identified impacts to an acceptable level, including the use of the upgraded materials, the inclusion of certain architectural design elements on building exteriors, intensified landscape elements, and decorative hardscape elements.

(4) ***In the case of an application affecting specific property(ies), the subject site is physically suitable, including, but not limited to, parcel size, shape, access, and availability of utilities, for the request and anticipated development.*** In preparing the proposed PUD, a thorough review and analysis of the proposed project and the project site's physical suitability for the proposed project was completed, included analysis of the project size, shape, intensity of development, building height, building setbacks, site access, site landscaping and drainage, fences and walls, vehicle circulation, pedestrian connections, availability of mass transit, necessary street dedication and easements, public right-of-way improvements, availability of utilities and other infrastructure needs, off-street parking and circulation, building orientation and streetscapes, architectural character, building materials and color, and site signage.

(5) ***The proposed PUD is superior to that which could be obtained through the application of the Development Code or a specific plan.*** The proposed PUD addresses aspects of the project that are specifically related to the Development Plan proposed in conjunction with PUD application, including necessary building setbacks, site access points, off-street parking and site circulation, and architectural character.

SECTION 5: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the City Council hereby APPROVES the herein described Planned Unit Development, attached hereto as "Attachment A," and incorporated herein by this reference.

SECTION 6: ***Indemnification.*** The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 7: ***Custodian of Records.*** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 8: ***Severability.*** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 9: ***Effective Date.*** This Ordinance shall become effective 30 days following its adoption.

SECTION 10: ***Publication and Posting.*** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. _____ was duly introduced at a regular meeting of the City Council of the City of Ontario held _____ and adopted at the regular meeting held _____, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. _____ duly passed and adopted by the Ontario City Council at their regular meeting held _____ and that Summaries of the Ordinance were published on _____ and _____, in the Inland Valley Daily Bulletin newspaper.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

ATTACHMENT A:

File No. PUD24-002
Holt + Allyn Planned Unit Development

(Document follows this page)

HOLT + ALLYN PLANNED UNIT DEVELOPMENT

FILE NO: PUD24-002
DRAFT: DECEMBER 2024
REVISED: JANUARY 2025









PREPARED BY:

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ONYX ARCHITECTS
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1 INTRODUCTION

1.1 OVERVIEW

The Holt + Allyn Planned Unit Development (PUD) is intended to function as a set of planning and design principles, development regulations, and performance standards to guide and govern the development of five parcels bounded by Holt Boulevard to the south and residential parcels along Nocta Street to the north and Allyn Avenue to the west [see Exhibit 1-1, Project Location Map]. The project site is envisioned to accommodate a high-quality residential use development on the parcels that face Holt Boulevard. The Holt + Allyn Planned Unit Development (PUD) will replace the existing zone district designations and zoning standards that apply to the affected properties. Unless otherwise defined herein, definitions and interpretations contained in the Development Code shall apply. City Staff and private developers will rely on this PUD to determine whether precise plans for development ("Development Plans") will adequately meet the City's land use and design objectives.

Located near the northeast corner of East Holt Boulevard and North Allyn Avenue, the 5.73-acre site is situated along the Holt Boulevard Corridor and within the East Holt Boulevard Mixed Use Area. Through these designations, the Ontario Plan seeks to encourage the redevelopment of Holt Boulevard into medium-density residential uses integrated with commercial, workplace, and urban facades.

EXHIBIT 1-1: PROJECT LOCATION MAP



PUD Area

2 PROJECT OBJECTIVES

2.1 GENERAL PLAN CONSISTENCY

Within the Ontario Policy Plan (General Plan) the Holt + Allyn PUD site is designated Mixed Use – Holt Blvd. The Ontario Plan describes the Mixed-Use – Holt Blvd designations as "a low-rise (3-5 stories) intensification of the Holt Corridor. The intent is to create identity and place, connect the corridor to Downtown, and connect the Downtown to the Ontario Airport Metro Center." Within the community design element, the Policy Plan envisions all corridors to carry unique identities with infill development; create comfortable, safe, human-scale public realms, including pedestrian paths, such as sidewalks that provide access to new housing, and meet mobility needs of residents, transit riders, workers and visitors; complete and connect mobility networks for convenient bicycle travel; accentuate the linear nature of the corridor by providing seamless transitions from less intense residential neighborhoods to higher density infill sites; and enable and promote human activity through activated street frontages.

The Holt + Allyn Apartments are consistent with the principles, goals, and policies contained within the components that make up the Ontario Policy Plan, including (1) Vision, (2) Policy Plan, (3) Implementation Programs, and (4) City Council Priorities. The policies implemented by this PUD are as follows:

1. VISION

On February 13, 2007, the Ontario City Council adopted The Ontario Vision. The central theme that motivates the Vision is – *"A sustained, community-wide prosperity which continuously adds value and yields benefits."* Everything the City does and every action the City takes is done with

this simple yet comprehensive theme in mind, from the design quality of the built environment, to the intent of designing socio-economic programs, to the way in which its leaders govern as a community. In discussing a Vision that would endure for the lifetime of The Ontario Plan (30 years or more), the City Council recognized that there are four components that serve as the basic building blocks that set the foundation for a unified and prosperous community. These foundational blocks must be expressed and widely accepted throughout the Plan's lifetime. They are:

1. A **Dynamic Balance** that enables our community to confront the continued vigorous growth of the region and technological change with confidence and a sense of opportunity.

2. A **Prosperous Economy** that sustains the perception and reality of prosperity across our entire community that positively impacts all the people of Ontario and is broadly – though not uniformly – shared.
3. **Distinctive Development** that integrates our varied and diverse focal points, districts, villages, and neighborhoods to provide a feeling of coherence without sacrificing uniqueness.

4. **Recognized Leadership** in local governance that stimulates excellence and serves to unify the people of Ontario in support of best practices in conducting public endeavors.

The Holt + Allyn PUD will implement the Ontario Vision in ways that will further the City's desire to be a sustainable and prosperous community.

RESIDENTIAL DEVELOPMENT

- The PUD allows for the development of multifamily housing on a site near schools, recreation, and cultural facilities, places of worship, places of employment and shopping, and a future high-quality public transportation line.

- The development standards encourage multifamily residential development, further diversifying the City's housing stock and balancing the City's jobs-to-housing ratio that is essential to maintain quality of life within the community.

- The PUD encourages a comprehensive and diverse housing stock that offers broad choices for the diverse workforce and local families, by introducing new affordable multifamily housing units.

DEVELOPMENT QUALITY

- The PUD requires a well-designed project with high-quality materials that complement the existing neighborhood and will enhance the distinctive architectural styles within the City.

- The development standards require future projects to consider the existing built environment and open spaces, ensuring careful attention to detail at every scale, including public and private spaces and structures.

MOBILITY

- The PUD is located along the future West County Connector bus rapid transit (BRT) line currently under construction and encourages higher-density development near high-frequency transportation facilitating an exceptional degree of movement and connectivity.

- Within the development standards, proposed projects will provide features and amenities to encourage the use of alternative forms of transportation including bicycles, buses, and walking.

PUBLIC SAFETY

- The PUD will ensure that the project is integrated into the existing neighborhood and that connections are made to residential neighborhoods, schools, parks, community centers, and cultural facilities in the surrounding area.

LEISURE AND CULTURAL ACTIVITIES

- The PUD will require recreational amenities, community facilities, and programs that offer ample recreation and cultural involvement by a diverse resident population.

RESOURCE CONSERVATION AND ENHANCEMENT

- The location of the PUD on the future West County Connector line provides a unique opportunity to reduce vehicle trips and air pollutants, resulting in improved air quality in Ontario and the region.

2. POLICY PLAN

Goal LU1: Balance. A community that has a spectrum of housing types and price ranges that match the jobs in the City and that make it possible for people to live and work in Ontario and maintain a quality of life.

- The PUD allows for the development of a multifamily residential project on infill parcels preserving open space and ensuring access to necessary services and infrastructure. The proposed project will be affordable to households earning less than 60 percent of the area median income (AMI) which will provide opportunities for lower-income families to live close to work, commute via public transportation, and maintain a decent quality of life. The

PUD will also encourage sustainable development practices and LEED certification within all applicable projects.

Goal LU2: Compatibility. Compatibility between a wide range of uses.

- The PUD evaluates the existing uses surrounding the property and buffers new development through setbacks and step backs.

Goal LU3: Flexibility. Staff, regulations, and processes that support and allow flexible responses to conditions and circumstances to achieve the Vision.

- The establishment of the PUD allows for clear development standards that allow flexibility to achieve the Ontario Vision, improve livability, reduce vehicular trips, create community gathering places and activity nodes, and help create identity.

Goal H1: Neighborhoods + Housing Development Standards. Stable neighborhoods of quality housing, ample community services and public facilities, well-maintained infrastructure, and public safety that foster a positive sense of identity

- The PUD will improve the long-term sustainability of neighborhoods through comprehensive planning, provision of neighborhood amenities, rehabilitation and maintenance of housing, and community-building efforts. The PUD will also ensure that adequate public services, infrastructure, open space, parking, traffic management, pedestrian, and bicycle routes, as well as public safety related to the project are consistent with the City's master and neighborhood plans.

Goal H2: Housing Supply & Diversity. Diversity of types of quality housing that are affordable to a range of household income levels, accommodate changing demographics and support and reinforce the economic sustainability of Ontario.

- The PUD will revitalize the Holt Boulevard corridor, in conjunction with the construction of the West County Connector by encouraging the production of higher density residential uses that are architecturally, functionally, and aesthetically suited to corridors. The PUD also encourages infill development on a vacant parcel that is identified within the City's 2021-2028 Housing Element as an opportunity site to meet the City's Regional Housing Needs Allocation (RHNA). A proposed project on the site will be affordable to households earning less than 60 percent of the area median income (AMI) which will provide opportunities for lower income families to live close to work, commute via public transportation, and maintain a decent quality of life.

Goal H4: Housing Assistance. Increased opportunities for low and moderate-income households and families to afford and maintain quality ownership and rental housing opportunities, including move-up opportunities.

- The PUD is a collaborative partnership with a nonprofit affordable housing developer to produce affordable housing and supports the City's goal to provide rental assistance for individuals and families earning extremely low, very low, and low income with funding from the state and federal government.

Goal H5: Special Needs Housing. A full range of housing types and community services that meet the special housing needs for all individuals and families in Ontario, regardless of income level, age, or other status.

- The PUD allows for and encourages the development of larger rental apartments that are appropriate for families with children, including, as feasible, the provision of supportive services, recreation, and other amenities.

3. HOUSING ELEMENT PRINCIPLES

This PUD furthers the City of Ontario Housing Element by implementing core principles included therein, such as:

- Providing a range of housing for all income levels is essential to a complete community.
- Affordable, quality housing helps attract and retain a qualified workforce and supports a prosperous local economy.

4. CITY COUNCIL PRIORITIES

The Holt + Allyn PUD is consistent with the City Council's desire to:

- Invest in the Growth and Evolution of the City's Economy.
- Focus Resources in Ontario's Commercial and Residential Neighborhoods
- Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in the New Model Colony

5. IMPLEMENTATION

The Holt + Allyn PUD implements the Ontario Plan as the PUD is a public-private partnership proposing a multifamily Development Project on a site identified within the City's Housing Element land inventory and furthers the City's goal to apply for funding from the Affordable Housing Sustainable Communities (AHSC) Program to connect housing and transit to reduce greenhouse gas emissions.

2.2 CENTER CITY REDEVELOPMENT PLAN OBJECTIVES

The Center City Project Area encompasses the historic Euclid Avenue District, including parts of East Holt Boulevard. Ontario's City Hall and surrounding Civic Center, Senior Center, Main Library, the Museum of History and Art, Ontario Town Square, and the Law School of the University of La Verne are all within the Center City project area. Development within the downtown area is designed to create an immediate and positive identity transforming the vicinity into a comfortable place to stroll and be seen. Along the Holt Boulevard Corridor and surrounding neighborhoods, the PUD encourages the development of low-rise buildings that include both residential and a mixture of retail uses to maximize the economic vitality of the community and create an urban environment where residents can live and work in Ontario. It also seeks to boost commercial activity by increasing the supply of housing and improving aesthetics on major corridors such as Holt Boulevard.

The goals of the Center City Project include:

- Improving aesthetics along major corridors.
- Promoting the creation of a mixed-use urban village in the Civic Center area; and
- Preserving the City's historic commercial structures, neighborhoods, and housing stock.

This PUD furthers each of those goals by laying the foundation for catalytic redevelopment along the East Holt Boulevard corridor – a connecting arterial into the City's downtown core.

2.3 PUD DISTRICT PURPOSE AND OBJECTIVES

The purpose of the Holt + Allyn PUD as part of the MU-6 (East Holt Mixed-Use) District is to secure the residential uses of the general plan; promote high-quality design standards in urban design; encourage the development of mixed-use residential communities, all while establishing regulations and standards appropriate to the specific need for affordable housing for working families in the area.

The intent of the Holt + Allyn PUD is to:

- Promote development projects that are consistent with The Ontario Plan and Policy Plan.
- Establish a sense of place and identity along the Holt Boulevard Corridor and provide a connection between the Downtown Mixed-Use Area and the Ontario Airport Metro Center.
- Achieve high-density residential development or mixed-use development, and diversification of housing types, while maintaining high quality in design and construction.

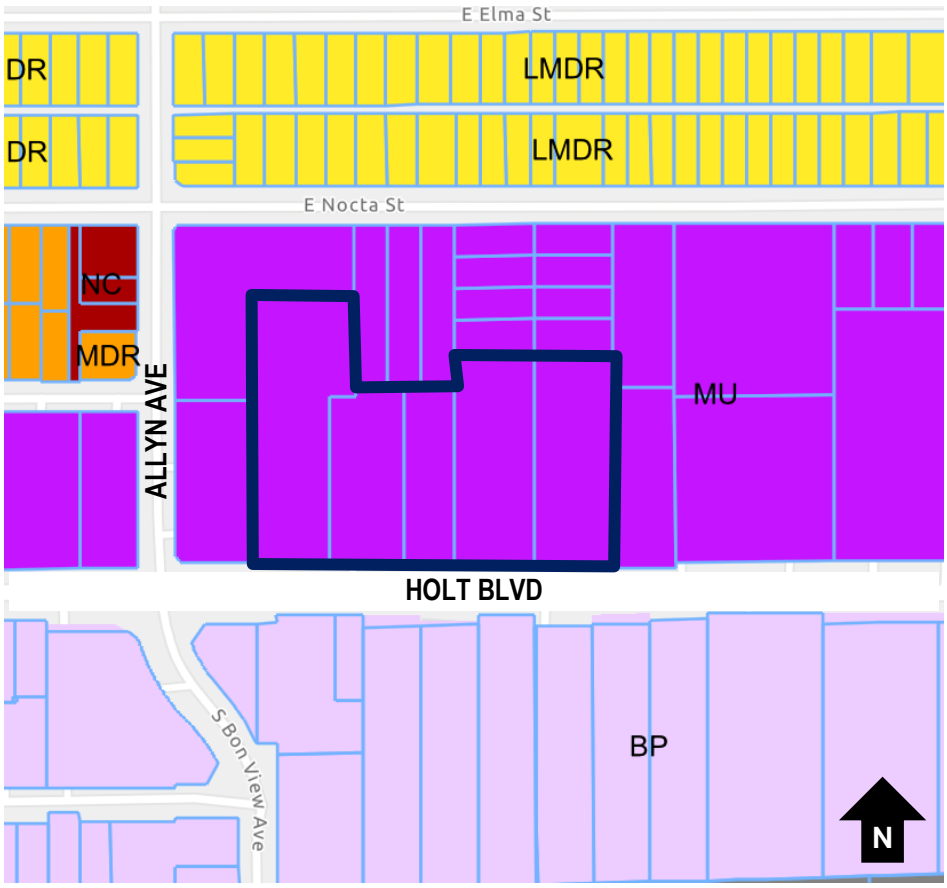
- Encourage clustering of structures to preserve a maximum amount of continuous open space.

3 LAND USE PLAN

3.1 LAND USE DESIGNATION

The Holt + Allyn Planned Unit Development (PUD) includes 5 parcels that are designated Mixed Use (MU) within the Ontario Plan and MU-6 in the City's Zoning Map. The MU-6 zoning district was established to accommodate the intensification of the East Holt Boulevard Corridor with low-rise (up to 5 stories) buildings accommodating a mix of retail and office uses at a development intensity of up to 2.0 FAR and 1.0 FAR, respectively, and residential uses at a density of 14 to 40 DU/AC. The MU-6 zoning district intends to create identity and place along the East Holt Boulevard Corridor and provide a connection between the Downtown Mixed-Use Area and the Ontario Airport Metro Center. The MU-6 zoning district is consistent with and implements the East Holt Mixed Use Area land use designation of the Policy Plan component of The Ontario Plan.

EXHIBIT 3-1: LAND USE DISTRICT MAP



Project Area: Mixed Use (MU)

Adjacent Uses:

- Business Park (BP)
- Low Medium Density Residential (LMDR)
- Medium Density Residential (MDR)
- Neighborhood Commercial (NC)
- Mixed Use (MU)

3.2 PERMITTED USES

Holt + Allyn Planned Unit Development does not deviate from the residential permitted uses outlined in Table 5.02-1, *Land Use Matrix* of the City of Ontario Development Code, as summarized in Table 3-1. For a full listing of uses please refer to the Ontario Development Code.

TABLE 3-1, CITY OF ONTARIO LAND USE MATRIX

Land Uses	MU-6
Mixed Use Developments	P
Multiple Family Dwellings	P
Senior Citizen Housing Developments	C
Single-Family Dwellings	P
Single Room Occupancy Facilities	---
Supportive Housing	---
Work/Live Units	C

"P" – Per section 5.02-1 of the Ontario Zoning Code, **Permitted** shall mean the land use, activity, or facility within the specified district is permitted by right of bring in the proper zoning district, and is subject to each Development Code provision applicable to the specified zoning district and the standards for specific uses, activities, and facilities contained in division 5.03 (Standards for Specific Uses, Activities, and Facilities) of the City's Development Code.

"C" (Conditionally Permitted) shall mean the land use, activity, or facility within the specified zoning district is subject to the granting of a Conditional Use Permit pursuant to Section 4.02.025 (Conditional Use Permits) of this Development Code, and is subject to each Development Code provision applicable to the specified zoning district and the standards for specific uses, activities, and facilities contained in Division 5.03 (Standards For Specific Uses, Activities and Facilities).

"---" (Prohibited) shall mean the land use, activity, or facility within the specified zoning district is expressly prohibited and shall not be allowed within the specified zoning district unless changed by Development Code Amendment.

4 DEVELOPMENT REGULATIONS AND DESIGN STANDARDS

4.1 BUILDING INTENSITY

Residential land uses within the Holt + Allyn Planned Unit Development will be consistent with the Mixed Use-6 (MU-6) zoning district allowing for residential uses at a density of 14 to 40 dwelling units per acre (DUA) or non-residential development at an FAR of up to 2.0.

4.2 BUILDING HEIGHT

Development within the Holt + Allyn Planned Unit Development will be consistent with the Mixed Use-6 zoning district, which allows for a maximum of fifty feet (50') in height consistent with the City of Ontario General Plan.

To further the City's low-rise mixed use building typology along the East Holt Boulevard corridor, higher density dwellings can be accommodated to increase the supply of housing, foster integrated residential and retail use communities, and increase pedestrian activity. Within the PUD area, multiple family developments should not exceed five stories or 50 feet, for locations within 100 feet of less intense development patterns (existing or planned). In sites where there are vacant adjacent uses zoned for single family development, building height must also not exceed 50 feet or the height of adjacent residential dwellings, whichever is greater.

4.3 BUILDING SETBACKS

Within the Holt + Allyn Planned Unit Development the buildings will comply with the building setback requirements as set forth in Table 4-1 (Minimum Building Setbacks). All setbacks shall be measured from the ultimate property lines after all dedications to develop streets to the ultimate right-of-way width. Placement of buildings, structures, fences, walls, utility facilities, yards, etc. will be based on the street rights-of-way and property line dimensions. Allowable encroachments in yards include (maximum 6' high) property line fences and gates, landscaping, paving, and public utilities.

TABLE 4.1: MINIMUM BUILDING SETBACKS

SETBACK	DISTANCE
1. Minimum Setbacks from Public Street Property Lines / Urban (25 du/ac or greater)	
• Holt Boulevard	0 feet
2. Minimum Setbacks from Interior Project Boundary Property Line	5 feet
3. Minimum Setbacks from Parking Spaces to Living Areas	10 feet

4.4 BUILDING SEPARATION

Within the Holt + Allyn Planned Unit Development the buildings will comply with the building separation requirements as set forth in Table 4-2 (Minimum Building Separation) and are consistent with or are more than the requirements outlined in Table 6.01-3, *Multiple-Family Residential Development Standards*, in the City of Ontario Development Code.

TABLE 4.2: MINIMUM SEPARATION BETWEEN DETACHED BUILDINGS

LOCATION	DISTANCE
Dwelling Front to Front, Rear or Side	< 2-Stories: 25 FT; > 3 Stories: 30 FT
Dwelling Side to Side	< 2-Stories: 25 FT; > 3 Stories: 30 FT
Dwelling Side to Rear	15 FT
Dwelling Rear to Rear	20 FT

4.5 BUILDING ORIENTATION

Building orientation should be designed to minimize noise impacts, aid in property site safety, create proper accessibility to site amenities and parking and maximize views from residential units. Design should also be crafted in a way that creates sound spaces, improving site safety. By blending residential and on-site community amenities, the design of the development project should promote increased walkability. Whenever feasible, Development Projects should locate building edges near the property line along Holt Boulevard to strengthen and define the urban edge and encourage pedestrian activity. Development Projects should create interest and interact with the streetscape through active uses, such as a community center, lobby, offices, and other related uses.

4.5.1 EXTERIOR

A. Orientation towards the exterior of the project area shall be carefully evaluated to ensure a proper relationship.

4.5.2 INTERIOR

A. Buildings should be clustered in a way that creates defensible spaces providing views of interior open spaces and amenities. For units without garage spaces, buildings shall be oriented to create minimal distances from assigned parking spaces to primary or secondary residential unit entries.

4.6 BUILDING TYPES

Within the Holt + Allyn Planned Unit Development the buildings that result in a density of more than 25 units per acre are Urban. For Urban building types the following requirements apply.

4.6.1 MASSING INCREMENTS

Along front and side elevations that face public streets and are longer than 100 feet shall require a minimum of two distinct massing increments. Individual massing increments shall be differentiated from one another using at least one of the following:

- vary parapet height by at least 3 feet, increase number of stories;
- set back upper floor;
- set the upper floor or multiple floors back at least 15 feet from façade; or
- set the entire façade back at least 10 for every 20 feet and/or by incorporating a tower element.

Massing increments that have distinct facades shall appear as distinct buildings and a massing increment design may be repeated on the same project elevation.

Buildings within the PUD area are distinct from one another, have articulation every 100 feet and have incorporated tower elements along Holt Boulevard.

4.6.2 FACADES - BUILDING BASE

Separate the building base from the rest of the façade for at least 12 feet (fewer than 5 stories) using at least one of the following strategies: provide a string course at the top of the first story, specify base material different from the rest of façade, specify body colors different from rest of façade or provide a ground floor Arcade or Gallery.

Buildings within the PUD area provide a base height of 12 feet and include a string course at the top of the first story.

4.6.3 FACADES - BUILDING BODY

The body of the building consists of the façade of all floors located above base and shall be designed as follows: windows shall be organized in bays, bands, curtain wall, and grid of windows and each massing increment must contain its entire façade composition without elements overlapping the division between increments.

4.6.4 FACADES - FENESTRATION DESIGN

Fenestration design addresses the percentage of window and door openings for ground floors and upper floors and glazing transparency. The ground floors of the building along the front lot line will have approximately 35 percent glazing transparency. All other frontages will have approximately 25 percent glazing transparency. For the upper floors of the building, 15 percent glazing transparency will be provided.

Additionally, ground floor windows shall be no higher than 3 feet above the adjacent grade and ground-floor bathroom windows are prohibited on facades that face front lot line.

4.7 ARCHITECTURAL CHARACTER

Due to the size and scale of the PUD project area, many of the buildings' elevations may be visible from the public street, common access drives, common parking areas, or adjacent parcels. As

such, architectural treatments should be carried around to the visible portions of all sides of the buildings. All towers or raised elements should be fully finished on all sides to appear as three-dimensional features.

Development types with densities of greater than 25 dwelling units per net acre shall be characterized as "urban" in their architectural character, as described below. Developments with densities lower than 25 dwelling units per net acre that include more than 5 units shall be characterized as "neighborhood" styles and shall carry the architectural character and are subject to the design requirements outlined in Section 2.2.2 of the Ontario Objective Design Standards. The development shall be designed with a Mission-Spanish architectural style.

Influenced by Spanish/Mediterranean and early Californian styles in the late 19th and early 20th centuries, the Spanish Colonial Revival style is asymmetrically arranged and includes low-pitched roofs covered with S-type clay red roofing tiles, wooden frames with stucco siding, and arches above doors, porch entries, and main windows.

4.7.1 FORM AND MASSING

The following form and massing requirements apply to the Mission-Spanish architectural style

A. Asymmetrical façade/elevations.
B. Three or more roof planes.
C. A minimum of 50 percent of the units shall have balconies or window treatments (such as shutters or awnings).
D. Entrances are recessed a minimum 12 inches.

4.8 MATERIALS AND DETAILING

A variety of durable high-quality materials with a range of textures and patterns that are naturally inherent in the materials should be used. Furthermore, building envelopes will be designed to prioritize meeting and exceeding energy efficiency goals to achieve a Zero Net Energy property. This includes everything from the types of windows, window frames, doors, fenestration percentage, and building exterior specs that will be utilized. Along nonresidential locations with street frontages, vinyl, fiberglass, or aluminum-clad windows shall be utilized to meet the California Energy Code and will resemble wood-framed windows. Alternative wood materials might also be used for window and door trims but will resemble wood to achieve architectural goals. The proposed color scheme for developments within the PUD area should complement surrounding uses with warmer and neutral tones and accent features to create a cohesive design. The development design will use various architectural strategies to create visual interest and fit the

context of its surroundings. This may include varying parapet heights and increasing stories or towers to create aesthetic appeal for the vertical components of the building. Designs should be divided into a base and body with varying design elements utilizing materials or window treatments to break up the massing of the façade. Balconies, awnings, and elements facing the street frontage should adhere to defined standards within this PUD, such as front lot line setbacks. Balconies and entry features along the building frontage must align with the architectural character of the building. Other features are described in greater detail below.

4.8.1 MATERIALS AND COLORS

A. Roof tiles shall use terracotta, brown earth tones, or rustic red color palettes.
B. White, cream, or tan stucco wall with (20/30) textured finish (i.e., hand troweled)
C. Wood-like materials (i.e., Alumawood or similar product) shall be used as secondary wall material for the following and similar elements:
    A. Posts and exposed beams.
    B. Railing, spindles, and grille work.
    C. Shutters, window frames, and doors.
D. If windows have shutters, the shutters' color shall match the accent color that is used for doors or decorative trim.
E. A minimum of 1 wrought-iron element (such as railings, hardware, and gates) shall be used.

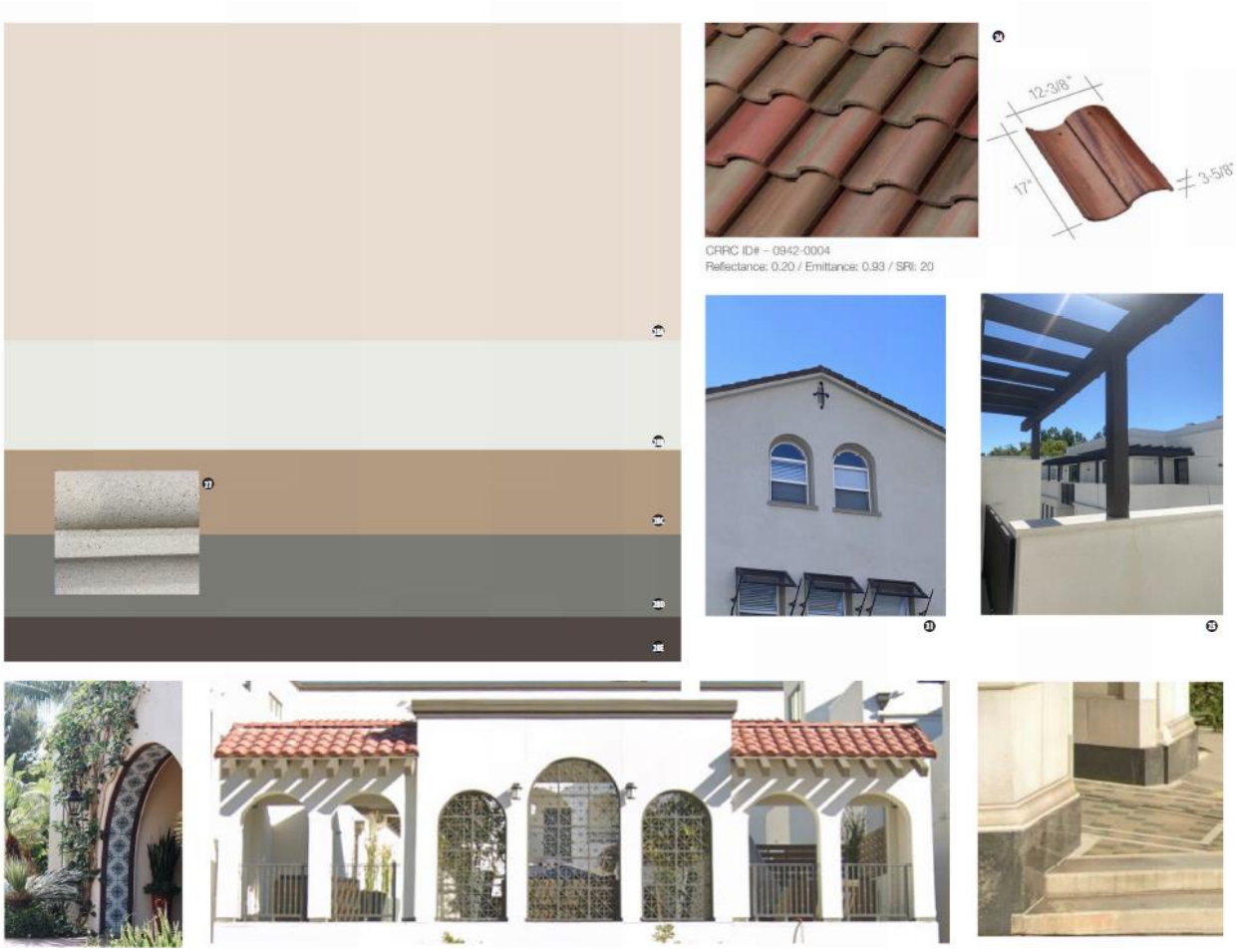
The following sample building materials proposed are illustrated on the south building elevations:



*Proposed color and materials details.

4.8.2 DOORS AND WINDOWS

A. Accent windows shall be a minimum of ten percent of the total windows.
B. The primary facade shall include a minimum of one arched element.
C. All primary entrance-door surrounds shall be banded with ceramic tile, molded plaster, or painted accents.
D. Vinyl or vinyl-clad windows are permitted if they are a dark color that is complementary or typical of the architectural style of the building.



E. Windows are not required to be recessed to ensure the long-term viability of the building envelope and prevent water intrusion.
F. Door and window trim may include wood, faux wood (i.e., Alumawood) cast stone, pre-cast concrete, glass fiber, reinforced concrete, and cement fiber board.

4.8.3 ROOF

A. A flat roof is proposed to meet the requirements of Title 24 and maximize solar PV arrays onsite.
B. When a flat roof is used, it shall be screened by a parapet that is an extension of the wall plane or by a modified Mansard roof.
C. Red, fired, clay tile roofs. Tile types include both Spanish (S-shaped) and Mission (half-cylinder) or concrete S 2-piece roof tiles.

4.8.4 DECORATIVE DETAILS

All residential projects 4 stories and taller shall provide a minimum of 5 of the following:

- Entry/front porch or patio;
- Decorative tiles;
- Clay tile vents;
- Wrought-iron balcony railings or support brackets;
- Dark-metal light fixture and hardwares;
- Paired wood (or wood simulated) garage doors with iron hardware,
- Verandas, pergolas, or arcades,
- Exterior stairs, and/or
- Awnings with metal spear supports.

4.9 STORAGE

Lockable private storage space for each residential unit may be provided within a storage building or a space directly accessible from the dwelling, such as an exterior closet accessed from a patio or balcony if screened from public view. Storage is not required but can be provided if feasible.

4.10 OPEN SPACE

To enhance the quality of life for residents, areas for physical activity, relaxation, and social engagement, common open spaces shall be provided to foster a sense of community and cohesion. Two types of open space are required, private and common open space. These open space areas are for the use of the on-site residents and their guests. Required street setback areas are not counted towards common open space requirements.

4.10.1 PRIVATE OPEN SPACE

Private open space shall be provided for each residential unit in order to provide private outdoor areas that can be enjoyed for exclusive use by the occupant of the residential unit and their guests. Types of areas considered private open space include balconies, decks, and enclosed patios and yards. A minimum of 60 square feet of private open space shall be provided for each residential unit.

4.10.2 COMMON OPEN SPACE

Common open space shall be provided to allow for both passive and active types of recreation, along with site landscape amenities. These areas are for use by project residents and their guests and may include indoor recreational facilities. The amount of required common open space shall be a minimum of 15% of the total lot area and include at least one of the following landscaped open space types: forecourt of 15 by 15 feet, side garden, 20 by 30-foot interior court, and passages between buildings.

Areas not considered common open space include: [1] parking lots; [2] walkways along or between buildings; [3] parking lot landscaping; [4] street setback areas; and [5] other areas not intended for active or passive recreation.

4.11 PARKING STANDARDS

Given the PUD area's location along a major transportation corridor, with access to multiple bus lines and the upcoming West Valley Connector BRT line, future projects should consider a parking ratio that is below the parking standards included in the City of Ontario Zoning Code. Based on recent legislation, best practices in the region, and the PUD location and proximity to transit, a Development Plan that proposes multifamily residential development that has affordability restrictions in place will be required to provide parking based on the following ratios:

TABLE 4-3: REQUIRED PARKING

UNIT SIZE/USE	REQUIRED PARKING RATIO	PARKING REQUIRED
1 bedroom unit/studio	1.0 spaces per unit	13 spaces
2-bedroom unit	1.3 spaces per unit	88.4 spaces
3-bedroom unit	1.7 spaces per unit	107.1 spaces
Visitor parking	0.075 spaces per unit	10.8 spaces
Staff parking	--	3 spaces
TOTAL		**222.3 spaces**

Market-rate residential projects or mixed-use projects that do not require affordability restrictions on housing units are subject to the City of Ontario parking standards as shown in the Municipal Code.

A proposed Development Plan may propose secure resident and guest parking within the PUD site in conformance with the standards listed above. To ensure future residential parking is controlled, the Development Project will ensure that a parking management plan is in place by a property manager upon development completion.

In no event shall street parking be allowed on Holt Boulevard. Should adjacent parcels with complementary residential uses be developed in the future, shared parking strategies shall be allowed under this PUD so long as a parking management plan is in place and updated to meet all onsite parking needs.

4.12 PARKING DESIGN

Parking shall be designated in compliance with the applicable standards in Division 6.03 (Off-Street Parking and Loading) of the Ontario Development Code and the City's Objective Design and Development Standards. The development proposes the development of approximately 239 surface parking spaces. Surface parking will comply with the following standards:

4.12.1 SURFACE PARKING LAYOUT

A. **Setbacks**. Surface parking lots adjacent to public or private streets shall include a landscaped and irrigated setback a minimum of 5 feet in width measured from the property line, or aligned with the building façade, whichever is greater.

B. **Orientation.** Surface parking lots shall be located at the rear, side, or internal lot lines and away from the front lot line.

4.12.2 SURFACE PARKING SCREENING

A. Street-adjacent parking lots shall be screened from view by a low wall or hedge no higher than 3 feet in height.

B. Views from neighboring properties shall be screened with trees and shrubs.

4.12.3 SURFACE PARKING LOT DESIGN

A. Landscape. Landscaping materials shall be applied in compliance with the applicable objective parking lot landscape standards contained in Ontario Development Code Section 6.05.030

4.12.4 SURFACE PARKING ACCESSORY STRUCTURES

A. All accessory structures, including carports, if used, shall match the architectural style and/or colors of the project buildings.

4.13 EQUIPMENT SCREENING

All roof-mounted and ground-mounted equipment shall be fully screened from a view of the public street and adjacent developments. The location of items shall be designed to allow screening with landscape materials, walls, architectural features, parapet walls, etc. Screening should be designed in a way that seamlessly integrates screening within a proposed Development Project.

4.14 FENCES AND WALLS

Fences and walls for a proposed Development Project shall be made of decorative materials that are compatible with the overall architectural character of the development within the PUD area. All fences and walls shall be in scale with the development to fulfill such needs as screening and security. Fences, walls, and hedges within the PUD area shall comply with Engineering Corner Sight Distance Standards and other applicable standards. All decorative walls, monuments, and other similar features shall not encroach into the public street right-of-way. Within the PUD area, fences and walls shall be limited to a maximum of six feet (6') in height within the interior, rear, and front entry areas consistent with the requirements of the Mixed Use-6 land use district.

4.15 SIGNS

Signs must comply with the City of Ontario Development Code and be coordinated through a comprehensive sign program.

4.16 SERVICE FACILITIES

Service facilities such as trash enclosures and parking areas shall be designed, located, and oriented to have a minimal visual impact on the development frontage within the PUD area. Trash enclosures shall be designed to coordinate with the architecture, colors, and materials of the development and shall be located to provide adequate access for trash pickup without encroaching into access drives or landscaped areas. Trash enclosures shall be designed and constructed with a solid roof cover which shall also be designed to match the architecture of the development.

5 CIRCULATION & INFRASTRUCTURE

5.1 VEHICLE CIRCULATION

Proposed Development Projects within the PUD area are required to provide adequate vehicle connections from potential buildings to the public street. Primary access to a future Development Project shall be provided through at least one central fifty-seven (57') foot gated vehicular access point. A secondary twenty-six-foot (26') driveway for emergency vehicle access shall be provided off Holt Boulevard at the western end of the PUD area. Within the PUD area, drive aisles are two-way and a minimum of twenty-six feet (26') wide to ensure adequate emergency vehicle access.

5.2 PEDESTRIAN CONNECTIONS

Proposed Development Projects within the PUD area will be required to provide adequate pedestrian connections from residential buildings to the public street. This can be achieved through pedestrian gates along street frontages and/or access gates near driveways.

5.3 MASS TRANSIT

The proposed Development Project within the PUD area should encourage the use of existing bus stops by providing pedestrian connections to east and westbound destinations through [Omnitrans 61] with bus stops located on the northeast corner of Holt Boulevard and Allyn Avenue as well as

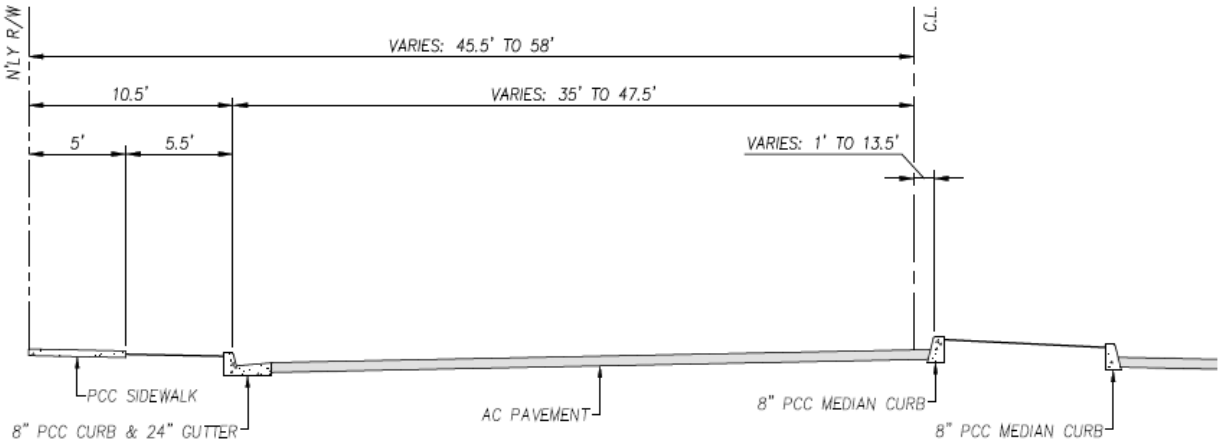
the southeast corner of Holt Boulevard and Bon View Avenue. The PUD site is also roughly 0.4 miles from the anticipated West Valley Connector stop at the corner of Grove Avenue and Holt Boulevard.

5.4 STREET DEDICATIONS AND EASEMENTS

Proposed Development Projects within the PUD area shall dedicate right-of-way (ROW) along all street frontages as necessary to increase the right-of-way to ultimate width with a modified parkway section (Holt Boulevard) consistent with the West Valley Connector Bus Rapid Transit (BRT) line. Widths along the Holt Boulevard frontage will vary from approximately 58 feet at the western boundary tapering to approximately 45 feet for the majority of the site frontage.

Development projects will accommodate the required ultimate right-of-way for Holt Boulevard to ensure that the proposed right-of-way Holt Boulevard can accommodate the development of the West Valley Connector BRT line.

EXHIBIT 5-1: HOLT BOULEVARD TYPICAL ROW



TYPICAL SECTION
HOLT BOULEVARD
SCALE: 1"=6'

5.5 PUBLIC RIGHT-OF-WAY IMPROVEMENTS

As development projects are proposed within the PUD area, prospective developers are responsible for improving the public right-of-way to be consistent with the City's General Plan and Municipal Code. Public right-of-way improvements are required to include but are not limited to the following: street pavement, curb & gutter, parkway landscaping, parkway irrigation, raised landscape median with irrigation on Holt Boulevard, public sidewalks, traffic signage and striping, streetlights, bus stop, bus shelter, and amenities. The extent of the required improvements shall be determined for each development plan. At a minimum, the improvements shall incorporate all items along the street frontages of the properties to be developed with proper transitioning of the entire block frontage if not being installed simultaneously. Improvements along the street frontage for the entire block may be required at the time of the development plan review.

5.6 INFRASTRUCTURE

Water service for the PUD site will be provided by the existing 12-inch water line in Holt Boulevard. Wastewater flows for the PUD will also be designed to connect to the existing 30-inch sewer line in Holt Boulevard. On-site stormwater drainage facilities shall be provided to capture and infiltrate a 2-year, 1-hour storm event, consistent with the San Bernardino County Stormwater Program's Water Quality Management Plan (WQMP) requirements for new development projects. Stormwater capture and infiltration facilities may include the utilization of vegetated swales, depressed landscaped basins, pervious concrete pavement, or underground stormwater detention/retention/infiltration vaults. The existing Master Plan storm drain at Virginia Avenue and Holt Boulevard is built to the ultimate requirement; consequently, additional storm drain system extensions are not necessary. All building roof and paved area runoff shall be directed into depressed landscaped swales, trenches, or basins, within the development, to comply with the requirement to capture and infiltrate the 2-year, 1-hour storm event runoff. All proposed Development Plans are required to prepare a Preliminary Water Quality Management Plan. All Priority Land Use (PLU) areas shall comply with the statewide Trash Provisions adopted by the State Water Resources Control Board (SWRCB) and trash requirements in the most current San Bernardino County Area-Wide MS4 Permit.

Sewer mains in Nocta Street and Allyn Avenue will need to be installed per City Standards and Guidelines to accommodate the project. All existing unused sewer lines traversing the project site as well as any unused manholes on the project site will be abandoned per the City's Standards. In instances where sewer lines are abandoned, the PUD requires that any adjacent properties impacted be reconnected to sewer mains along Nocta Street and Allyn Avenue.

Utility lines (electric, communications, TV, etc.) located onsite that are currently overhead will be placed underground unless they run along a property line that would allow them to remain and would not impact the proposed housing development and/or it is determined to be financially or physically infeasible and/or requires approval or access from neighboring property owners. The existing overhead utility lines and utility poles along the eastern, northern, and western edges of the site may remain in place with appropriate setbacks and easements.

Street lighting shall be installed along the public right-of-way off Holt Boulevard in line with City of Ontario Standards. The type of street lighting will be determined at the time of development plan review.

5.7 LANDSCAPING + DRAINAGE PLAN

A conceptual landscape plan and preliminary drainage plan shall be submitted with each Development Plan proposed within the Holt + Allyn Planned Unit Development area. The plan shall specify all landscape and hardscape elements for the development site and indicate how the improvements will coordinate with the other sites within the PUD. The landscape plans and/or civil plans shall show the location of all ground-mounted utility structures such as transformers, backflow prevention devices, trash enclosures, and HVAC equipment, and indicate the methods for screening these items. All utility structures and equipment shall be screened from view of the public streets and adjacent developments.

Water conservation shall be provided through drought-tolerant plant species, hydro zones, water-efficient irrigation, and weather-based controllers. Landscaped areas may be used for stormwater infiltration through vegetated swales, detention or retention basins, or dry wells as needed with the use of appropriate planting materials. Broad canopy shade trees shall be used to reduce heat gain on buildings, paving, and parking areas. The plan shall identify all existing trees on site and preserve them where possible. The landscape design shall meet the requirements of the Landscape Development Standards and shall create well-functioning spaces within a sustainable design.

Within the PUD area, the building façade shall be complemented by a curated planting palette along the building frontage. Additionally, in conformance with the BRT Plans, the right-of-way widths fronting the building will meet the Holt Blvd parkway (landscape + sidewalk) of ten and a half feet (10.5') width. Parkway landscaping and irrigation, although within the public right-of-way, will be installed and maintained by each development. Additionally, trees along street frontages shall comply with the variety, size, and spacing as directed by the City of Ontario Master Street Tree Plan.

6 ADMINISTRATION

6.1 ITEMS NOT ADDRESSED IN PUD

Any terms, requirements, or regulations not addressed within the PUD document shall be governed by the City of Ontario Development Code, the regulations of the General Mixed-Use zones, and City Standards.

6.2 DEVELOPMENT APPLICATIONS

Development Plans for projects within the Holt + Allyn PUD area, along with fees and other required items, shall be submitted for review and approval per the requirements contained in Article 8 of the City of Ontario Development Code and the General Application.

6.3 ADMINISTRATIVE EXCEPTIONS

Deviation from the development standards set forth in this document may be granted up to a maximum of ten percent (10%) by the Zoning Administrator. Any deviations from the City of Ontario's development standards will be considered an incentive/concession in lieu of a variance.

6.4 AMENDMENTS TO THE PUD

Any amendments to the PUD document are subject to the Ontario Development Code Section 4.01.030.

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CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **PUBLIC HEARINGS**
Department: Financial Services Prepared By: Jennifer Schaefer Staff Member Presenting: Armen Harkalyan, Executive Director of Finance Reviewed By: Doreen Nunes Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 23

SUBJECT: RESOLUTIONS AUTHORIZING THE ISSUANCE OF LEASE REVENUE BONDS, SERIES 2025A AND RELATED MATTERS

RECOMMENDATION: Hold public hearing and that the City Council and the Ontario Public Financing Authority take the following actions:

A. City Council consider and adopt a Resolution authorizing the execution and delivery of a Ground Lease, Lease Agreement, Indenture, Bond Purchase Agreement and Continuing Disclosure Certificate in connection with the issuance and sale of the Lease Revenue Bonds, Series 2025A, by the Ontario Public Financing Authority in an aggregate principal amount not to exceed $250 million and authorizing the distribution of an Official Statement in connection with the offering and sale of the Bonds and authorizing the execution and delivery of necessary documents in connection therewith.
B. Ontario Public Financing Authority consider and adopt a Resolution authorizing the execution and delivery of a Ground Lease, Lease Agreement, Indenture, Bond Purchase Agreement and Assignment Agreement in connection with the issuance of its Lease Revenue Bonds, Series 2025A, in an aggregate principal amount of not to exceed $250 million and authorizing the distribution of an Official Statement in connection with the offering and sale of the Bonds and authorizing the execution and delivery of necessary documents in connection therewith.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Ontario Public Financing Authority (the "Authority") and City intend to execute a lease agreement for the purpose of causing the issuance of the Lease Revenue Bonds, Series 2025A (2025 Bonds). Based on current market conditions, a publicly sold tax-exempt bond issuance to fund $250 million in net proceeds would result in estimated average full-year debt service payments of approximately $15 million per year over a 30-year period with an approximate true interest cost of 4.37 percent. The final true interest cost will be determined when the bonds are

priced and sold, which is anticipated to occur in May 2025. The estimated issuance costs will be paid from the proceeds of the new bond issue and have been included in the calculation of the debt service. An appropriation for the 2025 Bonds annual debt service payment is included in the Fiscal Year 2025-26 Proposed Budget. Once the 2025 Bonds are sold and issued, this appropriation will be adjusted accordingly at the next quarterly budget update. Future appropriations for the 2025 Bonds annual debt service payment will be included in future annual budgets presented to City Council for approval.

BACKGROUND & ANALYSIS: The City is undertaking a series of significant public infrastructure projects designed to enhance public amenities and support regional growth. Over the current and next five fiscal years, the City has budgeted approximately $1.6 billion in capital improvements. The Authority is a Joint Powers Authority which was formed to finance the acquisition and construction of public capital improvements and facilitate buildout of the City's infrastructure plan.

The City has requested that the Authority issue its lease revenue bonds for the purpose of financing certain City capital improvements for the 2025-26 and 2026-27 fiscal years, including, but not limited to, the following projects:

- Ontario Sports Empire Onsite and Offsite Improvements
- Storm Drain Improvements
- Continuum of Care – West Mission Campus
- Real Time Information Center
- Anthony Munoz Hall of Fame Park Improvements
- De Anza Park Improvements
- John Galvin Park Improvements
- James Galanis Park Improvements
- Veterans Memorial Park Improvements
- Ontario Museum of History & Art Improvements

The 2025 Bonds will be payable and secured from base rental payments made by the City pursuant to the lease agreement with respect to the lease of the following properties:

- Ovitt Family Community Library
- Municipal Services Corporation Yard
- Creekside Park
- Kimball Community Park
- Bon View Park
- Homer F. Briggs Memorial Park
- Anthony Munoz Hall of Fame Park
- De Anza Park
- Westwind Park
- John Galvin Park
- Ontario Motor Speedway Park
- Celebration Park (North and South)

In coordination with the financing team, staff analyzed various scenarios for the 2025 Bonds,

including use of tax-exempt and taxable bonds and funding of capitalized interest. By identifying capital projects that could be funded with tax-exempt bond proceeds, the City is able to achieve a lower true interest cost as compared to a taxable bond issuance. In addition, by pledging the above properties under the lease agreement for the 2025 Bonds, the City will avoid funding capitalized interest during construction, further reducing the cost of borrowing. The 2025 Bonds structure that is being recommended results in the lowest true interest cost and total payments as compared to the alternative scenarios and is reflected in the estimates included with this agenda item.

The proposed 2025 Bonds are estimated to be issued in the principal amount of approximately $232.8 million with a final maturity of November 1, 2055. Based on current market conditions and assuming the City's current "AA-" Standard & Poor's rating, the 2025 Bonds are expected to have average annual debt service payments of approximately $15 million and a true interest cost of 4.37 percent. The final interest cost and debt service payments will be determined when the 2025 Bonds are priced, which is currently expected in May 2025.

As required under Section §5852.1 of the California Government Code, good faith estimates as provided by the Municipal Advisor and Underwriter are provided as an attachment to the authorizing Resolution.

FINANCING PLAN: Presented to the City Council and the Authority are resolutions which approve the execution of a Ground Lease, Lease Agreement, Indenture, Bond Purchase Agreement, Assignment Agreement, Continuing Disclosure Certificate, and Preliminary Official Statement related to the 2025 bonds. The proposed 2025 Bonds are to be secured by lease payments from the City's General Fund.

To provide services necessary for the issuance of the bonds, staff seeks City Council authority for the City Manager to negotiate and execute agreements with: Stradling Yocca Carlson & Rauth, LLP, to act as Bond Counsel; Best Best & Krieger LLP to act as Disclosure Counsel; Urban Futures, Inc., to act as Municipal Advisor; Ramirez & Co., Inc., to act as Underwriter, and Zions Bancorporation, N.A., to act as Trustee. The costs for such services will be paid for and from the bond proceeds.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE, LEASE AGREEMENT, INDENTURE, BOND PURCHASE AGREEMENT AND CONTINUING DISCLOSURE CERTIFICATE IN CONNECTION WITH THE ISSUANCE OF ONTARIO PUBLIC FINANCING AUTHORITY 2025A LEASE REVENUE BONDS, APPROVING THE ISSUANCE OF SUCH BONDS IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $250,000,000, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION WITH THE OFFERING AND SALE OF SUCH BONDS AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS

WHEREAS, the City of Ontario, California (the "City"), is a general law city organized and existing under the laws of the State of California; and

WHEREAS, the City desires to finance the costs of the acquisition and/or installation of various capital improvements (the "Project"); and

WHEREAS, the Ontario Public Financing Authority (the "Authority") and the City have determined that it would be in the best interests of the City and residents of the City to authorize the preparation, sale and delivery of the "Ontario Public Financing Authority 2025A Lease Revenue Bonds" (the "Bonds") for the purposes of financing the Project; and

WHEREAS, in order to facilitate the issuance of the Bonds, the City and the Authority desire to enter into a Ground Lease between the City and the Authority (the "Ground Lease") pursuant to which the City will lease certain real property (collectively, the "Leased Assets")) to the Authority, and a Lease Agreement between the City and the Authority (the "Lease Agreement"), pursuant to which the City will lease the Leased Assets back from the Authority, and pay certain Base Rental Payments (as such term is defined in the Lease Agreement), which are pledged to the owners of the Bonds by the Authority pursuant to an Indenture by and among Zions Bancorporation, National Association (the "Trustee"), the City and the Authority (the "Indenture"); and

WHEREAS, the City and the Authority desire to undertake a negotiated sale of the Bonds to Samuel A. Ramirez & Co., Inc., as the underwriter of the Bonds (the "Underwriter") pursuant to a purchase contract by and among the City, the Authority and the Underwriter (the "Bond Purchase Contract"); and

WHEREAS, Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12") requires that, in order to be able to purchase or sell the Bonds, the underwriters thereof must have reasonably determined that the City has undertaken in a written agreement or contract for the benefit of the holders of the Bonds to provide disclosure of certain financial information and certain events on an ongoing basis; and

WHEREAS, in order to cause such requirement to be satisfied, the City desires to execute and deliver a Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"); and

WHEREAS, a form of the Preliminary Official Statement (the "Preliminary Official Statement") has been prepared; and

WHEREAS, the Bonds will be issued pursuant to the Marks-Roos Local Bond Pooling Act of 1985, commencing with Section 6584 of the California Government Code (the "Act"); and

WHEREAS, the City is a member of the Authority and the Project is located within the boundaries of the City; and

WHEREAS, the City has, prior to the consideration of this Resolution, held a public hearing on the financing of the Project from the proceeds of the issuance of the Bonds in accordance with Section 6586.5 of the Act, which hearing was held at 303 East B Street, Ontario, California 91764 on the date of this Resolution; and

WHEREAS, in accordance with Section 6586.5 of the Act, notice of such hearing was published once at least five days prior to the hearing in the Inland Valley Daily Bulletin, a newspaper of general circulation in the City; and

WHEREAS, the City Council has been presented with the form of each document that is referred to herein relating to the refinancing contemplated hereby, and the City Council has examined and approved each document and desires to authorize and direct the execution of such documents and the consummation of such refinancing; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of such refinancing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such refinancing for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ontario as follows:

SECTION 1. Each of the above recitals is true and correct and the City Council so finds. Following a duly noticed and conducted public hearing, the City Council hereby finds and determines that there are significant public benefits to the citizens of the City through the use of the Act to assist the City with respect to the subject matter hereof through the approval of the issuance of the Bonds and otherwise hereunder within the meaning of Section 6586(a)-(d), inclusive, of the Act, in that the issuance of the Bonds and related transactions will result in more efficient delivery of local agency services to residential and commercial development.

SECTION 2. The forms of the Ground Lease and the Lease Agreement on file with the City Clerk are hereby approved, and the Mayor, the City Manager, the Executive Director of Finance and the City Clerk (the "Authorized Officers"), are each hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Ground Lease and the Lease Agreement in substantially said forms, with such changes, insertions and omissions therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, that the term of the Ground Lease and the Lease Agreement shall terminate no later than November 1, 2056 (provided that such term may be extended as provided therein) and that the true interest cost applicable to the interest components of the Base Rental Payments shall not exceed 5.50%.

SECTION 3. The form of Indenture on file with the City Clerk is hereby approved, and the Authorized Officers are each hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Indenture in substantially said form, with such changes, insertions and omissions therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 4. The form of Bond Purchase Agreement on file with the City Clerk is hereby approved, and the Authorized Officers are each hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Bond Purchase Contract in substantially said form, with such changes, insertions and omissions therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, that the Underwriter's discount shall not exceed 0.45% of the principal amount of the Bonds.

SECTION 5. The form of Preliminary Official Statement on file with the City Clerk, with such changes, insertions and omissions therein as may be approved by an Authorized Officer, is hereby approved, and the use of the Preliminary Official Statement in connection with the offering and sale of the Bonds is hereby authorized and approved. The Authorized Officers are each hereby authorized to certify on behalf of the City that the Preliminary Official Statement is deemed final as of its date within the meaning of Rule 15c2-12 (except for the omission of certain final pricing, rating and related information as permitted by Rule 15c2-12). The Authorized Officers are each hereby authorized and directed to furnish, or cause to be furnished, to prospective bidders for the Bonds a reasonable number of copies of the Preliminary Official Statement.

SECTION 6. The preparation and delivery of an Official Statement, and its use in connection with the offering and sale of the Bonds, is hereby authorized and approved. The Official Statement shall be in substantially the form of the Preliminary Official Statement with such changes, insertions and omissions as may be approved by an Authorized Officer, such approval to be conclusively evidenced by the execution and delivery thereof. The Authorized Officers are each hereby authorized and directed, for and in the name of and on behalf of the City, to execute the final Official Statement and any amendment or supplement thereto for and in the name and on behalf of the City.

SECTION 7. The form of Continuing Disclosure Certificate on file with the City Clerk is hereby approved, and the Authorized Officers are each hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Continuing Disclosure Certificate in substantially said form, with such changes, insertions and omissions therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced to the execution and delivery thereof.

SECTION 8. The Authorized Officers are each hereby authorized to evaluate whether the purchase of municipal bond insurance and/or a debt service reserve policy for the Bonds will result in a net savings with respect to the Bonds and, if so, to arrange for the purchase of such municipal bond insurance and/or debt service reserve policy. The Authorized Officers are each hereby authorized to solicit bids from municipal bond insurers, to select an insurer to provide municipal bond insurance with respect to the Bonds and/or a debt service reserve policy, if applicable, and to execute and negotiate any agreements that are necessary in connection with the procurement of such municipal bond insurance and/or debt service reserve policy, provided that such municipal bond insurance policy and/or insurance debt service reserve policy provides debt service savings or other benefits to the proposed transaction, as determined by the Authorized Officers. The City's execution of an insurance commitment shall be conclusive evidence of such determination. Each of the above-referenced officers is hereby authorized to direct Bond Counsel and/or the City Attorney to make any necessary revisions to the legal documents to effectuate the procurement of municipal bond insurance and/or a debt service reserve fund policy.

SECTION 9. The Authorized Officers are hereby authorized and directed, jointly and severally, to do any and all things which they may deem necessary or advisable in order to consummate the transactions herein authorized and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, including, but not limited to, adding property to, substituting property for or removing property from the Leased Assets identified in the Ground Lease and the Lease Agreement, and taking any and all actions, and executing and delivering any and all documents, in order to clear any title exceptions to the Leased Assets, including but not limited to entering into any subordination and non-disturbance agreement with any tenants of the Leased Assets. All actions heretofore taken by the officers, employees and agents of the City with respect to the transactions set forth above are hereby approved, confirmed and ratified.

SECTION 10. The good faith estimates of costs related to the Bonds which are required by Section 5852.1 of the California Government Code are disclosed in Exhibit A hereto and are available to the public at the meeting at which this Resolution is approved.

SECTION 11. The City Council hereby approves the execution and delivery of all agreements, documents, certificates and instruments referred to herein with electronic signatures as may be permitted under the California Uniform Electronic Transactions Act and digital signatures as may be permitted under Section 16.5 of the California Government Code using DocuSign.

SECTION 12. Unless otherwise defined herein, all terms used herein and not otherwise defined shall have the meanings given such terms in the Indenture unless the context otherwise clearly requires.

SECTION 13. This Resolution shall take effect from and after the date of its passage and adoption.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of April, 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 15, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held April 15, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the Bonds in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to the City by Urban Futures Incorporated (the City's "Municipal Advisor") in consultation with Samuel A. Ramirez & Co., Inc., the Underwriter of the Bonds.

Principal Amount. The Municipal Advisor has informed the City that, based on the City's financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Bonds to be sold is $250,000,000 (the "Estimated Principal Amount"), which excludes approximately $19,133,552 of premium estimated to be generated based on current market conditions, which together total $251,898,552. Premium is generated when, on a net aggregate basis for a single issuance of bonds, the price paid for the bonds is higher than the face value of such bonds.

True Interest Cost of the Bonds. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the true interest cost of the Bonds, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the Bonds, is 4.37%.

Finance Charge of the Bonds. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Bonds), is $1,897,443.

Amount of Proceeds to be Received. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the City for sale of the Bonds, less the finance charge of the Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is $250,000,000.

Total Payment Amount. The Municipal Advisor has informed the City that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the City will make to pay debt service on the Bonds, plus the finance charge for the Bonds, as described above, not paid with the proceeds of the Bonds, calculated to the final maturity of the Bonds, is $460,413,884.

The foregoing estimates constitute good faith estimates only. The actual principal amount of the Bonds issued and sold, the true interest cost thereof, the finance charges

thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to: (a) the actual date of the sale of the Bonds being different than the date assumed for purposes of such estimates; (b) the actual principal amount of Bonds sold being different from the Estimated Principal Amount; (c) the actual amortization of the Bonds being different than the amortization assumed for purposes of such estimates; (d) the actual market interest rates at the time of sale of the Bonds being different than those estimated for purposes of such estimates; (e) other market conditions; or (f) alterations in the City's financing plan, delays in the financing, additional legal work or a combination of such factors and additional finance charges, if any, attributable thereto. The actual date of sale of the Bonds and the actual principal amount of Bonds sold will be determined by the City based on the timing of the need for proceeds of the Bonds and other factors. The actual interest rates borne by the Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the City.

RESOLUTION NO. _____

A RESOLUTION OF THE ONTARIO PUBLIC FINANCING AUTHORITY, OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY BY THE AUTHORITY OF A GROUND LEASE, LEASE AGREEMENT, INDENTURE, BOND PURCHASE AGREEMENT AND ASSIGNMENT AGREEMENT IN CONNECTION WITH THE ISSUANCE OF ONTARIO PUBLIC FINANCING AUTHORITY 2025A LEASE REVENUE BONDS, AUTHORIZING THE ISSUANCE OF SUCH BONDS IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $250,000,000, AUTHORIZING THE DISTRIBUTION OF AN OFFICIAL STATEMENT IN CONNECTION WITH THE OFFERING AND SALE OF SUCH BONDS AND AUTHORIZING THE EXECUTION OF NECESSARY DOCUMENTS AND CERTIFICATES AND RELATED ACTIONS

WHEREAS, the City of Ontario (the "City") and the Ontario Public Financing Authority (the "Authority") desire to finance the costs of the acquisition and/or installation of various capital improvements (the "Project"); and

WHEREAS, the Authority and the City have determined that it would be in the best interests of the Authority, the City and residents of the City to authorize the preparation, sale and delivery by the Authority of the "Ontario Public Financing Authority Lease Revenue Bonds Series 2025A (the "Bonds) to finance the Project;

WHEREAS, in order to facilitate the issuance of the Bonds, the City and the Authority desire to enter into a Ground Lease between the City and the Authority (the "Ground Lease") pursuant to which the City will lease certain real property (the "Leased Assets")) to the Authority, and a Lease Agreement between the City and the Authority (the "Lease Agreement"), pursuant to which the City will sublease the Leased Assets back from the Authority, and pay certain Base Rental Payments (as such term is defined in the Lease Agreement), which are pledged to the owners of the Bonds by the Authority pursuant to an Indenture by and among Zions Bancorporation, National Association (the "Trustee"), the City and the Authority (the "Indenture"); and

WHEREAS, the Authority and the Trustee desire to enter into an Assignment Agreement in order to provide, among other things, that all rights to receive the Base Rental Payments have been assigned without recourse by the Authority to the Trustee; and

WHEREAS, the City and the Authority desire to undertake a negotiated sale of the Bonds to Samuel A. Ramirez & Co., Inc., as the underwriter of the Bonds (the "Underwriter") pursuant to a purchase contract by and among the City, the Authority and the Underwriter (the "Bond Purchase Contract"); and

WHEREAS, a form of the Preliminary Official Statement (the "Preliminary Official Statement") has been prepared; and

WHEREAS, the Bonds will be issued pursuant to the Marks-Roos Local Bond Pooling Act of 1985, commencing with Section 6584 of the California Government Code (the "Act");

WHEREAS, the City is a member of the Authority and the Project is located within the boundaries of the City; and

WHEREAS, the City has, prior to the consideration of this Resolution, held a public hearing on the financing of the Project from the proceeds of the issuance of the Bonds in accordance with Section 6586.5 of the Act, which hearing was held at 303 East B Street, Ontario, California 91764 on the date of this Resolution, and adopted its resolution approving the refinancing and making a finding of significant public benefit in accordance with the Act; and

WHEREAS, in accordance with Section 6586.5 of the Act, notice of such hearing was published once at least five days prior to the hearing in the Inland Valley Daily Bulletin, a newspaper of general circulation in the City; and

WHEREAS, the Board of Directors of the Authority (the "Board of Directors") has been presented with the form of each document that is referred to herein, and the Board of Directors has examined and approved each document and desires to authorize and direct the execution of such documents and the consummation of such financing and refinancing; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of such refinancing authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Authority is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such refinancing for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Ontario Public Financing Authority as follows:

SECTION 1. Each of the above recitals is true and correct and the Board of Directors so finds. The Board of Directors has determined and hereby finds that the Authority's assistance in financing the Project by the execution and delivery of the Bonds will result in significant public benefits within the meaning of Section 6586(a)-(d), inclusive, of the Act.

SECTION 2. The forms of the Lease Agreement and the Ground Lease on file with the Secretary of the Authority are hereby approved, and the Chair, Vice Chair, Executive Director, Treasurer and Secretary (the "Authorized Officers"), are each hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Lease Agreement and the Ground Lease, respectively, in substantially said forms, with such changes, insertions and omissions therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced

by the execution and delivery thereof; provided, however, that the term of the Lease Agreement and the Ground Lease shall terminate no later than November 1, 2056 (provided that such term may be extended as provided therein) and the true interest cost applicable to the interest components of the Base Rental Payments shall not exceed 5.50% per annum.

SECTION 3. The form of Indenture on file with the Secretary of the Authority is hereby approved, and the Authorized Officers are each hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Indenture in substantially said form, with such changes, insertions and omissions therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 4. The form of Bond Purchase Agreement on file with the Secretary of the Authority is hereby approved, and the Authorized Officers are each hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Bond Purchase Agreement in substantially said form, with such changes, insertions and omissions therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, however, that the Underwriters' discount shall not exceed 0.45% of the principal amount of the Bonds.

SECTION 5. The form of Assignment Agreement on file with the Secretary of the Authority is hereby approved, and the Authorized Officers are each hereby authorized and directed, for and in the name and on behalf of the Authority, to execute and deliver the Assignment Agreement in substantially said form, with such changes, insertions and omissions therein as the Authorized Officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 6. The form of Preliminary Official Statement on file with the Secretary of the Authority, with such changes, insertions and omissions therein as may be approved by an Authorized Officer, is hereby approved, and the use of the Preliminary Official Statement in connection with the offering and sale of the Bonds is hereby authorized and approved. The Authorized Officers are each hereby authorized to certify on behalf of the Authority that the Preliminary Official Statement is deemed final as of its date within the meaning of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (except for the omission of certain final pricing, rating and related information as permitted by Rule 15c2-12). The Authorized Officers are each hereby authorized and directed to furnish, or cause to be furnished, to prospective bidders for the Bonds a reasonable number of copies of the Preliminary Official Statement.

SECTION 7. The preparation and delivery of an Official Statement, and its use in connection with the offering and sale of the Bonds, is hereby authorized and approved. The Official Statement shall be in substantially the form of the Preliminary Official Statement with such changes, insertions and omissions as may be approved by an Authorized Officer, such approval to be conclusively evidenced by the execution and delivery thereof. The Authorized Officers are each hereby authorized and directed, for and in the name of and on behalf of the Authority, to execute the final Official Statement

and any amendment or supplement thereto for and in the name and on behalf of the Authority.

SECTION 8. The Authorized Officers are each hereby authorized to evaluate whether the purchase of municipal bond insurance and/or a debt service reserve policy for the Bonds will result in a net savings with respect to the Bonds and, if so, to arrange for the purchase of such municipal bond insurance and/or debt service reserve policy. The Authorized Officers are each hereby authorized to solicit bids from municipal bond insurers, to select an insurer to provide municipal bond insurance with respect to the Bonds and/or a debt service reserve policy, if applicable, and to execute and negotiate any agreements that are necessary in connection with the procurement of such municipal bond insurance and/or debt service reserve policy, provided that such municipal bond insurance policy and/or insurance debt service reserve policy provides debt service savings or other benefits to the proposed transaction, as determined by the Authorized Officers. The Authority's execution of an insurance commitment shall be conclusive evidence of such determination. Each of the above-referenced officers is hereby authorized to direct Bond Counsel and/or the Authority's General Counsel to make any necessary revisions to the legal documents to effectuate the procurement of municipal bond insurance and/or a debt service reserve fund policy.

SECTION 9. The Authorized Officers are hereby authorized and directed, jointly and severally, to do any and all things which they may deem necessary or advisable in order to consummate the transactions herein authorized and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, including, but not limited to, adding property to, substituting property for or removing property from the Leased Assets identified in the Ground Lease and the Lease Agreement, and taking any and all actions, and executing and delivering any and all documents, in order to clear any title exceptions to the Leased Assets, including but not limited to entering into any subordination and non-disturbance agreement with any tenants of the Leased Assets. All actions heretofore taken by the officers and agents of the Authority with respect to the transactions set forth above are hereby approved, confirmed and ratified.

SECTION 10. The good faith estimates of costs related to the Bonds which are required by Section 5852.1 of the California Government Code are disclosed in Exhibit A hereto and are available to the public at the meeting at which this Resolution is approved.

SECTION 11. The Board hereby approves the execution and delivery of all agreements, documents, certificates and instruments referred to herein with electronic signatures as may be permitted under the California Uniform Electronic Transactions Act and digital signatures as may be permitted under Section 16.5 of the California Government Code using DocuSign.

SECTION 12. Unless otherwise defined herein, all terms that are used herein and not otherwise defined shall have the meanings given to such terms in the Indenture unless the context otherwise clearly requires.

SECTION 13. This Resolution shall take effect from and after the date of its passage and adoption.

The Secretary of the Ontario Public Financing Authority shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of April, 2025.

_____
PAUL S. LEON, CHAIRMAN

ATTEST:

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

APPROVED AS TO FORM:

_____
AUTHORITY COUNSEL

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, Secretary of the Ontario Public Financing Authority, DO HEREBY CERTIFY that the foregoing Resolution No. OPFA- was duly passed and adopted by the Board Members of the Ontario Public Financing Authority at their regular meeting held April 15, 2025, by the following roll call vote, to wit:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

The foregoing is the original of Resolution No. OPFA duly passed and adopted by the Ontario Public Financing Authority at their regular meeting held April 15, 2025

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

EXHIBIT A

GOOD FAITH ESTIMATES

The good faith estimates set forth herein are provided with respect to the Bonds in accordance with California Government Code Section 5852.1. Such good faith estimates have been provided to the Authority by Urban Futures Incorporated (the Authority's "Municipal Advisor") in consultation with Samuel A. Ramirez & Co., Inc., the Underwriter of the Bonds.

Principal Amount. The Municipal Advisor has informed the Authority that, based on the Authority's financing plan and current market conditions, its good faith estimate of the aggregate principal amount of the Bonds to be sold is $250,000,000 (the "Estimated Principal Amount"), which excludes approximately $19,133,552 of net premium estimated to be generated based on current market conditions, which together total $251,898,552. Premium is generated when, on a net aggregate basis for a single issuance of bonds, the price paid for the bonds is higher than the face value of such bonds.

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Finance Charge of the Bonds. The Municipal Advisor has informed the Authority that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the finance charge for the Bonds, which means the sum of all fees and charges paid to third parties (or costs associated with the Bonds), is $1,897,443.

Amount of Proceeds to be Received. The Municipal Advisor has informed the Authority that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the amount of proceeds expected to be received by the City for sale of the Bonds, less the finance charge of the Bonds, as estimated above, and any reserves or capitalized interest paid or funded with proceeds of the Bonds, is $250,000,000.

Total Payment Amount. The Municipal Advisor has informed the Authority that, assuming that the Estimated Principal Amount of the Bonds is sold, and based on market interest rates prevailing at the time of preparation of such estimate, its good faith estimate of the total payment amount, which means the sum total of all payments the City will make to pay debt service on the Bonds, plus the finance charge for the Bonds, as described above, not paid with the proceeds of the Bonds, calculated to the final maturity of the Bonds, is $460,413,884.

The foregoing estimates constitute good faith estimates only. The actual principal amount of the Bonds issued and sold, the true interest cost thereof, the finance charges thereof, the amount of proceeds received therefrom and total payment amount with respect thereto may differ from such good faith estimates due to: (a) the actual date of the sale of the Bonds being different than the date assumed for purposes of such estimates; (b) the actual principal amount of Bonds sold being different from the Estimated Principal Amount; (c) the actual amortization of the Bonds being different than the amortization assumed for purposes of such estimates; (d) the actual market interest rates at the time of sale of the Bonds being different than those estimated for purposes of such estimates; (e) other market conditions; or (f) alterations in the Authority's financing plan, delays in the financing, additional legal work or a combination of such factors and additional finance charges, if any, attributable thereto. The actual date of sale of the Bonds and the actual principal amount of Bonds sold will be determined by the Authority based on the timing of the need for proceeds of the Bonds and other factors. The actual interest rates borne by the Bonds will depend on market interest rates at the time of sale thereof. The actual amortization of the Bonds will also depend, in part, on market interest rates at the time of sale thereof. Market interest rates are affected by economic and other factors beyond the control of the Authority.

RECORDING REQUESTED BY:
Ontario Public Financing Authority

AND WHEN RECORDED RETURN TO:
Stradling Yocca Carlson & Rauth LLP
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Brian P. Forbath, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11921 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

GROUND LEASE

by and between

CITY OF ONTARIO

and

ONTARIO PUBLIC FINANCING AUTHORITY

Dated as of _____ 1, 2025

Relating to

$_____
ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BONDS

GROUND LEASE

THIS GROUND LEASE (this "**Ground Lease**"), executed and entered into as of _____ 1, 2025, is by and between the CITY OF ONTARIO (the "**City**"), a municipal corporation and general law city duly organized and existing under and by virtue of the Constitution and laws of the State of California, as lessor, and the ONTARIO PUBLIC FINANCING AUTHORITY (the "**Authority**"), a joint exercise of powers entity duly organized and existing under the laws of the State of California, as lessee.

RECITALS

A. The City and the Authority desire to finance a portion of the costs of the acquisition, construction and installation of various public improvements (collectively, the "**Project**").

B. In order to finance the Project, the City will lease certain real property and the improvements located thereon (the "**Property**") to the Authority pursuant to this Ground Lease, and the City will sublease the Property back from the Authority pursuant to that certain Lease Agreement, dated as of the date hereof (the "Lease Agreement").

C. The Property is more particularly described in Exhibit A hereto.

D. The City and the Authority have determined that it would be in the best interests of the City and the Authority to provide the funds necessary to finance the Project through the issuance by the Authority of bonds payable from the base rental payments (the "**Base Rental Payments**") to be made by the City under the Lease Agreement.

E. The City and the Authority have determined that it would be in the best interests of the City and the Authority to provide for the issuance of such bonds payable from the Base Rental Payments pursuant to that certain Indenture, dated as of the date hereof (the "Indenture"), by and among the Authority, the City and Zions Bancorporation, National Association, as trustee (the "**Trustee**").

F. All rights to receive the Base Rental Payments have been assigned without recourse by the Authority to the Trustee pursuant to an Assignment Agreement, dated as of the date hereof (the "**Assignment Agreement**").

G. All acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Ground Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Ground Lease.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Except as otherwise defined herein, or unless the context clearly otherwise requires, words and phrases defined in Article I of the Lease Agreement shall have the same meaning in this Ground Lease.

ARTICLE II

LEASE OF THE PROPERTY; RENTAL

Section 2.01 Lease of Property. The City hereby leases to the Authority, and the Authority hereby leases from the City, for the benefit of the Owners of the Bonds, the Property, subject only to Permitted Encumbrances, to have and to hold for the term of this Ground Lease.

Section 2.02 Rental. The Authority shall pay to the City as and for rental of the Property hereunder, the sum of $1.00, the receipt of which is hereby acknowledged.

ARTICLE III

QUIET ENJOYMENT

The parties intend that the Property will be leased back to the City pursuant to the Lease Agreement for the term thereof. It is further intended that, to the extent provided herein and in the Lease Agreement, if an event of default occurs under the Lease Agreement, the Authority, or its assignee, will have the right, for the then remaining term of this Ground Lease to: (a) take possession of the Property; (b) if it deems it appropriate, cause an appraisal of the Property and a study of the then reasonable use thereof to be undertaken; and (c) relet the Property. Subject to any rights the City may have under the Lease Agreement (in the absence of an event of default) to possession and enjoyment of the Property, the City hereby covenants and agrees that it will not take any action to prevent the Authority from having quiet and peaceable possession and enjoyment of the Property during the term hereof and will, at the request of the Authority and at the City's cost, to the extent that it may lawfully do so, join in any legal action in which the Authority asserts its right to such possession and enjoyment.

ARTICLE IV

SPECIAL COVENANTS AND PROVISIONS

Section 4.01 Waste. The Authority agrees that at all times that it is in possession of the Property, it will not commit, suffer or permit any waste on the Property, and that it will not willfully or knowingly use or permit the use of the Property for any illegal purpose or act.

Section 4.02 Further Assurances and Corrective Instruments. The City and the Authority agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby

leased or intended so to be or for carrying out the expressed intention of this Ground Lease, the Indenture and the Lease Agreement.

Section 4.03 Waiver of Personal Liability. All liabilities under this Ground Lease on the part of the Authority shall be solely liabilities of the Authority as a joint exercise of powers entity, and the City hereby releases each and every director, officer and employee of the Authority of and from any personal or individual liability under this Ground Lease. No director, officer or employee of the Authority shall at any time or under any circumstances be individually or personally liable under this Ground Lease to the City or to any other party whomsoever for anything done or omitted to be done by the Authority hereunder.

All liabilities under this Ground Lease on the part of the City shall be solely liabilities of the City as a public corporation, and the Authority hereby releases each and every member, officer and employee of the City of and from any personal or individual liability under this Ground Lease. No member, officer or employee of the City shall at any time or under any circumstances be individually or personally liable under this Ground Lease to the Authority or to any other party whomsoever for anything done or omitted to be done by the City hereunder.

Section 4.04 Taxes. The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Property.

Section 4.05 Right of Entry. The City reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same.

Section 4.06 Representations of the City. The City represents and warrants to the Authority and the Trustee as follows:

(a) the City has the full power and authority to enter into, to execute and to deliver this Ground Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Ground Lease;

(b) except for Permitted Encumbrances, the Property is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the use of the Property for governmental purposes as contemplated by the City;

(c) all taxes, assessments or impositions of any kind with respect to the Property, except current taxes, have been paid in full; and

(d) the Property is necessary to the City in order for the City to perform its governmental functions.

Section 4.07 Representations of the Authority. The Authority represents and warrants to the City and the Trustee that the Authority has the full power and authority to enter into, to execute and to deliver this Ground Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Ground Lease.

ARTICLE V

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 5.01 Assignment and Subleasing. This Ground Lease may be sold or assigned and the Property subleased, as a whole or in part, by the Authority without the necessity of obtaining the consent of the City, if an event of default occurs under the Lease Agreement. The Authority shall, within thirty (30) days after such an assignment, sale or sublease, furnish or cause to be furnished to the City a true and correct copy of such assignment, sale or sublease, as the case may be.

Section 5.02 Restrictions on City. The City agrees that, except with respect to Permitted Encumbrances, it will not mortgage, sell, encumber, assign, transfer or convey the Property or any portion thereof during the term of this Ground Lease.

ARTICLE VI

TERM; TERMINATION

Section 6.01 Term. The term of this Ground Lease shall commence as of the date of commencement of the term of the Lease Agreement and shall remain in full force and effect from such date to and including November 1, 20__, upon which date it shall terminate, unless such term is extended or sooner terminated as hereinafter provided.

Section 6.02 Extension; Early Termination. If, on November 1, 20__, the Bonds shall not be fully paid, or provision therefor made in accordance with Article X of the Indenture, or the Indenture shall not be discharged by its terms, or if the Rental Payments payable under the Lease Agreement shall have been abated at any time, then the term of this Ground Lease shall be automatically extended until the date upon which all Bonds shall be fully paid, or provision therefor made in accordance with Article X of the Indenture, and the Indenture shall be discharged by its terms, except that the term of this Ground Lease shall in no event be extended more than ten years. If, prior to November 1, 20__, all Bonds shall be fully paid, or provisions therefor made in accordance with Article X of the Indenture, and the Indenture shall be discharged by its terms, the term of this Ground Lease shall end simultaneously therewith.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Binding Effect. This Ground Lease shall inure to the benefit of and shall be binding upon the City, the Authority and their respective successors and assigns.

Section 7.02 Severability. In the event that any provision of this Ground Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.03 Amendments, Changes and Modifications. This Ground Lease may be amended, changed, modified, altered or terminated only in accordance with the provisions of the Lease Agreement.

Section 7.04 Assignment to Trustee. The Authority and City acknowledge that the Authority has assigned its right, title and interest in and to this Ground Lease (but none of its obligations and none of its rights to provide consents or approvals hereunder) to the Trustee pursuant to certain provisions of the Assignment Agreement. The City consents to such assignment.

Section 7.05 Execution In Counterparts. This Ground Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.06 Applicable Law. This Ground Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 7.07 Captions. The captions or headings in this Ground Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ground Lease.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Authority and the City have caused this Ground Lease to be executed by their respective officers hereunto duly authorized, all as of the day and year first above written.

CITY OF ONTARIO

By: _____
Scott Ochoa
City Manager

ATTEST:

_____
Sheila Mautz
City Clerk

ONTARIO PUBLIC FINANCING AUTHORITY

By: _____
Scott Ochoa
Executive Director

ATTEST:

_____
Sheila Mautz
Secretary

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in the Property conveyed under the foregoing to the Ontario Public Financing Authority, a joint exercise of powers agency duly organized and existing under and by virtue of the Constitution and the laws of the State of California, is hereby accepted by the undersigned officer or agent on behalf of the Board of Directors of the Ontario Public Financing Authority, pursuant to authority conferred by resolutions of the Board of Directors adopted on _____, 2025, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2025

ONTARIO PUBLIC FINANCING AUTHORITY

By: _____
Scott Ochoa
Executive Director

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____

SIGNATURE OF NOTARY PUBLIC

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____

SIGNATURE OF NOTARY PUBLIC

EXHIBIT A

DESCRIPTION OF THE PROPERTY

- Ovitt Family Community Library
- Municipal Services Corporation Yard
- Creekside Park
- Kimball Community Park
- Bon View Park
- Homer F. Briggs Memorial Park
- Anthony Munoz Hall of Fame Park
- De Anza Park
- Westwind Park
- John Galvin Park
- Ontario Motor Speedway Park
- Celebration Park (North and South)

LEASE AGREEMENT

by and between

CITY OF ONTARIO

and

ONTARIO PUBLIC FINANCING AUTHORITY

Dated as of _____ 1, 2025

Relating to

$_____
ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BONDS

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease Agreement**") executed and entered into as of _____ 1, 2025, is by and between the CITY OF ONTARIO (the "**City**"), a municipal corporation and general law city duly organized and existing under and by virtue of the Constitution and laws of the State of California, as lessee, and the ONTARIO PUBLIC FINANCING AUTHORITY (the "**Authority**"), a joint exercise of powers entity duly organized and existing under and by virtue of the laws of the State of California, as lessor.

RECITALS

A. The City and the Authority desire to finance a portion of the costs of the acquisition, construction and installation of various public improvements (collectively, the "**Project**").

B. In order to finance the Project, the City will lease certain real property and the improvements located thereon (the "**Property**") to the Authority pursuant to a Ground Lease, dated as of the date hereof, and the City will sublease the Property back from the Authority pursuant to this Lease Agreement.

C. The City and the Authority have determined that it would be in the best interests of the City and the Authority to provide the funds necessary to finance the Project through the issuance by the Authority of bonds payable from the base rental payments (the "**Base Rental Payments**") to be made by the City under this Lease Agreement.

D. The City and the Authority have determined that it would be in the best interests of the City and the Authority to provide for the issuance of such bonds payable from the Base Rental Payments pursuant to that certain Indenture, dated as of the date hereof (the "Indenture"), by and among the Authority, the City and Zions Bancorporation, National Association, as trustee (the "**Trustee**").

E. All rights to receive the Base Rental Payments have been assigned without recourse by the Authority to the Trustee pursuant to that certain Assignment Agreement, dated as of the date hereof (the "Assignment Agreement"), by and between the Authority and the Trustee.

F. All acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Lease Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Lease Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease Agreement, have the meanings herein specified, which meanings shall be equally applicable to both the singular and plural forms of any of the terms herein defined. Capitalized terms that are not otherwise defined herein shall have the meanings assigned to such terms in the Indenture.

"**Additional Bonds**" means bonds other than the Series 2025A Bonds issued under the Indenture in accordance with the provisions thereof.

"**Additional Rental Payments**" means all amounts payable by the City as Additional Rental Payments pursuant to Section 3.02 hereof.

"**Authority**" means the Ontario Public Financing Authority, a joint exercise of powers authority organized and existing under the laws of the State of California.

"**Base Rental Deposit Date**" means the fifth (5th) Business Day next preceding each Interest Payment Date.

"**Base Rental Payments**" means all amounts payable to the Authority from the City as Base Rental Payments pursuant to Section 3.01 hereof.

"**Base Rental Payment Schedule**" means the schedule of Base Rental Payments payable to the Authority from the City pursuant to Section 3.01 hereof and attached hereto as Exhibit B.

"**Bonds**" means the Series 2025A Bonds and any Additional Bonds.

"**City**" means the City of Ontario, a municipal corporation and general law city duly organized and existing under and by virtue of the Constitution and laws of the State of California.

"**Delivery Date**" means _____, 2025.

"**Ground Lease**" means the Ground Lease, dated as of the date hereof, by and between the City and the Authority, as originally executed and as it may from time to time be amended in accordance with to the provisions thereof and hereof.

"**Indenture**" means the Indenture, dated as of the date hereof, by and among the Authority, the City and the Trustee, as originally executed and as it may from time to time be amended or supplemented in accordance with the provisions thereof.

"**Joint Powers Agreement**" means the Joint Exercise of Powers Agreement, dated as of June 1, 2013, by and between the City and the Ontario Housing Authority, as originally executed and as it may from time to time be amended in accordance with the provisions thereof.

"**Lease Agreement**" means this Lease Agreement, as originally executed and as it may from time to time be amended in accordance with the provisions hereof.

"**Net Insurance Proceeds**" means any insurance proceeds or condemnation award in excess of $50,000, paid with respect to any of the Property, remaining after payment therefrom of all reasonable expenses incurred in the collection thereof.

"**Permitted Encumbrances**" means, with respect to the Property, as of any particular time: (a) liens for general *ad valorem* taxes and assessments, if any, not then delinquent, or which the City may, pursuant to provisions of Article V hereof, permit to remain unpaid; (b) the Assignment Agreement; (c) this Lease Agreement; (d) the Ground Lease; (e) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law as normally exist with respect to properties similar to the Property for the purposes for which it was acquired or is held by the City; (f) easements, rights of way, mineral rights, drilling rights and other rights (including but not limited to rights in cellular telephone network infrastructure on the Property), reservations, covenants, conditions or restrictions which exist of record as of the Delivery Date which the City certifies in writing will not affect the intended use of the Property or impair the security granted to the Trustee for the benefit of the Owners of the Bonds by the Indenture and the Assignment Agreement and to which the Authority and the City consent in writing; and (g) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the Delivery Date which the City certifies in writing do not affect the intended use of the Property or impair the security granted to the Trustee for the benefit of the Owners of the Bonds by the Indenture and the Assignment Agreement and to which the Authority and the City consent in writing. [To be updated based on final Leased Assets for cell tower Leases, etc.]

"**Property**" means the real property described in Exhibit A hereto and the improvements located thereon.

"**Rental Payments**" means, collectively, the Base Rental Payments and the Additional Rental Payments.

"**Rental Period**" means the twelve-month period commencing on November 1 of each year during the term of the Lease Agreement; provided that the first Rental Period shall be the period from the Delivery Date through October 31, 2025.

"**Series 2025A Bonds**" means the Ontario Public Financing Authority 2025A Lease Revenue Bonds issued under the Indenture.

"**Termination Date**" means November 1, 20__, unless extended or sooner terminated as provided in Section 2.02 hereof.

"**Trustee**" means the trustee appointed under the Indenture and referred to therein as the Trustee.

ARTICLE II

LEASE OF PROPERTY; TERM

Section 2.01 Lease of Property.

(a) The Authority hereby leases to the City and the City hereby leases from the Authority the Property, and all rights appurtenant thereto, including but not limited to, rights of access, on the terms and conditions hereinafter set forth, subject to all Permitted Encumbrances.

(b) The leasing of the Property by the City to the Authority pursuant to the Ground Lease shall not effect or result in a merger of the City's leasehold estate pursuant to this Lease Agreement and the City's fee estate as lessor under the Ground Lease, and the Authority shall continue to have a leasehold estate in the Property pursuant to the Ground Lease throughout the term thereof and hereof. The leasehold interest granted by the City to the Authority pursuant to the Ground Lease is and shall be independent of this Lease Agreement; this Lease Agreement shall not be an assignment or surrender of the leasehold interest granted to the Authority under the Ground Lease.

Section 2.02 Term; Occupancy. The term of this Lease Agreement shall commence on the Delivery Date and shall end on the Termination Date, unless such term is extended or sooner terminated as hereinafter provided. If, on the Termination Date, the Bonds shall not be fully paid or provision therefor made in accordance with Article X of the Indenture, or the Indenture shall not be discharged by its terms, or if the Rental Payments shall remain due and payable or shall have been abated at any time and for any reason, then the term of this Lease Agreement shall be extended until the date upon which: (a) all Bonds shall be fully paid, or provision therefor made in accordance with Article X of the Indenture; or (b) the Indenture shall be discharged by its terms. Notwithstanding the foregoing, the term of this Lease Agreement shall in no event be extended more than ten years beyond such Termination Date, such extended date being the "**Maximum Lease Term**." If, prior to the Termination Date, all Bonds shall be fully paid or provision therefor made in accordance with Article X of the Indenture, the Indenture shall be discharged by its terms and all Rental Payments shall have been paid in full, and the term of this Lease Agreement shall end simultaneously therewith.

ARTICLE III

RENTAL PAYMENTS

Section 3.01 Base Rental Payments.

(a) Subject to the provisions hereof relating to a revision of the Base Rental Payment Schedule pursuant to subsection (b) of this Section, the City shall pay to the Authority, as Base Rental Payments (subject to the provisions of Section 3.06 and Article VII hereof) the amounts at the times specified in the Base Rental Payment Schedule, a portion of which Base Rental Payments shall constitute principal, and a portion of which shall constitute interest. Rental Payments, including Base Rental Payments, shall be paid by the City to the Authority for and in consideration of the right to use and occupy the Property and in consideration of the continued right to the quiet use and enjoyment thereof during each Rental Period for which such Rental Payments are to be paid.

The obligation of the City to make the Base Rental Payments does not constitute a debt of the City or of the State of California, or of any political subdivision thereof within the meaning of any constitutional or statutory debt limit or restriction, and does not constitute an obligation for which the City or the State of California is obligated to levy or pledge any form of taxation or for which the City or the State of California has levied or pledged any form of taxation.

(b) If the term of this Lease Agreement shall have been extended pursuant to Section 2.02 hereof, the obligation of the City to pay Rental Payments shall continue to and including the Base Rental Deposit Date preceding the date of termination of this Lease Agreement (as so extended pursuant to Section 2.02 hereof). Upon such extension, the Base Rental Payments shall be established so that they will be sufficient to pay all extended and unpaid Base Rental Payments; provided, however, that the Rental Payments payable in any Rental Period subsequent to such extension shall not exceed the annual fair rental value of the Property.

Section 3.02 Additional Rental Payments. The City shall also pay, as Additional Rental Payments, such amounts as shall be required for the payment of the following:

(a) all taxes and assessments of any type or nature charged to the Authority or the City or affecting the Property or the respective interests or estates of the Authority or the City therein;

(b) all reasonable administrative costs of the Authority relating to the Property including, but without limiting the generality of the foregoing, salaries, wages, fees and expenses, compensation and indemnification of the Trustee payable by the Authority under the Indenture, fees of auditors, accountants, attorneys or engineers, and all other necessary and reasonable administrative costs of the Authority or charges required to be paid by it in order to maintain its existence or to comply with the terms of the Indenture or the Lease Agreement or to defend the Authority and its members, officers, agents and employees;

(c) insurance premiums for all insurance required pursuant to Article V hereof;

(d) any amounts with respect to the Lease Agreement or the Bonds required to be rebated to the federal government in accordance with Section 148(f) of the Code; and

(e) all other payments required to be paid by the City under the provisions of this Lease Agreement or the Indenture.

Amounts constituting Additional Rental Payments payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 60 days after notice in writing from the Trustee to the City stating the amount of Additional Rental Payments then due and payable and the purpose thereof.

Section 3.03 Fair Rental Value. The parties hereto have agreed and determined that the annual fair rental value of the Property is not less than the maximum annual Rental Payments due in any year. In making such determination of fair rental value, consideration has been given to the uses and purposes that may be served by the Property and the benefits therefrom which will accrue to the City and the general public. Payments of the Rental Payments for the Property during each Rental Period shall constitute the total rental for said Rental Period.

Section 3.04 Payment Provisions. Each installment of Base Rental Payments payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Authority at the principal office of the Trustee in Los Angeles, California, or such other place or entity as the Authority or Trustee shall designate. Each Base Rental Payment shall be deposited with the Trustee no later than the Base Rental Deposit Date preceding the Interest Payment Date on which such Base Rental Payment is due. Any Base Rental Payment which shall not be paid by the City when due and payable under the terms of this Lease Agreement shall bear interest from the date when the same is due hereunder until the same shall be paid at the rate equal to the highest rate of interest on any of the Outstanding Bonds. Notwithstanding any dispute between the Authority and the City, the City shall make all Rental Payments when due without deduction or offset of any kind and shall not withhold any Rental Payments pending the final resolution of such dispute. In the event of a determination that the City was not liable for said Rental Payments or any portion thereof, said payments or excess of payments, as the case may be, shall be credited against subsequent Rental Payments due hereunder or refunded at the time of such determination. Amounts required to be deposited by the City with the Trustee pursuant to this Section on any date shall be reduced to the extent of available amounts on deposit in the Base Rental Payment Fund, the Interest Fund or the Principal Fund.

Section 3.05 Appropriations Covenant. The City covenants to take such action as may be necessary to include all Rental Payments due hereunder as a separate line item in its annual budgets and to make necessary annual appropriations for all such Rental Payments. The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the City.

Section 3.06 Rental Abatement. Except as otherwise specifically provided in this Section, during any period in which, by reason of material damage to, or destruction or condemnation of, the Property, or any defect in title to the Property, there is substantial interference with the City's right to use and occupy any portion of the Property, Rental Payments shall be abated proportionately, and the City waives the benefits of Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate the Lease Agreement by virtue of any such interference, and the Lease Agreement shall continue in full force and effect. The amount of such abatement shall be agreed upon by the City and the Authority; provided, however, that the Rental Payments due for any Rental Period shall not exceed the annual fair rental value of that portion of the Property available for use and occupancy by the City during such Rental Period. The City and the Authority shall calculate such abatement and shall provide the Trustee with a certificate setting forth such calculation and the basis therefor. Such abatement shall continue for the period commencing with the date of interference resulting from such damage, destruction, condemnation or title defect and, with respect to damage to or destruction of the Property, ending when such use an occupancy are restored; and the term of this Lease Agreement shall be extended as provided in Section 2.02 hereof, except that the term shall in no event be extended beyond the Maximum Lease Term.

Notwithstanding the foregoing, to the extent that moneys are available for the payment of Rental Payments in any of the funds and accounts established under the Indenture, Rental Payments shall not be abated as provided above but, rather, shall be payable by the City as a special obligation payable solely from said funds and accounts.

ARTICLE IV

MAINTENANCE, ALTERATIONS AND ADDITIONS

Section 4.01 Maintenance and Utilities. Throughout the term of this Lease Agreement, as part of the consideration for rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power gas, telephone, light, heating, ventilation, air conditioning, water and all other utility services, and shall pay for or otherwise arrange for payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Rental Payments, the Authority agrees to provide only the Property.

Section 4.02 Additions to Property. Subject to Section 8.02 hereof, the City and any sublessee shall, at its own expense, have the right to make additions, modifications and improvements to the Property. To the extent that the removal of such additions, modifications or improvements would not cause material damage to the Property so as to cause an abatement of Lease Agreements, pursuant to Section 3.06 hereof, such additions, modifications and improvements shall remain the sole property of the City or such sublessee, and neither the Authority nor the Trustee shall have any interest therein. Such additions, modifications and improvements shall not in any way damage the Property or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is at least equal to the value of the Property immediately prior to the making of such additions, modifications and improvements.

Section 4.03 Installation of City's Equipment. The City and any sublessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the City or such sublessee, and neither the Authority nor the Trustee shall have any interest therein. The City or such sublessee may remove or modify such equipment or other personal property at any time, provided that such party shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement shall prevent the City or any sublessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

ARTICLE V

INSURANCE

Section 5.01 Commercial General Liability and Property Damage Insurance; Workers' Compensation Insurance.

(a) The City shall maintain or cause to be maintained, throughout the term of this Lease Agreement, a standard commercial general liability insurance policy or policies in protection of the City, the Authority and their respective members, officers, agents and employees. Said policy

or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the use or ownership of the Property. Said policy or policies shall provide coverage in the minimum liability limits of $1,000,000 for personal injury or death of each person and $3,000,000 for personal injury or deaths of two or more persons in a single accident or event, and in a minimum amount of $500,000 for damage to property (subject to a deductible clause of not to exceed $100,000) resulting from a single accident or event. Such commercial general liability and property damage insurance may, however, be in the form of a single limit policy in the amount of $3,000,000 covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, provided that such self-insurance complies with the provisions of Section 5.04 hereof. The Net Insurance Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the Net Insurance Proceeds of such insurance shall have been paid.

(b) The City shall maintain or cause to be maintained, throughout the term of this Lease Agreement, workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the California Labor Code, or any act enacted as an amendment or supplement thereto or in lieu thereof, such workers' compensation insurance to cover all persons employed by the City in connection with the Property and to cover full liability for compensation under any such act; provided, however, that the City's obligations under this subsection may be satisfied by self-insurance, provided that such self-insurance complies with the provisions of Section 5.04 hereof.

(c) The City shall maintain or cause to be maintained, fire, lightning and special extended coverage insurance (which shall include coverage for vandalism and malicious mischief, but need not include coverage for earthquake damage) on all improvements constituting any part of the Property in an amount equal to the greater of 100% of the replacement cost of such improvements or 100% of the outstanding principal amount of the Bonds. The City has an insurance policy which provides replacement cost coverage. All insurance required to be maintained pursuant to this subsection may be subject to a deductible in an amount not to exceed $500,000. The City's obligations under this subsection may be satisfied by self-insurance, provided that such self-insurance complies with the provisions of Section 5.04 hereof.

(d) The City shall maintain rental interruption insurance to cover the Authority's loss, total or partial, of Base Rental Payments resulting from the loss, total or partial, of the use of any part of the Property as a result of any of the hazards required to be covered pursuant to subsection (c) of this Section in an amount sufficient at all times to pay an amount not less than the product of two times the maximum amount of Base Rental Payments scheduled to be paid during any Rental Period. The City shall not be permitted to self-insure its obligation under this subsection.

(e) The insurance required by this Section shall be provided by reputable insurance companies with claims paying abilities determined, in the reasonable opinion of a professionally certified risk manager or an independent insurance consultant, to be adequate for the purposes hereof.

Section 5.02 Title Insurance. The City shall provide, at its own expense, one or more CLTA or ALTA title insurance policies for the Property, in the aggregate amount of not less than the initial aggregate principal amount of the Bonds. Such policy or policies shall insure: (a) the fee

interest of the City in the Property; (b) the Authority's ground leasehold estate in the Property under the Ground Lease; and (c) the City's leasehold estate hereunder in the Property, subject only to Permitted Encumbrances. All Net Insurance Proceeds received under said policy or policies shall be deposited with the Trustee and applied as provided in Section 5.04 of the Indenture. So long as any of the Bonds remain Outstanding, each policy of title insurance obtained pursuant to the Indenture or this Lease Agreement or required thereby or hereby shall provide that all proceeds thereunder shall be payable to the Trustee for the benefit of the Bond Owners.

Section 5.03 Additional Insurance Provision; Form of Policies. The City shall pay or cause to be paid when due the premiums for all insurance policies required by Section 5.01 hereof. All such policies shall provide that the Trustee shall be given 30 days' notice of the expiration thereof or any intended cancellation thereof. The Trustee shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Trustee.

The City shall cause to be delivered to the Trustee on or before September 10 each year, commencing September 10, 2026, a Certificate of the City stating that such policies are in full force and effect and that the City is in full compliance with the requirements of this Article. The Trustee shall be entitled to rely upon said Certificate of the City as to the City's compliance with this Article. The Trustee shall not be responsible for the sufficiency of coverage or amounts of such policies.

Section 5.04 Self-Insurance. Insurance provided through a California joint powers authority of which the City is a member or with which the City contracts for insurance shall be deemed to be self-insurance for purposes hereof. Any self-insurance maintained by the City pursuant to this Article shall comply with the following terms:

(a) the self-insurance program and any self-insured retentions maintained by the City shall be approved in writing by a professionally certified risk manager or by an independent insurance consultant (who may be an employee of the City);

(b) the self-insurance program shall include an actuarially sound claims reserve fund out of which each self-insured claim shall be paid, the adequacy of each such fund shall be evaluated on an annual basis by a professionally certified risk manager or by an independent insurance consultant (who may be an employee of the City) and any deficiencies in any self-insured claims reserve fund shall be remedied in accordance with the recommendation of a professionally certified risk manager or such independent insurance consultant, as applicable; and

(c) in the event that the self-insurance program shall be discontinued, the actuarial soundness of its claims reserve fund, as determined by a professionally certified risk manager or by an independent insurance consultant, shall be maintained.

ARTICLE VI

DEFAULTS AND REMEDIES

Section 6.01 Defaults and Remedies.

(a) (i) If the City shall fail: (A) to pay any Rental Payment payable hereunder when the same becomes due and payable, time being expressly declared to be of the essence in this

Lease Agreement; or (B) to keep, observe or perform any other material term, covenant or condition contained herein or in the Indenture to be kept or performed by the City; or (ii) upon the happening of any of the events specified in this subsection or in subsection (b) of this Section, the City shall be deemed to be in default hereunder and it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Lease Agreement. The City shall in no event be in default in the observance or performance of any covenant, condition or agreement in this Lease Agreement on its part to be observed or performed, other than as referred to in clause (i)(A) or (ii) of the preceding sentence, unless the City shall have failed, for a period of thirty (30) days or such additional time as is reasonably required, to correct any such default after notice by the Authority to the City properly specifying wherein the City has failed to perform any such covenant, condition or agreement. Upon any such default, the Authority, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(1) To terminate this Lease Agreement in the manner hereinafter provided on account of default by the City, notwithstanding any re-entry or re-letting of the Property as hereinafter provided for in subparagraph (2) hereof, and to re-enter the Property and remove all persons in possession thereof and all personal property whatsoever situated upon the Property and place such personal property in storage in any warehouse or other suitable place, for the account of and at the expense of the City. In the event of such termination, the City agrees to surrender immediately possession of the Property, without let or hindrance, and to pay the Authority all damages recoverable at law that the Authority may incur by reason of default by the City, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Property and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. Neither notice to pay Rental Payments or to deliver up possession of the Property given pursuant to law nor any entry or re-entry by the Authority nor any proceeding in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Property nor the appointment of a receiver upon initiative of the Authority to protect the Authority's interest under this Lease Agreement shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the City shall be or become effective by operation of law or acts of the parties hereto, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Lease Agreement. The City covenants and agrees that no surrender of the Property or of the remainder of the term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated by the Authority by such written notice.

(2) Without terminating this Lease Agreement: (x) to collect each installment of Rental Payments as the same become due and enforce any other terms or provisions hereof to be kept or performed by the City, regardless of whether or not the City has abandoned the Property; or (y) to exercise any and all rights of entry and re-entry upon the Property. In the event that the Authority does not elect to terminate this Lease Agreement in the manner provided for in subparagraph (1) hereof, the City shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the City and, if the Property is not re-let, to pay the full amount of the Rental Payments to the end of the term of this Lease Agreement or, in the event that the Property is re-let, to pay any deficiency in Rental Payments that results therefrom; and further agrees to pay said Rental Payments and/or Rental Payment deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of Rental Payments hereunder, notwithstanding the fact that the Authority may have received in previous years or may receive thereafter in subsequent years Rental Payments in excess of the Rental Payments herein

specified, and notwithstanding any entry or re-entry by the Authority or suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Property. Should the Authority elect to re-enter as herein provided, the City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to re-let the Property, or any part thereof, from time to time, either in the Authority's name or otherwise, upon such terms and conditions and for such use and period as the Authority may deem advisable and to remove all persons in possession thereof and all personal property whatsoever situated upon the Property and to place such personal property in storage in any warehouse or other suitable place, for the account of and at the expense of the City, and the City hereby indemnifies and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon and re-letting of the Property and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Authority to re-let the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-letting shall constitute a surrender or termination of this Lease Agreement irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease Agreement shall vest in the Authority to be effected in the sole and exclusive manner provided for in subparagraph (1) hereof. The City further agrees to pay the Authority the cost of any alterations or additions to the Property necessary to place the Property in condition for re-letting immediately upon notice to the City of the completion and installation of such additions or alterations.

The City hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Property as herein provided and all claims for damages that may result from the destruction of or injury to the Property and all claims for damages to or loss of any property belonging to the City, or any other person, that may be in or upon the Property.

(b) If: (i) the City's interest in this Lease Agreement or any part thereof is assigned or transferred, either voluntarily or by operation of law or otherwise, without the written consent of the Authority and, as hereinafter provided for; or (ii) the City or any assignee shall file any petition or institute any proceeding under any act or acts, state or federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby the City asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of the City's debts or obligations, or offers to the City's creditors to elect a composition or extension of time to pay the City's debts or asks, seeks or prays for reorganization or to effect a plan of reorganization, or for a readjustment of the City's debts, or for any other similar relief, or if any such petition or any such proceedings of the same or similar kind or character be filed or be instituted or taken against the City, or if a receiver of the business or of the property or assets of the City shall be appointed by any court, except a receiver appointed at the instance or request of the Authority, or if the City shall make a general assignment for the benefit of the City's creditors; or (iii) the City shall abandon or vacate the Property, then the City shall be deemed to be in default hereunder.

(c) In addition to the other remedies set forth in this Section, upon the occurrence of an event of default, the Authority and its assignee shall be entitled to proceed to protect and enforce the rights vested in the Authority and its assignee by the Lease Agreement or by law. The provisions of the Lease Agreement and the duties of the City and of its city council, officers or

employees shall be enforceable by the Authority or its assignee by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the Authority and its assignee shall have the right to bring the following actions:

(i) Accounting. By action or suit in equity to require the City and its city council, officers and employees and its assigns to account as the trustee of an express trust.

(ii) Injunction. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority or its assignee.

(iii) Mandamus. By mandamus or other suit, action or proceeding at law or in equity to enforce the Authority's or its assignee's rights against the City (and its city council, officers and employees) and to compel the City to perform and carry out its duties and obligations under the law and its covenants and agreements with the City as provided herein.

Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of the Authority to the further exercise thereof or the exercise of any or all other rights, powers or privileges. The term "re-let" or "re-letting" as used in this Section shall include, but not be limited to, re-letting by means of the operation by the Authority of the Property. If any statute or rule of law validly shall limit the remedies given to the Authority hereunder, the Authority nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

In the event that the Authority shall prevail in any action brought to enforce any of the terms and provisions of this Lease Agreement, the City agrees to pay a reasonable amount as and for attorney's fees incurred by the Authority in attempting to enforce any of the remedies available to the Authority hereunder.

Notwithstanding anything to the contrary contained in this Lease Agreement, the Authority shall have no right upon a default hereunder by the City to accelerate Rental Payments.

(d) Notwithstanding anything to the contrary contained in this Lease Agreement, the termination of this Lease Agreement by the Authority and its assignees on account of a default by the City under this Section shall not effect or result in a termination of the Ground Lease.

Section 6.02 Waiver. Failure of the Authority to take advantage of any default on the part of the City shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the Authority to insist upon performance by the City of any term, covenant or condition hereof, or to exercise any rights given the Authority on account of such default. A waiver of a particular default shall not be deemed to be a waiver of any other default or of the same default subsequently occurring. The acceptance of Rental Payments hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Lease Agreement.

ARTICLE VII

EMINENT DOMAIN; PREPAYMENT

Section 7.01 Eminent Domain. If all of the Property (or portions thereof such that the remainder is not usable for public purposes by the City) shall be taken under the power of eminent domain, the term hereof shall cease as of the day that possession shall be so taken. If less than all of the Property shall be taken under the power of eminent domain and the remainder is usable for public purposes by the City at the time of such taking, then the Lease Agreement shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the Rental Payments in accordance with the provisions of Section 3.06 hereof. So long as any Bonds shall be Outstanding, any award made in eminent domain proceedings for the taking of the Property, or any portion thereof, shall be paid to the Trustee and applied to the redemption of Bonds as provided in subsection (a) of Section 4.01 of the Indenture, in the corresponding provisions of any Supplemental Indenture pursuant to which Additional Bonds are issued and in Section 5.03 of the Indenture. Any such award made after all of the Bonds, and all other amounts due under the Indenture and hereunder, have been fully paid, shall be paid to the Authority and to the City as their respective interests may appear.

Section 7.02 Prepayment.

(a) The City may prepay all or a portion of the Base Rental Payments attributable to the Series 2025A Bonds which are payable after November 1, 20__ from any source of available funds, on November 1, 20__ or any date thereafter by paying: (i) all or a portion, as selected by the City, of the principal components of such Base Rental Payments; and (ii) the accrued but unpaid interest component of such Base Rental Payments to be prepaid to the date of such prepayment.

(b) The City may prepay, from any source of available funds, all or any portion of the Base Rental Payments attributable to the Series 2025A Bonds by depositing with the Trustee moneys or securities as provided, and subject to the terms and conditions set forth, in Article X of the Indenture sufficient to make such Base Rental Payments when due or to make such Base Rental Payments through a specified date on which the City has a right to prepay such Base Rental Payments pursuant to subsection (a) of this Section, and to prepay such Base Rental Payments on such prepayment date, at a prepayment price determined in accordance with subsection (a) of this Section.

(c) If less than all of the Base Rental Payments attributable to the Series 2025A Bonds are prepaid pursuant to this Section then, as of the date of such prepayment pursuant to subsection (a) of this Section, or the date of a deposit pursuant to subsection (b) of this Section, the principal and interest components of such Base Rental Payments shall be recalculated by the City and transmitted to the Trustee in order to take such prepayment into account. The City agrees that if, following a partial prepayment of such Base Rental Payments, the Property is damaged or destroyed or taken by eminent domain, or a defect in title to the Property is discovered, the City shall not be entitled to, and by such prepayment waives the right of, abatement of such prepaid Base Rental Payments and the City shall not be entitled to any reimbursement of such Base Rental Payments.

(d) If all of the Base Rental Payments are prepaid in accordance with the provisions of this Lease Agreement then, as of the date of such prepayment pursuant to subsection (a) of this Section and, if applicable, the corresponding provisions hereof relating to the prepayment of

Base Rental Payments attributable to Additional Bonds, or deposit pursuant to subsection (b) of this Section and, if applicable, such corresponding provisions, and payment of all other amounts owed under this Lease Agreement, the term of this Lease Agreement shall be terminated.

(e) Prepayments of Base Rental Payments attributable to the Series 2025A Bonds made pursuant to this Section shall be applied to the redemption of the Series 2025A Bonds as directed by the City and as provided in Section 4.01 of the Indenture.

ARTICLE VIII

COVENANTS

Section 8.01 Right of Entry. The Authority and its assignees shall have the right to enter upon and to examine and inspect the Property during reasonable business hours (and in emergencies at all times) for any purpose connected with the Authority's rights or obligations under this Lease Agreement, and for all other lawful purposes.

Section 8.02 Liens. In the event that the City shall at any time during the term of this Lease Agreement cause any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Property, the City shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for the City in, upon or about the Property and which may be secured by a mechanic's, materialmen's or other lien against the Property or the Authority's interest therein, and will cause each such lien to be fully discharged and released at the time that the performance of any obligation secured by any such lien matures or becomes due, except that, if the City desires to contest any such lien, it may do so as long as such contestment is in good faith. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, the City shall forthwith pay and discharge said judgment.

Section 8.03 Quiet Enjoyment. The parties hereto mutually covenant that the City, by keeping and performing the covenants and agreements herein contained, shall at all times during the term of this Lease Agreement peaceably and quietly have, hold and enjoy the Property without suit, trouble or hindrance from the Authority.

Section 8.04 Authority Not Liable. The Authority and its directors, officers, agents and employees shall not be liable to the City or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Property. To the extent permitted by law, the City shall, at its expense, indemnify and hold the Authority and the Trustee and all directors, members, officers and employees thereof harmless against and from any and all claims by or on behalf of any person, firm, corporation or governmental authority arising from the acquisition, construction, occupation, use, operation, maintenance, possession, conduct or management of or from any work done in or about the Property or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Property or the occupancy or use thereof, but excepting the negligence or willful misconduct of the persons or entity seeking indemnity. The City also covenants and agrees, at its expense, to pay and indemnify and save the Authority and the Trustee and all directors, officers and employees thereof harmless against and from any and all claims arising from: (a) any condition of the Property and the adjoining sidewalks and passageways;

(b) any breach or default on the part of the City in the performance of any covenant or agreement to be performed by the City pursuant to this Lease Agreement; (c) any act or negligence of licensees in connection with their use, occupancy or operation of the Property; or (d) any accident, injury or damage whatsoever caused to any person, firm or corporation in or about the Property or upon or under the sidewalks and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section, but excepting the negligence or willful misconduct of the person or entity seeking indemnity. In the event that any action or proceeding is brought against the Authority or the Trustee or any director, member, officer or employee thereof by reason of any such claim, the City, upon notice from the Authority or the Trustee or such director, member, officer employee thereof, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to the Authority or the Trustee or such director, member, officer or employee thereof.

Section 8.05 Assignment and Subleasing. Neither this Lease Agreement nor any interest of the City hereunder shall be sold, mortgaged, pledged, assigned, or transferred by the City by voluntary act or by operation by law or otherwise. The Property may not be subleased in whole or in part by the City without the prior written consent of the Authority. Any such sublease shall be subject to all of the following conditions:

(a) this Lease Agreement and the obligation of the City to make all Rental Payments hereunder shall remain the primary obligation of the City;

(b) the City shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of such sublease;

(c) no such sublease by the City shall cause the Property to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California;

(d) any sublease of the Property by the City shall explicitly provide that such sublease is subject to all rights of the Authority under the Lease Agreement, including the right to re-enter and re-let the Property or terminate the Lease Agreement upon a default by the City; and

(e) the City shall furnish the Authority and the Trustee with an Opinion of Counsel to the effect that such sublease will not, in and of itself, cause the interest on the Bonds to be included in gross income for federal income tax purposes.

Notwithstanding the foregoing, the Authority's consent and the Opinion of Counsel described in subsection (e) above shall not be required if the sublease, use agreement or license is cancellable by the City upon 55 days or less notice to the sublessee, licensee or user.

Section 8.06 Title to Property. Upon the termination or expiration of this Lease Agreement (other than as provided in Sections 6.01 and 7.01 hereof), and the first date upon which the Bonds are no longer Outstanding, all right, title and interest in and to the Property shall vest in the City. Upon any such termination or expiration, the Authority shall execute such conveyances, deeds and other documents as may be necessary to effect such vesting of record.

Section 8.07 Authority's Purpose. The Authority covenants that, prior to the discharge of this Lease Agreement and the Bonds, it will not engage in any activities inconsistent with the purposes for which the Authority is organized, as set forth in the Joint Powers Agreement.

Section 8.08 Representations of the City. The City represents and warrants to the Authority that: (a) the City has the full power and authority to enter into, to execute and to deliver this Lease Agreement and the Indenture, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Lease Agreement and the Indenture; and (b) the Property will be used in the performance of essential governmental functions.

Section 8.09 Representation of the Authority. The Authority represents and warrants to the City that the Authority has the full power and authority to enter into, to execute and to deliver this Lease Agreement, the Assignment Agreement and the Indenture, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Lease Agreement, the Assignment Agreement and the Indenture.

ARTICLE IX

NO CONSEQUENTIAL DAMAGES; USE OF THE PROPERTY; SUBSTITUTION OR RELEASE

Section 9.01 No Consequential Damages. In no event shall the Authority or the Trustee be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Lease Agreement or the City's use of the Property.

Section 9.02 Use of the Property. The City will not use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease Agreement. In addition, the City agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Property) with all laws of the jurisdictions in which its operations may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Property; provided, however, that the City may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Authority, adversely affect the estate of the Authority in and to any of the Property or its interest or rights under this Lease Agreement.

Section 9.03 Substitution or Release of, or Addition to, the Property. The City shall have the right to substitute alternate real property for any portion of the Property or to release a portion of the Property from this Lease Agreement or to add additional property to the encumbrance of this Lease Agreement. All costs and expenses incurred in connection with such substitution, release or addition shall be borne by the City. Notwithstanding any substitution or release of, or addition to, Property pursuant to this subsection, there shall be no reduction in or abatement of the Base Rental Payments due from the City hereunder as a result of such substitution, release or addition. Any such substitution or release of any portion of the Property, or addition to the Property, shall be subject to the following specific conditions, which are hereby made conditions precedent to such substitution, release or addition:

(a) The City shall have delivered a certificate to the Trustee setting forth its findings that the Property, as constituted after such substitution, release or addition: (i) has an annual

fair rental value at least equal to the maximum Base Rental Payments payable by the City in any Rental Period; and (ii) has a useful life in excess of the final maturity of any Outstanding Bonds;

(b) With respect to any substituted or added property, the City shall have obtained or caused to be obtained a CLTA or ALTA title insurance policy or policies with respect to the Property (as such term will be defined after such substitution or addition) that when taken together with other title insurance policies covering the Property, will be in the amount at least equal to the aggregate principal amount of any Outstanding Bonds of the type and with the endorsements described in Section 5.02 hereof; and

(c) the City, the Authority and the Trustee shall have executed, and the City shall have caused to be recorded with the San Bernardino County Recorder, any document necessary to reconvey to the City the portion of the Property being released and to include any substituted real property in the description of the Property contained herein and in the Ground Lease.

ARTICLE X

MISCELLANEOUS

Section 10.01 Law Governing. THIS LEASE AGREEMENT SHALL BE GOVERNED EXCLUSIVELY BY THE PROVISIONS HEREOF AND BY THE LAWS OF THE STATE OF CALIFORNIA AS THE SAME FROM TIME TO TIME EXIST.

Section 10.02 Notices. All written notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the City:	City of Ontario 303 East B Street Ontario, CA 91764 Attention: City Manager
If to the Authority:	Ontario Public Financing Authority c/o City of Ontario 303 East B Street Ontario, CA 91764 Attention: Executive Director

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed: (a) if personally served or delivered, upon delivery; (b) if given by electronic communication, whether by telex, telegram or telecopier, upon the sender's receipt of an appropriate answerback or other written acknowledgment; (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail; (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier; or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 10.03 Validity and Severability. If for any reason this Lease Agreement shall be held by a court of competent jurisdiction to be void, voidable or unenforceable by the Authority or by the City, or if for any reason it is held by such a court that any of the covenants and conditions of the City hereunder, including the covenant to pay Rental Payments, is unenforceable for the full term hereof; then and in such event this Lease Agreement is and shall be deemed to be a Lease Agreement under which the Rental Payments are to be paid by the City annually in consideration of the right of the City to possess, occupy and use the Property, and all of the terms, provisions and conditions of this Lease Agreement, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

Section 10.04 Net-Net-Net Lease. This Lease Agreement shall be deemed and construed to be a "net-net-net lease" and the City hereby agrees that the Rental Payments shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever and notwithstanding any dispute between the City and the Authority.

Section 10.05 Taxes. The City shall pay or cause to be paid all taxes and assessments of any type or nature charged to the Authority or affecting the Property or the respective interests or estates therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the term of this Lease Agreement as and when the same become due.

The City or any sublessee may, at the City's or such sublessee's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority or the Trustee shall notify the City or such sublessee that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Authority in the Property will be materially endangered or the Property, or any part thereof, will be subject to loss or forfeiture, in which event the City or such sublessee shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority and the Trustee.

Section 10.06 Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease Agreement.

Section 10.07 Amendments.

(a) This Lease Agreement and the Ground Lease may be amended and the rights and obligations of the Authority and the City hereunder and thereunder may be amended at any time by an amendment hereto or thereto which shall become binding upon execution and delivery by the Authority and the City, but only with the prior written consent of the Owners of a majority of the principal amount of the Bonds then Outstanding pursuant to the Indenture, provided that no such amendment shall: (i) extend the payment date of any Base Rental Payments, reduce the interest component or principal component of any Base Rental Payments or change the prepayment terms and provisions, without the prior written consent of the Owner of each Bond so affected; or (ii) reduce the percentage of the principal amount of the Bonds the consent of the Owners of which is required for the execution of any amendment of this Lease Agreement or the Ground Lease.

(b) This Lease Agreement and the Ground Lease and the rights and obligations of the Authority and the City hereunder and thereunder may also be amended at any time by an amendment hereto or thereto which shall become binding upon execution by the Authority and the City, without the written consents of any Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(i) to add to the agreements, conditions, covenants and terms required by the Authority or the City to be observed or performed herein or therein other agreements, conditions, covenants and terms thereafter to be observed or performed by the Authority or the City, or to surrender any right or power reserved herein or therein to or conferred herein or therein on the Authority or the City, and which in either case shall not materially adversely affect the interests of the Owners;

(ii) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or therein or in regard to questions arising hereunder or thereunder which the Authority or the City may deem desirable or necessary and not inconsistent herewith or therewith, and which shall not materially adversely affect the interests of the Owners;

(iii) to make such additions, deletions or modifications as may be necessary or appropriate to assure the exclusion from gross income for federal income tax purposes of the interest on the Bonds;

(iv) to provide for the substitution or release of a portion of the Property in accordance with the provisions of Section 9.03 hereof;

(v) to provide for the issuance of Additional Bonds in accordance with Article III of the Indenture; or

(vi) to make such other changes herein or therein or modifications hereto or thereto as the Authority or the City may deem desirable or necessary, and which shall not materially adversely affect the interests of the Owners.

Section 10.08 Assignment. The City and the Authority hereby acknowledge the assignment of this Lease Agreement (except for the Authority's obligations and its rights to give consents or approvals hereunder), and the Base Rental Payments payable hereunder, to the Trustee pursuant to the Assignment Agreement. To the extent that this Lease Agreement confers upon or gives or grants the Trustee any right, remedy or claim under or by reason of this Lease Agreement, the Trustee is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

Section 10.09 Execution. This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Lease Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Authority and the City have caused this Lease Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF ONTARIO

By: _____
City Manager

ATTEST:

_____
City Clerk

ONTARIO PUBLIC FINANCING AUTHORITY

By: _____
Executive Director

ATTEST:

_____
Secretary

EXHIBIT A

DESCRIPTION OF THE PROPERTY

- Ovitt Family Community Library
- Municipal Services Corporation Yard
- Creekside Park
- Kimball Community Park
- Bon View Park
- Homer F. Briggs Memorial Park
- Anthony Munoz Hall of Fame Park
- De Anza Park
- Westwind Park
- John Galvin Park
- Ontario Motor Speedway Park
- Celebration Park (North and South)

EXHIBIT B

BASE RENTAL PAYMENT SCHEDULE

Date (Fifth Business Day Prior to)	*Principal Component*	*Interest Component*	*Total Base Rental*

Date (Fifth Business Day Prior to)	*Principal Component*	*Interest Component*	*Total Base Rental*

INDENTURE

by and among

ONTARIO PUBLIC FINANCING AUTHORITY

and

CITY OF ONTARIO

and

ZIONS BANCORPORATION, NATIONAL ASSOCIATION,
as Trustee

Dated as of _____ 1, 2025

Relating to

$_____
ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BONDS

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INDENTURE

THIS INDENTURE (this "**Indenture**"), executed and entered into as of _____ 1, 2025, is by and among the ONTARIO PUBLIC FINANCING AUTHORITY, a joint exercise of powers entity duly organized and existing under the laws of the State of California (the "**Authority**"), the CITY OF ONTARIO, a municipal corporation and general law city duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "**City**"), and ZIONS BANCORPORATION, NATIONAL ASSOCIATION, a national banking association duly organized and existing under and by virtue of the laws of the United States, as Trustee (the "**Trustee**").

RECITALS

A. The City and the Authority desire to finance a portion of the costs of the acquisition, construction and installation of various public improvements (collectively, the "**Project**").

B. In order to finance the Project, the City will lease certain real property and the improvements located thereon (the "**Property**") to the Authority pursuant to that certain Ground Lease, dated as of the date hereof, and the City will sublease the Property back from the Authority pursuant to that certain Lease Agreement, dated as of the date hereof (the "**Lease Agreement**").

C. The City and the Authority have determined that it would be in the best interests of the City and the Authority to provide the funds necessary to finance the Project through the issuance by the Authority of bonds payable from the base rental payments (the "**Base Rental Payments**") to be made by the City under the Lease Agreement.

D. All rights to receive the Base Rental Payments have been assigned without recourse by the Authority to the Trustee (as defined below) pursuant to that certain Assignment Agreement, dated as of the date hereof, by and between the Authority and the Trustee.

E. The Authority and the City desire to provide for the issuance by the Authority of the Ontario Public Financing Authority 2025A Lease Revenue Refunding Bonds (the "**Series 2025A Bonds**") in the aggregate principal amount of $_____, in order to finance the Project.

F. The Series 2025A Bonds will be payable equally and ratably from the Base Rental Payments.

G. The Authority and the City desire to provide for the issuance of additional bonds (the "**Additional Bonds**") payable from the Base Rental Payments on a parity with the Series 2025A Bonds (the Series 2025A Bonds and any such Additional Bonds being collectively referred to as the "**Bonds**").

H. In order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to secure the payment of the principal thereof, premium, if any, and interest thereon, the Authority and the City have authorized the execution and delivery of this Indenture.

I. The Authority and the City have determined that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to

constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of the Indenture has been in all respects duly authorized.

NOW THEREFORE, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties do hereby agree as follows:

ARTICLE I

DEFINITIONS; EQUAL SECURITY

Section 1.01 Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes hereof and of any amendment hereof or supplement hereto and of the Bonds and of any certificate, opinion, request or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein. Capitalized terms that are not otherwise defined herein shall have the meanings assigned to such terms in the Lease Agreement.

"**Act**" means the Marks-Roos Local Bond Pooling Act of 1985, commencing with Section 6584 of the California Government Code.

"**Additional Bonds**" means Bonds other than the Series 2025A Bonds issued hereunder in accordance with the provisions of Sections 3.06 and 3.07 hereof.

"**Additional Rental Payments**" means all amounts payable by the City as Additional Rental Payments pursuant to Section 3.02 of the Lease Agreement.

"**Assignment Agreement**" means the Assignment Agreement, dated as of the date hereof, by and between the Authority and the Trustee.

"**Authority**" means the Ontario Public Financing Authority, a joint exercise of powers entity organized and existing under and by virtue of the laws of the State of California.

"**Authorized Authority Representative**" means the Chair, Vice Chair, Executive Director, Treasurer and Secretary of the Authority, or any other person authorized by the Board of Commissioners of the Authority to act on behalf of the Authority under or with respect to this Indenture.

"**Authorized City Representative**" means the Mayor of the City, the Mayor Pro Tem of the City, the City Manager of the City, the Executive Director of Finance of the City or the City Clerk, or any other person authorized by the City Council of the City to act on behalf of the City under or with respect to this Indenture.

"**Authorized Denominations**" means $5,000 or any integral multiple thereof.

"**Base Rental Payment Fund**" means the fund by that name established in accordance with Section 5.02 hereof.

"**Base Rental Payments**" means all amounts payable to the Authority by the City as Base Rental Payments pursuant to Section 3.01 of the Lease Agreement.

"**Bonds**" means the Series 2025A Bonds and any Additional Bonds issued hereunder.

"**Book-Entry Bonds**" means the Bonds of a Series registered in the name of the nominee of DTC, or any successor securities depository for such Series of Bonds, as the registered owner thereof pursuant to the terms and provisions of Section 2.10 hereof.

"**Business Day**" means a day which is not: (a) a Saturday, Sunday or legal holiday; (b) a day on which banking institutions in the State of California, or in any state in which the Office of the Trustee is located, are required or authorized by law (including executive order) to close; or (c) a day on which the New York Stock Exchange is closed.

"**Cede & Co.**" means Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to a Series of Book-Entry Bonds.

"**City**" means the City of Ontario, a municipal corporation and general law city duly organized and existing under and by virtue of the Constitution and laws of the State of California.

"**Closing Date**" means _____, 2025.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Continuing Disclosure Certificate**" means the Continuing Disclosure Certificate, dated as of the date hereof, executed by the City, as originally executed and as it may from time to time be amended in accordance with the provisions thereof.

"**Costs of Issuance**" means all of the costs of issuing and delivering the Bonds, including, but not limited to, all printing and document preparation expenses in connection with this Indenture, the Lease Agreement, the Ground Lease, the Assignment Agreement, the Bonds and any preliminary official statement and final official statement pertaining to the Bonds, rating agency fees, CUSIP Service Bureau charges, market study fees, legal fees and expenses of counsel in connection with the issuance and delivery of the Bonds, the initial fees and expenses of the Trustee and its counsel and other fees and expenses incurred in connection with the issuance and delivery of the Bonds, to the extent such fees and expenses are approved by the City.

"**Costs of Issuance Fund**" means the fund by that name established in accordance with Section 3.04 hereof.

"**DTC**" means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors as securities depository for any Series of Book-Entry Bonds, including any such successor appointed pursuant to Section 2.10 hereof.

"**Federal Securities**" means: (a) non-callable direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America); and (b) obligations of any agency, department or instrumentality of the United States of America the timely payment of principal of and interest on which are fully guaranteed by the United States of America, provided that such securities are eligible for defeasance under the then-existing criteria of S&P.

"**Ground Lease**" means the Ground Lease, dated as of the date hereof, by and between the City and the Authority, as originally executed and as it may from time to time be amended in accordance with the provisions thereof and of the Lease Agreement.

"**Indenture**" means this Indenture, as originally executed and as it may be amended or supplemented from time to time by any Supplemental Indenture.

"**Information Services**" means the Municipal Securities Rulemaking Board through the Electronic Municipal Marketplace Access (EMMA) website; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other services providing information with respect to called bonds as the Authority may designate in a Written Certificate of the Authority delivered to the Trustee.

"**Insolvency Proceeding**" means any proceeding by or against the City or the Authority commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law.

"**Insured Series 2025A Bonds**" means those Series 2025A Bonds maturing on November 1, 20__ through November 1, 20__, inclusive.

"**Interest Fund**" means the fund by that name established in accordance with Section 5.02 hereof.

"**Interest Payment Date**" means May 1 and November 1 of each year, commencing on _____ 1, 2025.

"**Lease Agreement**" means the Lease Agreement, dated as of the date hereof, by and between the City and the Authority, as originally executed and as it may be from time to time amended in accordance with the provisions thereof.

"**Moody's**" means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, except that if such corporation shall no longer perform the function of a securities rating agency for any reason, the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the Authority.

"**Net Insurance Proceeds Fund**" means the fund by that name established in accordance with Section 5.02 hereof.

"**Office of the Trustee**" means the principal corporate trust office of the Trustee in Los Angeles, California, or such other office as may be specified to the Authority and the City by the Trustee in writing, except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term shall mean the office or the agency of the Trustee at which, at any particular time, its corporate trust agency shall be conducted as specified to the Authority and the City by the Trustee in writing.

"**Opinion of Counsel**" means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, appointed and paid by the Authority or the City and which written opinion is satisfactory to the Trustee.

"**Outstanding**," when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 11.09 hereof) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except:

(a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;

(b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.01 hereof; and

(c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture.

"**Owner**" means, with respect to a Bond, the Person in whose name such Bond is registered on the Registration Books.

"**Participant**" means any entity which is recognized as a participant by DTC in the book-entry system of maintaining records with respect to Book-Entry Bonds.

"**Participating Underwriter**" has the meaning ascribed thereto in the Continuing Disclosure Certificate.

"**Permitted Investments**" means any of the following to the extent then permitted by the general laws of the State of California (provided that the Trustee shall be entitled to rely upon any investment directions from the City and Authority as conclusive certification to the Trustee that the investments described therein are so authorized under the laws of the State of California):

(1) (a) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("United States Treasury Obligations"); (b) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America; (c) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America; or (d) evidences of ownership of proportionate interests in future interest and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated (collectively "United States Obligations"). These include, but are not necessarily limited to:

-U.S. Treasury obligations
All direct or fully guaranteed obligations
-Farmers Home Administration
Certificates of beneficial ownership
-General Services Administration
Participation certificates
-U.S. Maritime Administration
Guaranteed Title XI financing

-Small Business Administration
Guaranteed participation certificates
Guaranteed pool certificates
-Government National Mortgage Association (GNMA)
GNMA-guaranteed mortgage-backed securities
GNMA-guaranteed participation certificates
-U.S. Department of Housing & Urban Development
Local authority bonds
-Washington Metropolitan Area Transit Authority
Guaranteed transit bonds

(2) Federal Housing Administration debentures.

(3) The listed obligations of government-sponsored agencies which are not backed by the full faith and credit of the United States of America:

-Federal Home Loan Mortgage Corporation (FHLMC)
Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)
Senior debt obligations
-Farm Credit Banks (formerly: Federal Land Banks, Federal intermediate Credit Banks and Banks for Cooperatives)
Consolidated systemwide bonds and notes
-Federal Home Loan Banks (FHL Banks)
Consolidated debt obligations
-Federal National Mortgage Association (FNMA)
Senior debt obligations
Mortgage-backed securities (excluded are stripped mortgages securities which are purchased at prices exceeding their principal amounts)
-Financing Corporation (FICO)
Debt obligations
-Resolution Funding Corporation (REFCORP)
Debt obligations

(4) Unsecured certificates of deposit, time deposits or other similar bank deposit products, and bankers' acceptances (having maturities of not more than 180 days) of any bank, including the Trustee and its affiliates, the short-term obligations of which are rated "A-1+" or better by S&P and "P-1" or better by Moody's.

(5) Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation (FDIC), in banks, including the Trustee and its affiliates, which have capital and surplus of at least $5 million.

(6) Commercial paper (having original maturities of not more than 270 days) rated "A-1+" by S&P and "Prime-1" by Moody's at the time of purchase.

(7) Money market funds rated "AAm" or "AAm-G" or better by S&P and "Aa2" or better by Moody's, including such funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services or for which the Trustee or an affiliate of the

Trustee serves as investment administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that: (i) the Trustee or an affiliate of the Trustee receives and retains a fee for services extended to the fund; (ii) the Trustee collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds; and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee.

(8) Repurchase agreements:

(a) With any domestic bank the long term debt of which is rated "AA" or better by S&P and "Aa" by Moody's (so long as an opinion is rendered that the repurchase agreement is a "repurchase agreement" as defined in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") and that such bank is subject to FIRREA), or any foreign bank rated at least "AA" by S&P and "Aaa" by Moody's or "AA" by S & P and at least "Aa2" by Moody's; provided the term of such repurchase agreement is for one year or less.

(b) With (i) any broker-dealer with "retail customers" which has, or the parent company of which has, long-term debt rated at least "AA" by S&P and "Aa2" by Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corp. (SIPC); provided that:

A. The market value of the collateral is maintained for United States Treasury Obligations, at the levels shown below under "Collateral Levels for United States Treasury Obligations";

B. Failure to maintain the requisite collateral percentage will require the City or the Trustee to liquidate the collateral;

C. The Trustee, the City or a third party acting solely as agent therefor (the "Holder of the Collateral") has possession of the collateral or the collateral has been transferred to the Holder of the Collateral in accordance with applicable state and federal laws (other than by means of entries on the transferor's books);

D. The repurchase agreement states, and an opinion of counsel is rendered to the effect, that the Trustee has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

E. The transferor represents that the collateral is free and clear of any third-party liens or claims;

F. An opinion is rendered that the repurchase agreement is a "repurchase agreement" as defined in the United States Bankruptcy Code;

G. There is or will be a written agreement governing every repurchase transaction;

H. The City represents that it has no knowledge of any fraud involved in the repurchase transaction; and

I. The City and the Trustee receive an opinion of counsel (which opinion shall be addressed to the City and the Trustee) that such repurchase agreement is legal, valid and binding and enforceable against the provider in accordance with its terms.

(9) State Obligations

(a) Direct general obligations of any state of the United States or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated "A2" by Moody's and "A" by S&P, or better, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated.

(b) Direct, general short-term obligations of any state agency or subdivision described in (a) above and rated "A-1+" by S&P and "Prime-1" by Moody's.

(c) Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state, state agency or subdivision described in (a) above and rated "AA" or better by S&P and "Aa2" or better by Moody's.

(10) Local Agency Investment Fund.

(11) Investment agreements with a domestic or foreign bank or corporation (other than a life or property casualty insurance company) the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt of the guarantor, or in the case of a monoline financial guaranty insurance company the claims paying ability of the guarantor, is rated at least "AA" by S&P and "Aa2" by Moody's; provided, that prior written notice of an investment in the investment agreement is provided to S&P and, provided, further, by the terms of the investment agreement:

(a) interest payments are to be made to the Trustee at times and in amounts as necessary to pay debt service on the Bonds;

(b) the invested funds are available for withdrawal without penalty or premium, at any time for purposes identified in this Indenture other than acquisition of alternative investment property upon not more than seven days prior notice (which notice may be amended or withdrawn at any time prior to the specified withdrawal date); provided that the Indenture specifically requires the Trustee or the City to give notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

(c) the investment agreement shall state that it is the unconditional and general obligation of, and is not subordinated to any other obligation of, the provider thereof;

(d) a guaranteed rate of interest is to be paid on invested funds and all future deposits, if any, required to be made to restore the amount of such funds to the level specified under the Indenture;

(e) the Trustee and the City receive the opinion of domestic counsel (which opinion shall be addressed to the City) that such investment agreement is legal, valid and binding and enforceable against the provider in accordance with its terms and of foreign counsel (if applicable);

(f) the investment agreement shall provide that if during its term: (A) the provider's or the guarantor's rating by either Moody's or S&P is withdrawn or suspended or falls below "AA" or "Aa2", respectively, or, with respect to a foreign bank, below the ratings of such provider at the delivery date of the investment agreement, the provider must, at the direction of the City or the Trustee (acting at the direction of the City) within 10 days of receipt of such direction, either: (1) collateralize the investment agreement by delivering or transferring in accordance with applicable state and federal laws (other than by means of entries on the provider's books) to the Trustee, the City or a Holder of the Collateral, United States Treasury Obligations which are free and clear of any third-party liens or claims at the Collateral Levels set forth below; or (2) repay the principal of and accrued but unpaid interest on the investment (the choice of (1) or (2) above shall be that of the City or Trustee (acting at the direction of the City), as appropriate); and (B) the provider's or the guarantor's rating by either Moody's or S&P is withdrawn or suspended or falls below "A" or "A2," or, with respect to a foreign bank, below "AA" or "Aa2" by S&P or Moody's, as appropriate, the provider must, at the direction of the City or the Trustee (acting at the direction of the City), within 10 days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the City or Trustee;

(g) the investment agreement shall state, and an opinion of counsel shall be rendered to the effect, that the Trustee has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Trustee is in possession); and

(h) the investment agreement must provide that if during its term: (A) the provider shall default in its payment obligations, the provider's obligation under the investment agreement shall, at the direction of the City or the Trustee, be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the City or Trustee, as appropriate; and (B) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("**event of insolvency**"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the City or Trustee, as appropriate.

(12) Pre-refunded municipal obligations rated "AAA" by S&P and "Aaa" by Moody's meeting the following requirements:

(a) the municipal obligations are: (i) not subject to redemption prior to maturity; or (ii) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

(b) the municipal obligations are secured by cash or United States Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

(c) the principal of and interest on the United States Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("**Verification**");

(d) the cash or United States Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or trustee in trust for owners of the municipal obligations;

(e) no substitution of a United States Treasury Obligation shall be permitted except with another United States Treasury Obligation and upon delivery of a new Verification; and

(f) the cash or the United States Treasury Obligations are not available to satisfy any other claims, including those by or against the trustee or escrow agent.

Collateral Levels For United States Treasury Obligations

Remaining Maturity

Frequency of Valuation	***1 year or less***	***5 years or less***	***10 years or less***	***15 years or less***	***30 years or less***
Daily	102	105	106	108	114
Weekly	103	111	112	114	120
Monthly	105	117	120	125	133
Quarterly	107	120	130	133	140

Further Requirements: (a) On each valuation date, the City, or the custodian who shall confirm to the City and the Trustee, shall value the market value (exclusive of accrued interest) of the collateral, which market value will be an amount equal to the requisite collateral percentage times the principal amount of the investment (including unpaid accrued interest thereon) that is being secured; (b) in the event the collateral level is below its collateral percentage on a valuation date, such percentage shall be restored within the following restoration periods: one Business Day for daily valuations, two Business Days for weekly and monthly valuations, and one month for quarterly valuations (the use of different restoration periods affect the requisite collateral percentage); (c) the City or the Trustee (acting at the direction of the City) shall terminate the repurchase agreement or the investment agreement, as the case may be, upon a failure to maintain the requisite collateral percentage after the restoration period and, if not paid by the counterparty in federal funds against transfer of the collateral, liquidate the collateral.

The Trustee shall have no responsibility to monitor the ratings of Permitted Investments after the initial purchase of such Permitted Investments.

"**Person**" means an individual, corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

"**Principal Fund**" means the fund by that name established in accordance with Section 5.02 hereof.

"**Project**" means the acquisition, construction and/or installation of the Series 2025A Project and such other capital facilities that may be financed from proceeds of Additional Bonds as set forth in a Supplemental Indenture.

"**Rebate Fund**" means the fund by that name established in accordance with Section 5.05 hereof.

"**Rebate Requirement**" has the meaning ascribed thereto in the Tax Certificate.

"**Record Date**" means the fifteenth day of the month next preceding an Interest Payment Date, whether or not such day is a Business Day.

"**Redemption Fund**" means the fund by that name established in accordance with Section 5.02 hereof.

"**Redemption Price**" means the aggregate amount of principal of and premium, if any, on the Bonds upon the redemption thereof pursuant hereto.

"**Registration Books**" means the records maintained by the Trustee for the registration of ownership and registration of transfer of the Bonds pursuant to Section 2.05 hereof.

"**Rental Payments**" means, collectively, the Base Rental Payments and the Additional Rental Payments.

"**Rental Period**" means the period from the Closing Date through October 31, 2025 and, thereafter, the twelve-month period commencing on November 1 of each year during the term of the Lease Agreement.

"**Representation Letter**" means the Letter of Representations from the Authority to DTC, or any successor securities depository for any Series of Book-Entry Bonds, in which the Authority makes certain representations with respect to issues of its securities for deposit by DTC or such successor depository.

"**S&P**" means S&P Global Ratings, a Standard & Poor's Financial Services LLC business, its successors and assigns, except that if such entity shall no longer perform the functions of a securities rating agency for any reason, the term "S&P" shall be deemed to refer to any other nationally recognized securities rating agency selected by the Authority.

"**Securities Depositories**" means The Depository Trust Company; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the Authority may designate in a Written Certificate of the Authority delivered to the Trustee.

"**Series**" means the Series 2025A Bonds executed, authenticated and delivered on the Closing Date and identified pursuant to this Indenture and any Additional Bonds issued pursuant to a Supplemental Indenture and identified as a separate Series of Bonds.

"**Series 2025A Bond Insurer**" means, _____, or any successor thereto or assignee thereof.

"**Series 2025A Bonds**" means the Ontario Public Financing Authority 2025A Lease Revenue Refunding Bonds issued hereunder.

"**Series 2025A Insurance Policy**" means _____ issued by the Series 2025A Bond Insurer guaranteeing the scheduled payment of principal and interest on the Insured Series 2025A Bonds when due.

"**Series 2025A Project**" means the acquisition, construction and/or installation of the capital facilities described in Exhibit C hereto.

"**Supplemental Indenture**" means any supplemental indenture amendatory of or supplemental to this Indenture, but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

"**Tax Certificate**" means the Tax Certificate executed by the Authority and the City at the time of issuance of the Series 2025A Bonds relating to the requirements of Section 148 of the Code, as originally executed and as it may from time to time be amended in accordance with the provisions thereof.

"**Trustee**" means Zions Bancorporation, National Association, a national banking association duly organized and existing under and by virtue of the laws of the United States, or any successor thereto as Trustee hereunder, appointed as provided herein.

"**Written Certificate of the Authority**" and "**Written Request of the Authority**" mean, respectively, a written certificate or written request signed in the name of the Authority by an Authorized Authority Representative. Any such certificate or request may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

"**Written Certificate of the City**" and "**Written Request of the City**" mean, respectively, a written certificate or written request signed in the name of the City by an Authorized City Representative. Any such certificate or request may, but need, not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

Section 1.02 Equal Security. In consideration of the acceptance of the Bonds by the Owners thereof, this Indenture shall be deemed to be and shall constitute a contract among the Authority, the City, the Trustee and the Owners from time to time of all Bonds authorized, executed, issued and delivered hereunder and then Outstanding to secure the full and final payment of the principal of, premium, if any, and interest on all Bonds which may from time to time be authorized, executed, issued and delivered hereunder, subject to the agreements, conditions, covenants and provisions contained herein; and all agreements and covenants set forth herein to be performed by or on behalf of the Authority or the City shall be for the equal and proportionate benefit, protection and security of all Owners of the Bonds without distinction, preference or priority as to security or otherwise of any Bonds over any other Bonds by reason of the number or date thereof or the time of authorization, sale, execution, issuance or delivery thereof or for any cause whatsoever, except as expressly provided herein or therein.

ARTICLE II

THE BONDS

Section 2.01 Authorization of Bonds. The Authority hereby authorizes the issuance of the Bonds under and subject to the terms of this Indenture and applicable laws of the State of California for the purpose of financing the Project. The Bonds may consist of one or more Series of Bonds of varying denominations, dates, maturities, interest rates and other provisions, subject to the provisions and conditions contained herein.

Section 2.02 Terms of Series 2025A Bonds.

(a) The Series 2025A Bonds shall be designated the "Ontario Public Financing Authority 2025A Lease Revenue Bonds." Each Series of Additional Bonds shall bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series, of Bonds.

(b) The Series 2025A Bonds shall be issued in fully registered form without coupons in Authorized Denominations, so long as no Series 2025A Bond shall have more than one maturity date. The Series 2025A Bonds shall be dated as of the Closing Date, shall be issued in the aggregate principal amount of $_____, shall mature on November 1 of each year and shall bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) at the rates per annum as follows:

Maturity Date	***Principal***	
(November 1)	***Amount***	***Interest Rate***

(c) Interest on the Series 2025A Bonds shall be payable from the Interest Payment Date next preceding the date of authentication thereof unless: (i) a Series 2025A Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it shall bear interest from such Interest Payment Date; (ii) a Series 2025A Bond is authenticated on or before the first Record Date, in which event interest thereon shall be payable from the dated date thereof; or (iii) interest on any Series 2025A Bond is in default as of the date of authentication thereof, in which event interest thereon shall be payable from the date to which interest has been paid in full, payable on each Interest Payment Date. Interest shall be paid in lawful money of the United States on each Interest Payment Date to the Persons in whose names the ownership of the Series 2025A Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest shall be paid by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Series 2025A Bond Owners at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date.

(d) The principal and premium, if any, of the Series 2025A Bonds shall be payable in lawful money of the United States of America upon presentation and surrender thereof upon maturity or earlier redemption at the Office of the Trustee.

(e) The Series 2025A Bonds shall be subject to redemption as provided in Article IV.

Section 2.03 Form of Series 2025A Bonds. The Series 2025A Bonds shall be in substantially the form set forth in Exhibit A hereto, with appropriate or necessary insertions, omissions and variations as permitted or required hereby.

Section 2.04 Transfer and Exchange of Bonds. Any Bond may, in accordance with its terms, be transferred upon the Registration Books by the Person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Trustee. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and shall deliver a new Bond or Bonds of the same Series in a like aggregate principal amount, in any Authorized Denomination. The Trustee shall require the Bond Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of the same Series of other authorized denominations. The Trustee shall require the payment by the Bond Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

The Trustee shall not be obligated to make any transfer or exchange of Bonds of a Series pursuant to this Section during the period established by the Trustee for the selection of Bonds of such Series for redemption, or with respect to any Bonds of such Series selected for redemption.

Section 2.05 Registration Books. The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall be open to inspection during regular business hours and upon reasonable notice by the City; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

Section 2.06 Execution of Bonds. The Bonds shall be executed in the name and on behalf of the Authority with the facsimile signature of an Authorized Officer of the Authority attested by the manual or facsimile signature of the Secretary of the Authority. The Bonds shall then be delivered to the Trustee for authentication by it. In case any of such officers of the Authority who shall have signed or attested any of the Bonds shall cease to be such officers of the Authority before the Bonds so signed or attested shall have been authenticated or delivered by the Trustee, or issued by the Authority, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though those who signed and attested the same had continued to be such officers of the Authority, and also any Bonds may be signed and attested on behalf of the Authority by such Persons as at the actual date of execution of such Bonds shall be the proper officers of the Authority although at the nominal date of such Bonds any such Person shall not have been such officer of the Authority.

Section 2.07 Authentication of Bonds. Only such of the Bonds as shall bear thereon a certificate of authentication substantially in the form as that set forth in Exhibit A hereto, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of or on behalf of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 2.08 Temporary Bonds. The Bonds of a Series may be issued in temporary form exchangeable for definitive Bonds of such Series when ready for delivery. Any temporary Bonds may be printed, lithographed or typewritten, shall be of such authorized denominations as may be determined by the Authority, shall be in fully registered form without coupons and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds of a Series it will execute and deliver definitive Bonds of such Series as promptly thereafter as practicable, and thereupon the temporary Bonds of such Series may be surrendered, for cancellation, at the Office of the Trustee and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of such Series in Authorized Denominations. Until so exchanged, the temporary Bonds of such Series shall be entitled to the same benefits under this Indenture as definitive Bonds of such Series authenticated and delivered hereunder.

Section 2.09 Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor and Series in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by it and delivered to, or in accordance with the order of, the Authority. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence and indemnity satisfactory to the Trustee shall be given, the Authority, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor and Series in lieu of and in replacement for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been selected for redemption, instead of issuing a replacement Bond, the Trustee may pay the same without surrender thereof). The Authority may require payment by the Owner of a sum not exceeding the actual cost of preparing each replacement Bond issued under this Section and of the expenses which may be incurred by the Authority and the Trustee. Any Bond of a Series issued under the provisions of this Section in lieu of any Bond of such Series alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Indenture with all other Bonds of such Series secured by this Indenture.

Section 2.10 Book-Entry Bonds.

(a) Prior to the issuance of a Series of Bonds, the Authority may provide that such Series of Bonds shall initially be issued as Book-Entry Bonds and, in such event, the Bonds of such Series for each maturity shall be in the form of a separate single fully registered Bond (which may be typewritten). The Series 2025A Bonds shall initially be issued as Book-Entry Bonds.

Except as provided in subsection (c) of this Section, the registered Owner of all of the Book-Entry Bonds shall be Cede & Co., as nominee of DTC. Notwithstanding anything to the contrary contained in this Indenture, payment of interest with respect to any Book-Entry Bond registered as of each Record Date in the name of Cede & Co. shall be made by wire transfer of same-day funds to the account of Cede & Co. on the Interest Payment Date at the address indicated on the Record Date for Cede & Co. in the Registration Books or as otherwise provided in the Representation Letter.

(b) The Trustee and the Authority may treat DTC (or its nominee) as the sole and exclusive Owner of Book-Entry Bonds registered in its name for the purposes of payment of the principal, premium, if any, or interest with respect to Book-Entry Bonds, selecting Book-Entry Bonds or portions thereof to be redeemed, giving any notice permitted or required to be given to Owners of Book-Entry Bonds under this Indenture, registering the transfer of Book-Entry Bonds, obtaining any consent or other action to be taken by Owners of Book-Entry Bonds and for all other purposes whatsoever, and neither the Trustee nor the Authority shall be affected by any notice to the contrary. Neither the Trustee nor the Authority shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in Book-Entry Bonds under or through DTC or any Participant, or any other person which is not shown on the Registration Books as being an Owner, with respect to the accuracy of any records maintained by DTC or any Participant, the payment by DTC or any Participant of any amount in respect of the principal, premium, if any, or interest with respect to Book-Entry Bonds, any notice which is permitted or required to be given to Owners of Book-Entry Bonds under this Indenture, the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of Book-Entry Bonds, or any consent given or other action taken by DTC as Owner of Book-Entry Bonds. The Trustee shall pay all principal, premium, if any and interest with respect to Book-Entry Bonds, only to DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Authority's obligations with respect to the principal, premium, if any, and interest with respect to the Book-Entry Bonds to the extent of the sum or sums so paid. Except under the conditions of subsection (c) of this Section, no person other than DTC shall receive an executed Book-Entry Bond for each separate stated maturity. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions herein with respect to record dates, the term "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

(c) In the event that: (i) DTC, including any successor as securities depository for a Series of Bonds, determines not to continue to act as securities depository for such Series of Bonds; or (ii) the Authority determines that the incumbent securities depository shall no longer so act, and delivers a written certificate to the Trustee to that effect, then the Authority will discontinue the book-entry system with the incumbent securities depository for such Series of Bonds. If the Authority determines to replace the incumbent securities depository for such Series of Bonds with another qualified securities depository, the Authority shall prepare or direct the preparation of a new single, separate fully registered Bond of such Series for the aggregate outstanding principal amount of Bonds of such Series of each maturity, registered in the name of such successor or substitute qualified securities depository, or its nominee, or make such other arrangement acceptable to the Authority, the Trustee and the successor securities depository for the Bonds of such Series as are not inconsistent with the terms of this Indenture. If the Authority fails to identify another qualified successor securities depository for such Series of Bonds to replace the incumbent securities depository, then the Bonds of such Series shall no longer be restricted to being registered in the Registration Books in the name of the incumbent securities depository or its nominee, but shall be registered in whatever name or names the incumbent securities depository for such Series of Bonds, or its nominee, shall designate. In such event the Authority shall execute, and deliver to the Trustee, a sufficient quantity of Bonds of such Series to carry out the transfers and exchanges provided in Sections 2.04, 2.08 and 2.09 hereof. All such Bonds of such Series shall be in fully registered form in Authorized Denominations.

(d) Notwithstanding any other provision of this Indenture to the contrary, so long as any Book-Entry Bond is registered in the name of DTC, or its nominee, all payments with respect

to the principal, premium, if any, and interest with respect to such Book-Entry Bond and all notices with respect to such Book-Entry Bond shall be made and given, respectively, as provided in the Representation Letter.

(e) In connection with any notice or other communication to be provided to Owners of Book-Entry Bonds pursuant to this Indenture by the Authority, the City or the Trustee with respect to any consent or other action to be taken by Owners, the Authority, the City or the Trustee, as the case may be, shall establish a record date for such consent or other action and give DTC notice of such record date not less than 15 calendar days in advance of such record date to the extent possible.

ARTICLE III

ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

Section 3.01 Issuance of Series 2025A Bonds. The Authority may, at any time, execute the Series 2025A Bonds for issuance hereunder and deliver the same to the Trustee. The Trustee shall authenticate the Series 2025A Bonds and deliver the Series 2025A Bonds to the original purchaser thereof upon receipt of a Written Request of the Authority and upon receipt of the purchase price therefor.

Section 3.02 Application of Proceeds of the Series 2025A Bonds. On the Closing Date, the proceeds of the sale of the Series 2025A Bonds received by the Trustee, $_____ (being the principal amount of $_____, [plus/less] [net] original issue [premium/discount] of $_____, less an underwriter's discount of $_____, and less $_____ paid by the Participating Underwriter of the Series 2025A Bonds on behalf of the Authority directly to the Series 2025A Bond Insurer), shall be deposited by the Trustee as follows:

(a) The Trustee shall deposit the amount of $_____ in the 2025A Costs of Issuance Account.

(b) The Trustee shall transfer the amount of $_____ to the Project Fund.

Section 3.03 Costs of Issuance Fund. The Trustee shall establish and maintain a separate fund designated the "Costs of Issuance Fund," and within such fund the "2025A Costs of Issuance Account." On the Closing Date, there shall be deposited in the 2025A Costs of Issuance Account the amount specified in Section 3.02 hereof. There shall be additionally be deposited in the Costs of Issuance Fund the portion, if any, of the proceeds of the sale of any Additional Bonds required to be deposited therein under the Supplemental Indenture pursuant to which such Additional Bonds are issued.

The moneys in the Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Costs of Issuance upon submission of a Written Request of the Authority stating: (a) the Person to whom payment is to be made; (b) the amount to be paid, together with payment instructions; (c) the purpose for which the obligation was incurred; (d) that such payment is a proper charge against the Costs of Issuance Fund; and (e) that such amounts have not been the subject of a prior disbursement from the Costs of Issuance Fund, in each case together with a statement or invoice for each amount requested thereunder. Each such Written Request of the Authority shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have

no duty to confirm the accuracy of such facts. [On the date that is six months after the Closing Date, all amounts, if any, remaining in the 2025A Costs of Issuance Account shall be withdrawn therefrom by the Trustee and transferred to the Interest Fund, and the 2025A Costs of Issuance Account shall be closed.]

Section 3.04 Project Fund. The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Project Fund" and within such fund the "2025A Project Account." On the Closing Date, there shall be deposited in the 2025A Project Account the amount specified in Section 3.02 hereof. There shall be additionally deposited in the Project Fund the portion, if any, of the proceeds of the sale of any Additional Bonds required to be deposited therein under the Supplemental Indenture pursuant to which such Additional Bonds are issued.

The moneys in the Project Fund or the accounts therein shall be disbursed by the Trustee on behalf of the City as specified in a Written Request of the City in the form attached hereto as Exhibit B. Each Written Request of the City shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. On the date on which the City determines that amounts in the Project Fund are no longer necessary for payment of the cost of the Projects, the City shall submit a Written Request to the Trustee to transfer any remaining balance in the Project Fund not needed for Project Fund purposes, at the City's sole discretion, either (a) to the Base Rental Payment Fund for application in accordance with Section 5.02 hereof, or (b) to the City for use on eligible capital facilities, and the Project Fund shall be closed.

[Investment earnings on amounts on deposit in the Project Fund shall remain on deposit in the Project Fund for application in accordance with this Section.]

Section 3.05 Conditions for the Issuance of Additional Bonds. The Authority may at any time issue one or more Series of Additional Bonds (in addition to the Series 2025A Bonds) payable from Base Rental Payments as provided herein on a parity with all other Bonds theretofore issued hereunder, but only subject to the following conditions, which are hereby made conditions precedent to the issuance of such Additional Bonds:

(a) The issuance of such Additional Bonds shall have been authorized under and pursuant hereto and shall have been provided for by a Supplemental Indenture which shall specify the following:

(1) The application of the proceeds of the sale of such Additional Bonds;

(2) The principal amount and designation of such Series of Additional Bonds and the denomination or denominations of the Additional Bonds;

(3) The date, the maturity date or dates, the interest payment dates and the dates on which mandatory sinking fund redemptions, if any, are to be made for such Additional Bonds; provided, however, that: (i) the serial Bonds of such Series of Additional Bonds shall be payable as to principal annually on November 1 of each year in which principal falls due, and the term Bonds of such Series of Additional Bonds shall have annual mandatory sinking fund redemptions on November 1; (ii) the Additional Bonds shall be payable as to interest semiannually on May 1 and November 1 of each year, except that the first installment of interest may be payable on either May 1 or November 1 and shall be for a period of not longer than twelve months and the interest shall be payable thereafter semiannually on May 1 and November 1; (iii) all Additional

Bonds of a Series of like maturity shall be identical in all respects, except as to number or denomination; and (iv) serial maturities of serial Bonds or mandatory sinking fund redemptions for term Bonds, or any combination thereof, shall be established to provide for the redemption or payment of such Additional Bonds on or before their respective maturity dates;

(4) The redemption premiums and terms, if any, for such Additional Bonds;

(5) The form of such Additional Bonds;

(6) Such other provisions that are appropriate or necessary and are not inconsistent with the provisions hereof;

(b) The Authority shall be in compliance with all agreements, conditions, covenants and terms contained herein, in the Lease Agreement and in the Ground Lease required to be observed or performed by it;

(c) The City shall be in compliance with all agreements, conditions, covenants and terms contained herein, in the Lease Agreement and in the Ground Lease required to be observed or performed by it; and

(d) The Ground Lease and the Lease Agreement shall have been amended, to the extent necessary, (i) so as to increase the Base Rental Payments payable by the City thereunder by an aggregate amount equal to the principal of and interest on such Additional Bonds, payable at such times and in such manner as may be necessary to provide for the payment of the principal of and interest on such Additional Bonds; provided, however, that no such amendment shall be made such that the sum of Base Rental Payments, including any increase in the Base Rental Payments as a result of such amendment, plus Additional Rental Payments, in any Rental Period shall be in excess of the annual fair rental value of the Property after taking into account the use of the proceeds of any Additional Bonds issued in connection therewith (evidence of the satisfaction of such condition shall be made by a Written Certificate of the City); and (ii) to include provisions for the prepayment of Base Rental Payments attributable to such Additional Bonds.

Nothing contained herein shall limit the issuance of any bonds or other obligations payable from Base Rental Payments if, after the issuance and delivery of such bonds or other obligations, none of the Bonds theretofore issued hereunder will be Outstanding.

Section 3.06 Procedure for the Issuance of Additional Bonds. At any time after the sale of any Additional Bonds in accordance with the Act, such Additional Bonds shall be executed by the Authority for issuance hereunder and shall be delivered to the Trustee and thereupon shall be authenticated and delivered by the Trustee, but only upon receipt by the Trustee of the following:

(a) Certified copies of the Supplemental Indenture authorizing the issuance of such Additional Bonds, the amendment to the Lease Agreement required by Section 3.05 hereof and the amendment to the Ground Lease, if any, required by Section 3.05 hereof, together with satisfactory evidence that such amendment to the Lease Agreement and such amendment to the Ground Lease, if any, have been duly recorded;

(b) A Written Request of the Authority as to the delivery of such Additional Bonds;

(c) An opinion of Bond Counsel substantially to the effect that: (i) the Indenture (including all Supplemental Indentures), the Lease Agreement (including the amendment thereto required by Section 3.05 hereof) and the Ground Lease (including any amendment thereto required by Section 3.05 hereof) have been duly authorized, executed and delivered by, and constitute the valid and binding obligations of, the Authority and the City, enforceable in accordance with their terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and by the application of equitable principles and by the exercise of judicial discretion in appropriate cases and subject to the limitations on legal remedies against political subdivisions in the State of California); and (ii) such Additional Bonds constitute valid and binding special obligations of the Authority payable solely from Base Rental Payments as provided herein and are enforceable in accordance with their terms (except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and by the application of equitable principles and by the exercise of judicial discretion in appropriate cases and subject to the limitations on legal remedies against political subdivisions in the State of California);

(d) a Written Certificate of the Authority that the requirements of Section 3.05 hereof have been met;

(e) a Written Certificate of the City that the requirements of Section 3.05 hereof and Sections 5.01 and 5.02 of the Lease Agreement have been met, and a Written Certificate of the City that the annual fair rental value of the Property is at least equal to the total Base Rental Payments, after giving effect to the issuance of the Additional Bonds, and to the use of proceeds received therefrom, including any capitalized interest; and

(f) Such further documents as are required by the provisions hereof or by the provisions of the Supplemental Indenture authorizing the issuance of such Additional Bonds.

Section 3.07 Additional Bonds. So long as any of the Bonds remain Outstanding, the Authority shall not issue any Additional Bonds or obligations payable from the Base Rental Payments, except pursuant to Sections 3.05 and 3.06 hereof.

ARTICLE IV

REDEMPTION OF BONDS

Section 4.01 Redemption of Series 2025A Bonds.

(a) Extraordinary Redemption. The Series 2025A Bonds shall be subject to redemption, in whole or in part, on any date as directed by the City in a written request provided to the Trustee not less than 30 days (or such lesser number of days acceptable to the Trustee, in the sole discretion of the Trustee) prior to such date, in Authorized Denominations, from and to the extent of any Net Insurance Proceeds received with respect to all or a portion of the Property, deposited by the Trustee in the Redemption Fund pursuant to Sections 5.03 and 5.04 hereof, at a Redemption Price equal to the principal amount of the Series 2025A Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

(b) Optional Redemption. The Series 2025A Bonds maturing on or after November 1, 20__, shall be subject to optional redemption, in whole or in part, on November 1, 20__ or any date thereafter, as directed by the City in a written request provided to the Trustee not less than 30 days (or such lesser number of days acceptable to the Trustee, in the sole discretion of the Trustee) prior to such date, in Authorized Denominations, from and to the extent of prepaid Base Rental Payments paid pursuant to subsection (a) of Section 7.02 of the Lease Agreement, at a Redemption Price equal to the principal amount of the Series 2025A Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

(c) Mandatory Sinking Fund Redemption. The Series 2025A Bonds with stated maturities on November 1, 20 __ are subject to mandatory sinking fund redemption in part (by lot) on each November 1 on and after November 1, 20__, in integral multiples of $5,000 at a Redemption Price of the principal amount thereof plus accrued interest to the date fixed for redemption, without premium, in accordance with the following schedule:

Redemption Date (November 1)	***Principal Amount***

* Maturity.

The Series 2025A Bonds with stated maturities on November 1, 20__ are subject to mandatory sinking fund redemption in part (by lot) on each November 1 on and after November 1, 20__, in integral multiples of $5,000 at a Redemption Price of the principal amount thereof plus accrued interest to the date fixed for redemption, without premium, in accordance with the following schedule:

Redemption Date (November 1)	***Principal Amount***

* Final Maturity.

If, during the Fiscal Year immediately preceding one of the redemption dates specified above, the Authority purchases Series 2025A Bonds, at least 45 days prior to the redemption date, the Authority shall notify the Trustee as to the principal amount purchased and the amount of Series 2025A Bonds so purchased shall be credited at the time of purchase, to the extent of the full principal amount thereof, to reduce such upcoming mandatory sinking fund redemption payment for the Series 2025A Bonds so purchased. All Series 2025A Bonds purchased pursuant to this subsection shall be cancelled pursuant to Section 11.09.

In the event of a redemption pursuant to Section 4.01(a) or (b) or in the event of the purchase of Series 2025A Bonds, the City shall provide the Trustee with a revised mandatory sinking fund schedule giving effect to the redemption so completed.

Section 4.02 Notice of Redemption. The Trustee on behalf and at the expense of the Authority shall mail (by first class mail) notice of any redemption to the respective Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, to the Securities Depositories and to one or more Information Services, at least 20 but not more than 60 days prior to the date fixed for redemption. Such notice shall state the date of the notice, the redemption date, the redemption place and the Redemption Price and shall designate the CUSIP numbers, the Bond numbers and the maturity or maturities (except in the event of redemption of all of the Bonds of such maturity or maturities in whole) of the Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Office of the Trustee for redemption at the Redemption Price, giving notice also that further interest on such Bonds will not accrue from and after the date fixed for redemption. Such notice may state that such redemption is conditioned upon sufficient funds being on deposit on the redemption date to redeem the Bonds so called for redemption. Such notice of redemption may also state that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or on the Bonds. Neither the failure to receive any notice so mailed, nor any defect in such notice, shall affect the validity of the proceedings for the redemption of the Bonds or the cessation of accrual of interest thereon from and after the date fixed for redemption.

With respect to any notice of optional redemption of the Bonds, such notice may state that such redemption shall be conditional upon the receipt by the Trustee, on or prior to the date fixed for such redemption, of moneys sufficient to pay the principal of, premium if any, and interest on the Bonds to be redeemed and upon other conditions set forth therein and that, if such money shall not have been so received or such other conditions shall not have been satisfied for any reason, said notice shall be of no force and effect and the Trustee shall not be required to redeem such Bonds. If any condition stated in the redemption notice for an optional redemption shall not have been satisfied on or prior to the redemption date: (i) the redemption notice shall be of no force and effect, (ii) the Authority shall not be required to redeem such Bonds, (iii) the redemption shall not be made, and (iv) the Trustee shall within a reasonable time thereafter give notice to the persons in the manner in which the conditional redemption notice was given that such condition or conditions were not met and that the redemption was canceled.

Section 4.03 Selection of Bonds for Redemption. Whenever provision is made in this Indenture for the redemption of less than all of the Bonds, the Trustee shall select the Bonds to be redeemed from all Bonds not previously called for redemption: (a) with respect to any optional redemption of Bonds of a Series, among maturities of Bonds of such Series as directed in a Written Request of the Authority; (b) with respect to any redemption pursuant to Section 4.01(a) hereof and the corresponding provision of any Supplemental Indenture pursuant to which Additional Bonds are issued, among maturities of all Series of Bonds on a pro rata basis as nearly as practicable; and (c) with respect to any other redemption of Additional Bonds, among maturities as provided in the Supplemental Indenture pursuant to which such Additional Bonds are issued, and by lot among Bonds of the same Series with the same maturity in any manner which the Trustee in its sole discretion shall deem appropriate and fair. For purposes of such selection, all Bonds shall be deemed to be comprised of separate $5,000 denominations and such separate denominations shall be treated as separate Bonds which may be separately redeemed.

Section 4.04 Partial Redemption of Bonds. Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of the same Series in authorized

denominations equal in aggregate principal amount representing the unredeemed portion of the Bonds surrendered.

Section 4.05 Effect of Notice of Redemption. Notice having been mailed as aforesaid, and moneys for the Redemption Price, and the interest to the applicable date fixed for redemption, having been set aside in the Redemption Fund, the Bonds shall become due and payable on said date, and, upon presentation and surrender thereof at the Office of the Trustee, said Bonds shall be paid at the Redemption Price thereof, together with interest accrued and unpaid to said date.

If, on said date fixed for redemption, moneys for the Redemption Price of all the Bonds to be redeemed, together with interest to said date, shall be held by the Trustee so as to be available therefor on such date, and, if notice of redemption thereof shall have been mailed as aforesaid and not canceled, then, from and after said date, interest on said Bonds shall cease to accrue and become payable. All moneys held by or on behalf of the Trustee for the redemption of Bonds shall be held in trust for the account of the Owners of the Bonds so to be redeemed without liability to such Owners for interest thereon.

All Bonds paid at maturity or redeemed prior to maturity pursuant to the provisions hereof shall be canceled upon surrender thereof and destroyed.

ARTICLE V

SECURITY FOR BONDS; FLOW OF FUNDS; INVESTMENTS

Section 5.01 Pledge; Special Obligations. Subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Base Rental Payments and any other amounts (including proceeds of the sale of the Bonds) held in the Base Rental Payment Fund, the Interest Fund, the Principal Fund and the Redemption Fund are hereby pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms, the provisions of this Indenture and the Act. Said pledge shall constitute a first lien on such assets.

All obligations of the Authority under this Indenture shall be special obligations of the Authority, payable solely from Base Rental Payments and the other assets pledged therefor hereunder; provided, however, that all obligations of the Authority under the Bonds shall be special obligations of the Authority, payable solely from Base Rental Payments and the other assets pledged therefor hereunder. Neither the faith and credit nor the taxing power of the Authority, the City or the State of California, or any political subdivision thereof, is pledged to the payment of the Bonds. The Authority has not taxing power.

Section 5.02 Flow of Funds.

(a) The Trustee shall establish and maintain separate funds designated the "Base Rental Payment Fund," the "Interest Fund," the "Principal Fund," the "Redemption Fund," and the "Net Insurance Proceeds Fund."

All Base Rental Payments shall be paid directly by the City to the Trustee, and if received by the Authority at any time shall be transferred by the Authority with the Trustee within

one Business Day after the receipt thereof. All Base Rental Payments received by the Trustee shall be deposited by the Trustee in the Base Rental Payment Fund.

(b) The Trustee shall transfer the amounts on deposit in the Base Rental Payment Fund, at the times and in the manner hereinafter provided, to the following respective funds:

(i) Interest Fund. On the Business Day immediately preceding each Interest Payment Date, the Trustee shall transfer from the Base Rental Payment Fund to the Interest Fund the amount, if any, necessary to cause the amount on deposit in the Interest Fund to be equal to the interest due on the Bonds on such Interest Payment Date.

(ii) Principal Fund. On the Business Day immediately preceding each November 1, commencing November 1, 20__, the Trustee shall transfer from the Base Rental Payment Fund to the Principal Fund the amount, if any, necessary to cause the amount on deposit in the Principal Fund to be equal to the principal amount of the Bonds due on such November 1 either as a result of the maturity thereof or mandatory sinking fund redemption payments required to be made with respect thereto. Moneys in the Principal Fund shall be used by the Trustee for the purpose of paying the principal of the Bonds when due and payable at their maturity dates or upon earlier mandatory sinking fund redemption.

(iii) Redemption Fund. The Trustee, on the redemption date specified in the Written Request of the City filed with the Trustee at the time that any prepaid Base Rental Payment is paid to the Trustee pursuant to the Lease Agreement, shall deposit in the Redemption Fund that amount of moneys representing the portion of the Base Rental Payments designated as prepaid Base Rental Payments. Additionally, the Trustee shall deposit in the Redemption Fund any amounts required to be deposited therein pursuant to Sections 5.03 or 5.04 hereof. Moneys in the Redemption Fund shall be used by the Trustee for the purpose of paying the principal of and interest and premium, if any, on Series 2025A Bonds redeemed pursuant to the provisions of subsections (a) and (b) of Section 4.01 hereof and Additional Bonds redeemed pursuant to the corresponding provisions of the Supplemental Indenture pursuant to which such Additional Bonds are issued; provided, however, that moneys deposited in the Redemption Fund may also be used to purchase Outstanding Series 2025A Bonds or Additional Bonds in the manner hereinafter provided. Purchases of Outstanding Series 2025A Bonds or Additional Bonds may be made by the Authority at public or private sale as and when and at such prices as the Authority may in its discretion determine, but only at prices (including brokerage or other expenses) not more than par plus accrued interest, plus, in the case of moneys set aside for an optional redemption or an extraordinary redemption, the premium applicable at the next following call date according to the premium schedule established pursuant to Sections 4.01(a) or (b), as applicable, or in the case of Additional Bonds the premium established in any Supplemental Indenture. Any accrued interest payable upon the purchase of Series 2025A Bonds or Additional Bonds may be paid from the amount reserved in the Interest Fund.

Section 5.03 Application of Net Insurance Proceeds. If the Property or any portion thereof shall be damaged or destroyed, subject to the further requirements of this Section, the City shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted the repair or replacement thereof, unless the City elects not to repair or replace the Property or the affected portion thereof in accordance with the provisions hereof.

The Net Insurance Proceeds (other than Net Insurance Proceeds of rental interruption insurance), including the proceeds of any self-insurance, received on account of any damage or

destruction of the Property or a portion thereof shall as soon as possible be deposited with the Trustee and be held by the Trustee in the Net Insurance Proceeds Fund and made available for and, to the extent necessary, shall be applied to the cost of repair or replacement of the Property or the affected portion thereof upon receipt of a Written Request of the City, together with invoices therefor. Each such Written Request of the City shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. Pending such application, such proceeds may be invested by the Trustee as directed by the City in Permitted Investments that mature not later than such times moneys are expected to be needed to pay such costs of repair or replacement.

Notwithstanding the foregoing, the City shall, within 60 days of the occurrence of the event of damage or destruction, notify the Trustee in writing as to whether the City intends to replace or repair the Property or the portions of the Property which were damaged or destroyed. If the City does intend to replace or repair the Property or portions thereof, the City shall deposit with the Trustee the full amount of any insurance deductible to be credited to the Net Insurance Proceeds Fund.

In the event of any damage to or destruction of the Property caused by one of the perils covered by the insurance required by Section 5.01(c) of the Lease Agreement which would result in an abatement of rental payments or any portion thereof pursuant to Section 3.06 thereof, then the City shall apply the Net Insurance Proceeds, together with other legally available funds that the City elects to contribute, to the repair, reconstruction or replacement of the damaged or destroyed portions of the Property; provided, however, that the City shall not be required to repair or replace any portion of the Property pursuant to this Section 5.03 if such Net Insurance Proceeds, together with any other amounts held under this Indenture and any other legally available funds made available by the City at its election, are sufficient to prepay: (i) all of the Outstanding Bonds; or (ii) a portion of the Outstanding Bonds such that the resulting Base Rental Payments under Section 4.01(a) in any Rental Period following such partial prepayment are sufficient to pay in such Rental Period the principal of and interest on all Bonds to remain Outstanding immediately after such partial redemption. If the City is not required to replace or repair the Property, or the affected portion thereof, or to use such amounts to redeem Bonds, in each case as set forth in this Section 5.03, then such proceeds shall, if there is first delivered to the Trustee a Written Certificate of the City to the effect that the annual fair rental value of the Property after such damage or destruction, and after any repairs or replacements made as a result of such damage or destruction, is at least equal to 100% of the maximum amount of Base Rental Payments becoming due under the Lease Agreement in the then current Rental Period or any subsequent Rental Period and the fair replacement value of the Property after such damage or destruction is at least equal to the principal amount of the Outstanding Bonds, be paid to the City to be used for any lawful purpose.

The proceeds of any award in eminent domain received in respect to the Property shall be deposited by the Trustee in the Redemption Fund and applied to the redemption of Bonds pursuant to subsection (a) of Section 4.01 hereof and the corresponding provisions of any Supplemental Indenture pursuant to which Additional Bonds are issued.

Section 5.04 Title Insurance. Proceeds of any policy of title insurance received by the Trustee in respect of the Property shall be applied and disbursed by the Trustee as follows:

(a) if the City determines that the title defect giving rise to such proceeds has not substantially interfered with its use and occupancy of the Property and will not result in an abatement

of Rental Payments payable by the City under the Lease Agreement, such proceeds shall be remitted to the City upon written direction from the City and used for any lawful purpose thereof; or

(b) if the City determines that the title defect giving rise to such proceeds has substantially interfered with its use and occupancy of the Property and will result in an abatement of Rental Payments payable by the City under the Lease Agreement, then the Trustee shall immediately deposit such proceeds in the Redemption Fund and such proceeds shall be applied to the redemption of Bonds in the manner provided in subsection (a) of Section 4.01 hereof and the corresponding provisions of any Supplemental Indenture pursuant to which Additional Bonds are issued, as directed in writing by the City.

Section 5.05 Rebate Fund.

(a) Establishment. The Trustee shall establish a fund for the Series 2025A Bonds designated the "Rebate Fund" when required in accordance herewith. Absent an Opinion of Counsel that the exclusion from gross income for federal income tax purposes of interest on the Series 2025A Bonds will not be adversely affected, the Authority shall cause to be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to this Section and the Tax Certificate. All money at any time deposited in the Rebate Fund shall be held by the Trustee in trust for payment to the United States Treasury. All amounts on deposit in the Rebate Fund for the Series 2025A Bonds shall be governed by this Section and the Tax Certificate, unless and to the extent that the Authority delivers to the Trustee an opinion of Bond Counsel that the exclusion from gross income for federal income tax purposes of interest on the Series 2025A Bonds will not be adversely affected if such requirements are not satisfied. Notwithstanding anything to the contrary contained herein or in the Tax Certificate, the Trustee: (1) shall be deemed conclusively to have complied with the provisions thereof if it follows all Written Requests of the Authority or Written Requests of the City; (2) shall have no liability or responsibility to enforce compliance by the Authority or the City with the terms of the Tax Certificate and shall not be deemed to have knowledge of the terms thereof; (3) may rely conclusively on the Authority's or the City's calculations and determinations and certifications relating to rebate matters; and (4) shall have no responsibility to independently make any calculations or determinations or to review the Authority's or the City's calculations or determinations thereunder.

(i) Computation. Within 55 days of the end of every fifth Bond Year (as such term is defined in the Tax Certificate), the Authority shall calculate or cause to be calculated the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any applicable exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (*e.g.*, the temporary investments exceptions of Section 148(f)(4)(B) and the construction expenditures exception of Section 148(f)(4)(C) of the Code), and taking into account whether the election pursuant to Section 148(f)(4)(C)(vii) of the Code (the "**1½% Penalty**") has been made), for this purpose treating the last day of the applicable Bond Year as a computation date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the "**Rebatable Arbitrage**"). The Authority shall obtain expert advice as to the amount of the Rebatable Arbitrage to comply with this Section.

(ii) Transfer. Within 55 days of the end of every fifth Bond Year, upon the Written Request of the Authority or Written Request of the City, an amount shall be deposited to the Rebate Fund by the Trustee from any Rental Payments legally available for such purpose (as specified by the Authority or the City in the aforesaid Written Request), if and to the extent required

so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with clause (i) of this subsection (a). In the event that immediately following the transfer required by the previous sentence, the amount then on deposit to the credit of the Rebate Fund exceeds the amount required to be on deposit therein, upon Written Request of the Authority or Written Request of the City, the Trustee shall withdraw the excess from the Rebate Fund and then credit the excess to the Base Rental Payment Fund.

(iii) Payment to the Treasury. The Trustee shall pay, as directed by Written Request of the Authority, to the United States Treasury, out of amounts in the Rebate Fund:

(1) Not later than 60 days after the end of: (X) the fifth Bond Year; and (Y) each applicable fifth Bond Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Bond Year; and

(2) Not later than 60 days after the payment of all of the Series 2025A Bonds, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Bond Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code and Section 1.148-3 of the Treasury Regulations.

In the event that, prior to the time of any payment required to be made from the Rebate Fund, the amount in the Rebate Fund is not sufficient to make such payment when such payment is due, the Authority shall calculate or cause to be calculated the amount of such deficiency and deposit an amount received from any legally available source equal to such deficiency prior to the time such payment is due. Each payment required to be made pursuant to this subsection (a) shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T (prepared by the Authority), or shall be made in such other manner as provided under the Code.

(b) Disposition of Unexpended Funds. Any funds remaining in the Rebate Fund after redemption and payment of the Series 2025A Bonds and the payments described in subsection (a) above being made may be withdrawn by the Authority and utilized in any manner by the Authority.

(c) Survival of Defeasance. Notwithstanding anything in this Section to the contrary, the obligation to comply with the requirements of this Section shall survive the defeasance or payment in full of the Series 2025A Bonds.

Section 5.06 Investment of Moneys. Except as otherwise provided herein, all moneys in any of the funds or accounts established pursuant to this Indenture and held by the Trustee shall be invested by the Trustee solely in Permitted Investments, as directed in writing by the Authority. Moneys in all funds and accounts held by the Trustee shall be invested in Permitted Investments maturing not later than the date on which it is estimated that such moneys will be required for the purposes specified in this Indenture; provided, however, that such Permitted Investments may be redeemed at par so as to be available on each Interest Payment Date. Absent timely written direction from the Authority, the Trustee shall hold any funds held by it uninvested.

Subject to the provisions of Section 5.06 hereof, all interest, profits and other income received from the investment of moneys in any fund or account established pursuant to this Indenture shall be retained in such fund or account.

Permitted Investments acquired as an investment of moneys in any fund established under this Indenture shall be credited to such fund. For the purpose of determining the amount in any fund, all Permitted Investments credited to such fund shall be valued by the Trustee at the fair market value thereof, such valuation to be performed not less frequently than semiannually on or before each Interest Payment Date. In determining fair market value, the Trustee may use and rely conclusively on any generally recognized securities pricing service available to it (including brokers and dealers in securities).

The Trustee may act as principal or agent in the making or disposing of any investment. Upon the Written Request of the Authority, the Trustee shall sell or present for redemption any Permitted Investments so purchased whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investments is credited, and the Trustee shall not be liable or responsible for any loss resulting from any investment made or sold pursuant to this Section. For purposes of investment, the Trustee may commingle moneys in any of the funds and accounts established hereunder.

The Trustee may make any investments hereunder through the bond or investment department or trust investment department of the entity acting as Trustee hereunder, or those of such entity's parent or any affiliate, and such entity, or its parent or affiliate, as applicable, shall be entitled to its normal, customary and reasonable compensation for such services.

The entity acting as Trustee hereunder, or any of its affiliates, may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder and such entity, or its affiliate, as applicable, shall be entitled to its normal, customary and reasonable compensation for such services.

The Authority and the City acknowledge that, to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority and the City the right to receive brokerage confirmations of security transactions as they occur, at no additional cost, the Authority and the City specifically waive receipt of such confirmations to the extent permitted by law.

ARTICLE VI

COVENANTS

Section 6.01 Compliance with Agreements. The Trustee will not authenticate or deliver any Bonds in any manner other than in accordance with the provisions hereof, and the Authority and the City will not suffer or permit any default by them to occur hereunder, but will faithfully comply with, keep, observe and perform all the agreements, conditions, covenants and terms hereof required to be complied with, kept, observed and performed by them.

Section 6.02 Compliance with Ground Lease and Lease Agreement. The Authority and the City will faithfully comply with, keep, observe and perform all the agreements, conditions, covenants and terms contained in the Ground Lease and the Lease Agreement required to be complied with, kept, observed and performed by them and, together with the Trustee, will enforce the Ground Lease and the Lease Agreement against the other party thereto in accordance with their respective terms.

Section 6.03 Observance of Laws and Regulations. The Authority, the City and the Trustee will faithfully comply with, keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on them by contract, or prescribed by any law of the United States of America or of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of each and every franchise, right or privilege now owned or hereafter acquired by them, including their right to exist and carry on their respective businesses, to the end that such franchises, rights and privileges shall be maintained and preserved and shall not become abandoned, forfeited or in any manner impaired.

Section 6.04 Other Liens. The City will keep the Property and all parts thereof free from judgments and materialmen's and mechanics' liens and free from all claims, demands, encumbrances and other liens of whatever nature or character, and free from any claim or liability which materially impairs the City in conducting its business or utilizing the Property, and the Trustee at its option (after first giving the City ten days' written notice to comply therewith and failure of the City to so comply within such ten-day period) may, but is in no event obligated to, defend against any and all actions or proceedings, or may pay or compromise any claim or demand asserted in any such actions or proceedings; provided, however, that, in defending against any such actions or proceedings or in paying or compromising any such claims or demands, the Trustee shall not in any event be deemed to have waived or released the City from liability for or on account of any of its agreements and covenants contained herein, or from its liability hereunder and to perform such agreements and covenants.

So long as any Bonds are Outstanding, none of the Trustee, the Authority or the City shall create or suffer to be created any pledge of or lien on the amounts on deposit in any of the funds or accounts created hereunder, other than the pledge and lien hereof.

The Authority, the City and the Trustee shall not encumber the Property other than in accordance with the Ground Lease, the Lease Agreement, the Indenture and the Assignment Agreement.

Section 6.05 Prosecution and Defense of Suits. The City will promptly, upon request of the Trustee (which request the Trustee is not required to make), take such action from time to time as may be necessary or proper to remedy or cure any cloud upon or defect in the title to the Property or any part thereof, whether now existing or hereafter developing, will prosecute all actions, suits or other proceedings as may be appropriate for such purpose and will indemnify and save the Trustee harmless from all cost, damage, expense or loss, including attorneys' fees and expenses, which it or the Owners may incur by reason of any such cloud, defect, action, suit or other proceeding.

Section 6.06 Accounting Records and Statements. The Trustee will keep proper accounting records in which complete and correct entries shall be made of all transactions relating to the receipt, deposit and disbursement of the Base Rental Payments, and such accounting records shall be available for inspection by the Authority and the City at reasonable hours and under reasonable conditions.

Section 6.07 Recordation and Filing. The City will record, or cause to be recorded, with the appropriate county recorder, the Lease Agreement, the Ground Lease and the Assignment Agreement, or memoranda thereof.

Section 6.08 Tax Covenants.

(a) Neither the Authority nor the City will take any action, or fail to take any action, if such action or failure to take such action would adversely affect the exclusion from gross income of interest on any tax-exempt Series 2025A Bonds under Section 103 of the Code. Without limiting the generality of the foregoing, the Authority and the City will comply with the requirements of the Tax Certificate, which is incorporated herein as if fully set forth herein, this covenant shall survive payment in full or defeasance of the Series 2025A Bonds.

(b) In the event that at any time the Authority is of the opinion that for purposes of this Section it is necessary or helpful to restrict or limit the yield on the investment of any moneys held by the Trustee in any of the funds or accounts established hereunder, the Authority shall so instruct the Trustee in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions.

(c) Notwithstanding any provisions of this Section, if the Authority shall provide to the Trustee an Opinion of Counsel to the effect that any specified action required under this Section is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Series 2025A Bonds, the Trustee may conclusively rely on such opinion in complying with the requirements of this Section and of the Tax Certificate, and the covenants hereunder shall be deemed to be modified to that extent.

Section 6.09 Continuing Disclosure. The City will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the City to comply with the Continuing Disclosure Certificate shall not constitute an event of default hereunder; provided, however, that the Trustee may (and, at the written direction of any Participating Underwriter or the holders of at least 25% of the aggregate principal amount of Outstanding Bonds, and upon being indemnified to its reasonable satisfaction therefor, shall) or any holder or beneficial bwner of the Bonds may take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

Section 6.10 Further Assurances. Whenever and so often as requested to do so by the Trustee, the Authority and the City will promptly execute and deliver or cause to be executed and delivered all such other and further assurances, documents or instruments and promptly do or cause to be done all such other and further things as may be necessary or reasonably required in order to further and more fully vest in the Trustee all advantages, benefits, interests, powers, privileges and rights conferred or intended to be conferred upon it hereby or by the Assignment Agreement, the Ground Lease or the Lease Agreement, and to preserve the priority of the pledge of the Rental Payments under applicable law.

ARTICLE VII

DEFAULT AND LIMITATIONS OF LIABILITY

Section 7.01 Action on Default. If an event of default (within the meaning of Article VI of the Lease Agreement) shall happen, then such event of default shall constitute an event of default hereunder. The Trustee shall give notice, as assignee of the Authority, of an event of default under the Lease Agreement to the City. In each and every case during the continuance of an event of

default, the Trustee may and, at the direction of the Owners of not less than a majority of the aggregate principal amount of Bonds then Outstanding, and upon being indemnified to its reasonable satisfaction therefor, shall, upon notice in writing to the City and the Authority, exercise any of the remedies granted to the Authority under the Lease Agreement and, in addition, take whatever action at law or in equity may appear necessary or desirable to enforce its rights as assignee pursuant to the Assignment Agreement or to protect and enforce any of the rights vested in the Trustee or the Owners by this Indenture or by the Bonds, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement or for the enforcement of any other legal or equitable right, including any one or more of the remedies set forth in Section 7.02 hereof.

Section 7.02 Other Remedies of the Trustee. Subject to the provisions of Section 7.01 hereof, the Trustee shall have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the Authority or the City or any member, director, officer or employee thereof, and to compel the Authority or the City or any such member, director, officer or employee to perform or carry out its or his or her duties under law and the agreements and covenants required to be performed by it or him or her contained herein;

(b) by suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Trustee; or

(c) by suit in equity upon the happening of any event of default hereunder to require the Authority and the City to account as the trustee of an express trust.

Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Owner any plan of reorganization, arrangement, adjustment or composition affecting the Bonds or the rights of any Owner thereof, or to authorize the Trustee to vote in respect of the claim of any Owner in any such proceeding without the approval of the Owners so affected.

Notwithstanding any provision of this Indenture to the contrary, no event of default hereunder or under the Lease by the Authority or the City shall result in the acceleration of debt service on the Bonds hereunder.

Section 7.03 Non-Waiver. A waiver of any default or breach of duty or contract by the Trustee shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Trustee to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Trustee by law or by this Article may be enforced and exercised from time to time and as often the Trustee shall deem expedient.

If any action, proceeding or suit to enforce any right or to exercise any remedy is abandoned or determined adversely to the Trustee or any Owner, then subject to any adverse determination, the Trustee, such Owner, the Authority and the City shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 7.04 Remedies Not Exclusive. Subject to the provisions of Section 7.01 hereof, no remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by any law. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 7.05 No Liability by the Authority to the Owners. Except as expressly provided herein, the Authority shall not have any obligation or liability to the Owners with respect to the payment when due of the Base Rental Payments by the City, or with respect to the performance by the City of the other agreements and covenants required to be performed by it contained in the Lease Agreement or herein, or with respect to the performance by the Trustee of any right or obligation required to be performed by it contained herein.

Section 7.06 No Liability by the City to the Owners. Except for the payment when due of the Base Rental Payments and the performance of the other agreements and covenants required to be performed by it contained in the Lease Agreement, the Ground Lease or herein, the City shall not have any obligation or liability to the Owners with respect to the Indenture or the preparation, execution, delivery or transfer of the Bonds or the disbursement of the Base Rental Payments by the Trustee to the Owners, or with respect to the performance by the Trustee of any right or obligation required to be performed by it contained herein.

Section 7.07 No Liability of the Trustee to the Owners. Except as expressly provided herein, the Trustee shall not have any obligation or liability to the Owners with respect to the payment when due of the Base Rental Payments by the City, or with respect to the performance by the Authority or the City of the other agreements and covenants required to be performed by them contained in the Lease Agreement, the Ground Lease or herein.

Section 7.08 Application of Amounts After Default. All payments received by the Trustee with respect to the rental of the Property after a default by the City pursuant to Article VI of the Lease Agreement (including, without limitation, any proceeds received in connection with the sale, assignment or sublease of the Authority's right, title and interest in the Ground Lease), and all damages or other payments received by the Trustee for the enforcement of any rights and powers of the Trustee under Article VI of the Lease Agreement, shall be deposited into the Base Rental Payment Fund and as soon as practicable thereafter applied, together with all other funds held hereunder (except funds in the Rebate Fund):

(a) to the payment of all amounts due the Trustee under Article VIII hereof;

(b) to the payment of all amounts then due for interest on the Bonds, in respect of which, or for the benefit of which, money has been collected (other than Bonds which have become payable prior to such event of default and money for the payment of which is held by the Trustee), ratably without preference or priority of any kind, according to the amounts of interest on such Bonds due and payable; and

(c) to the payment of all amounts then due for principal of the Bonds, in respect of which, or for the benefit of which, money has been collected (other than Bonds which have become payable prior to such event of default and money for the payment of which is held by the

Trustee), ratably without preference or priority of any kind, according to the amounts of principal of such Bonds due and payable.

Section 7.09 Trustee May Enforce Claims Without Possession of Bonds. All rights of action and claims under this Indenture or the Bonds may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Owners in respect of which such judgment has been recovered.

Section 7.10 Limitation on Suits. No Owner of any Bond shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or Trustee, or for any other remedy hereunder, unless: (a) such Owner shall have previously given written notice to the Trustee of a continuing event of default; (b) the Owners of not less than 25% of the aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee to institute proceedings in respect of such event of default in its own name as Trustee hereunder; (c) such Owner or Owners shall have afforded to the Trustee indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such proceedings; and (e) no direction inconsistent with such written request shall have been given to the Trustee during such 60 day period by the Owners of a majority of the aggregate principal amount of Bonds then Outstanding; it being understood and intended that no one or more Owners shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Owner, or to obtain or seek to obtain priority or preference over any other Owner or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Owners.

ARTICLE VIII

THE TRUSTEE

Section 8.01 Employment of the Trustee. The Authority hereby appoints and employs the Trustee to receive, deposit and disburse the Base Rental Payments, to authenticate, deliver and transfer the Bonds and to perform the other functions contained herein, all in the manner provided herein and subject to the conditions and terms hereof. By executing and delivering this Indenture, the Trustee accepts the appointment and employment hereinabove referred to and accepts the rights and obligations of the Trustee provided herein, subject to the conditions and terms hereof. Other than when an event of default has occurred and is continuing, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In case an event of default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. The Trustee hereby covenants and agrees that it will not encumber the Property.

Section 8.02 Duties, Removal and Resignation of the Trustee. The Authority may, by an instrument in writing, remove the Trustee initially a party hereto and any successor thereto unless an event of default shall have occurred and then be continuing, and shall remove the Trustee initially a party hereto and any successor thereto if at any time: (a) requested to do so by an instrument or concurrent instruments in writing signed by the Owners of a majority of the aggregate principal amount of Bonds at the time Outstanding (or their attorneys duly authorized in writing); or (b) the Trustee shall cease to be eligible in accordance with the following sentence, and shall appoint a successor Trustee. The Trustee and any successor Trustee shall be a banking corporation or association or trust company having (or if such banking corporation or association or trust company is a member of a bank holding company, its bank holding company has) a combined capital (exclusive of borrowed capital) and surplus of at least $50,000,000 and subject to supervision or examination by federal or state authorities. If such banking corporation or association or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such bank, association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Trustee may at any time resign by giving written notice of such resignation to the Authority and the City and by giving notice, by first class mail, postage prepaid, of such resignation to the Owners at their addresses appearing on the Registration Books. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee by an instrument in writing; provided, however, that in the event the Authority does not appoint a successor Trustee within 30 days following receipt of such notice of resignation, the resigning Trustee may, at the expense of the Authority, petition the appropriate court having jurisdiction to appoint a successor Trustee. Any resignation or removal of a Trustee and appointment of a successor Trustee shall become effective only upon acceptance of appointment by the successor Trustee.

Any corporation, association or agency into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, provided that such entity meets the combined capital and surplus requirements of this Section, ipso facto, shall be and become successor trustee under this Indenture and vested with all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 8.03 Compensation of the Trustee. The City shall from time to time, subject to any written agreement then in effect with the Trustee, pay the Trustee reasonable compensation for all its services rendered hereunder and reimburse the Trustee for all its reasonable advances and expenditures (which shall not include "overhead expenses" except as such expenses are included as a component of the Trustee's stated annual fees) hereunder, including but not limited to advances to and reasonable fees and reasonable expenses of accountants, agents, appraisers, consultants or other experts, and counsel not directly employed by the Trustee but an attorney or firm of attorneys retained by the Trustee, employed by it in the exercise and performance of its rights and obligations hereunder. The Trustee may take whatever legal actions are lawfully available to it directly against the Authority or the City.

The City shall, to the extent permitted by law, indemnify and save the Trustee harmless against any liabilities, costs, claims or expenses, including those of its attorneys, which it may incur in the exercise and performance of its powers and duties hereunder, under the Lease Agreement, or in connection with any document or transaction contemplated hereunder or thereunder, including the enforcement of any remedies and the defense of any suit, and which are not due to its negligence or its misconduct. The duty of the City to indemnify the Trustee shall survive the termination and discharge of this Indenture and the earlier removal or resignation of the Trustee.

No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers hereunder.

Upon an Event of Default, and only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of principal of and premium, if any, and interest on any Bond, upon the trust estate for the foregoing fees, charges and expenses incurred by it. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 8.04 Protection of the Trustee. The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any affidavit, bond, certificate, consent, notice, request, requisition, resolution, statement, telegram, voucher, waiver or other paper or document which it shall in good faith believe to be genuine and to have been adopted, executed or delivered by the proper party or pursuant to any of the provisions hereof, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Owners of the Bonds pursuant to this Indenture, unless such Owners shall have offered to the Trustee security or indemnity, reasonably satisfactory to the Trustee, against the reasonable costs, expenses and liabilities which might be incurred by it in compliance with such request or direction. The Trustee may consult with counsel, who may be counsel to the Authority or the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered by it hereunder in good faith in accordance therewith.

The Trustee shall not be responsible for the sufficiency of the Bonds or the Lease Agreement, or of the assignment made to it by the Assignment Agreement, or for statements made in any preliminary or final official statement relating to the Bonds, or of the title to the Property.

Whenever in the administration of its rights and obligations hereunder the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate of the City or a Written Certificate of the Authority, and such certificate shall be full warrant to the Trustee for any action taken or suffered under the provisions hereof upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it deems reasonable.

The Trustee may buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Owner may be entitled to take with like effect as if the Trustee were not a party hereto. The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Authority or the City, and may act as agent, depository or trustee for any committee or body of Owners or of owners of obligations of the Authority or the City as freely as if it were not the Trustee hereunder.

The Trustee may, to the extent reasonably necessary, execute any of the trusts or powers hereof and perform any rights and obligations required of it hereunder by or through agents, attorneys or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its rights and obligations hereunder, and the Trustee shall not be answerable for the negligence or misconduct of any such agent, attorney or receiver selected by it with reasonable care; provided, however, that in the event of any negligence or misconduct of any such attorney, agent or receiver, the Trustee shall in a commercially reasonable manner pursue all remedies of the Trustee against such agent, attorney or receiver. The Trustee shall not be liable for any error of judgment made by it in good faith unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

The Trustee shall not be answerable for the exercise of any trusts or powers hereunder or for anything whatsoever in connection with the funds established hereunder, except only for its own willful misconduct, negligence or breach of an obligation hereunder.

The Trustee shall not be deemed to have knowledge of an event of default unless it has actual knowledge thereof.

The Trustee may, on behalf of the Owners, intervene in any judicial proceeding to which the Authority or the City is a party and which, in the opinion of the Trustee and its counsel, affects the Bonds or the security therefor, and shall do so if requested in writing by the Owners of at least 5% of the aggregate principal amount of Bonds then Outstanding, provided that the Trustee shall have no duty to take such action unless it has been indemnified to its reasonable satisfaction against all risk or liability arising from such action.

The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and final payment or defeasance of the Bonds.

All indemnifications and releases from liability granted herein to the Trustee shall extend to the directors, officers, employees and agents of the Trustee.

The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful default. The Trustee shall have no responsibility or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of these Bonds. The Trustee shall not be accountable for the use or application by the Borrower of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any paying agent.

The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("**Instructions**") given pursuant to this Indenture and delivered using Electronic Means. ("**Electronic Means**" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder). The Authority and the City shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions ("**Authorized Officers**") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Authority whenever a person is to be added or deleted from the listing. If the Authority elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Authority understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Authority shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Authority and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Authority. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding the fact that such directions conflict or are inconsistent with a subsequent written instruction. The Authority agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Authority; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "**force majeure**" means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include but not be limited to acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

In acting or omitting to act pursuant to the Lease Agreement or Ground Lease, the Trustee shall be entitled to all of the rights, immunities and indemnities accorded to it under this Indenture and the Lease Agreement, including, but not limited to, this Article VIII.

ARTICLE IX

MODIFICATION OR AMENDMENTS

Section 9.01 Modifications and Amendments Permitted.

(a) This Indenture and the rights and obligations of the Authority, the City, the Owners of the Bonds and the Trustee may be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority, the City and the Trustee may enter into with the written consent of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding. No such modification or amendment shall: (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or the rate of interest thereon, or extend the time of payment, without the consent of the Owner of each Bond so affected; or (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment; or (iii) permit the creation of any lien on the Base Rental Payments and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture or deprive the Owners of the Bonds of the lien created by this Indenture on such Base Rental Payments and other assets (except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It shall not be necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof.

(b) This Indenture and the rights and obligations of the Authority, the City, the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority, the City and the Trustee may enter into without the consent of any Bond Owners for any one or more of the following purposes:

(i) to add to the covenants and agreements of the Authority or the City in this Indenture contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Authority or the City;

(ii) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision contained in this Indenture;

(iii) to provide for the issuance of one or more Series of Additional Bonds, and to provide the terms and conditions under which such Series of Additional Bonds may be issued, subject to and in accordance with the provisions of Article III hereof;

(iv) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;

(v) to modify, amend or supplement this Indenture in such manner as to cause interest on the Bonds to be excludable from gross income for purposes of federal income taxation by the United States of America; and

(vi) in any other respect whatsoever as the Authority and the City may deem necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners hereunder.

(c) Promptly after the execution by the Authority, the City and the Trustee of any Supplemental Indenture, the Trustee shall mail a notice (the form of which shall be furnished to the Trustee by the Authority), by first class mail postage prepaid, setting forth in general terms the substance of such Supplemental Indenture, to the Owners of the Bonds at the respective addresses shown on the Registration Books. Any failure to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

(d) No Supplemental Indenture shall modify any of the rights or obligations of the Trustee without its prior written consent.

(e) In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall receive, and shall be fully protected in relying upon, an opinion addressed and delivered to the Trustee stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and that the execution and delivery thereof will not in and of itself adversely affect the exclusion from federal gross income tax of interest on the Bonds.

Section 9.02 Effect of Supplemental Indenture. Upon the execution of any Supplemental Indenture pursuant to this Article, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the City, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.03 Endorsement of Bonds; Preparation of New Bonds. Bonds delivered after the execution of any Supplemental Indenture pursuant to this Article may, and if the Authority so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand of the Owner of any Bonds Outstanding at the time of such execution and presentation of his Bonds for the purpose at the Office of the Trustee a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority and the Trustee, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand of the Owners of any Bonds then Outstanding shall be exchanged at the Office of the Trustee, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same interest rate and maturity.

Section 9.04 Amendment of Particular Bonds. The provisions of this Article shall not prevent any Bond Owner from accepting any amendment as to the particular Bonds held by such Owner.

ARTICLE X

DEFEASANCE

Section 10.01 Discharge of Indenture. If the Authority shall pay or cause to be paid or there shall otherwise be paid to the Owners of all Outstanding Bonds the principal thereof and the interest and premium, if any, thereon at the times and in the manner stipulated herein and therein, then the Owners of such Bonds shall cease to be entitled to the pledge of the Base Rental Payments and the other assets as provided herein, and all agreements, covenants and other obligations of the Authority and the City to the Owners of such Bonds hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the Authority and the City all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over or deliver to the City all money or securities held by it pursuant hereto which are not required for the payment of the principal of and interest and premium, if any, on such Bonds.

Subject to the provisions of the above paragraph, when any of the Bonds shall have been paid and if, at the time of such payment, the Authority and the City shall have kept, performed and observed all of the covenants and promises in such Bonds and in this Indenture required or contemplated to be kept, performed and observed by them on or prior to that time, then this Indenture shall be considered to have been discharged in respect of such Bonds and such Bonds shall cease to be entitled to the lien of this Indenture and such lien and all covenants, agreements and other obligations of the Authority and the City hereunder shall cease, terminate become void and be completely discharged as to such Bonds.

Notwithstanding the satisfaction and discharge of this Indenture or the discharge of this Indenture in respect of any Bonds, those provisions of this Indenture relating to the maturity of the Bonds, interest payments and dates thereof, exchange and transfer of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, and the duties of the Trustee in connection with all of the foregoing, shall remain in effect and shall be binding upon the Trustee and the Owners of the Bonds and the Trustee shall continue to be obligated to hold in trust any moneys or investments then held by the Trustee for the payment of the principal of and interest and premium, if any, on the Bonds, to pay to the Owners of Bonds the funds so held by the Trustee as and when such payment becomes due. Notwithstanding the satisfaction and discharge of this Indenture or the discharge of this Indenture in respect of any Bonds, those provisions of this Indenture relating to the compensation and indemnity of the Trustee shall remain in effect and shall be binding upon the Trustee, the City and the Authority.

Section 10.02 Bonds Deemed To Have Been Paid. If moneys shall have been set aside and held by the Trustee for the payment or redemption of any Bonds and the interest thereon at the maturity or redemption date thereof, such Bonds shall be deemed to have been paid within the meaning and with the effect provided in Section 10.01 hereof. Any Outstanding Bonds shall, prior to the maturity date or redemption date thereof, be deemed to have been paid within the meaning of and with the effect expressed in Section 10.01 hereof if: (a) in case any of such Bonds are to be redeemed on any date prior to their maturity date, the Authority shall have given to the Trustee in form satisfactory to it irrevocable instructions to mail, on a date in accordance with the provisions of Section 4.02 hereof, notice of redemption of such Bonds on said redemption date, said notice to be given in accordance with Section 4.02 hereof; (b) there shall have been deposited with the Trustee either: (i) money in an amount which shall be sufficient; or (ii) Federal Securities that are not subject

to redemption other than at the option of the holder thereof, the interest on and principal of which when paid will provide money which, together with the money noted in previous subsection (i), if any deposited with the Trustee at the same time, shall, as verified by an independent certified public accountant, be sufficient to pay when due the interest to become due on such Bonds on and prior to the maturity date or redemption date thereof, as the case may be, and the principal of and premium, if any, on such Bonds; and (c) in the event that such Bonds are not by their terms subject to redemption within the next succeeding 60 days, the Authority shall have given the Trustee in form satisfactory to it irrevocable instructions to mail as soon as practicable, a notice to the owners of such Bonds that the deposit required by clause (b) above has been made with the Trustee and that such Bonds, are deemed to have been paid in accordance with this Section and stating the maturity date or redemption date upon which money is to be available for the payment of the principal of and premium, if any, on such Bonds.

Section 10.03 Payment of Bonds After Discharge of Indenture. Notwithstanding any provisions of this Indenture, to the extent permitted by law, any moneys held by the Trustee in trust for the payment of the principal of, or premium or interest on, any Bonds and remaining unclaimed for two years after the date of deposit of such moneys, shall be repaid to the Authority (without liability for interest) free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Authority as aforesaid, the Trustee may (at the cost of the Authority) first mail, by first class mail postage prepaid, to the Owners of Bonds which have not yet been paid, at the respective addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof.

ARTICLE XI

MISCELLANEOUS

Section 11.01 Benefits of Indenture Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the Authority, the City, the Trustee and the Owners any claim, remedy or right under or pursuant hereto, and any agreement, condition, covenant or term required herein to be observed or performed by or on behalf of the Authority or the City shall be for the sole and exclusive benefit of the Trustee and the Owners.

Section 11.02 Successor Deemed Included in all References to Predecessor. Whenever the Authority, the City or the Trustee, or any officer thereof, is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the Authority, the City or the Trustee, or such officer, and all agreements, conditions, covenants and terms required hereby to be observed or performed by or on behalf of the Authority, the City or the Trustee, or any officer thereof, shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 11.03 Execution of Documents by Owners. Any declaration, request or other instrument which is permitted or required herein to be executed by Owners may be in one or more instruments of similar tenor and may be executed by Owners in person or by their attorneys appointed in writing. The fact and date of the execution by any Owner or his attorney of any declaration, request or other instrument or of any writing appointing such attorney may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to

be recorded in the state or territory in which he purports to act that the person signing such declaration, request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer, or by such other proof as the Trustee may accept which it may deem sufficient.

The ownership of any Bonds and the amount, payment date, number and date of owning the same may be proved by the Registration Books.

Any declaration, request or other instrument in writing of the Owner of any Bond shall bind all future Owners of such Bond with respect to anything done or suffered to be done by the Authority, the City or the Trustee in good faith and in accordance therewith.

Section 11.04 Waiver of Personal Liability. Notwithstanding anything contained herein to the contrary, no member, officer or employee of the Authority or the City shall be individually or personally liable for the payment of any moneys, including without limitation, the principal of or interest on the Bonds, but nothing contained herein shall relieve any member, officer or employee of the City or the Authority from the performance of any official duty provided by any applicable provisions of law, by the Lease Agreement or hereby.

Section 11.05 Destruction of Bonds. Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the Authority of any Bonds, the Trustee may, in lieu of such cancellation and delivery, destroy such Bonds.

Section 11.06 Funds and Accounts. Any fund or account required to be established and maintained herein by the Trustee may be established and maintained in the accounting records of the Trustee either as an account or a fund, and may, for the purposes of such accounting records, any audits thereof and any reports or statements with respect thereto, be treated either as an account or a fund, but all such records with respect to all such funds and accounts shall at an times be maintained in accordance with sound accounting practice and with due regard for the protection of the security of the Bonds and the rights of the Owners.

The Trustee may commingle any of the moneys held by it hereunder for investment purposes only; provided, however, that the Trustee shall account separately for the moneys in each fund or account established pursuant to this Indenture. The Trustee may establish such funds and accounts as it deems necessary or appropriate to perform its obligations hereunder.

Section 11.07 Article and Section Headings Gender and References. The singular form of any word used herein, including the terms defined in Section 1.01 hereof, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders. The headings or titles of the several Articles and Sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof. All references herein to "Articles," "Sections," subsections or clauses are to the corresponding Articles, Sections, subsections or clauses hereof, and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section, subsection or clause thereof.

Section 11.08 Partial Invalidity. If any one or more of the agreements, conditions, covenants or terms required herein to be observed or performed by or on the part of the Authority,

the City or the Trustee shall be contrary to law, then such agreement or agreements, such condition or conditions, such covenant or covenants or such term or terms shall be null and void to the extent contrary to law and shall be deemed separable from the remaining agreements, conditions, covenants and terms hereof and shall in no way affect the validity hereof or of the Bonds, and the Owners shall retain all the benefit, protection and security afforded to them under any applicable provisions of law. The Authority, the City and the Trustee hereby declare that they would have executed this Indenture, and each and every Article, Section, paragraph, subsection, sentence, clause and phrase hereof and would have authorized the execution and delivery of the Bonds pursuant hereto irrespective of the fact that any one or more Articles, Sections, paragraphs, subsections, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 11.09 Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are actually known by the Trustee to be owned or held by or for the account of the Authority or the City, or by any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination; except that, in determining whether the Trustee shall be protected in relying upon any such demand, request, direction, consent or waiver of an Owner, only Bonds which the Trustee actually knows to be owned or held by or for the account of the Authority or the City, or by any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City, shall be disregarded unless all Bonds are so owned or held, in which case such Bonds shall be considered Outstanding for the purpose of such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Authority and the City shall specify in a Written Certificate of the City and Authority those Bonds disqualified pursuant to this Section and the Trustee may conclusively rely on such Certificate.

Section 11.10 Money Held for Particular Bonds. The money held by the Trustee for the payment of the interest, principal or premium due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, subject, however, to the provisions of Section 10.03 hereof but without any liability for interest thereon.

Section 11.11 Payment on Non-Business Days. In the event that any payment is required to be made hereunder on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day with the same effect as if made on such non-Business Day.

Section 11.12 California Law. This Indenture shall be construed and governed in accordance with the laws of the State of California.

Section 11.13 Notices. All written notices to be given hereunder shall be given by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the City:	City of Ontario 303 East B Street Ontario, California 91764 Attention: City Manager
If to the Authority:	Ontario Public Financing Authority c/o City of Ontario 303 East B Street Ontario, California 91764 Attention: Executive Director
If to the Trustee:	Zions Bancorporation, National Association 550 South Hope Street, Suite 2875 Los Angeles, California 90071 Attention: _____ Ref: _____

If to the Series 2025A Bond Insurer:

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed: (a) if personally served or delivered, upon delivery; (b) if given by electronic communication, whether by telex, telegram or telecopier, upon the sender's receipt of an appropriate answer back or other written acknowledgment; (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail; (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier; or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 11.14 Notice to Rating Agencies. The Trustee shall provide S&P, if the Bonds are then rated by S&P, and Moody's, if the Bonds are then rated by Moody's, with prompt notice of any substitution or release of property pursuant to Section 9.03 of the Lease Agreement.

Section 11.15 Execution in Counterparts. This Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 11.16 Bond Insurer as Third Party Beneficiary; Notices to Bond Insurer. The Series 2025A Bond Insurer is explicitly recognized as and will be deemed to be a Bond Owner entitled to all notices provided to Bond Owners and a third party beneficiary of the Indenture.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Authority and the City have caused this Indenture to be signed in their respective names by their representative thereunto duly authorized, and the Trustee, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

ONTARIO PUBLIC FINANCING AUTHORITY

By: _____
Executive Director

ATTEST:

_____
Secretary

CITY OF ONTARIO

By: _____
City Manager

ATTEST:

_____
City Clerk

[SIGNATURES CONTINUED ON NEXT PAGE.]

[SIGNATURE PAGE CONTINUED.]

ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Officer

EXHIBIT A

FORM OF SERIES 2025A BOND

No. ____ $_____

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY AND ANY PAYMENT IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BOND

INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP
_____%	November 1, 20____	_____	68304R ___

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

The Ontario Public Financing Authority (the "Authority"), for value received, hereby promises to pay, solely from the Base Rental Payments (as hereinafter defined) or amounts in certain funds and accounts held under the Indenture (as hereinafter defined), to the Registered Owner identified above or registered assigns (the "Registered Owner"); on the Maturity Date identified above or on any earlier redemption date, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Interest Rate identified above in like lawful money from the date hereof payable semiannually on May 1 and November 1 in each year, commencing _____ 1, 2025 (the "Interest Payment Dates"), until payment of such Principal Amount in full. This Bond shall bear interest from the Interest Payment Date next preceding the date of authentication of this Bond (unless this Bond is authenticated on or before an Interest Payment Date and after the close of business on the fifteenth calendar day of the month next preceding such Interest Payment Date, whether or not such day is a Business Day, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to April 15, 2018, in which event it shall bear interest from the Dated Date identified above; provided, however, that if, at the time of authentication of this Bond, interest is in default on this Bond, interest on this Bond shall be payable from the date to which interest hereon has been paid in full, payable on each Interest Payment Date). The Principal Amount hereof is payable upon surrender hereof upon maturity or earlier redemption at the Office of the Trustee (as hereinafter defined). Interest hereon is payable by wire or check of Zions Bancorporation, National Association, as trustee (the "Trustee"), mailed by first class mail, postage prepaid, on each Interest Payment Date to the Registered Owner hereof at the

address of the Registered Owner shown on the Registration Books at the close of business on the fifteenth calendar day of the month next preceding such Interest Payment Date. "Office of the Trustee" means the principal corporate trust office of the Trustee in Los Angeles, California, or such other office as may be specified to the Authority and the City of Ontario (the "City") by the Trustee in writing, except that with respect to presentation of Bonds for payment or for registration of transfer and exchange, such term shall mean the office or the agency of the Trustee at which, at any particular time, its corporate trust agency shall be conducted as specified to the Authority and the City by the Trustee in writing.

This Bond is one of a series of a duly authorized issue of bonds issued for the purpose of financing the acquisition, construction and installation of certain capital improvements of the City, and is one of the series of bonds designated "Ontario Public Financing Authority 2025A Lease Revenue Refunding Bonds" (the "Series 2025A Bonds") in the aggregate principal amount of $_____. The Series 2025A Bonds are issued pursuant to that certain Indenture, dated as of _____ 1, 2025 (the "Indenture"), by and among the Authority, the City and the Trustee, and this reference incorporates the Indenture herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. Pursuant to and as more particularly provided in the Indenture, additional bonds ("Additional Bonds"), may be issued by the Authority secured by a lien on a parity with the lien securing the Series 2025A Bonds. The Series 2025A Bonds and any Additional Bonds are collectively referred to as the "Bonds." The Indenture is entered into, and this Bond is issued under, the Marks-Roos Local Bond Pooling Act of 1985 (the "Act") and the laws of the State of California.

Pursuant to the Indenture, the principal of and interest on the Bonds are payable solely from certain base rental payments (the "Base Rental Payments") under and pursuant to that certain Lease Agreement, dated as of _____ 1, 2025 (the "Lease Agreement"), by and between the City, as lessee, and the Authority, as lessor, all of which rights to receive such Base Rental Payments have been assigned without recourse by the Authority to the Trustee. Subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, all of the Base Rental Payments and any other amounts (including proceeds of the sale of the Bonds) held in the Base Rental Payment Fund, the Interest Fund, the Principal Fund and the Redemption Fund established under the Indenture are pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms, the provisions of the Indenture and the Act. Said pledge constitutes a first lien on such assets.

The Series 2025A Bonds are authorized to be issued in the form of fully registered bonds without coupons in denominations of $5,000 or any integral multiple thereof ("Authorized Denominations").

The Series 2025A Bonds shall be subject to redemption, in whole or in part, on any date, in Authorized Denominations, from and to the extent of any net insurance proceeds received with respect to all or a portion of the property leased under the Lease Agreement, remaining after payment therefrom of all reasonable expenses incurred in the collection thereof, deposited by the Trustee in the Redemption Fund established under the Indenture, at a Redemption Price equal to the principal amount of the Series 2025A Bonds to be redeemed, plus accrued interest thereon to the date of redemption, without premium.

The Series 2025A Bonds maturing on or after November 1, 20__, shall be subject to optional redemption, in whole or in part, on November 1, 20__ or any date thereafter, in Authorized

Denominations, from and to the extent of prepaid Base Rental Payments paid pursuant to the Lease Agreement, at a Redemption Price equal to the principal amount of the Series 2025A Bonds to be redeemed, plus accrued interest thereon to the date of redemption.

The Series 2025A Bonds with stated maturities on November 1, 20__ are subject to mandatory sinking fund redemption in part (by lot) on each November 1 on and after November 1, 20__, in integral multiples of $5,000 at a Redemption Price of the principal amount thereof plus accrued interest to the date fixed for redemption, without premium, in accordance with the following schedule:

Redemption Date (November 1)	***Principal Amount***

* Maturity.

The Series 2025A Bonds with stated maturities on November 1, 20__ are subject to mandatory sinking fund redemption in part (by lot) on each November 1 on and after November 1, 20__, in integral multiples of $5,000 at a Redemption Price of the principal amount thereof plus accrued interest to the date fixed for redemption, without premium, in accordance with the following schedule:

Redemption Date (November 1)	***Principal Amount***

* Final Maturity.

If, during the Fiscal Year immediately preceding one of the redemption dates specified above, the Authority purchases Series 2025A Bonds, at least 45 days prior to the redemption date, the Authority will notify the Trustee as to the principal amount purchased and the amount of Series 2025A Bonds so purchased shall be credited at the time of purchase, to the extent of the full principal amount thereof, to reduce such upcoming mandatory sinking fund redemption payment for the Series 2025A Bonds so purchased. All Series 2025A Bonds purchased pursuant to the Indenture will be cancelled.

The Trustee on behalf and at the expense of the Authority shall mail (by first class mail) notice of any redemption to the respective owners of any Series 2025A Bonds designated for redemption, at their respective addresses appearing on the Registration Books, at least 20 but not more than 60 days prior to the date fixed for redemption; provided, however, that neither failure to receive any such notice so mailed, nor any defect therein, shall affect the validity of the proceedings for the redemption of such Series 2025A Bonds or the cessation of accrual of interest thereon from and after the date fixed for redemption. The Redemption Price of the Series 2025A Bonds to be redeemed shall be paid only upon presentation and surrender thereof at the Office of the Trustee. From and after the date fixed for redemption of any Series 2025A Bonds, interest on such Series 2025A Bonds will cease to accrue and become payable.

Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, fully registered Series 2025A Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount and maturity of fully registered Series 2025A Bonds of other authorized denominations.

This Bond is transferable by the Registered Owner hereof, in person or by his duly authorized attorney, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Series 2025A Bond or Series 2025A Bonds, in Authorized Denominations, for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Authority, the City and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority, the City and the Trustee shall not be affected by any notice to the contrary.

The Indenture and the rights and obligations of the Authority, the City, the owners of the Bonds and the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture; provided that no such modification or amendment shall: (a) extend the fixed maturity of any Bonds, or reduce the principal thereof or the rate of interest thereon, or extend the time of payment, without the consent of the owner of each Bond so affected; or (b) reduce the percentage of Bonds the consent of the owners of which is required to effect any such amendment or modification; or (c) permit the creation of any lien on the Base Rental Payments and other assets pledged under the Indenture prior to or on a parity with the lien created by the Indenture or deprive the owners of the Bonds of the lien created by the Indenture on such the Base Rental Payments and such other assets (except as expressly provided in the Indenture), without the consent of the owners of all Bonds then outstanding.

The Indenture contains provisions permitting the Authority to make provision for the payment of interest on, and the principal and premium, if any, of any of the Bond so that such Bonds shall no longer be deemed to be outstanding under the terms of the Indenture.

All obligations of the Authority under the Indenture shall be special obligations of the Authority, payable solely from Rental Payments and the other assets pledged therefor under the Indenture; provided, however, that all obligations of the Authority under the Bonds shall be special obligations of the Authority, payable solely from Base Rental Payments and the other assets pledged therefor under the Indenture. Neither the faith and credit nor the taxing power of the Authority, the City or the State of California, or any political subdivision thereof, is pledged to the payment of the Bonds.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Joint Exercise of Powers Agreement, and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit under any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Authority has caused this Bond to be signed in its name and on its behalf by the facsimile signatures of its Chair and Secretary, all as of the Dated Date identified above.

ONTARIO PUBLIC FINANCING AUTHORITY

By: _____
Executive Director

Attest:

_____
Secretary

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This is one of the Series 2025A Bonds described in the within-mentioned Indenture and registered on the Registration Books.

Date: _____

ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

[FORM OF LEGAL OPINION]

The following is a true copy of the opinion rendered by Stradling Yocca Carlson & Rauth LLP, Newport Beach, California, in connection with the issuance of, and dated as of the date of the original delivery of, the Bonds. A signed copy is on file in my office.

_____

Secretary of the Ontario Public Financing Authority

[FORM OF STATEMENT OF INSURANCE]

[TO COME]

[FORM OF ASSIGNMENT]

For value, received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

_____

Note: Signature(s) must be guaranteed by an eligible guarantor.

_____

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within pond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B

FORM OF PROJECT FUND REQUISITION

REQUISITION NO. _____ FOR
DISBURSEMENT FROM PROJECT FUND

The undersigned hereby states and certifies:

(i) that he/she is the duly appointed, qualified and acting _____ of the City of Ontario, a municipal corporation and general law city duly organized and existing under and by virtue of the Constitution and laws of the State of California (the "City"), and as such, is familiar with the facts herein certified and is authorized to certify the same;

(ii) that, pursuant to Section 3.04 of that certain Indenture, dated as of _____ 1, 2025 (the "Indenture"), by and among the Ontario Public Financing Authority (the "Authority"), the City and Zions Bancorporation, National Association, as trustee (the "Trustee"), related to the Authority's 2025A Lease Revenue Bonds, the undersigned hereby requests the Trustee to disburse this date the following amounts from the Project Fund established under the Indenture, to the payees designated on the attached Exhibit 1;

(iii) that each obligation mentioned herein has been incurred by the City and is a proper charge against the Project Fund; and

(iv) that there has not been filed with or served upon the City notice of any lien, right to lien or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to any of the payees named on the attached Exhibit 1, which has not been released or will not be released simultaneously with the payment of such obligation, other than materialmen's or mechanics' liens accruing by mere operation of law.

All capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Indenture.

Dated: _____ CITY OF ONTARIO

By: _____
Its: _____

EXHIBIT 1

PROJECT FUND DISBURSEMENTS

Item Number	***Payee Name and Address***	***Purpose of Obligation***	***Amount***
_____			_____
_____			_____
_____			_____
_____			_____
_____			_____

EXHIBIT C

DESCRIPTION OF SERIES 2025A PROJECT

Capital improvements of the City, including but not limited to on site and offsite improvements to The Ontario Sports Empire, improvements to The Continuum of Care – West Mission Campus, The Real Time Information Center, Anthony Munoz Hall of Fame Park, De Anza Park, John Galvin Park, James Galanis Park, Veterans Park, Ontario Museum of History & Art, storm drain improvements and other capital improvements identified in the City's Capital Improvement Plan.

$_____
ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BONDS

BOND PURCHASE AGREEMENT

_____, 2025

Ontario Public Financing Authority
303 East B Street
Ontario, California 91764

City of Ontario
303 East B Street
Ontario, California 91764

Ladies and Gentlemen:

The undersigned Samuel A. Ramirez & Co., Inc. (the "Underwriter"), acting not as a fiduciary or agent for you, but on behalf of itself, offers to enter into this Bond Purchase Agreement (which, together with Exhibit A, is referred to as this "Purchase Agreement") with the Ontario Public Financing Authority (the "Authority") and the City of Ontario (the "City"), which, upon the acceptance by the Authority and the City, will be binding upon the parties hereto. By execution of this Purchase Agreement, the Authority, the City and the Underwriter acknowledge the terms hereof and recognize that they will be bound by certain of the provisions hereof, and to the extent binding thereupon, acknowledge and agree to such terms. This offer is made subject to acceptance by the Authority and by the City by the execution of this Purchase Agreement and delivery of the same to the Underwriter prior to 11:59 P.M., Pacific time, on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the Authority and the City at any time prior to the acceptance hereof by the Authority and the City. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture (defined herein).

The City and Authority acknowledge and agree that: (i) the purchase and sale of the Bonds (defined herein), pursuant to this Purchase Agreement is an arm's-length commercial transaction between the City and the Authority, on one hand, and the Underwriter, on the other; (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as principal and is not acting as a Municipal Advisor (as defined in Section 15B of the Securities Exchange Act of 1934, as amended); (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the City or the Authority with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the City or the Authority on other matters); (iv) the Underwriter has financial and other interests that differ from those of the City and the Authority; and (v) the City and the Authority have consulted their own legal, financial and other advisors to the extent they have deemed appropriate.

Section 1. Purchase and Sale. Upon the terms and conditions and upon the basis of the representations, warranties and agreements herein set forth, the Underwriter hereby agrees to purchase from the Authority, and the Authority hereby agrees to issue, sell and deliver to the Underwriter all (but not less than all) of the Ontario Public Financing Authority 2025A Lease Revenue Bonds (the "Bonds"). The Bonds will be dated as of their date of delivery. Interest on the Bonds shall be payable semiannually in each year on May 1 and November 1, commencing November 1, 2025 (each an "Interest Payment Date"), and will bear interest at the rates and on the dates as set forth in Exhibit A attached hereto.

The purchase price for the Bonds shall be $_____ (which represents the principal amount of the Bonds, plus a net original issue premium in the amount of $_____, less an Underwriter's discount of $_____) (the "Purchase Price").

The scheduled payment of principal of and interest on the Bonds when due will be guaranteed under the Policy (defined below) to be issued concurrently with the delivery of the Bonds by _____ (the "Insurer"). The Insurer will also issue the Reserve Policy concurrently with the delivery of the Bonds. As an accommodation to the Authority and City, the Underwriter will wire from the Purchase Price the premium for the Policy and a portion of the premium for the Reserve Policy in the aggregate amount of $_____ on the date of Closing (defined below).

The Underwriter agrees to make a *bona fide* public offering of the Bonds at the initial offering yields set forth in the Official Statement (defined herein); however, the Underwriter reserves the right to make concessions to dealers and to change such initial offering yields as the Underwriter shall deem necessary in connection with the marketing of the Bonds. The Underwriter agrees that, in connection with the public offering and initial delivery of the Bonds to the purchasers thereof from the Underwriter, the Underwriter will deliver or cause to be delivered to each purchaser a copy of the final Official Statement prepared in connection with the Bonds, for the time period required under Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended ("Rule 15c2-12"). Terms defined in the Official Statement are used herein as so defined.

Section 2. The Bonds. The Bonds shall be secured by revenues consisting primarily of base rental payments (the "Base Rental Payments") to be paid by the City pursuant to the Lease Agreement, dated as of _____ 1, 2025 (the Lease Agreement"), by and between the Authority and the City. The Authority's right to receive the Base Rental Payments due under the Lease Agreement and to exercise remedies upon default under such Lease Agreement shall be assigned to Zions Bancorporation, National Association, as trustee (the "Trustee") for the benefit of the owners of the Bonds pursuant to an Assignment Agreement, dated as of _____ 1, 2025 (the "Assignment Agreement"), by and between the Authority and the Trustee. The Bonds shall be as described in and secured under and pursuant to an Indenture, dated as of _____ 1, 2025 (the "Indenture"), by and among the Authority, the City, and the Trustee. The Bonds will be subject to redemption as set forth in the Indenture and Official Statement herein described.

The Bonds are being issued to provide funds to: (i) finance the acquisition, construction and installation of various public capital improvements of the City; (ii) purchase a municipal bond insurance policy to guarantee the payment of principal and interest on the Bonds (the "Policy"); (iii) purchase a debt service reserve insurance policy for deposit in a reserve fund for the Bonds (the "Reserve Policy"); and (iv) pay the costs incurred in connection with the issuance of the Bonds.

Section 3. Public Offering. The Underwriter agrees to make an initial public offering of all the Bonds at the public offering prices (or yields) set forth on Exhibit A attached hereto and incorporated herein by reference. Subsequent to the initial public offering, the Underwriter reserves the right to change the public offering prices (or yields) as it deems necessary in connection with the marketing of the Bonds, provided that the Underwriter shall not change the interest rates set forth on Exhibit A attached hereto. The Bonds may be offered and sold to certain dealers at prices lower than such initial public offering prices.

Section 4. Establishment of Issue Price of the Bonds.

(a) The Underwriter agrees to assist the Authority in establishing the issue price of the Bonds and shall execute and deliver to the Authority at Closing an "issue price" or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit B, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the Authority and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds.

(b) Except as otherwise set forth in Exhibit B, the Authority will treat the first price at which 10% of each maturity of the Bonds (the "10% test") is sold to the public as the issue price of that maturity. At or promptly after the execution of this Purchase Agreement, the Underwriter shall report to the Authority the price or prices at which it has sold to the public each maturity of Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Bonds, the Underwriter agrees to promptly report to the Authority the prices at which it sells the unsold Bonds of that maturity to the public. That reporting obligation shall continue, whether or not the Closing Date has occurred, until either (i) the Underwriter has sold all Bonds of that maturity or (ii) the 10% test has been satisfied as to the Bonds of that maturity, provided that, the Underwriter's reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Authority or Bond Counsel. For purposes of this Section, if Bonds mature on the same date but have different interest rates, each separate CUSIP number within that maturity will be treated as a separate maturity of the Bonds.

(c) The Underwriter confirms that it has offered the Bonds to the public on or before the date of this Purchase Agreement at the offering price or prices (the "initial offering price"), or at the corresponding yield or yields, set forth in Exhibit A, except as otherwise set forth therein. Exhibit A also sets forth, as of the date of this Purchase Agreement, the maturities, if any, of the Bonds for which the 10% test has not been satisfied and for which the Authority and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the Authority to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the "hold-the-offering-price rule").

So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following: (i) the close of the 5th business day after the sale date; or (ii) the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter will advise the Authority promptly after the close of the 5th business day after the sale date whether it has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

(d) The Underwriter confirms that:

(i) any selling group agreement and any third-party distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(A)(i) to report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter that the 10% test has been satisfied as to the Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter, and (ii) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter,

(B) to promptly notify the Underwriter of any sales of Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below), and

(C) to acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter shall assume that each order submitted by the dealer or broker-dealer is a sale to the public.

(ii) any selling group agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Bonds of that maturity allocated to it have been sold or it is notified by the Underwriter or the dealer that the 10% test has been satisfied as to the Bonds of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Underwriter or the dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter or the dealer and as set forth in the related pricing wires.

(e) The Authority acknowledges that, in making the representations set forth in this section, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a third-party distribution agreement was employed in connection with the initial sale of the

Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds, as set forth in the third-party distribution agreement and the related pricing wires. The Authority further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Bonds, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Bonds.

(f) The Underwriter acknowledges that sales of any Bonds to any person that is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(i) "public" means any person other than an underwriter or a related party,

(ii) "underwriter" means (A) any person that agrees pursuant to a written contract with the Authority (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the public),

(iii) a purchaser of any of the Bonds is a "related party" to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(iv) "sale date" means the date of execution of this Purchase Agreement by all parties.

Section 5. The Official Statement. By their acceptance of this Purchase Agreement, the Authority and the City ratify, confirm and approve of the use and distribution by the Underwriter prior to the date hereof of the Preliminary Official Statement relating to the Bonds, dated _____, 2025 (including the cover page, all appendices and all information incorporated therein and any supplements or amendments thereto and as disseminated in its printed physical form or in electronic form in all respects materially consistent with such physical form, the "Preliminary Official Statement") that authorized officers of the City deemed "final" as of its date, for purposes of Rule 15c2-12 except for certain omissions permitted to be omitted therefrom by Rule 15c2-12. The Authority and the City hereby agree to deliver or cause to be delivered to the Underwriter, within seven (7) business days of the date hereof, copies of the final official statement, dated the date hereof, relating to the Bonds (including all information previously permitted to have been omitted by

Rule 15c2-12, the cover page, all appendices, all information incorporated therein and any amendments or supplements as have been approved by the Authority, the City and the Underwriter (the "Official Statement")) in such quantity as the Underwriter shall reasonably request to comply with Securities and Exchange Commission Rule 15c2-12(b)(4) and the rules of the Municipal Securities Rulemaking Board (the "MSRB").

The Underwriter hereby agrees that it will not request that payment be made by any purchaser of the Bonds prior to delivery by the Underwriter to the purchaser of a copy of the Official Statement. The Underwriter agrees to (i) provide the Authority and the City with final pricing information on the Bonds on a timely basis and (ii) promptly file a copy of the final Official Statement, including any supplements prepared by the Authority or the City with the MSRB on its Electronic Municipal Markets Access ("EMMA") system at *http://emma.msrb.org*. The Authority and the City hereby approve of the use and distribution by the Underwriter of the final Official Statement in connection with the offer and sale of the Bonds. The Authority and the City will cooperate with the Underwriter in the filing by the Underwriter of the Official Statement with EMMA.

Section 6. Closing. At 8:00 a.m., California time, on [Closing Date], or at such other time or date as the Authority, the City and the Underwriter agree upon, the Authority shall deliver or cause to be delivered to the Trustee, and the Trustee shall deliver or cause to be delivered through the facilities of The Depository Trust Company, New York, New York ("DTC"), the Bonds in definitive form, duly executed and authenticated. Concurrently with the delivery of the Bonds, the Authority and the City shall deliver the documents hereinafter mentioned at the offices of Stradling Yocca Carlson & Rauth LLP, Newport Beach, California or another place to be mutually agreed upon by the Authority, the City and the Underwriter. The Underwriter will accept such delivery and pay the purchase price of the Bonds as set forth in Section 1 hereof by wire transfer in immediately available funds. This payment for and delivery of the Bonds, together with the delivery of the aforementioned documents referenced herein, is called the "Closing."

The Bonds shall be registered in the name of Cede & Co., as nominee of DTC in denominations of five thousand dollars ($5,000) or any integral multiple thereof, and shall be made available to the Underwriter at least one (1) business day before the Closing for purposes of inspection and packaging. The Authority and the City acknowledge that the services of DTC will be used initially by the Underwriter to permit the issuance of the Bonds in book-entry form, and agree to cooperate fully with the Underwriter in employing such services.

Section 7. Representations, Warranties and Covenants of the Authority. The Authority represents, warrants and covenants to the Underwriter and the City that:

(a) The Authority is and will be at the date of Closing a joint exercise of powers authority organized and existing under the laws of the State of California, including Section 6500 et seq. of the California Government Code (the "JPA Act") with all necessary power and authority to enter into and perform its duties under the Ground Lease, dated as of _____ 1, 2025 (the "Ground Lease"), by and between the City and the Authority, the Lease Agreement, the Indenture, the Assignment Agreement and this Purchase Agreement. The Ground Lease, Lease Agreement, Indenture, Assignment Agreement and this Purchase Agreement are collectively referred to herein as the "Authority Documents".

(b) The Authority has complied with all filing requirements of the JPA Act.

(c) By official action of the Authority prior to or concurrently with the acceptance hereof, the Authority has duly approved the distribution of the Preliminary Official Statement and the distribution of the Official Statement (including in electronic form), and has duly authorized and approved the execution and delivery of, and the performance by the Authority of the obligations on its part contained, in the Authority Documents. When executed and delivered, each Authority Document will constitute the legal, valid and binding obligation of the Authority enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights generally.

(d) Prior to the date hereof, the Authority has provided to the Underwriter for its review the Preliminary Official Statement that an authorized officer of the Authority has deemed final for purposes of Rule 15c2-12, has approved the distribution of the Preliminary Official Statement and the Official Statement and has duly authorized the execution and delivery of the Official Statement (including in electronic form). The Preliminary Official Statement, at the date thereof, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein (other than the information relating to the Insurer, the Policy, the Reserve Policy, DTC and its book-entry system, as to which no view is expressed), in light of the circumstances under which they were made, not misleading. At the date hereof and on the Closing, the final Official Statement did not and will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein (other than the information relating to the Insurer, the Policy, the Reserve Policy, DTC and its book-entry system, as to which no view is expressed), in light of the circumstances under which they were made, not misleading.

(e) To the knowledge of the undersigned officer of the Authority, the execution and delivery by the Authority of the Authority Documents and the approval and execution by the Authority of the Official Statement and compliance with the provisions on the Authority's part contained in the Authority Documents, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject to, which conflict, breach or default has or may have a material adverse effect on the ability of the Authority to carry out its obligations under the Authority Documents, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any material lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Authority under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument, except as provided by the Authority Documents.

(f) The Authority will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement. The Authority will advise the Underwriter promptly of the institution of any proceedings known to it by any governmental agency prohibiting or otherwise affecting the use of the Official Statement in connection with the offering, sale or distribution of the Bonds.

(g) To the knowledge of the undersigned officer of the Authority, the Authority is not in breach of or default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the

Authority is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, in each case which breach or default has or may have a material adverse effect on the ability of the Authority to perform its obligations under the Authority Documents.

(h) As of the time of acceptance hereof and as of the date of Closing, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending or, to the knowledge of the officers of the Authority, threatened (i) in any way questioning the corporate existence of the Authority or the titles of the officers of the Authority to their respective offices, (ii) affecting, contesting or seeking to prohibit, restrain or enjoin the execution or delivery of any of the Bonds, or in any way contesting or affecting the validity of the Bonds or the Authority Documents or the consummation of the transactions contemplated thereby, or contesting the exclusion of the interest on the Bonds from gross income for federal income tax purposes or contesting the powers of the Authority to enter into the Authority Documents or (iii) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and there is no basis for any action, suit, proceeding, inquiry or investigation of the nature described in clause (i) through (iii) of this sentence.

(i) Any certificate signed by any officer of the Authority authorized to execute such certificate in connection with the issuance, sale and delivery of the Bonds and delivered to the Underwriter shall be deemed a representation and warranty of the Authority to the Underwriter and the City as to the statements made therein but not of the person signing such certificate.

Section 8. Representations, Warranties and Covenants of the City. The City represents, warrants and covenants to the Underwriter and the Authority that:

(a) The City is and will be at the date of Closing a municipal corporation and charter city duly organized and existing pursuant to and under the Constitution and laws of the State of California and has all necessary power and authority to enter into and perform its duties under the Continuing Disclosure Certificate relating to the Bonds (the "Continuing Disclosure Certificate"), the Indenture, the Ground Lease, the Lease Agreement and this Purchase Agreement (together, the "City Documents" and, together with the Authority Documents, the "Legal Documents") and has by official action duly authorized and approved the execution and delivery of, and the performance by the City of the obligations on its part contained in the City Documents for the purpose of refinancing the Prior Certificates.

(b) By official action of the City prior to or concurrently with the acceptance hereof, the City has duly approved the distribution of the Preliminary Official Statement and the distribution of the Official Statement (including in electronic form), and has duly authorized and approved the execution and delivery of, and the performance by the City of the obligations on its part contained, in the City Documents. When executed and delivered, each City Document will constitute the legally valid and binding obligation of the City enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights generally.

(c) The Preliminary Official Statement heretofore delivered to the Underwriter is hereby deemed final by the City as of its date and as of the date hereof, except for the omission of such information as is permitted to be omitted in accordance with paragraph (b)(i) of Rule 15c2-12. The Preliminary Official Statement, at the date thereof, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein (other than the information relating to the Insurer, the Policy, the Reserve Policy, DTC and its book-entry system, as to which no view is expressed), in the light of the circumstances under which they were made, not misleading. At the date hereof and on the Closing, the final Official Statement did not and will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein (other than the information relating to the Insurer, the Policy, the Reserve Policy, DTC and its book-entry system, as to which no view is expressed), in the light of the circumstances under which they were made, not misleading.

(d) To the knowledge of the undersigned officer of the City, the execution and delivery by the City of the City Documents and the approval by the City of the Official Statement and compliance with the provisions on the City's part contained in the City Documents, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject to, which conflict, breach or default has or may have a material adverse effect on the ability of the City to carry out its obligations under the City Documents, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any material lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the City under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, trust agreement, bond, note, resolution, agreement or other instrument, except as provided by the City Documents.

(e) The City will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement. The City will advise the Underwriter promptly of the institution of any proceedings known to it by any governmental Authority prohibiting or otherwise affecting the use of the Official Statement in connection with the offering, sale or distribution of the Bonds.

(f) To the knowledge of the undersigned officer of the City, after reasonable inquiry, the City is not in breach of or default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the City is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, in each case which breach or default has or may have a material adverse effect on the ability of the City to perform its obligations under the City Documents.

(g) The financial statements relating to the receipts, expenditures and cash balances of the City as of June 30, 2024 as set forth in the Official Statement fairly represent the revenues, expenditures and fund balances of the General Fund. Except as disclosed in the Preliminary Official Statement, the Official Statement or otherwise disclosed in writing to the Underwriter, there has not been any materially adverse change in the financial condition of the General Fund or in its operations since June 30, 2024 and, except as disclosed in the Preliminary Official Statement, the Official Statement or otherwise disclosed in writing to the Underwriter, there has been no occurrence, circumstance or combination thereof which is reasonably expected to result in any such materially adverse change.

(h) As of the time of acceptance hereof and as of the date of Closing, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, is pending or, to the knowledge of the officers of the City, threatened (i) in any way questioning the corporate existence of the City or the titles of the officers of the City to their respective offices; (ii) affecting, contesting or seeking to prohibit, restrain or enjoin the execution or delivery of any of the Bonds, or in any way contesting or affecting the validity of the Bonds or the City Documents or the consummation of the transactions contemplated thereby, or contesting the exclusion of the interest on the Bonds from gross income for federal income tax purposes or contesting the power of the City to enter into the City Documents; (iii) which may result in any material adverse change to the financial condition of the City or to its ability to pay the Base Rental Payments when due; or (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and there is no basis for any action, suit, proceeding, inquiry or investigation of the nature described in clause (i) through (iv) of this sentence.

(i) To the extent required by law, the City will undertake, pursuant to the Continuing Disclosure Certificate, to provide annual reports and notices of certain events. A description of this undertaking is set forth as an appendix to the Preliminary Official Statement and will also be set forth in an appendix to the final Official Statement. Except as otherwise disclosed in the Preliminary Official Statement and the Official Statement, the City has never failed to comply in all material respects with any previous undertakings with regard to Rule 15c2-12 to provide annual reports or notices of enumerated events with respect to the last five years.

(j) Any certificate signed by any officer of the City authorized to execute such certificate in connection with the issuance, sale and delivery of the Bonds and delivered to the Underwriter shall be deemed a representation and warranty of the City to the Underwriter and the Authority as to the statements made therein but not of the person signing such certificate.

(k) As of the date hereof, the City does not have any material obligations secured by payments from the General Fund of the City, except as disclosed in the Preliminary Official Statement and the Official Statement.

Section 9. Conditions to the Obligations of the Underwriter. The Underwriter has entered into this Purchase Agreement in reliance upon the representations and warranties of the Authority and the City contained herein. The obligations of the Underwriter to accept delivery of and pay for the Bonds on the date of the Closing shall be subject, at the option of the Underwriter, to the accuracy in all material respects of the statements of the officers and other officials of the Authority and of the City, as well as authorized representatives of Bond Counsel, the Trustee, Disclosure Counsel and the municipal advisor made in any Bonds or other documents furnished pursuant to the provisions hereof; to the performance by the Authority and the City of their obligations to be performed hereunder at or prior to the date of the Closing; and to the following additional conditions:

(a) The representations, warranties and covenants of the City and the Authority contained herein shall be true, complete and correct at the date hereof and at the time of the Closing, as if made on the date of the Closing;

(b) At the time of Closing, the Legal Documents shall be in full force and effect as valid and binding agreements between or among the various parties thereto, and the Legal Documents and the Official Statement shall not have been amended, modified or supplemented except as may have been agreed to in writing by the Underwriter, and all such reasonable actions as, in the opinion of Bond Counsel, shall reasonably deem necessary in connection with the transactions contemplated hereby;

(c) At the time of the Closing, no default shall have occurred or be existing under the Authority Documents, the City Documents, or any other agreement or document pursuant to which any of the City's financial obligations were executed and delivered, and the City shall not be in default in the payment of principal or interest with respect to any of its financial obligations, which default would adversely impact the ability of the City to make the Base Rental Payments;

(d) In recognition of the desire of the Authority, the City and the Underwriter to effect a successful public offering of the Bonds, and in view of the potential adverse impact of any of the following events on such a public offering, this Purchase Agreement shall be subject to termination in the absolute discretion of the Underwriter by notification, in writing, to the Authority and the City prior to delivery of and payment for the Bonds, if at any time prior to such time, regardless of whether any of the following statements of fact were in existence or known of on the date of this Purchase Agreement:

(i) any event shall occur which makes untrue any statement or results in an omission to state a material fact necessary to make the statements in the Official Statement, in the light of the circumstances under which they were made, not misleading, which event, in the reasonable opinion of the Underwriter would materially or adversely affect the ability of the Underwriter to market the Bonds;

(ii) the marketability of the Bonds or the market price thereof, in the opinion of the Underwriter, has been materially adversely affected by an amendment to the Constitution of the United States or by any legislation in or by the Congress of the United States or by the State of California, or the amendment of legislation pending as of the date of this Purchase Agreement in the Congress of the United States, or the recommendation to Congress or endorsement for passage (by press release, other form of notice or otherwise) of legislation by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or the proposal for consideration of legislation by either such Committee or by any member thereof, or the presentment of legislation for consideration as an option by either such Committee, or by the staff of the Joint Committee on Taxation of the Congress of the United States, or the favorable reporting for passage of legislation to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or any decision of any federal or state court or any ruling or regulation (final, temporary or proposed) or official statement on behalf of the United States Treasury Department, the Internal Revenue Service or other federal or State authority affecting the federal or State tax status of the Authority or the City, or the interest on or with respect to bonds or notes (including the Bonds);

(iii) any proceeding shall be pending or threatened by the Securities and Exchange Commission against the Authority or the City;

(iv) any legislation, ordinance, rule or regulation shall be introduced in, or be enacted by any governmental body, department or agency of the State of California, or a decision by any court of competent jurisdiction within the State of California shall be rendered which materially adversely affects the market price of the Bonds;

(v) an order, decree or injunction issued by any court of competent jurisdiction, or order, ruling, regulation (final, temporary or proposed), official statement or other form of notice or communication issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that: (i) obligations of the general character of the Bonds, or the Bonds, including any or all underlying arrangements, are not exempt from registration under the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended; or (ii) the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including any or all underlying obligations, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(vi) a decision by a court of the United States shall be rendered, or a stop order, release, regulation or no-action letter by or on behalf of the SEC or any other governmental agency having jurisdiction of the subject matter shall have been issued or made, to the effect that the issuance, offering or sale of the Bonds, including the underlying obligations as contemplated by this Bond Purchase Agreement or by the Official Statement, or any document relating to the issuance, offering or sale of the Bonds, is or would be in violation of any provision of the federal securities laws at the Closing Date, including the Securities Act, the Exchange Act and the Trust Indenture Act;

(vii) legislation shall be enacted by the Congress of the United States, or a decision by a court of the United States shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds are not exempt from registration under or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or that the Indenture is not exempt from qualification under or other requirements of the Trust Indenture Act of 1939, as amended and as then in effect;

(viii) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any domestic governmental authority or by any domestic national securities exchange, which are material to the marketability of the Bonds;

(ix) there shall have occurred (1) an outbreak or escalation of hostilities or the declaration by the United States of a national emergency or war or (2) any other calamity or crisis in the financial markets of the United States or elsewhere or the escalation of such calamity or crisis;

(x) a general suspension of trading on the New York Stock Exchange or other major exchange shall be in force, or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on any such exchange, whether by virtue of determination by that exchange or by order of the SEC or any other governmental authority having jurisdiction;

(xi) the New York Stock Exchange or other national securities exchange, or any governmental or regulatory authority, shall impose, as to the Bonds or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of the Underwriter;

(xii) any rating of the Insurer shall have been downgraded, suspended or withdrawn or placed on negative outlook or negative watch by a national rating service, which, in the Underwriter's reasonable opinion, materially adversely affects the marketability or market price of the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds;

(xiii) any rating of the Bonds or the rating of any obligations of the City secured by the City's general fund shall have been downgraded, suspended or withdrawn by a national rating service, which, in the reasonable opinion of the Underwriter, materially adversely affects the market price of the Bonds;

(xiv) a general banking moratorium shall have been established by federal or State authorities;

(xv) a material disruption in securities settlement, payment or clearance services affecting the Bonds shall have occurred; or

(xvi) the commencement of any action, suit or proceeding described in Section 7(h) or Section 8(h).

(e) At or prior to the Closing, the Underwriter shall receive the following documents, in each case to the reasonable satisfaction in form and substance of the Underwriter:

(i) all resolutions relating to the Bonds adopted by the Authority and certified by an authorized official of the Authority authorizing the issuance of the Bonds, the Authority Documents and the Official Statement;

(ii) all resolutions relating to the Bonds adopted by the City and certified by an authorized official of the City authorizing the execution and delivery of the City Documents and the issuance of the Bonds and the Official Statement;

(iii) the Legal Documents duly executed and delivered by the respective parties thereto, with only such amendments, modifications or supplements as may have been agreed to in writing by the Underwriter;

(iv) the approving opinion of Bond Counsel, dated the date of Closing and addressed to the Authority and the City, in substantially the form attached as

Appendix D to the Official Statement, and a reliance letter thereon addressed to the Underwriter;

(v) a supplemental opinion of Bond Counsel dated the date of Closing and addressed to the Underwriter, in substantially the form attached hereto as Exhibit C;

(vi) the Official Statement, executed on behalf of the Authority and the City;

(vii) evidence that the rating on the Bonds is as described in the Official Statement;

(viii) a certificate, dated the date of Closing, signed by a duly authorized officer of the Authority satisfactory in form and substance to the Underwriter to the effect that: (A) the representations, warranties and covenants of the Authority contained in this Purchase Agreement are true and correct in all material respects on and as of the date of Closing with the same effect as if made on the date of the Closing by the Authority, and the Authority has complied with all of the terms and conditions of this Purchase Agreement required to be complied with by the Authority at or prior to the date of Closing; (B) to such officer's knowledge, no event affecting the Authority has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purposes for which it is to be used or which is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect; (C) the information and statements contained in the Official Statement (other than information relating to the Insurer, the Policy, the Reserve Policy, DTC and its book-entry system) did not as of its date and do not as of the Closing contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; and (D) to its knowledge, the Authority is not in breach of or default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject, which would have a material adverse impact on the Authority's ability to perform its obligations under the Authority Documents, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument;

(ix) a certificate, dated the date of Closing, signed by a duly authorized officer of the City satisfactory in form and substance to the Underwriter to the effect that: (A) the representations, warranties and covenants of the City contained in this Purchase Agreement are true and correct in all material respects on and as of the date of Closing with the same effect as if made on the date of the Closing by the City, and the City has complied with all of the terms and conditions of the Purchase Agreement required to be complied with by the City at or prior to the date of Closing; (B) to such officer's knowledge, no event affecting the City has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the

purposes for which it is to be used or which is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect; (C) the information and statements contained in the Official Statement (other than information relating to the Insurer, the Policy, the Reserve Policy, DTC and its book-entry system) did not as of its date and do not as of the Closing contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; (D) to its knowledge after reasonable investigation, the City is not in breach of or default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement (including but not limited to the Lease Agreement) or other instrument to which the City is a party or is otherwise subject, which would have a material adverse impact on the City's ability to perform its obligations under the City Documents, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument; and (E) no further consent is required for inclusion of its audited financial statements in the Official Statement;

(x) an opinion dated the date of Closing and addressed to the Underwriter, the Trustee and Bond Counsel, of the City Attorney of the City, as counsel to the Authority, to the effect that:

(A) the Authority is a joint exercise of powers authority organized and existing under the laws of the State of California;

(B) the resolution of the Authority approving and authorizing the execution and delivery of the Authority Documents, the Bonds and the Official Statement and other actions of the Authority was duly adopted at a meeting of the governing body of the Authority which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the resolution is now in full force and effect and has not been amended or superseded in any way;

(C) to the knowledge of such counsel there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or public body pending with respect to which the Authority has been served or, to such counsel's knowledge, threatened against or affecting the Authority, except as may be disclosed in the Official Statement, which would materially adversely impact the Authority's ability to complete the transactions contemplated by the Authority Documents, the Official Statement or any other document or certificate related to such transactions, restrain or enjoin the collection of Base Rental Payments with respect to the Lease Agreement, or in any way contesting or affecting the validity of the Bonds, the Official Statement, the Authority Documents or the transactions described in and contemplated thereby wherein an unfavorable decision, ruling or finding would materially adversely affect the validity and enforceability of the Bonds or the Authority Documents or in which a final

adverse decision could materially adversely affect the operations of the Authority;

(D) the Authority Documents have been duly authorized, executed and delivered by the Authority, and (assuming due execution and delivery by parties other than the Authority) are valid, legal and binding agreements of the Authority enforceable in accordance with their terms, except that the rights and obligations under the Authority Documents are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State;

(E) the execution and delivery of the Authority Documents and the issuance of the Bonds and compliance with the provisions thereof, do not and will not in any material respect conflict with or constitute on the part of the Authority a breach of or default under any agreement or other instrument to which the Authority is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Authority is subject, which breach or default has or may have a material adverse effect on the ability of the Authority to perform its obligations under the Authority Documents;

(F) no authorization, approval, consent, or other order of the State of California or any other governmental body within the State of California is required for the valid authorization, execution and delivery of the Authority Documents or the Official Statement by the Authority or the consummation by the Authority of the transactions on its part contemplated therein, except such as have been obtained and except such as may be required under state securities or blue sky laws in connection with the purchase and distribution of the Bonds by the Underwriter; and

(G) based on the information made available to such counsel in its role as counsel to the Authority, and without having undertaken to determine independently or assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement under the caption entitled "THE AUTHORITY," nothing has come to its attention which would lead it to believe that the statements contained in the above-referenced caption as of the date of the Official Statement and as of the date of Closing contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(xi) an opinion dated the date of Closing and addressed to the Underwriter, the Trustee and the Bond Counsel, of the City Attorney, to the effect that:

(A) the City is duly organized and validly existing as a municipal corporation under the Constitution and laws of the State of California;

(B) the resolution of the City approving and authorizing the execution and delivery of the City Documents and approving and authorizing the issuance of the Bonds and the delivery of the Official Statement and other actions of the City was duly adopted at a meeting of the governing body of the City which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the resolution is now in full force and effect and has not been amended or superseded in any way;

(C) there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or public body pending with respect to which the City has been served or, to such counsel's knowledge, threatened against or affecting the City, except as may be disclosed in the Official Statement, which would materially adversely impact the City's ability to complete the transactions contemplated by the City Documents, the Official Statement or any other document or certificate related to such transactions, restrain or enjoin the collection of Base Rental Payments with respect to the Lease Agreement, or in any way contesting or affecting the validity of the Bonds, the Official Statement or the City Documents;

(D) the execution and delivery of the City Documents and compliance with the provisions thereof, do not and will not in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the City is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the City is subject, which breach or default has or may have a material adverse effect on the ability of the City to perform its obligations under the City Documents;

(E) the City Documents have been duly authorized, executed and delivered by the City, and (assuming due execution and delivery by parties other than the City) are valid, legal and binding agreements of the City enforceable in accordance with their terms, except that the rights and obligations under the City Documents are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State; and

(F) no authorization, approval, consent, or other order of the State of California or any other governmental body within the State of California is

required for the valid authorization, execution and delivery of the City Documents, except such as have been obtained and except such as may be required under state securities or blue sky laws in connection with the purchase and distribution of the Bonds by the Underwriter.

(xii) a letter of Best Best & Krieger LLP, Disclosure Counsel to the Authority and the City dated the date of Closing and addressed to the Underwriter, in substantially the form attached hereto as Exhibit D;

(xiii) an opinion of counsel to the Trustee, addressed to the Underwriter and the Authority, dated the date of the Closing, to the effect that:

(A) the Trustee is a national banking association duly organized and validly existing under the laws of the United States, having full corporate power to undertake the trust created under the Indenture;

(B) the Indenture and the Assignment Agreement (together, the "Trustee Documents") have each been duly authorized, executed and delivered by the Trustee and, assuming due authorization, execution and delivery by the other parties thereto, the Trustee Documents constitute the valid, legal and binding obligations of the Trustee enforceable in accordance with their terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought;

(C) the Trustee has duly authenticated the Bonds upon the order of Authority;

(D) the Trustee's actions in executing and delivering the Trustee Documents are in full compliance with, and do not conflict with any applicable law or governmental regulation and, to the best of such counsel's knowledge, after reasonable inquiry with respect thereto, do not conflict with or violate any contract to which the Trustee is a party or any administrative or judicial decision by which the Trustee is bound; and

(E) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the banking or trust powers of the Trustee that has not been obtained is or will be required for the execution and delivery of the Bonds or the consummation by the Trustee of its obligations under the Trustee Documents;

(xiv) a certificate, dated the date of Closing, signed by a duly authorized officer of the Trustee satisfactory in form and substance to the Underwriter, to the effect that:

(A) the Trustee is duly organized and existing as a national banking association under the laws of the United States of America, having

the full corporate power and authority to enter into and perform its duties under the Trustee Documents;

(B) the Trustee is duly authorized to enter into the Trustee Documents and has duly executed and delivered the Trustee Documents, and assuming due authorization and execution by the other parties thereto, the Trustee Documents are legal, valid and binding upon the Trustee and enforceable against such party in accordance with its terms;

(C) the Trustee has duly authenticated the Bonds under the Indenture and delivered the Bonds to or upon the order of the Underwriter; and

(D) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the banking or trust powers of the Trustee that has not been obtained is required for the execution and delivery of the Bonds or the consummation by the Trustee of its obligations under the Trustee Documents;

(xv) the preliminary and final Statement of Sale required to be delivered to the California Debt and Investment Advisory Commission pursuant to Section 53583 of the California Government Code and Section 8855(g) of the Government Code;

(xvi) a copy of the executed Blanket Issuer Letter of Representations by and between the City or the Authority and DTC relating to the book-entry system;

(xvii) the tax certificate executed by the Authority and the City relating to the Bonds in form and substance to the reasonable satisfaction of Bond Counsel and the Underwriter;

(xviii) a title policy with respect to the Property in form and substance acceptable to Bond Counsel, the Underwriter and Underwriter's Counsel;

(xix) evidence of insurance in compliance with the requirements of the Lease Agreement in form and substance acceptable to the Underwriter;

(xx) an opinion of Kutak Rock LLP ("Underwriter's Counsel") in form and substance acceptable to the Underwriter;

(xxi) a certificate, dated the date of the Preliminary Official Statement, of the City, as required under Rule 15c2-12;

(xxii) a certificate, dated the date of the Preliminary Official Statement, of the Authority, as required under Rule 15c2-12;

(xxiii) the Policy duly executed by the Insurer;

(xxiv) the Reserve Policy duly executed by the Insurer;

(xxv) an opinion of counsel to the Insurer, dated the Closing Date, addressed to the Authority, the City and the Underwriter, in form and substance satisfactory to the Underwriter and Bond Counsel;

(xxvi) a certificate or certificates of the Insurer, dated the Closing Date, as to the accuracy of the information relating to the Insurer, the Reserve Policy and the Policy included in the Official Statement and such other matters reasonably requested by the Underwriter and Bond Counsel; and

(xxvii) such additional legal opinions, Bonds, proceedings, instruments or other documents as the Underwriter or Underwriter's Counsel may reasonably request.

Section 10. Changes in Official Statement. Within 90 days after the Closing or within 25 days following the "end of the underwriting period" (as defined in Rule 15c2-12), whichever occurs first, if any event shall occur as a result of which it is necessary, in the reasonable opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in any material respect in the light of the circumstances existing at the time it is delivered to a purchaser, the Authority will forthwith prepare and furnish to the Underwriter an amendment or supplement that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to purchaser, not misleading. The City and the Authority shall cooperate with the Underwriter in the filing by the Underwriter of such amendment or supplement to the Official Statement with the EMMA. The Underwriter acknowledges that the "end of the underwriting period" will be the date of Closing unless the Underwriter otherwise notifies the City in writing that it still owns some or all of the Bonds.

Section 11. Expenses. Whether or not the transactions contemplated by this Purchase Agreement are consummated, the Underwriter shall be under no obligation to pay, and the Authority shall pay only from the proceeds of the Bonds, but only as the Authority and such other party providing such services may agree, all expenses and costs of the Authority and the City incident to the performance of their obligations in connection with the authorization, issuance, sale and delivery of the Bonds to the Underwriter, including, without limitation, printing costs, rating agency fees and charges, initial fees of the Trustee, including fees and disbursements of its counsel, if any, fees and disbursements of Bond Counsel, Disclosure Counsel, the municipal advisor and other professional advisors employed by the Authority or the City, title insurance and costs of preparation, printing, signing, transportation, delivery and safekeeping of the Bonds. The Underwriter shall pay all out-of-pocket expenses of the Underwriter, including, without limitation, the fees and expenses of its counsel, advertising expenses, the California Debt and Investment Advisory Commission fee, CUSIP Services Bureau charges, regulatory fees imposed on new securities issuers and any and all other expenses incurred by the Underwriter in connection with the public offering and distribution of the Bonds.

Section 12. Notices. Any notice or other communication to be given to the Underwriter under this Purchase Agreement may be given by delivering the same in writing to Samuel A. Ramirez & Co., Inc., 12130 Millennium Drive, Suite 300, Los Angeles, California 90094; Attention: Public Finance. Any notice or other communication to be given to the Authority or the City pursuant

to this Purchase Agreement may be given by delivering the same in writing to such entity, at the addresses set forth on the cover page hereof.

Section 13. Parties in Interest. This Purchase Agreement is made solely for the benefit of the Authority, the City and the Underwriter (including the successors or assigns thereof) and no other person shall acquire or have any right hereunder or by virtue hereof. All representations, warranties and agreements of the Authority and the City in this Purchase Agreement shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriter and shall survive the delivery of and payment for the Bonds.

Section 14. Counterparts. This Purchase Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 15. Governing Law. This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of California.

SAMUEL A. RAMIREZ & CO., INC.

By: _____
Managing Director

The foregoing is hereby agreed to and accepted as of the date first above written:

ONTARIO PUBLIC FINANCING AUTHORITY

By:_____
Name: Armen Harkalyan
Title: Treasurer

Time of Execution: _____ p.m. California time

Accepted:

CITY OF ONTARIO

By:_____
Name: Armen Harkalyan
Title: Executive Director of Finance

Time of Execution: _____ p.m. California time

EXHIBIT A

MATURITY SCHEDULE

$_____
ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BONDS

Maturity (November 1)	*Principal Amount*	*Interest Rate*	*Yield*	*Price*	*10% Test Satisfied*[*]	*10% Test Not Satisfied*	*Subject to Hold-The-Offering-Price Rule*
2026							
2027							
2028							
2029							
2030							
2031							
2032							
2033							
2034							
2035							
2036							
2037							
2038							
2039							
2040							
2041							
2042							
2043							
2044							
20__[(T)]							
20__[(T)]							

[(T)] Term Bond.
[(C)] Priced to optional call at [par] on November 1, 20__.
[*] At the time of execution of this Purchase Agreement and assuming orders are confirmed by the close of the business day immediately following the date of this Purchase Agreement.

EXHIBIT B

FORM OF ISSUE PRICE CERTIFICATE

$_____
ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BONDS

The undersigned, Samuel A. Ramirez & Co., Inc. ("Ramirez"), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the "Bonds").

1. ***Sale of the General Rule Maturities***. As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. ***Initial Offering Price of the Hold-the-Offering-Price Maturities***.

(a) Ramirez offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the "Initial Offering Prices") on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as Schedule B.

(b) As set forth in the Bond Purchase Agreement, dated [BPA Date], by and among Ramirez, the Issuer and the City of Ontario, Ramirez has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the "hold-the-offering-price rule"), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement shall contain the agreement of each broker-dealer who is a party to the retail distribution agreement, to comply with the hold-the-offering-price rule. Pursuant to such agreement, no Underwriter (as defined below) has offered or sold any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

3. ***Defined Terms***.

(a) *Issuer* means the Ontario Public Financing Authority.

(b) *General Rule Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the "General Rule Maturities."

(c) *Hold-the-Offering-Price Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the "Hold-the-Offering-Price Maturities."

(d) *Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which Ramirez has sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.

(e) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term "related party" for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(g) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [BPA Date].

(h) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the interpretation by Ramirez of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the attached Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bond Counsel, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds. Except as expressly set forth above, the certifications set forth herein may not be relied upon or used by any third party or for any other purpose.

Dated: [Closing Date]

SAMUEL A. RAMIREZ & CO., INC., as underwriter

By: _____
Authorized Signatory

SCHEDULE A

SALE PRICES OF THE GENERAL RULE MATURITIES AND INITIAL OFFERING PRICES OF THE HOLD-THE-OFFERING-PRICE MATURITIES

[TO BE ATTACHED]

SCHEDULE B

PRICING WIRE OR EQUIVALENT COMMUNICATION

EXHIBIT C

FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL

On the Closing Date, Bond Counsel expects to deliver a supplemental opinion in substantially the following form:

[Closing Date]

Samuel A. Ramirez & Co., Inc.
Los Angeles, California

Re: $_____ Ontario Public Financing Authority 2025A Lease Revenue Bonds

Ladies and Gentlemen:

We have examined certified copies of proceedings taken for the sale and issuance of the above-referenced bonds (the "Bonds"), and we have rendered our opinion to the Ontario Public Financing Authority (the "Authority") this day regarding the validity and enforceability of the Bonds (the "Approving Opinion"). The Bonds are being issued pursuant to an Indenture dated as of ____ 1, 2025 (the "Indenture"), by and among the Authority, the City of Ontario (the "City") and Zions Bancorporation, National Association, as Trustee. You may rely upon our Approving Opinion as if it were addressed to you. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the Bond Purchase Agreement dated [BPA Date] (the "Purchase Agreement"), among the Authority, the City and Samuel A. Ramirez & Co., Inc. (the "Underwriter").

We have assumed, but not independently verified, that the signatures on all documents, letters, certificates and instructions which we have examined are genuine, that all documents submitted to us are authentic and were duly and properly executed by the parties thereto and that all representations made in the documents that we have reviewed are true and accurate.

We express no opinion herein with respect to any indemnification, contribution, choice of law, choice of forum, penalty or waiver provisions contained in the Bonds, the Indenture, the Ground Lease, the Lease Agreement, the Assignment Agreement or the Purchase Agreement (collectively, the "Legal Documents"), nor do we express any opinion with respect to the state or quality of title to any of the real or personal property described in the Ground Lease, the Lease Agreement or the Indenture, or the accuracy or sufficiency of the description of any such property contained therein.

Based upon the foregoing and such other information and documents as we consider necessary to render this opinion, we are of the opinion that:

(1) The Purchase Agreement has been duly authorized, executed and delivered by the Authority and the City and is a valid and binding agreement of the Authority and the City.

(2) The statements on the cover of the Official Statement and in the Official Statement under the captions "INTRODUCTION," "THE SERIES 2025A BONDS," "PLAN OF

FINANCE," "THE PROPERTY," "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS," and "TAX MATTERS," and in "APPENDIX B – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS" and "APPENDIX D –FORM OF BOND COUNSEL OPINION," excluding any material that may be treated as included under such captions and appendices by any cross-reference, insofar as such statements expressly summarize provisions of the Bonds, the Ground Lease, the Lease Agreement, the Assignment Agreement, the Indenture and Bond Counsel's final opinion concerning certain federal tax matters relating to the Bonds, are accurate in all material respects as of the date of Closing.

(3) The Bonds are exempt from registration pursuant to the Securities Act of 1933, as amended, and the Indenture is exempt from qualification as an indenture pursuant to the Trust Indenture Act of 1939, as amended.

The opinions expressed herein are based upon our analysis and interpretation of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. This opinion is limited to matters governed by the laws of the State of California and federal securities laws, and we assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction.

We call attention to the fact that the rights and obligations under the Legal Documents are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or transfer and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State of California.

We express no opinion herein regarding any tax consequences with respect to the Bonds. No opinion is expressed herein with respect to the compliance with, or applicability of, any "blue sky" laws of any state as they relate to the offer or sale of the Bonds.

We call attention to the fact that the foregoing opinions may be affected by actions taken (or not taken) or events occurring (or not occurring) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions or events are taken (or not taken) or occur (or do not occur).

This opinion is furnished by us to you and is solely for your benefit, and may not be used, circulated, quoted or otherwise referred to or relied upon by others without our prior written consent. This letter is not intended to be, and may not be, relied upon by the owners of the Bonds or any beneficial ownership interest therein. You have acknowledged that no attorney-client relationship exists between us and you with respect to any matters related to the Bonds.

Our engagement with respect to the Bonds has concluded with their delivery, and we disclaim any obligation to update this opinion or other matters discussed in the Official Statement.

Respectfully submitted,

EXHIBIT D

FORM OF DISCLOSURE COUNSEL LETTER

On the Closing Date, Disclosure Counsel expects to deliver a negative assurance letter in substantially the following form:

[TO COME FROM DISCLOSURE COUNSEL]

RECORDING REQUESTED BY:
Ontario Public Financing Authority

AND WHEN RECORDED RETURN TO:
Stradling Yocca Carlson & Rauth LLP
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Brian P. Forbath, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11921 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

ASSIGNMENT AGREEMENT

by and between

ONTARIO PUBLIC FINANCING AUTHORITY

and

ZIONS BANCORPORATION, NATIONAL ASSOCIATION
as Trustee

Dated as of _____ 1, 2025

Relating to

$_____
ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BONDS

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (this "**Assignment Agreement**"), executed and entered into as of _____ 1, 2025, is by and between the ONTARIO PUBLIC FINANCING AUTHORITY, a joint exercise of powers entity organized and existing under and by virtue of the laws of the State of California (the "**Authority**"), and ZIONS BANCORPORATION, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States, as Trustee (the "**Trustee**").

RECITALS

A. The City of Ontario (the "**City**") and the Authority desire to finance a portion of the costs of the acquisition, construction and installation of certain public improvements (collectively, the "**Project**").

B. In order to finance the Project, the City will lease certain real property and the improvements located thereon (the "**Property**") to the Authority pursuant to that certain Ground Lease, dated as of the date hereof (the "Ground Lease"), by and between the City and Authority, and the City will sublease the Property back from the Authority pursuant to that certain Lease Agreement, dated as of the date hereof (the "Lease Agreement"), by and between the City and the Authority.

C. The Property is more particularly described in Exhibit A hereto.

D. Under the Lease Agreement, the City is obligated to make Base Rental Payments (as such term is defined in the Lease Agreement) to the Authority.

E. The Authority desires to assign without recourse certain of its rights in the Ground Lease and the Lease Agreement, including its right to receive the Base Rental Payments, to the Trustee for the benefit of the owners of bonds (the "**Bonds**") to be issued pursuant to the Indenture, dated as of the date hereof (the "**Indenture**"), by and among the Authority, the City and the Trustee.

F. All acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Assignment Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Assignment Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

Section 1. Assignment. The Authority, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby sell, assign and transfer to the Trustee, irrevocably and absolutely, without recourse, for the benefit of the owners of the Bonds, all of its right, title and interest in and to the Ground Lease and the Lease Agreement including, without limitation, its right to receive the Base Rental Payments to be paid by the City under and pursuant to the Lease Agreement; provided, however, that the Authority shall retain its obligations under the Lease Agreement and Ground Lease, the rights to indemnification, to give approvals and consents under the

Lease Agreement and the Ground Lease and to payment or reimbursement of its reasonable costs and expenses under the Lease Agreement.

Section 2. Acceptance. The Trustee hereby accepts the foregoing assignment, subject to the terms and provisions of the Indenture, and all such Base Rental Payments shall be applied and the rights so assigned shall be exercised by the Trustee as provided in the Lease Agreement and the Indenture.

Section 3. Conditions. This Assignment Agreement shall impose no obligations upon the Trustee beyond those expressly provided in the Indenture.

Section 4. Further Assurances. The Authority shall make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Assignment Agreement, and for the better assuring and confirming to the Trustee, for the benefit of the owners of the Bonds, the rights intended to be conveyed pursuant hereto.

Section 5. Governing Law. THIS ASSIGNMENT AGREEMENT SHALL BE GOVERNED EXCLUSIVELY BY THE PROVISIONS HEREOF AND BY THE LAWS OF THE STATE OF CALIFORNIA AS THE SAME FROM TIME TO TIME EXIST.

Section 6. Execution. This Assignment Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Assignment Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Authority and the Trustee have caused this Assignment Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first above-written.

ONTARIO PUBLIC FINANCING AUTHORITY

By: _____
Scott Ochoa
Executive Director

ATTEST:

_____
Sheila Mautz
Secretary

[SIGNATURES CONTINUED ON NEXT PAGE.]

[SIGNATURE PAGE CONTINUED.]

ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as Trustee

By: _____
[_____]
Authorized Officer

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____

SIGNATURE OF NOTARY PUBLIC

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____

SIGNATURE OF NOTARY PUBLIC

EXHIBIT A

DESCRIPTION OF THE PROPERTY

- Ovitt Family Community Library
- Municipal Services Corporation Yard
- Creekside Park
- Kimball Community Park
- Bon View Park
- Homer F. Briggs Memorial Park
- Anthony Munoz Hall of Fame Park
- De Anza Park
- Westwind Park
- John Galvin Park
- Ontario Motor Speedway Park
- Celebration Park (North and South)

FORM OF CONTINUING DISCLOSURE CERTIFICATE

Upon issuance of the 2025A Bonds, the City proposes to enter into a Continuing Disclosure Certificate in substantially the following form:

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of Ontario (the "**City**") in connection with the issuance by the Ontario Public Financing Authority (the "Authority") of the Authority's 2025A Lease Revenue Bonds (the "Bonds"). The Bonds are being issued pursuant to an Indenture, dated as of _____, 2025 (the "Indenture"), by and between the Authority and Zion's Bancorporation, National Association, as trustee. The City covenants and agrees as follows:

1. Purpose of this Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with the Rule.

2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

Annual Report. The term "Annual Report" means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

Beneficial Owner. The term "Beneficial Owner" means any person which: (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries); or (b) is treated as the owner of any Bonds for federal income tax purposes.

EMMA. The term "EMMA" means the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures, maintained on the Internet at http://emma.msrb.org/.

Financial Obligation. The term "Financial Obligation" means a: (A) debt obligation; (B) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (C) guarantee of (A) or (B). The term "Financial Obligation" does not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with the Rule.

Fiscal Year. The term "Fiscal Year" means the one-year period ending on the last day of June of each year.

Holder. The term "Holder" means a registered owner of the Bonds.

Insurer. The term "Insurer" means [to come].

Listed Events. The term "Listed Events" means any of the events listed in Sections 5(a) and (b) of this Disclosure Certificate.

Official Statement. The term "Official Statement" means the Official Statement relating to the Bonds dated _____, 2025 delivered in connection with the issuance of the Bonds.

Participating Underwriter. The term "Participating Underwriter" means the original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

Rule. The term "Rule" means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

3. Provision of Annual Reports.

(a) The City shall provide not later than each April 1 following the end of its Fiscal Year (commencing April 1, 2026 with the Annual Report for Fiscal Year 2025) to EMMA an Annual Report relating to the immediately preceding Fiscal Year which is consistent with the requirements of Section 4 of this Disclosure Certificate, which Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate.

(b) If the City is unable to provide to EMMA an Annual Report by the date required in subsection (a), the City shall send to EMMA a notice in substantially the manner prescribed by the Municipal Securities Rulemaking Board.

4. Content of Annual Reports. The Annual Report shall contain or incorporate by reference the following:

(a) The audited financial statements of the City for the prior Fiscal Year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If such audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Principal amount of the Bonds outstanding.

(c) To the extent not already included in the City's audited financial statements, an update of the information substantially in the form of the following tables or captions in the Official Statement for the Fiscal Year prior to the filing of such Annual Report:

1. Table 2 – General Fund Statement of Revenues, Expenditures and Charges in Fund Balance;

2. Table 3 – General Fund Balance Sheets;

3. Table 4 – Assessed Valuation History;

4. Table 5 – Property Tax Levies and Collections; and

5. Information under the caption "CITY FINANCIAL INFORMATION—Other Indebtedness—General Fund Supported Debt" (provided that such information may be located in the notes to the City's audited financial statements).

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which have been submitted to EMMA or the Securities and Exchange Commission; provided that if any document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board; and provided further that the City shall clearly identify each such document so included by reference.

5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds in a timely manner not more than ten (10) Business Days after the event:

1. principal and interest payment delinquencies;

2. unscheduled draws on debt service reserves reflecting financial difficulties;

3. unscheduled draws on credit enhancements reflecting financial difficulties;

4. substitution of credit or liquidity providers, or their failure to perform;

5. issuance by the Internal Revenue Service of proposed or final determination of taxability or of a Notice of Proposed Issue (IRS Form 5701 TEB);

6. tender offers;

7. defeasances;

8. ratings changes;

9. bankruptcy, insolvency, receivership or similar proceedings; Note: For the purposes of the event identified in subparagraph (9), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person; and

10. default, event of acceleration, termination event, modification of terms or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

(b) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

1. unless described in Section 5(a)(5), other notices or determinations by the Internal Revenue Service with respect to the tax status of the Bonds or other events affecting the tax status of the Bonds;

2. modifications to the rights of Bondholders;

3. optional, unscheduled or contingent Bond calls;

4. release, substitution or sale of property securing repayment of the Bonds;

5. non-payment related defaults;

6. the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms;

7. appointment of a successor or additional trustee or the change of the name of a trustee; and

8. incurrence of a Financial Obligation of the City, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders.

(c) If the City determines that knowledge of the occurrence of a Listed Event under Section 5(b) would be material under applicable federal securities laws, the City shall file a notice of such occurrence with EMMA in a timely manner not more than ten (10) Business Days after the event.

6. Customarily Prepared and Public Information. Upon request, the City shall provide to any person financial information and operating data regarding the City which is customarily prepared by the City and is publicly available.

7. Termination of Obligation. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that, in the opinion of nationally recognized bond counsel, such amendment or waiver is permitted by the Rule.

9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall not thereby have any obligation under this Disclosure Certificate to update such information or include it in any future notice of occurrence of a Listed Event.

10. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, any Holders or Beneficial Owners of at least 50% aggregate principal amount of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

No Holder or Beneficial Owner of the Bonds may institute such action, suit or proceeding to compel performance unless they shall have first delivered to the City satisfactory written evidence of their status as such, and a written notice of and request to cure such failure, and the City shall have refused to comply therewith within a reasonable time.

11. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the Authority, the City, the Insurer, the Participating Underwriter and Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Dated: _____, 2025

CITY OF ONTARIO

By: _____
Its: City Manager

This Preliminary Official Statement and the information contained herein are subject to completion and amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities, in any jurisdiction in which such offer, solicitation or sale would be unlawful.

PRELIMINARY OFFICIAL STATEMENT DATED _____ __, 2025

NEW ISSUE – BOOK-ENTRY ONLY

Insured Rating: S&P: "___"
Underlying Rating: S&P "___"
Underlying Rating: Fitch "___"
See the caption "RATINGS."

In the opinion of Stradling Yocca Carlson & Rauth LLP, Bond Counsel, under existing statutes, regulations, rulings and judicial decisions, and assuming the accuracy of certain representations and compliance with certain covenants and requirements described in this Official Statement, interest on the 2025A Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals. In the further opinion of Bond Counsel, interest on the 2025A Bonds is exempt from State of California personal income tax. See "TAX MATTERS" with respect to certain tax consequences relating to the 2025A Bonds, including with respect to the alternative minimum tax imposed on certain large corporations."

$_____
ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BONDS

Dated: Date of Delivery **Due: November 1, as shown on inside cover**

The Ontario Public Financing Authority 2025A Lease Revenue Bonds (the "2025A Bonds") will be issued pursuant to an Indenture, dated as of _____, 2025, by and between the Ontario Public Financing Authority and Zions Bancorporation, National Association, as trustee. The 2025A Bonds are payable from 2025 Base Rental Payments to be made by the City for the right to the use of certain real property pursuant to a Lease Agreement, dated as of _____, 2025, by and between the City, as lessee, and the Authority, as lessor.

The 2025A Bonds are being issued to provide funds: (i) to finance the acquisition and construction of capital projects of the City; and (ii) to pay the costs of issuing the 2025A Bonds, including the premium for a municipal bond insurance policy insuring the 2025A Bonds to be issued by _____.

The City has covenanted under the Lease Agreement to take such action as may be necessary to include all Rental Payments (including 2025 Base Rental Payments and Additional Rental Payments) due thereunder as a separate line item in its annual budgets and to make necessary annual appropriations for all such Rental Payments. The City's obligation to make 2025 Base Rental Payments under the Lease Agreement is subject to abatement during any period in which by reason of material damage to, or destruction or condemnation of the Property, or any defect in title thereto, there is substantial interference with the use and occupancy by the City of the Property or any portion thereof.

The 2025A Bonds are being issued in fully registered book-entry only form, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York. Interest on the 2025A Bonds is payable semiannually commencing November 1, 2025 and each May 1 and November 1 thereafter. Purchasers will not receive certificates representing their interest in the 2025A Bonds. Individual purchases will be in principal amounts of integral multiples of $5,000. Principal of and interest and premium, if any, on the 2025A Bonds will be paid by the Trustee to DTC for subsequent disbursement to DTC Participants who are obligated to remit such payments to the beneficial owners of the 2025A Bonds.

The Authority may issue Additional Bonds payable from Base Rental Payments. The 2025A Bonds and any Additional Bonds are collectively referred to herein as the "Bonds."

The 2025A Bonds are subject to redemption prior to maturity as described in this Official Statement.

The 2025A Bonds are special obligations of the Authority, payable solely from the 2025 Base Rental Payments and the other assets pledged therefor under the Indenture. Neither the faith and credit nor the taxing power of the Authority, the City or the State of California, or any political subdivision thereof, is pledged to the payment of the 2025A Bonds. The Authority has no taxing power.

The obligation of the City to make 2025 Base Rental Payments does not constitute a debt of the City or the State of California or any political subdivision thereof within the meaning of any constitutional or statutory debt limit or restriction, and does not constitute an obligation for which the City or the State of California is obligated to levy or pledge any form of taxation or for which the City or the State of California has levied or pledged any form of taxation.

The 2025A Bonds are not subject to acceleration in the event of a payment default.

The scheduled payment of principal of and interest on the 2025A Bonds when due will be guaranteed under a municipal bond insurance policy to be issued concurrently with the delivery of the 2025A Bonds by _____.

[INSURER LOGO]

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.

The 2025A Bonds will be offered when, as and if issued and received by the Underwriter, subject to the approval as to their validity by Stradling Yocca Carlson & Rauth, a Professional Corporation, Newport Beach, California, Bond Counsel. Certain legal matters will be passed upon for the City and the Authority by Best Best & Krieger LLP, Ontario, California, as City Attorney and General Counsel to the Authority. Best Best & Krieger LLP, Riverside, California, is acting as Disclosure Counsel. Certain legal matters will be passed upon for the Underwriter by Kutak Rock, Irvine, California, as Underwriter's Counsel, for the Insurer by its counsel and for the Trustee by its counsel. It is anticipated that the 2025A Bonds in definitive form will be available for delivery to DTC on or about _____, 2025.

Ramirez & Co., Inc.

Dated: _____, 2025

MATURITY SCHEDULE

BASE CUSIP:*C

$_____
ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BONDS

Maturity Date (November 1)	Principal Amount	Interest Rate	Yield	Price	CUSIP*C Suffix

$___ _ % Term 2025A Bonds due November 1, 20__, Yield: _____%, Price: _____, CUSIP®* Suffix

$___ _ % Term 2025A Bonds due November 1, 20__, Yield: _____%, Price: _____, CUSIP®* Suffix

$___ _ % Term 2025A Bonds due November 1, 20__, Yield: _____%, Price: _____, CUSIP®* Suffix

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C *Priced to first optional redemption date of November 1, 20__ at par.*

No dealer, broker, salesperson or other person has been authorized by the City or the Authority to give any information or to make any representations in connection with the offer or sale of the 2025A Bonds other than those contained in this Official Statement and, if given or made, such other information or representations must not be relied upon as having been authorized by the City or the Authority. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor will there be any sale of the 2025A Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

This Official Statement is not to be construed as a contract with the purchasers or owners of the 2025A Bonds. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described in this Official Statement, are intended solely as such and are not to be construed as representations of fact.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

This Official Statement and the information contained in this Official Statement are subject to completion or amendment without notice and neither delivery of this Official Statement nor any sale made hereunder will, under any circumstances, create any implication that there has been no change in the affairs of the City or the Authority or any other parties described in this Official Statement since the date hereof. These securities may not be sold, nor may an offer to buy be accepted, prior to the time that the Official Statement is delivered in final form. This Official Statement is being submitted in connection with the sale of the 2025A Bonds referred to in this Official Statement and may not be reproduced or used, in whole or in part, for any other purpose, unless authorized in writing by the City. All summaries of documents and laws are made subject to the provisions thereof and do not purport to be complete statements of any or all such provisions.

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "assume," "project," "budget," "intend" or similar words. Such forward-looking statements include, but are not limited to, certain statements contained under the captions "THE CITY" and "CITY FINANCIAL INFORMATION."

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE CITY DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THE FORWARD-LOOKING STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT. IN EVALUATING SUCH STATEMENTS, POTENTIAL INVESTORS SHOULD SPECIFICALLY CONSIDER THE VARIOUS FACTORS THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE INDICATED BY SUCH FORWARD-LOOKING STATEMENTS.

IN CONNECTION WITH THE OFFERING OF THE 2025A BONDS, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE 2025A BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITER MAY OFFER AND SELL THE 2025A BONDS TO CERTAIN DEALERS AND DEALER BANKS AND BANKS ACTING AS AGENT AND OTHERS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICE STATED ON THE COVER PAGE HEREOF AND SAID PUBLIC OFFERING PRICE MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITER.

THE 2025A BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXEMPTION CONTAINED IN SUCH ACT AND HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

The City maintains a website and certain social media accounts; however, information presented there is not a part of this Official Statement and should not be relied upon in making an investment decision with respect to the 2025A Bonds.

CITY OF ONTARIO
COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA

CITY COUNCIL AND AUTHORITY BOARD OF DIRECTORS

Paul S. Leon, Mayor and Authority Chair
Alan D. Wapner, Mayor Pro Tem and Authority Vice Chair
Jim W. Bowman, Councilmember and Authority Board Member
Debra Porada, Councilmember and Authority Board Member
Daisy Macias, Councilmember and Authority Board Member

STAFF

Scott Ochoa, City Manager and Authority Executive Director
James R. Milhiser, City Treasurer
Armen Harkalyan, Executive Director of Finance and Authority Treasurer
Doreen Nunes, Assistant Finance Director
Sheila Mautz, City Clerk and Authority Secretary

SPECIAL SERVICES

City Attorney and Authority General Counsel
Best Best & Krieger LLP
Ontario, California

Bond Counsel
Stradling Yocca Carlson & Rauth LLP
Newport Beach, California

Disclosure Counsel
Best Best & Krieger LLP
Riverside, California

Municipal Advisor
Urban Futures, Inc.
Walnut Creek, California

Trustee
Zions Bancorporation, National Association
Los Angeles, California

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$_____
ONTARIO PUBLIC FINANCING AUTHORITY
2025A LEASE REVENUE BONDS

INTRODUCTION

General

This Official Statement, which includes the cover page and appendices (the "Official Statement"), provides certain information concerning the above-captioned bonds (the "2025A Bonds"). The 2025A Bonds are being issued by the Ontario Public Financing Authority (the "Authority"), a joint exercise of powers agency the members of which are the City of Ontario, California (the "**City**") and the Ontario Housing Authority (the "Housing Authority").

The 2025A Bonds will be issued pursuant to Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the California Government Code, and an Indenture, dated as of _____, 2025 (the "Indenture"), by and between the Authority and Zions Bancorporation, National Association, as trustee (the "Trustee"). Additional Bonds may also be issued under the Indenture. See the caption "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Additional Bonds."

The 2025A Bonds are being issued in fully registered book-entry only form, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). Purchasers will not receive certificates representing their interest in the 2025A Bonds. Individual purchases will be in integral multiples of $5,000. Principal of and interest on the 2025A Bonds will be paid by the Trustee to DTC for subsequent disbursement to DTC Participants who are obligated to remit such payments to the beneficial owners of the 2025A Bonds. See the caption "THE 2025A BONDS—Book-Entry Only System."

The 2025A Bonds are subject to redemption prior to maturity as described under the caption "THE 2025A BONDS—Redemption."

The 2025A Bonds are being issued to provide funds: (i) to finance the acquisition, construction and installation of capital projects of the City (collectively, the "2025 Project"), as described under the caption "PLAN OF FINANCE—2025 Project;" and (ii) to pay the costs of issuing the 2025A Bonds, including the premium for a municipal bond insurance policy (the "Policy") insuring the 2025A Bonds to be issued by the Insurer. See the caption "PLAN OF FINANCE."

Security for the 2025A Bonds; Base Rental Payments

Pursuant to a Ground Lease, dated as of _____, 2025 (the "Ground Lease"), by and between the City, as lessor, and the Authority, as lessee, the City has leased certain real property of the City and the improvements thereon (collectively, the "Property") to the Authority in consideration for the Authority's assistance in issuing the 2025A Bonds.

Pursuant to a Lease Agreement, dated as of _____, 2025 (the "Lease Agreement"), by and between the City, as lessee, and the Authority, as lessor, the Authority has subleased the Property back to the City in consideration for the City's payment of semiannual lease payments (the "2025 Base Rental Payments") to be made by the City for the right to use the Property as sublessee.

See the caption "THE PROPERTY" for a description of the Property.

Under an Assignment Agreement, dated as of _____, 2025 (the "Assignment Agreement"), by and between the Authority and the Trustee, the Authority has assigned to the Trustee for the benefit of the 2025A Bond Owners substantially all of the Authority's right, title and interest in and to the Lease Agreement, including its right to receive the 2025 Base Rental Payments due under the Lease Agreement and to enforce any remedies in the event of a default by the City.

The City has covenanted under the Lease Agreement to take such action as may be necessary to include all Rental Payments (including the 2025 Base Rental Payments and Additional Rental Payments) due thereunder as a separate line item in its annual budgets and to make necessary annual appropriations for all such Rental Payments. See the caption "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Additional Rental Payments" for a description of Additional Rental Payments.

During any period in which, by reason of material damage to, or destruction or condemnation of, the Property, or any defect in title to the Property, there is substantial interference with the City's right to use and occupy any portion of the Property, Rental Payments will be abated proportionately, and the City waives the benefits of Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate the Lease Agreement by virtue of any such interference, and the Lease Agreement will continue in full force and effect. The amount of such abatement will be agreed upon by the City and the Authority; provided, however, that the Rental Payments due for any Rental Period may not exceed the annual fair rental value of that portion of the Property available for use and occupancy by the City during such Rental Period. See the captions "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Abatement" and "RISK FACTORS—Abatement."

Limited Obligation

THE 2025A BONDS ARE SPECIAL OBLIGATIONS OF THE AUTHORITY, PAYABLE SOLELY FROM THE 2025 BASE RENTAL PAYMENTS AND THE OTHER ASSETS PLEDGED THEREFOR UNDER THE INDENTURE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE AUTHORITY, THE CITY OR THE STATE OF CALIFORNIA (THE "STATE"), OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE 2025A BONDS. THE AUTHORITY HAS NO TAXING POWER.

THE OBLIGATION OF THE CITY TO MAKE 2025 BASE RENTAL PAYMENTS DOES NOT CONSTITUTE A DEBT OF THE CITY OR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION, AND DOES NOT CONSTITUTE AN OBLIGATION FOR WHICH THE CITY OR THE STATE IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY OR THE STATE HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

Bond Insurance

Concurrently with the issuance of the 2025A Bonds, the Insurer will issue the Policy. The Policy guarantees the scheduled payment of principal of and interest on the 2025A Bonds when due as set forth in the form of the Policy set forth in Appendix G.

Additional Bonds

Under the Lease Agreement, the Authority may issue additional bonds (the "Additional Bonds") payable from Base Rental Payments on a parity basis with the 2025A Bonds. The 2025A Bonds and any Additional Bonds are collectively referred to in this Official Statement as the "Bonds." See the caption "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Additional Bonds."

The City

See the captions "THE CITY" and "CITY FINANCIAL INFORMATION," as well as Appendices A and C for information with respect to the City and the General Fund, including other obligations which are payable from general revenues of the City.

Continuing Disclosure

The City has agreed to provide, or to cause to be provided, to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for purposes of Securities and Exchange Commission

Rule 15c2-12 certain annual financial information and operating data and, in a timely manner, notice of certain listed events. See the caption "CONTINUING DISCLOSURE."

Risk Factors

Certain events could affect the ability of the City to make the 2025 Base Rental Payments when due. See the caption "RISK FACTORS" for a discussion of certain factors that should be considered, in addition to other matters that are set forth in this Official Statement, in evaluating an investment in the 2025A Bonds.

Summaries Not Definitive

The summaries of and references to documents, statutes, reports and other instruments in this Official Statement do not purport to be complete, comprehensive or definitive, and each such summary and reference is qualified in its entirety by the complete document, statute, report or instrument. The capitalization of any word that is not conventionally capitalized, or otherwise defined in this Official Statement, indicates that such word is defined in a particular agreement or other document and, as has the meaning that is given to such word in Appendix B. Copies of the documents described in this Official Statement will be available at the City, 303 East B Street, Ontario, California 91764, Attention: Finance Department.

PLAN OF FINANCE

2025 Project

The 2025 Project is comprised of the City's capital improvement for the 2025-26 and 2026-27 fiscal years. Many of the improvements will relate to the Ontario Sports Empire, which is currently under construction and expected to be completed in 2026. The Ontario Sports Empire is a 200 acre sports and entertainment complex designed to attract 1.2 million visitors annually. The facility will feature the new Los Angeles Dodgers single-A team. The development will feature a 6,000-seat Minor League Baseball stadium, a vibrant stadium village with restaurants, entertainment venues, and a hotel, as well as professional-quality soccer, baseball, and softball fields. Additionally, the complex will include a state-of-the-art youth sports training facility.

The improvements may include, but not be limited to the following:

Ontario Sports Empire Off Site Improvements and Street Improvements. Includes off site public improvements and on site and off site street improvements. Estimated Cost $65,000,000.

Storm Drain Improvements. Includes San Antonio Avenue Storm Drain, Sultana Avenue and J Street, Campus Avenue, Fourth Street, Euclid Avenue and Storm Drain Pipe Replacement. The improvements are master planned facilities which will connect to the existing San Bernardino County Flood Control District East State Street Storm Drain. Estimated Cost $67,000,000.

Continuum of Care – West Mission Campus. The City plans to acquire and convert a motel on Mission Boulevard into a temporary housing space for unhoused individuals and their families as a temporary campus, and then acquire property design and construct a new Access Center to assist unhoused individuals and families by providing supportive and educational resources, case management, assistance in finding temporary shelter, transitional housing or long-term Section 8 housing. Estimated Cost $43,200,000.

Real Time Information Center will serve as the City of Ontario's centralized hub for aggregating and monitoring data, video, audio, and other critical information. Its primary objective is to enhance public safety by supporting crime reduction efforts and enabling real-time situational awareness throughout the City. The project will be completed in two phases: Phase One will consist of facility construction, and Phase Two will involve software implementation and personnel onboarding. Estimated Cost $6,300,000.

Anthony Munoz Hall of Fame Park. Improvements include upgrading concession area and remodel the storage area, demolition of existing restroom and install a pre-fabricated restroom and construction of a gymnasium, fitness room, and teen lounge. Estimated Cost $21,200,000

De Anza Park. Improvements include the addition of a skate park and splash pad, renovation of a picnic shelter, upgrade soccer field to synthetic turf, replacement of existing tot lot playground equipment and rubber surface installation, and improvements to the walkway and lighting. Estimated Cost $13,000,000.

John Galvin Park/ James Galanis Park/ Veterans Memorial Park. Improvements include ballfield renovations, installation of fitness course, replacement of existing tot lot playground and installation of new rubber surface, design and construction of new skate park, native garden, splash pad, improvements to park lighting, and a master plan for a new community center. Estimated Cost $28,000,000.

Ontario Museum of History & Art. Improvements include those included in the approved master plan such as waterproofing the basement, adding an elevator, and renovation of the North Gallery. Estimated Costs $6,900,000.

The City will have the ability to use the proceeds of the bonds on the projects listed above and on any other component of the capital improvement program not listed above. See, "CITY FINANCIAL INFORMATION – Capital Improvement Plan," herein. The City may alter the scope of the capital improvements or reprioritize the facilities to be constructed in the capital improvement plan at any time.

The City intends to apply proceeds of the 2025A Bonds, together with other available City moneys, to pay for the costs of the 2025 Project. The City expects to comply with all governmental approval, environmental review, public bidding and other permitting requirements for each component of the 2025 Project as required by law, and to complete all components of the 2025 Project by June 30, 2028. The City plans to use currently owned assets as the leased assets and does not intend to capitalize interest on the 2025A Bonds during the period in which the 2025 Project is being designed and constructed.

Upon or after completion of the 2025 Project, the City may reevaluate the pool of leased assets that is described under the caption "THE PROPERTY" and may substitute the properties that comprise the 2025 Project for certain properties that currently comprise the Property. There can be no assurance as to whether or when any such substitution will occur, or as to which properties may be substituted out from the current pool of Property. See the caption "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS - Substitution or Release of the Property."

Estimated Sources and Uses of Funds

The estimated sources and uses of funds with respect to the 2025A Bonds are shown below.

Sources[(1)]:	
Principal Amount	
Plus Original Issue Premium	
Total Sources	
Uses[(1)]:	
Deposit to Improvement Fund	
Costs of Issuance[(2)]	
Total Uses	

(1) All amounts rounded to the nearest dollar. Totals may not add due to rounding.

(2) Includes Underwriter's discount, premium for the Policy and certain legal, municipal advisory, rating agency, title insurance, printing and other financing-related costs.

THE PROPERTY

General

The Property are currently owned by the City and have been leased to the Authority pursuant to the Ground Lease, with the Authority in turn subleasing the Property back to the City pursuant to the Lease Agreement. The Property consist of the below-described properties.

Ovitt Family Community Library has served the community since 1894 and is currently 52,268 square feet of building space on 1.2 acres located on the northeast corner of East C Street and N Lemon Street. The Ovitt Family Community Library is Ontario's main library which contains over 315,000 items, including books, magazines, DVDs, audio books, and a local history collection. The library also provides public computers, a children's area, smaller meeting/study rooms, reading areas, and program rooms. The library includes the Model Colony History Room, Makerspace, and a Veterans Resource Center. The community makerspace has dedicated equipment and software to create digital media projects, 3D prints, laser cutting and etching, CNC carving, sewing crafts, robotics, electronics and virtual reality.

Municipal Services Corporation Yard has a 67,284 square foot corporation building, a 3,600 square foot welding and paint shop, a 3,466 square foot storage shed, a 1,240 truck wash, a 2,000 square foot training room, a 12,000 square foot municipal building and a 1,440 municipal training center. All buildings are on 21.1 acres located at 1425 S. Bon View Ave.

Creekside Park is a 6.9 acre park located at the northeast corner of Riverside Drive and Turner Avenue. Creekside Park opened in August 1990 and serves as an outlet for recreation Grace Yokley Middle School. Amenities at Creekside Park include a zip-line, playground, basketball courts, tennis & pickleball courts, volleyball sand court, large open turf area, pedestrian/bike paths, barbecues, shade structure, picnic tables, benches, and restrooms.

Kimball Community Park is a 7.1 acre park located at the southeast corner of Campus Avenue and Walnut Drive. Kimball Community Park was built in 1955 and includes baseball fields, volleyball courts, and restrooms.

Bon View Park is a 10.3 acre park located on the northwest corner of South Bon View Avenue and East Belmont Street. Bon View Park includes the Dorothy A. Quesada Community Center which is a 10,200 square foot facility with weight/fitness rooms, classrooms, a teen lounge and game room, and a multi-purpose room. Bon View Park amenities also include an ADA compliant tot lot, playground, concession building, basketball court, baseball fields, soccer field, outdoor exercise equipment, swimming pool, water conservation area, walking trail, barbecues, picnic tables, benches, and restrooms.

Homer F. Briggs Memorial Park is a 14.4 acre park located on Oaks Avenue, one block north of Philadelphia Street. Homer F. Briggs Memorial Park has the only equestrian facility in the City. Amenities also include an ADA compliant play structure, children's play area, concession building, horse arena and equestrian trail, walking trail/bike path, turf area/multi-use, horseshoe pit, basketball court, baseball field, barbecues, picnic shelters, picnic tables, benches, and restrooms.

Anthony Munoz Hall of Fame Park is a 15.8 acre park located between Fourth and Fifth Street, one block west of Mountain Avenue. Anthony Munoz Hall of Fame Park includes a 15,973 square foot community center which features a large multi-purpose room with a modern kitchen, activity rooms, a tot room with a tot playground, a youth playground, 6-lane swimming pool with a large deck and a paved courtyard. Other amenities include a multi-use court, soccer fields, softball fields, basketball court, playground, ADA compliant play structure, swimming pool, and restrooms

De Anza Park is a 19.2 acre park located at the corner of Phillips Street and South Euclid Avenue. De Anza Park includes a community center, banquet halls, meeting rooms, gym & fitness rooms, basketball courts, pickleball courts, volleyball sand court, futsal court, horseshoe courts, softball field, pedestrian/bike path, ADA compliant play structure, children's play area, water conservation area, barbecues, shade structure, picnic tables, benches, and restrooms.

Westwind Park is a 23.0 acre park located on the north side of Riverside Drive, adjacent to the east side of the Ontario National Golf Course (Whispering Lakes Golf Course). Westwind Park includes a 28,000 square foot community center featuring a large gymnasium for basketball and volleyball, a game room with billiards, foosball, ping pong tables and a multi-purpose meeting room. A 2,400 square foot outdoor swimming pool is adjacent to the building. The park also offers pedestrian/bike paths and sports fields, a concession building, baseball and softball fields, soccer fields, basketball courts, tennis courts, ADA compliant play structure, barbecues, shade structures, picnic tables, benches, and restrooms.

John Galvin Park is a 25.6 acre park located between Fourth Street and G Street in the northeast section of the City. Amenities include an ADA compliant play structure, children's play area, baseball fields, concession building, basketball courts, horseshoe courts, multi-use court, pedestrian/bike path, water conservation area, dog park, picnic shelters, picnic tables, benches, and restrooms.

Ontario Motor Speedway Park is a 6.2 acre park located on the corner of N. Center Avenue and Concours Street. Ontario Motor Speedway Park is a joint-use facility, a park/school complex and features typical neighborhood park equipment. Amenities include playground, exercise equipment, soccer field, softball field, pedestrian/bike path, barbecues, picnic tables, benches, and restrooms.

Celebration Park (North and South) is a 10.5 acre park located on the corner of S. Celebration Avenue and Merrill Avenue. The park celebrates the City of Ontario's history with a concrete walkway with a timeline documenting historic events in the City. Amenities include picnic tables conveniently placed all throughout the park, picnic shelters for shaded afternoons, and two demonstration gardens. Additional amenities include a rose garden and maze, walking trail, playground with sunshade, tot lot, basketball courts, turf area/multi-use, picnic shelters, barbecues, picnic tables, benches, and restrooms.

The combined insured replacement value of the structures on the Property and the land value of the Property is $246,272,358. The City has certified in the Lease Agreement that the annual fair rental value of the Property is at least equal to the sum of the annual Base Rental Payments payable under the Lease Agreement with respect to the 2025 Base Rental Payments.

For a discussion of the insurance required to be maintained on the Property, see the caption "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Insurance."

Upon or after completion of the 2025 Project, the City may reevaluate the pool of leased assets listed above and may substitute the properties that comprise the 2025 Project for certain properties that currently comprise the Property. There can be no assurance as to whether or when any such substitution will occur, or as to which properties may be substituted out from the current pool of Property. See the caption "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS - Substitution or Release of the Property," and "THE 2025 PROJECT."

BASE RENTAL PAYMENT SCHEDULE

Set forth below is a schedule of Base Rental Payments, which secure the 2025A Bonds, assuming no optional or extraordinary prepayments.

	2025 Base Rental Payments			
Base Rental Payment Date[(1)]	**Principal**	**Interest**	**Total 2025 Base Rental Payments**	**Total Base Rental Payments**

(1) The Base Rental Payment Date is the fifth Business Day prior to the date shown.

Source: Underwriter.

THE 2025A BONDS

General

The 2025A Bonds will be issued in fully registered form without coupons in denominations of integral multiples of $5,000. The 2025A Bonds will be dated as of and bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) from the dated date thereof at the rates set forth on the inside cover page. Interest on the 2025A Bonds will be paid semiannually commencing November 1, 2025 and each May 1 and November 1 thereafter (each, an "Interest Payment Date").

Interest on the 2025A Bonds will be payable semi-annually calculated based on a 360-day year of twelve thirty-day months on each Interest Payment Date to the person whose name appears on the Registration Books as the Owner thereof as of the fifteenth day of the month preceding each Interest Payment Date (each, a "Record Date"), such interest to be paid by check of the Trustee mailed by first class mail to the Owner at the address of such Owner as its appears on the Registration Books; provided however, that payment of interest may be by wire transfer in immediately available funds to an account in the United States of America to any Owner of 2025A Bonds in the aggregate principal amount of $1,000,000 or more who will furnish written wire instructions to the Trustee at least five days before the applicable Record Date. Principal of any 2025A Bond and any premium upon redemption will be paid by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee. Principal of and interest and premium (if any) on the 2025A Bonds will be payable in lawful money of the United States of America.

Each 2025A Bond will be dated as of the Closing Date, and will bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless: (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it will bear interest from such Interest Payment Date; or (b) unless it is authenticated on or before October 15, 2025, in which event it will bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any 2025A Bond, interest thereon is in default, such 2025A Bond will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Registration, Transfers and Exchanges

The 2025A Bonds will be issued as fully registered bonds, registered in the name of Cede & Co. as nominee of DTC, and will be available to actual purchasers of the 2025A Bonds (the "Beneficial Owners") in the denominations set forth above, under the book-entry system maintained by DTC, only through brokers and dealers who are or act through DTC Participants (as defined in Appendix F) as described in this Official Statement. Beneficial Owners will not be entitled to receive physical delivery of the 2025A Bonds. See the caption "—Book-Entry Only System."

In the event that the book-entry system that is described herein is discontinued, the 2025A Bonds will be printed and delivered as provided in the Indenture. Thereafter, any 2025A Bond may, in accordance with its terms, be transferred upon the Registration Books by the Person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such 2025A Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Trustee. Whenever any 2025A Bond or Bonds shall be surrendered for transfer, the Authority will execute and the Trustee will authenticate and deliver a new 2025A Bond or Bonds in a like aggregate principal amount, in any Authorized Denomination. The Trustee will require the Bond Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

The 2025A Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of 2025A Bonds of other authorized denominations. The Trustee will require the payment by the 2025A Bond Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

The Trustee is not obligated to make any transfer or exchange of 2025A Bonds pursuant to the Indenture during the period established by the Trustee for the selection of 2025A Bonds for redemption, or with respect to any 2025A Bonds selected for redemption.

Redemption

Optional Redemption. The 2025A Bonds maturing on or before November 1, 20__ are not subject to redemption prior to their respective stated maturities. The 2025A Bonds maturing on or after November 1, 20__, are subject to redemption at the option of the Authority as a whole or in part, on November 1, 20__ or any date thereafter, upon at least 45 days' prior notice to the Trustee or shorter period as acceptable to Trustee from any available source of funds, a redemption price equal to the principal amount of the 2025A Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

Extraordinary Redemption from Condemnation Award or Insurance Proceeds. The 2025A Bonds are also subject to redemption as a whole or in part on any date, from Net Insurance Proceeds or proceeds of condemnation required to be used for such purpose as provided in the Supplemental Lease Agreement, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

Mandatory Sinking Fund Redemption. The 2025A Bonds maturing on November 1, 20__ and November 1, 20__ (collectively, the "Term Series 2025A Bonds") are subject to mandatory redemption, in part by lot, from Principal Fund payments set forth in the following schedules on November 1, 20__, and November 1, 20__, respectively, and each November 1 thereafter at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption; provided, however, that if some but not all of the Term Series 2025A Bonds have been redeemed as described under the subcaptions "—Optional Redemption" or "—Extraordinary Redemption from Condemnation Award or Insurance Proceeds," above, the total amount of Principal Fund payments to be made subsequent to such redemption will be reduced in an amount equal to the principal amount of the Term Series 2025A Bonds so redeemed pursuant to the First Supplemental Indenture by reducing each such future Principal Fund payment on a pro rata basis (as nearly as practicable) in integral multiples of $5,000, as designated pursuant to written notice filed by the Authority with the Trustee.

Term Series 2025A Bonds Maturing November 1, 20__

Redemption Date (November 1)	**Principal Amount**

* Maturity.

Term Series 2025A Bonds Maturing November 1, 20__

Redemption Date (November 1)	**Principal Amount**

* Final Maturity.

In lieu of such redemption, the Trustee may apply amounts in the Principal Fund to the purchase of Term Series 2025A Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Fund) as may be directed by the Authority prior to the selection of Term Series 2025A Bonds for redemption, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Term Series 2025A Bonds, as set forth in a Written Request of the Authority.

Selection of Bonds for Redemption. Except for mandatory sinking fund redemption as described under the subcaption "—Mandatory Sinking Fund Redemption" above, whenever provision is made in the First Supplemental Indenture for the redemption of less than all of the 2025A Bonds, the Trustee will select the 2025A Bonds to be redeemed from all 2025A Bonds or such given portion thereof not previously called for redemption from such maturities as are set forth in a Written Request of the Authority filed with the Trustee. For purposes of such selection, the Trustee will treat each 2025A Bond as consisting of separate $5,000 portions and each such portion will be subject to redemption as if such portion were a separate 2025A Bond.

Notice of Redemption. Notice of redemption will be mailed by first class mail, postage prepaid, not less than 20 nor more than 60 days before any redemption date, to the respective Owners of any 2025A Bonds designated for redemption at their addresses appearing on the Registration Books, and to the Securities Depositories and to one or more of the Information Services. Each notice of redemption will state the date of the notice, the redemption date, the place or places of redemption, whether less than all of the 2025A Bonds (or all 2025A Bonds of a single maturity) are to be redeemed, the CUSIP numbers and, if less than all of the 2025A Bonds of a maturity are to be redeemed, Bond numbers of the 2025A Bonds to be redeemed, the maturity or maturities of the 2025A Bonds to be redeemed and in the case of 2025A Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. In case of an optional redemption of 2025A Bonds as described under the subcaption "—Optional Redemption" above, notice of redemption may be given if moneys sufficient to pay the redemption price are on deposit with the Trustee or available for such purpose on the date that notice of redemption is given or if such notice expressly states that such redemption is conditional on receipt by the Trustee of sufficient moneys. A conditional notice of redemption may be rescinded in the event that there are insufficient moneys to redeem such 2025A Bonds. Each such notice will also state that on the redemption date there will become due and payable on each of said 2025A Bonds the redemption price thereof, and that from and after such redemption date interest thereon will cease to accrue, and will require that such 2025A Bonds be then surrendered. Neither the failure to receive any notice nor any defect therein will affect the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of 2025A Bonds will be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

Partial Redemption of Bonds. Upon surrender of any 2025A Bonds redeemed in part only, the Authority will execute and the Trustee will authenticate and deliver to the Owner thereof, at the expense of the Authority, a new 2025A Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the 2025A Bonds surrendered.

Effect of Notice of Redemption. Notice of redemption having been duly given described under the subcaption "—Notice of Redemption" above, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, the 2025A Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the 2025A Bonds (or portions thereof) so called for redemption will become due and payable, interest on the 2025A Bonds so called for redemption will cease to accrue, said 2025A Bonds (or portions thereof) will cease to be entitled to any benefit or security under the First Supplemental Indenture, and the Owners of said 2025A Bonds will have no rights in respect thereof except to receive payment of the redemption price thereof. All 2025A Bonds redeemed pursuant to the provisions of the First Supplemental Indenture will be cancelled by the Trustee upon surrender thereof and destroyed.

Book-Entry Only System

The 2025A Bonds are registered in the name of Cede & Co., as nominee of DTC. DTC will act as securities depository for the 2025A Bonds. Ownership interests in the 2025A Bonds may be purchased in book-entry form only. So long as DTC, or Cede & Co. as its nominee, is the registered owner of all 2025A Bonds, all payments on the 2025A Bonds will be made directly to DTC, and disbursement of such payments to the DTC Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of the Participants, as more fully described in Appendix F.

As long as Cede & Co. is the registered owner of the 2025A Bonds, references herein to the Owners of the 2025A Bonds will refer to Cede & Co. and not to the Beneficial Owners. Neither the Authority nor the City gives any assurance that DTC, DTC Participants nor others will distribute payments with respect to the 2025A Bonds or notices concerning the 2025A Bonds to the Beneficial Owners or that DTC will otherwise serve and act in the manner described in this Official Statement. See Appendix F for a further description of DTC and its book-entry system. The information presented therein is based solely on information provided by DTC.

SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS

Pledge of Base Rental Payments

Subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Base Rental Payments and any other amounts (including proceeds of the sale of the 2025A Bonds) held in the Base Rental Payment Fund, the Interest Fund, the Principal Fund, and the Redemption Fund have been pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms, the provisions of the Indenture and the Act. Such pledge constitutes a first lien on such assets.

All obligations of the Authority under the Indenture will be special obligations of the Authority, payable solely from Rental Payments and the other assets pledged therefor thereunder. Neither the faith and credit nor the taxing power of the Authority, the City or the State, or any political subdivision thereof, is pledged to the payment of the Bonds.

Under the Assignment Agreement, the Authority has assigned to the Trustee for the benefit of the 2025A Bond Owners substantially all of the Authority's right, title and interest in and to the Lease Agreement, including its right to receive the 2025 Base Rental Payments due under the Lease Agreement and to enforce any remedies in the event of a default by the City. The City will pay 2025 Base Rental Payments directly to the Trustee, as assignee of the Authority. See the caption "—Base Rental Payments."

The Trustee will establish and maintain separate funds designated the "Base Rental Payment Fund," the "Interest Fund," the "Principal Fund," the "Redemption Fund" and the "Net Insurance Proceeds Fund."

All Base Rental Payments will be paid directly by the City to the Trustee, and if received by the Authority at any time will be transferred by the Authority with the Trustee within one Business Day after the receipt thereof. All Base Rental Payments received by the Trustee will be deposited by the Trustee in the Base Rental Payment Fund.

The Trustee will transfer the amounts on deposit in the Base Rental Payment Fund, at the times and in the manner provided in the Indenture, to the following respective funds:

(i) Interest Fund. On the Business Day immediately preceding each Interest Payment Date, the Trustee will transfer from the Base Rental Payment Fund to the Interest Fund the amount, if any, necessary to cause the amount on deposit in the Interest Fund to be equal to the interest due on the Bonds on such Interest Payment Date.

(ii) Principal Fund. On the Business Day immediately preceding each November 1, the Trustee will transfer from the Base Rental Payment Fund to the Principal Fund the amount, if any, necessary to cause

the amount on deposit in the Principal Fund to be equal to the principal amount of the Bonds due on such November 1 either as a result of the maturity thereof or mandatory sinking fund redemption payments required to be made with respect thereto. Moneys in the Principal Fund will be used by the Trustee for the purpose of paying the principal of the Bonds when due and payable at their maturity dates or upon earlier mandatory sinking fund redemption.

(iii) Redemption Fund. The Trustee, on the redemption date specified in the Written Request of the City filed with the Trustee at the time that any prepaid Base Rental Payment is paid to the Trustee pursuant to the Lease Agreement, will deposit in the Redemption Fund that amount of moneys representing the portion of the Base Rental Payments designated as prepaid Base Rental Payments. Additionally, the Trustee will deposit in the Redemption Fund any amounts required to be deposited therein constituting Net Insurance Proceeds. Moneys in the Redemption Fund will be used by the Trustee for the purpose of paying the principal of and interest and premium, if any, on 2025A Bonds redeemed pursuant to the provisions of the Indenture and Additional Bonds redeemed pursuant to the corresponding provisions of the Supplemental Indenture pursuant to which such Additional Bonds are issued; provided, however, that moneys deposited in the Redemption Fund may also be used to purchase Outstanding Bonds in the manner provided in the Indenture. Purchases of Outstanding Bonds may be made by the Authority at public or private sale as and when and at such prices as the Authority may in its discretion determine, but only at prices (including brokerage or other expenses) not more than par plus accrued interest, plus, in the case of moneys set aside for an optional redemption or an extraordinary redemption, the premium applicable at the next following call date according to the premium schedule established pursuant to the Indenture, as applicable. Any accrued interest payable upon the purchase of Bonds may be paid from the amount reserved in the Interest Fund.

(iv) Application of Net Proceeds of Insurance or Condemnation. If the Property or any portion thereof shall be damaged or destroy, the City shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted the repair or replacement thereof, unless the City elects not to repair or replace the Property or the affected portion thereof in accordance with the Indenture.

The Net Insurance Proceeds (other than Net Insurance Proceeds of rental interruption insurance), including the proceeds of any self-insurance, received on account of any damage or destruction of the Property or a portion thereof shall as soon as possible be deposited with the Trustee and be held by the Trustee in the Net Insurance Proceeds Fund and made available for and, to the extent necessary, shall be applied to the cost of repair or replacement of the Property or the affected portion thereof upon receipt of a Written Request of the City, together with invoices therefor. Each such Written Request of the City shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. Pending such application, such proceeds may be invested by the Trustee as directed by the City in Permitted Investments that mature not later than such times moneys are expected to be needed to pay such costs of repair or replacement.

Notwithstanding the foregoing, the City shall, within 60 days of the occurrence of the event of damage or destruction, notify the Trustee in writing as to whether the City intends to replace or repair the Property or the portions of the Property which were damaged or destroyed. If the City does intend to replace or repair the Property or portions thereof, the City shall deposit with the Trustee the full amount of any insurance deductible to be credited to the Net Insurance Proceeds Fund.

In the event of any damage to or destruction of the Property caused by one of the perils covered by the insurance required by the Lease Agreement which would result in an abatement of rental payments or any portion thereof under the Lease Agreement, then the City shall apply the Net Insurance Proceeds, together with other legally available funds that the City elects to contribute, to the repair, reconstruction or replacement of the damaged or destroyed portions of the Property; provided, however, that the City shall not be required to repair or replace any portion of the Property under the Indenture if such Net Insurance Proceeds, together with any other amounts held under the Indenture and any other legally available funds made available by the City at its election, are sufficient to prepay: (i) all of the Outstanding Bonds; or (ii) a portion of the Outstanding Bonds such that the resulting Base Rental Payments due under the Lease Agreement in any Rental Period following such partial prepayment are sufficient to pay in such Rental Period the principal of and interest on all Bonds to

remain Outstanding immediately after such partial redemption. If the City is not required to replace or repair the Property, or the affected portion thereof, or to use such amounts to redeem Bonds, in each case as set forth in the Indenture, then such proceeds shall, if there is first delivered to the Trustee a Written Certificate of the City to the effect that the annual fair rental value of the Property after such damage or destruction, and after any repairs or replacements made as a result of such damage or destruction, is at least equal to 100% of the maximum amount of Base Rental Payments becoming due under the Lease Agreement in the then current Rental Period or any subsequent Rental Period and the fair replacement value of the Property after such damage or destruction is at least equal to the principal amount of the Outstanding Bonds, be paid to the City to be used for any lawful purpose.

The proceeds of any award in eminent domain received in respect to the Property shall be deposited by the Trustee in the Redemption Fund and applied to the redemption of Bonds pursuant to the Indenture and the corresponding provisions of any Supplemental Indenture pursuant to which Additional Bonds are issued.

Notwithstanding anything in the Indenture or in the 2025A Bonds, the Authority is not required to advance any moneys derived from any source other than the 2025 Base Rental Payments and other assets pledged under the Indenture for any of the purposes of the Indenture, whether for the payment of the principal of or interest on the 2025A Bonds or for any other purpose of the Indenture. Nevertheless, the Authority may, but is not required to, advance for any of the purposes of the Indenture any funds of the Authority which may be made available to it for such purposes.

THE 2025A BONDS ARE SPECIAL OBLIGATIONS OF THE AUTHORITY, PAYABLE SOLELY FROM THE 2025 BASE RENTAL PAYMENTS AND THE OTHER ASSETS PLEDGED THEREFOR UNDER THE INDENTURE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE AUTHORITY, THE CITY OR THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE 2025A BONDS. THE AUTHORITY HAS NO TAXING POWER.

Additional Bonds

The Authority may at any time issue one or more Series of Additional Bonds (in addition to the 2025A Bonds) payable from Base Rental Payments as provided in the Indenture on a parity with all other Bonds theretofore issued thereunder, but only subject to the following conditions, which have been made conditions precedent to the issuance of such Additional Bonds:

(a) The issuance of such Additional Bonds has been authorized under and pursuant to the Indenture and has been provided for by a Supplemental Indenture which specifies the following:

(1) The application of the proceeds of the sale of such Additional Bonds;

(2) The principal amount and designation of such Series of Additional Bonds and the denomination or denominations of the Additional Bonds;

(3) The date, the maturity date or dates, the interest payment dates and the dates on which mandatory sinking fund redemptions, if any, are to be made for such Additional Bonds; provided, however, that: (i) the serial Bonds of such Series of Additional Bonds will be payable as to principal annually on November 1 of each year in which principal falls due, and the term Bonds of such Series of Additional Bonds will have annual mandatory sinking fund redemptions on November 1; (ii) the Additional Bonds will be payable as to interest semiannually on May 1 and November 1 of each year, except that the first installment of interest may be payable on either May 1 or November 1 and will be for a period of not longer than twelve months and the interest will be payable thereafter semiannually on May 1 and November 1; (iii) all Additional Bonds of a Series of like maturity will be identical in all respects, except as to number or denomination; and (iv) serial maturities of serial Bonds or mandatory sinking fund redemptions for term Bonds, or any combination thereof, will be established to provide for the redemption or payment of such Additional Bonds on or before their respective maturity dates;

(4) The redemption premiums and terms, if any, for such Additional Bonds;

(5) The form of such Additional Bonds; and

(6) Such other provisions that are appropriate or necessary and are not inconsistent with the provisions of the Indenture;

(b) The Authority is in compliance with all agreements, conditions, covenants and terms contained in the Indenture, in the Lease Agreement and in the Ground Lease required to be observed or performed by it;

(c) The City is in compliance with all agreements, conditions, covenants and terms contained in the Indenture, in the Lease Agreement and in the Ground Lease required to be observed or performed by it;

(d) The Ground Lease has been amended, to the extent necessary, and the Lease Agreement has been amended so as to increase the Base Rental Payments payable by the City thereunder by an aggregate amount equal to the principal of and interest on such Additional Bonds, payable at such times and in such manner as may be necessary to provide for the payment of the principal of and interest on such Additional Bonds; provided, however, that no such amendment will be made such that the sum of Base Rental Payments, including any increase in the Base Rental Payments as a result of such amendment, plus Additional Rental Payments, in any Rental Period is in excess of the annual fair rental value of the Property after taking into account the use of the proceeds of any Additional Bonds issued in connection therewith (evidence of the satisfaction of such condition will be made by a Written Certificate of the City); and

(e) So long as the Policy is in full force and effect and the Insurer has not defaulted on its obligations thereunder, the written consent of the Insurer has been received prior to the issuance of Additional Bonds, which consent may not be unreasonably withheld or delayed; provided that, notwithstanding the foregoing, the written consent of the Insurer is not required to issue Additional Bonds the proceeds of which are applied to effect a full refunding of the 2025A Bonds.

Nothing contained in the Indenture limits the issuance of any bonds or other obligations payable from Base Rental Payments if, after the issuance and delivery of such bonds or other obligations, none of the Bonds theretofore issued thereunder will be Outstanding.

Notwithstanding satisfaction of the other conditions to the issuance of Additional Bonds set forth in the Indenture, Additional Bonds may not be issued if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists, unless such default will be cured upon such issuance.

Base Rental Payments

General. In consideration of the lease and leaseback by the Authority of the Property and in consideration of the issuance of the 2025A Bonds by the Authority for the purpose of financing the 2025 Project, and subject to the provisions of the Lease Agreement relating to condemnation or damage (as described under the caption "—Abatement," the City has agreed to pay to the Authority, its successors and assigns, as rental for the use and occupancy of the Property during each Fiscal Year, the Base Rental Payments (denominated into components of principal and interest) for the Property in the respective amounts specified in the Lease Agreement, to be due and payable each respective Base Rental Payment Date specified in the Lease Agreement. Rental Payments, including Base Rental Payments, will be paid by the City to the Authority for and in consideration of the right to use and occupy the Lease and in consideration of the continued right to the quiet use and enjoyment thereof during each Rental Period for which such Rental Payments are to be paid.

Fair Rental Value. The City and the Authority have agreed and determined that the annual fair rental value of the Property is not less than the maximum annual Rental Payments due in any year. In making such determination of fair rental value, consideration has been given to the uses and purposes that may be served by the Property and the benefits therefrom which will accrue to the City and the general public. Payments of the Rental Payments for the Property during each Rental Period will constitute the total rental for said Rental Period.

Covenant to Budget and Appropriate. The City has covenanted to take such action as may be necessary to include all Rental Payments due under the Lease Agreement as a separate line item in its annual budgets and to make necessary annual appropriations for all such Rental Payments. The City will deliver to the Authority and the Trustee a Certificate of the City stating that its final annual budget includes all Base Rental Payments due in such Fiscal Year within ten days after the filing or adoption thereof. The covenants on the part of the City contained in the Lease Agreement will be deemed to be and will be construed to be duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in the Lease Agreement agreed to be carried out and performed by the City.

Limited Obligation. The obligation of the City to pay Base Rental Payments and other payments under the Lease Agreement constitutes a current expense of the City and will not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the City, nor does anything contained in the Lease Agreement constitute a pledge of the general tax revenues, funds or moneys of the City. Base Rental Payments due under the Lease Agreement will be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Base Rental Payments or other payments due thereunder as consideration for use of the Property during the Fiscal Year for which such funds were budgeted and appropriated or otherwise made legally available for such purpose. The Lease Agreement will not create an immediate indebtedness for any aggregate payments which may become due thereunder. The City has not pledged the full faith and credit of the City, the State or any agency or department thereof to the payment of the Base Rental Payments or any other payments due under the Lease Agreement, the 2025A Bonds or the interest thereon.

THE OBLIGATION OF THE CITY TO MAKE THE BASE RENTAL PAYMENTS DOES NOT CONSTITUTE A DEBT OF THE CITY OR OF THE STATE, OR OF ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION, AND DOES NOT CONSTITUTE AN OBLIGATION FOR WHICH THE CITY OR THE STATE IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY OR THE STATE HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

Additional Rental Payments

In addition to the Base Rental Payments, the City will pay when due the following items of Additional Rental Payments:

(a) all taxes and assessments of any type or nature charged to the Authority or the City or affecting the Property or the respective interests or estates of the Authority or the City therein;

(b) all reasonable administrative costs of the Authority relating to the Property including, but without limiting the generality of the foregoing, salaries, wages, fees and expenses, compensation and indemnification of the Trustee payable by the Authority under the Indenture, fees of auditors, accountants, attorneys or engineers, and all other necessary and reasonable administrative costs of the Authority or charges required to be paid by it in order to maintain its existence or to comply with the terms of the Indenture or the Lease Agreement or to defend the Authority and its members, officers, agents and employees;

(c) insurance premiums for all insurance required pursuant to the Lease Agreement;

(d) any amounts with respect to the Lease Agreement or the Bonds required to be rebated to the federal government in accordance with Section 148(f) of the Code; and

(e) all other payments required to be paid by the City under the provisions of the Lease Agreement or the Indenture, interest on Insurer Advances related to the Policy and any other amounts due to the Insurer not payable as a Base Rental Payment in accordance with the Indenture and the Lease Agreement.

Amounts constituting Additional Rental Payments payable under the Lease Agreement will be paid by the City directly to the person or persons to whom such amounts are payable. The City will pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 60 days after notice in writing from the Trustee to the City stating the amount of Additional Rental Payments then due and payable and the purpose thereof.

Abatement

Except as otherwise specifically provided in the Lease Agreement, during any period in which, by reason of material damage to, or destruction or condemnation of, the Property, or any defect in title to the Property, there is substantial interference with the City's right to use and occupy any portion of the Property, Rental Payments will be abated proportionately, and the City waives the benefits of Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate the Lease Agreement by virtue of any such interference, and the Lease Agreement will continue in full force and effect. The amount of such abatement will be agreed upon by the City and the Authority; provided, however, that the Rental Payments due for any Rental Period may not exceed the annual fair rental value of that portion of the Property available for use and occupancy by the City during such Rental Period. The City and the Authority will calculate such abatement and provide the Trustee with a certificate setting forth such calculation and the basis therefor. Such abatement will continue for the period commencing with the date of interference resulting from such damage, destruction, condemnation or title defect and, with respect to damage to or destruction of the Property, ending with the substantial completion of the work of repair or replacement of the Property, or the portion thereof so damaged or destroyed; and the term of the Lease Agreement will be extended as provided therein, except that the term will in no event be extended beyond the Maximum Lease Term.

Notwithstanding the foregoing, to the extent that moneys are available for the payment of Rental Payments in any of the funds and accounts established under the Indenture, including but not limited to the Rental Payments will not be abated as provided above but, rather, will be payable by the City as a special obligation payable solely from said funds and accounts.

See the caption "RISK FACTORS—Abatement."

Substitution or Release of the Property

The City has the right to substitute alternate real property for any portion of the Property or to release a portion of the Property from the Lease Agreement. All costs and expenses incurred in connection with such substitution or release will be borne by the City. Notwithstanding any substitution or release of the Property pursuant to the Lease Agreement, there will be no reduction in or abatement of the Base Rental Payments due from the City thereunder as a result of such substitution or release. Any such substitution or release of any portion of the Property is subject to the following specific conditions, which have been made conditions precedent to such substitution or release:

(a) The City has delivered a certificate to the Trustee and the Insurer setting forth its findings that the Property, as constituted after such substitution or release: (i) has an annual fair rental value at least equal to the maximum Base Rental Payments payable by the City in any Rental Period; and (ii) has a useful life in excess of the final maturity of any Outstanding Bonds;

(b) the City has obtained or caused to be obtained a CLTA or ALTA title insurance policy or policies with respect to the Property (as such term will be defined after such substitution or addition) that when taken together with other title insurance policies covering the Property, will be in the amount at least equal to the aggregate principal amount of any Outstanding Bonds of the type and with the endorsements described in the Lease Agreement; and

(c) the City, the Authority and the Trustee shall have executed, and the City shall have caused to be recorded with the San Bernardino County Recorder, any document necessary to reconvey to the City the

portion of the Property being released and to include any substituted real property in the description of the Property contained in the Lease Agreement and in the Ground Lease.

Action on Default

Should the City default under the Lease Agreement, the Trustee, as assignee of the Authority under the Lease Agreement, may terminate the Lease Agreement and recover certain damages from the City, or may retain the Lease Agreement and hold the City liable for all Base Rental Payments thereunder on an annual basis, and will have the right to re-enter and re-let the Property.

Base Rental Payments may not be accelerated upon a default under the Lease Agreement. See the caption "RISK FACTORS—No Acceleration of Base Rental."

For purposes of certain actions of 2025A Bond Owners under the Indenture and Lease Agreement, such as certain consents and amendments and the direction of remedies following default, such 2025A Bond Owners do not act alone and may not control such matters to the extent that such matters are not supported by the requisite number of the Owners of all Bonds and Additional Bonds, if any.

For a detailed description of events of default and permitted remedies of the Trustee (as assignee of the Authority) contained in the Lease Agreement and the Indenture, see Appendix B.

No Reserve Fund

A Reserve Fund has not been established for the 2025A Bonds.

Insurance

Commercial General Liability and Property Damage Insurance. The City will maintain or cause to be maintained, throughout the term of the Lease Agreement, a standard commercial general liability insurance policy or policies in protection of the City, the Authority and their respective members, officers, agents and employees. Said policy or policies must provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the use or ownership of the Property. Said policy or policies must provide coverage in the minimum liability limits of $1,000,000 for personal injury or death of each person and $3,000,000 for personal injury or deaths of two or more persons in a single accident or event, and in a minimum amount of $500,000 for damage to property (subject to a deductible clause of not to exceed $100,000) resulting from a single accident or event. Such commercial general liability and property damage insurance may, however, be in the form of a single limit policy in the amount of $3,000,000 covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, provided that such self-insurance complies with the provisions of the Lease Agreement. The Net Insurance Proceeds of such liability insurance will be applied toward extinguishment or satisfaction of the liability with respect to which the Net Insurance Proceeds of such insurance have been paid.

The City will also maintain or cause to be maintained, fire, lightning and special extended coverage insurance (which includes coverage for vandalism and malicious mischief, but need not include coverage for earthquake damage) on all improvements constituting any part of the Property in an amount equal to the greater of 100% of the replacement cost of such improvements or 100% of the outstanding principal amount of the Bonds. The City has an insurance policy which provides replacement cost coverage. All casualty insurance required to be maintained under the Lease Agreement may be subject to a deductible in an amount not to exceed $500,000. The City's obligations to maintain casualty insurance may be satisfied by self-insurance, provided that such self-insurance complies with the provisions of the Lease Agreement.

Workers' Compensation Insurance. The City will maintain or cause to be maintained, throughout the term of the Lease Agreement, workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the California

Labor Code, or any act enacted as an amendment or supplement thereto or in lieu thereof, such workers' compensation insurance to cover all persons employed by the City in connection with the Property and to cover full liability for compensation under any such act; provided, however, that the City's obligations to maintain workers' compensation insurance may be satisfied by self-insurance, provided that such self-insurance complies with the provisions of the Lease Agreement.

Rental Interruption Insurance. The City will maintain rental interruption insurance to cover the Authority's loss, total or partial, of Base Rental Payments resulting from the loss, total or partial, of the use of any part of the Property as a result of any of the hazards required to be covered by casualty insurance (as described in the second paragraph under the subcaption "—Commercial General Liability and Property Damage Insurance" above) in an amount sufficient at all times to pay an amount not less than the product of two times the maximum amount of Base Rental Payments scheduled to be paid during any Rental Period. The City is not permitted to self-insure its obligation to maintain rental interruption insurance.

The City will maintain property insurance in an amount sufficient to cover the loss or damage to any tenant improvements or betterments on the Property.

The insurance required by the Lease Agreement must be provided by reputable insurance companies with claims paying abilities determined, in the reasonable opinion of a professionally certified risk manager or an independent insurance consultant, to be adequate for the purposes thereof.

BOND INSURANCE

The information under this caption has been prepared by the Insurer for inclusion in this Official Statement. None of the Authority, the City or the Underwriter have reviewed this information, nor do the Authority, the City or the Underwriter make any representation with respect to the accuracy or completeness thereof. The following information is not a complete summary of the terms of the Policy and reference is made to Appendix G for a specimen of the Policy.

Bond Insurance Policy

THE CITY

General

The City is located in southwestern San Bernardino County (the "County"), approximately 35 miles east of Los Angeles near the intersection of Interstates 10 and 15 in the area of southern California known as the "Inland Empire." The City covers approximately 50 square miles and is adjacent to the cities of Upland, Montclair, Chino and Rancho Cucamonga. The City had a population of approximately 181,224 as of January 1, 2024. The City is one of Southern California's fastest growing cities over the last 25 years and is poised to be the largest city in the County and the second-largest city in the Inland Empire. The City was incorporated in 1891 and is a general law city operating under a council/manager form of government. Further information concerning the City is set forth below and in Appendix A. The City provides a full range of services, including police and fire protection, construction and maintenance of streets, parks, water and sewer lines, traffic signals and other infrastructure, water, sewer and integrated waste services, recreation and community services and arts, cultural and social programs. The City also operates a municipal golf course, the Convention Center and a sports and entertainment arena (the Toyota Arena, which opened in 2008).

Employees

As of June 30, 2024, the City had approximately 1,517 full-time equivalent employees, of which 139 worked for the City's Municipal Utilities Company (serving both the Water System and the City's municipal wastewater system) and 1,378 worked in general government services, including finance. City employees are represented by seven labor associations which collectively represent approximately 1,331 employees. Relations between the City and its labor associations are governed by memoranda of understanding (each, an "MOU") that expire on June 30, 2027, with the exception of the American Federation of State, County and Municipal

Employees Local 3061 ("AFSCME"), which has an MOU which expires on June 30, 2026, and the Association of Ontario Management Employees ("AOME"), which has an MOU which expires on June 30, 2025. A total of approximately 186 management and confidential employees are exempt from collective bargaining. Salaries for exempt employees are set by the City Council. The City has never experienced a strike, slowdown or work stoppage.

Government and Administration

The City operates under a council-manager form of government. Councilmembers and the Mayor are currently elected at large for four-year alternating terms. The City Treasurer and City Clerk are also elected by City voters. Beginning with the November 5, 2024 Statewide election, two Councilmembers were elected by district, and the other two Councilmembers will be elected by district at the November 3, 2026 Statewide election; the Mayor will continue to be elected Citywide.

The City Manager, appointed by the City Council, serves as the City's chief administrative officer and is responsible for overseeing the daily operations of City departments and efficient management of all City business. Functions of the City Manager's Office include coordination of the implementation of City Council policies and programs; providing overall direction to the departments that administer City programs and services; coordinating intergovernmental relations and legislative advocacy; and administration of the City's communications, media relations and public information programs.

Scott Ochoa has served as the City Manager since October 2017. In this capacity he leads the daily operation of City government. Prior to coming to the City, Mr. Ochoa served as the City Manager of Glendale, California and Monrovia, California. Mr. Ochoa has a Bachelor's degree from Claremont McKenna College and a Masters in Public Administration degree from the University of Southern California.

Other key personnel responsible for management of the City include the City Treasurer and the Executive Director of Finance. In addition, the City Attorney provides legal services to the City and the Authority.

James R. Milhiser has served as the elected City Treasurer since 1998. Mr. Milhiser has over 40 years of experience in financial services. He has a Bachelor's degree from California State Polytechnic University, Pomona, and successfully completed a three year program at Pacific Coast Banking School, held at the University of Washington.

Armen Harkalyan serves as the Executive Director of Finance of the City. Mr. Harkalyan was appointed Executive Director of Finance in January 2019. Prior to coming to the City, Mr. Harkalyan served as the Deputy Director of Finance and Revenue Manager for the City of Glendale, California. Mr. Harkalyan has a Bachelor's degree from the California State University, Los Angeles, and a Master's degree from the University of Phoenix.

Ruben Duran has been City Attorney since 2020. Mr. Duran has been an attorney for more than 25 years in private practice specializing in municipal law. He has a Bachelor's degree from the University of California, San Diego and a Juris Doctorate degree from University of California, Hastings.

Ontario International Airport

The City is home to the Ontario International Airport ("ONT"). ONT is served by approximately 13 commercial carriers with connections to approximately 30 domestic and international destinations. It is also a major cargo airport given the City's proximity to the large logistics and distribution hub in the Inland Empire.

ONT was developed prior to World War II and was owned by the federal government until 1967, when it was acquired by a joint powers authority the members of which were the City and the City of Los Angeles Department of Airports ("LAWA"). LAWA operated ONT on behalf of the joint powers authority, eventually acquiring ONT outright in 1985.

In 2016, the City and the Ontario International Airport Authority ("OIAA"), a joint powers authority the members of which are the City and the County, acquired ONT from LAWA and assumed operation and management of ONT. The City paid a portion of the purchase price of ONT to LAWA as well as salaries and legal, consulting and administrative fees associated with the negotiations leading up to the acquisition of ONT from LAWA. The payments made by the City for these purposes totaled $42,373,148 as of June 30, 2019, which amount has been written off by the City and recorded as a capital contribution by OIAA.

The City and OIAA have entered into a number of agreements related to the provision of law enforcement, fire protection, information technology and other services by the City for the benefit of ONT. Currently, approximately 80 police and other public safety officers provide law enforcement and fire protection services at ONT. The City's charges to ONT for such services are intended to recoup the City's associated expenses in providing such services.

CITY FINANCIAL INFORMATION

Accounting and Financial Reporting

The City maintains its accounting records in accordance with Generally Accepted Accounting Principles ("GAAP") and the standards established by the Governmental Accounting Standards Board ("GASB"). On a quarterly basis, a report is prepared for the City Council and City staff which reviews fiscal performance to date against the budget. Combined financial statements of the City and its component units are produced following the close of each Fiscal Year.

The City Council employs an independent certified public accountant who examines at least annually the financial statements of the City in accordance with generally accepted auditing standards, including tests of the accounting records and other auditing procedures as such accountant considers necessary. As soon as practicable after the end of the Fiscal Year, a final audit and report is submitted by the independent certified public accountant to the City Council.

The accounts of the City are organized on the basis of funds and account groups, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund equity, revenues and expenditures, or expenses, as appropriate. Government resources are allocated to and accounted for in individual funds based upon the purposes for which they are to be spent and the means by which spending activities are controlled.

The City's government-wide financial statements are reported using the economic resource measurement focus and the accrual basis of accounting, under which revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of the related cash flows.

The City's governmental fund (including the General Fund) financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting, under which revenues are recognized as soon as they are both measurable and available (i.e. collectible within the current period or soon enough thereafter to pay liabilities of the current period), and expenditures are recorded when a liability is incurred.

The General Fund is the general operating fund of the City. It is used to account for all financial resources except those that are required to be accounted for in another fund. Base Rental Payments will be paid from any legally available funds of the City. Tables 1 through 4 below set forth certain historical and current Fiscal Year budget information for the General Fund. Information on the remaining governmental funds of the City as of June 30, 2024 is set forth in Appendix C.

General Economic Condition and Outlook of the City

Fiscal Policies.

The City has adopted several policies which are designed to ensure the prudent and effective management of City operations, including a Fund Balance and Reserve Policy, Debt Management Policy, Capital Asset Management Policy, Economic Uncertainty Reserve, Strategic Plan, Cost Allocation Plan and Investment Policy. Further information about these policies is set forth below.

Fund Balance and Reserve Policy. The City Council adopted a Fund Balance and Reserve Policy on June 17, 2024, that forms the overall framework within which the City's General Fund operating budget is formulated. The Fund Balance and Reserve Policy establishes the procedures for reporting unrestricted fund balances in the General Fund financial statements. Certain commitments and assignments of the fund balance will help ensure that there will be adequate financial resources to protect the City against unforeseen circumstances and events such as revenue shortfalls and unanticipated expenditures. The policy also authorizes and directs the Financial Services Agency to prepare financial reports which accurately categorize fund balance in accordance with GASB Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions.

Fund balance is essentially the difference between the assets, deferred outflows and deferred inflows of resources and liabilities reported in a governmental fund. There are five separate components of fund balance, each of which identifies the extent to which the City is bound to honor constraints on the specific purposes for which amounts can be spent:

- Nonspendable fund balance (inherently nonspendable, i.e., inventory)
- Restricted fund balance (externally enforceable limitations on use, i.e., restricted by law or terms of grant)
- Committed fund balance (self-imposed limitations on use)
- Assigned fund balance (limitation resulting from intended use)
- Unassigned fund balance (residual net resources)

The City Council, as the City's highest level of decision-making authority, may commit fund balances for specific purposes pursuant to constraints imposed by the adoption of a resolution. These committed amounts cannot be used for any other purpose unless the City Council removes or changes the specified use through the same type of formal action that was originally taken to establish the commitment. City Council action to commit fund balances must occur within the fiscal reporting period; however, the amount can be determined subsequently.

Amounts that are constrained by the City's intent to be used for specific purposes, but are neither restricted nor committed, are reported as assigned fund balances. Pursuant to the City budget guidelines and processes that are included in the annual operating budget documents, the City Council has delegated the authority to assign amounts to be used for specific purposes to the City Manager and/or the Executive Director of Finance for the purpose of reporting these amounts on the annual financial statements and the annual and quarterly budgetary reports.

Included in the Fund Balance and Reserve Policy is the 20% Stabilization Plan. This plan reflects the goal of the City Council to achieve a minimum of 20% of annual General Fund appropriations as an assigned fund balance in the General Fund. Based on the current year appropriations, the amount assigned to the 20% Stabilization Plan will either increase or decrease accordingly. This assigned balance is intended to be used for specific and defined emergency services and to minimize the potential for disruption of municipal services to citizens. However, included as part of the City's General Fund balancing strategies for Fiscal Year 2021-22 was the reduction of the General Fund stabilization assignment from 18% (the previous target amount) to 15%. As of June 30, 2024, the City's General Fund had an assigned fund balance for the stabilization arrangement of $73.35 million, which achieved the 20% goal for Fiscal Year 2023-24. Currently, the assigned fund balance is at approximately 20% of annual General Fund appropriations.

The General Fund is the only City fund that can report a positive unassigned fund balance; this is the residual positive net resources in excess of what can properly be classified in one of the other four categories.

Economic Uncertainty Reserve. In Fiscal Year 2019-20, the City established an Economic Uncertainty Reserve with a target amount of $15,000,000. The reserve was initially funded with a deposit of $15,000,000 representing moneys transferred from the City's other post-employment benefits fund. An additional $4,500,000 was added in Fiscal Year 2021-22 and $500,000 in Fiscal Year 2022-23 to bring the Economic Uncertainty Reserve to the current target of $20,000,000. The Economic Uncertainty Reserve was established to smooth out revenue and expenditure contingencies. As of June 30, 2024, the balance in the Economic Uncertainty Reserve was $20,000,000.

Debt Management Policy. The City has adopted a Debt Management Policy in accordance with California Government Code Section 8855 to establish guidelines and parameters for the effective governance, management and administration of debt issued by the City and its related entities and to ensure compliance with legislation, statutes and laws that place regulations on local agency debt. The following elements have been incorporated into this policy:

- The purposes for which debt may be incurred.
- The types of debt that may be issued.
- Assessment of debt limits generally and for General Fund-supported debt.
- Debt structuring and issuance practices.
- Debt management practices, including the investment of proceeds and post-issuance compliance.

Capital Asset Management Policy. The City's Capital Asset Management Policy is intended to: (1) describe the policies and procedures utilized in the City's capital asset management system; (2) establish guidelines for accounting and depreciating the City's capital assets; and (3) list and describe suitable capital assets and their estimated useful life.

The primary goals of the Capital Asset Management Policy are: (i) to ensure that the City's capital assets are properly accounted for; (ii) to establish a consistent and cost-effective method for accounting for the City's capital assets; and (iii) to assure compliance with GAAP.

Action Plan – Five Year Forecast. In the wake of the 2008 financial crisis, the City developed a Five-Year Budget Action Plan (the "Action Plan"), which was designed to minimize the negative impacts of the global economy on the City's fiscal health so that the City could continue to preserve public safety levels, meet community and cultural needs and deliver capital projects.

The Action Plan included budget cuts in non-essential expenditures, partnering with vendors and suppliers to limit cost increases, freezing vacant positions, transferring City staff from General Fund-supported positions to vacant positions with funding sources and negotiating with employee groups to forgo contracted raises and merit increases. Implementation of the Action Plan enabled the City to manage its finances after the 2008 financial crisis without layoffs and furloughs and by using accumulated reserves to balance its budgets.

Although the Action Plan covered a five-year period that ended in 2015, the City has continued to utilize the tools that it developed during the Action Plan (now referred to as a Five-Year Forecast) to assist in managing the City's finances during future economic recessions.

Strategic Plan. The City's Strategic Plan, which serves as a framework for developing the City's budget, includes the following goals established by the City Council:

- Invest in the Growth and Evolution of the City's Economy.
- Maintain the Current High Level of Public Safety.
- Operate in a Businesslike Manner.
- Pursue City's Goals and Objectives by Working with Other Governmental Agencies.
- Focus Resources in Ontario's Commercial and Residential Neighborhoods.

- Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities).
- Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities.
- Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community in Ontario Ranch.

The City is also developing a Fiber Optic Master Plan to guide the design, construction and operation of a fiber optic backbone infrastructure. The fiber optic network is intended to create cost-effective, secure, fast and reliable communications capabilities throughout the City. The first customer was connected in 2015 and there are currently more than 1,400 residential users and 250 commercial customers. The City continues increase and improve its wide fiber and wireless solutions.

Cost Allocation Plan. The City's Cost Allocation Plan is a basic information tool in a number of financial and budgetary decision-making situations. The Cost Allocation Plan can be used to identify indirect costs incurred by the City in administering and providing support services to special projects, funds and contracts. By identifying total project costs, the Cost Allocation Plan can be used to determine the level of support and to reimburse the General Fund for the indirect costs incurred.

An indirect cost rate is a means for determining fairly and conveniently, within the boundaries of sound administrative principles, what proportion of indirect costs each project or activity should bear. It is the ratio of total indirect expenses to a direct cost base. By applying the indirect cost rate to any particular cost objective, the total cost of the project or activity can be calculated. Indirect costs are categorized as Departmental Overhead and General & Administrative ("G&A") expenses. Departmental Overhead is allocated on the basis of direct personnel costs, while G&A is allocated based on the total project or activity costs (excluding G&A).

The Cost Allocation Plan is utilized in charging the City's utility funds, including water, sewer and integrated waste, for the costs of General Fund administrative activities that benefit such utility funds. The Cost Allocation Plan is updated on an annual basis.

Summary of General Fund Results and Budgets. As of June 30, 2024, the General Fund had a year-end surplus (revenues in excess of expenditures) of approximately $9,940,603 million (inclusive of interfund transfers), which was significantly more than the year-end deficit of $3.8 million that was projected in the Fiscal Year 2023-24 General Fund budget.

For Fiscal Year 2024-25, the adopted General Fund operating budget projects revenues of $428.8 million, which is approximately $7.9 million above audited Fiscal Year 2023-24 revenues. The adopted Fiscal Year 2024-25 General Fund operating budget projects expenditures of $427.4 million, which is approximately $16.4 million (3.99%) above audited Fiscal Year 2023-24 expenditures.

Based on current information to date, the City expects actual Fiscal Year 2024-25 General Fund revenues to come in at approximately $433.6 million, or $4.7 million (1.1%) higher than budgeted, and actual Fiscal Year 2024-25 General Fund expenditures to come in at approximately $433.9 million, or $6.4 million (1.5%) higher than budgeted. The increase in General Fund expenditures reflects approximately $1.0 million in Transfers Out, which included allocation of the significant budget surplus in Fiscal Year 2023-24. In the first quarter of Fiscal Year 2024-25, there was no surplus funds allocated for additional funding of programs.

See the caption "—Budget Procedure, Current Budget and Historical Budget Information" for additional information relating to the adopted budget for Fiscal Year 2024-25.

Budget Procedure, Current Budget and Historical Budget Information

Budget Timeline. The City's Fiscal Year 2024-25 budget was approved on June 17, 2024, and the City's Fiscal Year 2025-26 budget is scheduled to be approved on June 18, 2025. The budget includes all

funding sources of the City, including the General Fund and the Ontario Housing Authority. The City's budget process is described below.

The Ontario Municipal Code requires that the City Manager present the annual operating budget to the Mayor and City Council for approval. The City's Financial Services Agency (i.e., department), under the direction of the Executive Director of Finance, is responsible for compiling the estimated revenues and appropriations for the City Manager. Prior to the beginning of each Fiscal Year, the Mayor and City Council adopts the Annual Operating Budget at a public budget workshop.

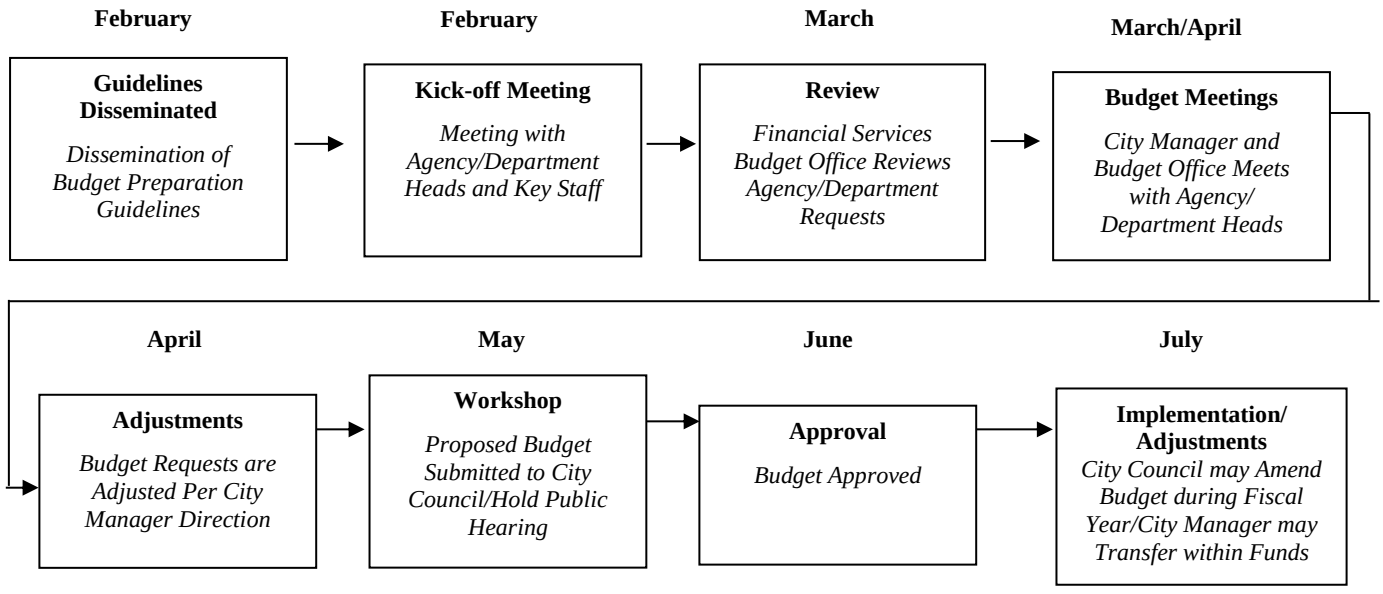
The development of the Annual Operating Budget begins in February with the dissemination of budget preparation guidelines, including policies and procedures to ensure that the preparation of the budget conforms to fiscal policies and guidelines established by the Mayor and City Council. Following the distribution of the budget development guidelines, a budget "kick-off' meeting is held with agency/department heads and other key City staff members to review the budget development guidelines.

Before department budget requests are submitted to the City Manager, the Financial Services Agency's Budget Office reviews and analyzes all agency/department budget requests. This review includes a comparative analysis of historical and current expenditure levels. The City Manager and Budget Office staff then hold budget meetings with each agency/department head to discuss the budget requests and obtain additional information to assist in the assessment of the requests. Following the meetings, the Budget Office adjusts line item requests in accordance with the City Manager's direction. Finally, the budget is presented to the Mayor and City Council for consideration and approval at a public budget workshop.

The City Council can make amendments to an adopted budget at any time during a Fiscal Year. Quarterly budget update reports include appropriation adjustments and revised revenue projections as needed. The City Manager may authorize budget transfers between line items, programs and agencies within a fund as long as the total budget has not exceeded the amount approved by City Council. Budgetary changes between funds require City Council approval.

A summary of the actions taken during the budgetary process is set forth below:

CITY OF ONTARIO
BUDGET PROCESS



Source: City.

Set forth in Table 1 are recent General Fund budgets and results of the City, including transfers in and out. During the course of each Fiscal Year, the budget is amended and revised as necessary by the City Council.

TABLE 1
CITY OF ONTARIO
GENERAL FUND BUDGETS AND RESULTS

	Fiscal Year 2021-22 Audited Results	Fiscal Year 2022-23 Adopted Budget	Fiscal Year 2022-23 Amended Budget	Fiscal Year 2022-23 Audited Results	Fiscal Year 2023-24 Adopted Budget	Fiscal Year 2023-24 Amended Budget	Fiscal Year 2023-24 Audited Results	Fiscal Year 2024-25 Adopted Budget	Fiscal Year 2024-25 Amended Budget
Revenues									
Property Taxes	$ 55,463,804	$ 58,460,000	$ 58,669,000	$ 63,349,812	$ 62,219,000	$ 70,584,000	$ 69,404,912	$ 74,525,000	$ 74,525,000
Property Taxes In Lieu	23,564,478	24,707,000	26,650,000	26,634,620	27,191,000	29,549,314	29,560,538	31,725,000	31,725,000
Sales Tax	129,332,341	109,900,000	144,400,000	140,501,064	226,857,000	187,142,000	184,307,995	194,375,000	194,375,000
Franchise Taxes	3,561,004	3,000,000	4,000,000	4,337,193	3,555,000	4,000,000	4,456,617	4,250,000	4,250,000
Transient Occupancy Tax	16,400,754	16,500,000	16,500,000	16,964,564	16,500,000	16,500,000	16,625,996	17,000,000	17,000,000
Business License Tax	8,856,928	8,763,000	8,763,000	9,729,862	8,914,000	9,264,000	10,902,568	10,150,000	10,150,000
Other Taxes	5,997,517	4,500,000	5,500,000	5,572,064	5,000,000	5,800,000	5,883,421	5,500,000	5,500,000
Licenses and Permits	10,772,502	6,192,000	9,295,000	12,608,106	8,477,000	8,477,000	7,879,656	7,057,000	7,057,000
Intergovernmental	15,306,488	18,620,387	19,504,642	16,401,508	23,299,481	23,144,061	23,173,611	18,260,721	17,548,589
Fines and Forfeitures	1,060,576	753,000	771,000	959,216	741,000	901,000	1,141,324	901,000	901,000
Use of Money and Property	(2,618,811	1,341,992	1,340,392	1,224,323	1,401,379	1,487,379	5,137,055	1,480,000	1,480,000
Charges for Services- ONT	19,371,918	20,902,300	20,902,300	20,902,300	21,529,369	22,723,451	22,723,450	24,500,591	23,866,579
Charges for Services	28,071,740	23,793,354	29,075,254	31,021,010	28,875,200	28,307,118	32,659,893	30,494,370	30,561,295
Other Revenue	9,466,875	1,720,000	7,883,256	6,607,104	2,020,000	5,651,773	7,098,255	5,647,747	11,164,359
Transfers In	2,508,769	-	2,000,000	2,000,000	2,000,000	15,000,000	17,000,000	3,000,000	3,459,374
Total Revenues	$327,116,883	$299,153,033	$355,253,844	$358,812,746	$438,579,429	$428,531,096	437,955,291	$428,866,429	$433,563,196
Expenditures									
General Government	$ 33,878,368	$ 33,013,472	$ 35,001,141	$ 29,686,747	$ 42,805,793	$ 44,125,417	$ 38,712,927	$ 44,078,515	$ 44,782,309
Public Safety	194,515,870	189,262,577	198,356,864	196,602,479	219,976,081	221,468,253	230,431,183	235,219,570	236,139,085
Community Development	39,299,440	61,697,434	73,854,292	63,535,293	83,697,907	90,470,377	85,809,117	79,992,747	83,267,006
Public Works	13,895,991	8,466,127	9,866,530	8,908,679	10,573,585	11,081,094	9,460,576	20,992,839	21,534,997
Debt Service	1,681,331	-	-	3,953,662	-	-	3,289,102	-	-
Transfers Out	58,025,730	9,438,410	57,232,079	80,167,806	70,874,441	71,494,441	60,311,783	47,146,250	48,138,582
Total Expenditures	$341,296,730	$301,878,020	$374,310,906	$382,854,666	$427,927,807	$438,639,582	428,014,688	$427,429,921	$433,861,979
Excess (Deficiency) of Revenues Over (Under) Expenditures	(14,179,847)	(2,724,987)	(19,057,062)	(24,041,920)	10,651,622	(10,108,486)	(9,940,603)	1,436,508	(298,783)

Sources: Adopted budgets of the City for Fiscal Years 2021-22 through 2024-25; audited financial statements of the City for Fiscal Years 2021-22 through 2023-24.

Change in Fund Balance of the City General Fund

Set forth in Table 2 are the City's General Fund statements of revenues, expenditures and changes in fund balance for the last five Fiscal Years.

TABLE 2
CITY OF ONTARIO
GENERAL FUND STATEMENT OF
REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE

	Fiscal Year Ended June 30				
	2020	**2021**	**2022**	**2023**	**2024**
Revenues					
Property Taxes[1]	$ 46,749,275	$ 50,622,447	$ 55,463,804	$ 63,349,812	$ 69,404,912
Property Taxes In Lieu [2]	20,072,659	21,557,460	23,564,478	26,634,620	29,560,538
Sales Tax	90,290,690	105,424,829	129,332,341	140,501,064[3]	184,307,995
Franchise Taxes	3,164,111	3,251,867	3,561,004	4,337,193	4,456,617
Transient Occupancy Tax	12,160,235	10,614,109	16,400,754	16,964,564	16,625,996
Business License Tax	7,793,962	8,559,248	8,856,928	9,729,862	10,902,568
Other Taxes	4,044,908	3,507,185	5,997,517	5,572,064	5,883,421
Licenses and Permits	5,488,023	8,423,831	10,772,502	12,608,106[4]	7,879,656
Intergovernmental	1,268,005	28,289,322	15,306,488	16,401,508	23,173,611[5]
Fines and Forfeitures	786,630	656,407	1,060,576	959,216	1,141,324
Use of Money and Property	8,476,572	1,066,572	(2,618,811)	1,224,323	5,137,055
Charges for Services- ONT[6]	24,017,776	16,292,913	19,371,918	20,902,300	22,723,450
Charges for Services[7]	12,150,526	15,429,490	28,071,740	31,021,010	32,659,893
Other Revenue	4,969,244	13,644,767	9,466,875	6,589,628	7,098,255
Total Revenues	$241,432,616	$287,340,447	$324,608,114	$356,795,270	$420,955,291
Expenditures					
General Government	$ 28,322,100	$ 29,847,243	$ 33,878,368	$ 29,686,747	$ 38,712,927
Public Safety	166,873,394	169,458,528	194,515,870	196,602,479	230,431,183[9]
Community Development	35,829,045	36,989,671	39,299,440	63,535,293	85,809,117
Public Works	21,303,770	13,535,675[5]	13,895,991	8,908,679	9,460,576
Debt Service	3,852,938	3,887,687	1,681,331	3,953,662	3,289,102
Total Expenditures	$256,181,247	$253,718,804	$283,271,000	$302,686,860	$367,702,905[8]
Excess (Deficiency) of Revenues Over (Under) Expenditures	$ (14,748,631)	$ 33,621,643	$ 41,337,114	$ 54,108,410	$ 53,252,386
Other Financing Sources (Uses)					
Transfers In	$ 48,168,298	$21,300,682	$ 2,508,769	$ 2,000,000	$ 17,000,000
Transfers Out	(14,894,106)	(22,966,841)	(58,025,730)	(80,167,806)	(60,311,783)
Other financing sources	-	-	-	17,476	-
Total other financing sources (uses)	33,274,192	(1,666,159)	(55,516,961)	(78,150,330)	(43,311,783)
Special Item	$(42,373,148)	-	-	-	-
Net Change in Fund Balances	$(23,847,587)	$ 31,955,484	$ (14,179,847)	$ (24,041,920)	$ 9,940,603
Fund Balances, Beginning of Year	$131,397,957	$107,338,096	$128,162,049	$113,982,202	$ 89,940,282
Fund Balances, End of Year	$107,550,370	$139,293,580	$113,982,202	$ 89,940,282	$ 99,880,885

(1) Property tax revenues include residual incremental property taxes from former redevelopment agency and penalties.
(2) See the caption "—State of California Motor Vehicle In-Lieu Payments."
(3) Measure Q local services sales tax increase of 1.0% effective 4/1/2023.
(4) Licenses and permits revenue increase in 2023 due to pulled permits for large commercial projects.
(5) American Rescue Plan Act (ARPA) revenue recognition in 2024.
(6) Revenue is generated by the public safety services provided by the City to ONT. Services decreased in 2021 due to COVID. Public safety service contracts with Ontario International Airport Authority (OIAA) increased in 2024.
(7) Includes fees for plan checks and other planning related services, recreational program fees, Special District, Toyota Arena and Convention Center service charges. Increased CFD contributions to General Fund Services in 2024 due to increased development. Also, increase in number of events held at Toyota Arena and the Convention Center resulted in increased security revenue.
(8) Increases to personnel expenditures due to an increase in the number of positions, vacant positions being filled, and labor contractual increases.
(9) Public Safety increase due to footnote 8 above and the opening of a new Fire Station located in Ontario Ranch, resulting in the addition of new personnel and equipment.

General Fund Balance Sheets of the City

Set forth in Table 3 are the City's General Fund balance sheets for the last five Fiscal Years.

TABLE 3
CITY OF ONTARIO
GENERAL FUND BALANCE SHEETS

	Fiscal Year Ended June 30,				
	2020	**2021[1]**	**2022**	**2023**	**2024**
Assets					
Cash and Investments	$54,108,152	$ 79,898,830	$ 58,992,190	$80,525,740	$ 72,817,759
Receivables					
Accounts	21,493,884	29,751,184	40,313,187	42,236,552	50,966,077
Taxes	200,483	241,320	1,461,851	-	87,958
Notes and Loans	75,000	63,000	66,851	60,373	365,462
Leases		-	3,045,533	2,731,213	2,679,513
Accrued Interest	685,878	607,249	512,326	648,798	534,768
Prepaid Costs	103,754	161,659	158,153	140,299	397,755
Deposits	72,400	92,400	-	-	
Due from Other Governments	120,081	809,285	-	-	4,951,505
Due from Other Funds	495,315	-	3,701,965	9,490,170	20,739,430
Advances to Other Funds	58,180,692	56,120,738	54,040,183		
Advances to Successor Agency	3,500,000	3,500,000	3,500,000	3,500,000	3,500,000
Restricted Cash and Investments	-	-	-	-	
Inventories	300,943	301,530	282,742	253,007	259,474
Total Assets	$139,336,582	171,547,195	$166,074,692	$139,586,152	$157,299,701
Liabilities, Deferred Inflows of Resources and Fund Balances					
Liabilities					
Accounts Payable	$11,305,415	$ 13,055,785	$ 7,126,415	$ 9,813,476	$ 14,006,703
Accrued Liabilities	6,688,007	3,687,718	5,182,079	5,193,921	9,575,824
Unearned Revenues	-	12,862,997	21,579,294	17,606,106	9,260,625
Deposits Payable	12,846,099	15,239,488	15,251,827	14,446,446	16,729,265
Total Liabilities	$30,839,521	$ 44,845,986	$ 49,139,615	$ 47,059,949	$ 49,572,417
Deferred Inflows of Resources					
Unavailable Revenues	$ 946,691	$	-	-	$ 5,411,969
Leases	-	-	$ 2,952,875	$ 2,585,921	2,434,430
Total Deferred Inflows of Resources	$ 946,691	$	$ 2,952,875	$ 2,585,921	$ 7,846,399
Fund Balances					
Nonspendable	$ 4,052,097	$ 4,001,189	$ 57,981,078	$ 3,893,306	$ 4,522,691
Restricted	417,464	361,579	361,579	373,447	383,445
Committed	595,469	-	-	-	-
Assigned	99,862,976	122,338,441	55,639,545	85,673,529	94,974,749
Unassigned	2,622,364	-	-	-	-
Total Fund Balances	$107,550,370	$126,701,209	$113,982,202	$ 89,940,282	$ 99,880,885
Total Liabilities, Deferred Inflows of Resources and Fund Balances	$139,336,582	$171,547,195	$166,074,692	$139,586,152	$157,299,701

Sources: Audited financial statements of the City.
(1) Fiscal Year 2020-21 annual financial statements of the City, restated as of August 22, 2022

Property Taxes

Property tax receipts of $98,965,450 (including motor vehicle license fee in-lieu payments, which are discussed under the caption "—State of California Motor Vehicle In-Lieu Payments"), provided the second largest tax revenue source of the City in Fiscal Year 2023-24, contributing approximately 30.8% of General Fund tax revenues and approximately 22.6% of total General Fund revenues during Fiscal Year 2023-24.

Property in the State which is subject to *ad valorem* taxes is classified as "secured" or "unsecured." The secured classification includes property on which any property tax levied by a county becomes a lien on that property. A tax that is levied on unsecured property may become a lien on certain other property owned by the taxpayer. Every tax which becomes a lien on secured property has priority over all other liens arising pursuant to State law on the secured property, regardless of the time of the creation of other liens.

The exclusive means of compelling the payment of delinquent taxes with respect to secured property is the sale of the property securing the taxes for the amount of taxes that are delinquent. The taxing authority has three methods of collecting unsecured personal property taxes: (1) filing a civil action against the taxpayer; (2) obtaining a judgment lien on certain property of the taxpayer from the county clerk or county recorder; and (3) seizing and selling personal property, improvements or possessory interests belonging or taxable to the assessee.

A 10% penalty is added to delinquent taxes which have been levied with respect to property on the secured roll. In addition, beginning on the July 1 following a delinquency, interest begins accruing at the rate of 1.5% per month on the amount delinquent. If taxes are unpaid for a period of five years or more, the property is deeded to the State and then is subject to sale by the county tax collector. A 10% penalty also applies to the delinquent taxes or property on the unsecured roll, and an additional penalty of 1.5% per month accrues with respect to such taxes beginning on the varying dates related to the tax billing date.

State law also provides for the supplemental assignment and taxation of property as of the occurrence of a change in ownership or completion of new construction. Collection of taxes based on supplemental assessments occurs throughout the year. Taxes due are prorated according to the amount of time remaining in the tax year.

For a number of years, the State Legislature shifted property taxes from cities, counties and special districts to the Educational Revenue Augmentation Fund ("ERAF"). In Fiscal Years 1993 and 1994, in response to serious budgetary shortfalls, the State Legislature and administration permanently redirected over $3 billion of property taxes from cities, counties, and special districts to schools and community college districts pursuant to ERAF shifts. The Fiscal Year 2004-05 State Budget included an additional $1.3 billion shift of property taxes from certain local agencies, including the City, in Fiscal Years 2004-05 and 2005-06.

On July 27, 2009, the Governor signed a revised Fiscal Year 2010 State budget that included an ERAF shift of approximately 8% of 1% *ad valorem* property tax revenues from certain local agencies, including the City.

On November 2, 2010, State voters approved Proposition 22, which: (i) prohibits the State of California from shifting or delaying the distribution of funds from special districts to schools and community colleges; (ii) eliminates the authority to shift property taxes temporarily during a severe financial hardship of the State; and (iii) restricts the State's authority to use fuel tax revenues to pay debt service on transportation bonds, to borrow or change the distribution of fuel tax revenues or to use vehicle license fee revenues to reimburse local governments for state-mandated costs.

Despite the passage of Proposition 22, there can be no assurance that 1% *ad valorem* property tax revenues which the City currently expects to receive will not be temporarily shifted from the City or reduced

pursuant to State legislation enacted. If the property tax formula is permanently changed in the future, it could have a material adverse effect on the receipt of its share of 1% *ad valorem* property tax revenues by the City.

Set forth in Table 4 are the secured and unsecured assessed valuations for property in the City for the last ten Fiscal Years, including valuations attributed to the City's redevelopment successor agency.

TABLE 4
CITY OF ONTARIO ASSESSED VALUATION HISTORY[1]

	City				Successor for Redevelopment			
Fiscal Year Ended June 30	**Secured**	**Unsecured**	**Less: Exemptions**	**Taxable Assessed Value**	**Secured**	**Unsecured**	**Taxable Assessed Value**	**Total Direct Tax Rate**
2015	12,413,859	2,552,384	(108,252)	14,857,991	4,295,948	786,273	5,082,221	1.0035
2016	13,124,582	2,611,079	(105,864)	15,629,797	4,494,605	786,273	5,280,877	1.0035
2017	13,781,901	2,543,624	(109,080)	16,216,435	4,697,741	781,204	5,478,946	1.0035
2018	14,844,332	2,624,317	(108,915)	17,359,734	5,060,484	781,204	5,841,689	1.0035
2019	16,575,762	2,814,842	(108,701)	19,281,903	5,458,072	781,204	6,239,276	1.0035
2020	18,181,749	2,910,729	(110,654)	20,981,823	5,754,326	781,204	6,535,530	1.0035
2021	19,529,581	3,147,303	(111,223)	22,565,661	6,217,924	781,204	6,999,129	1.0035
2022	21,666,906	3,257,643	(112,096)	24,812,452	6,723,763	781,204	7,504,967	1.0035
2023	25,470,365	2,423,770	(109,103)	27,785,032	7,347,228	982,294	8,329,522	1.0035
2024	28,446,187	2,547,814	(109,714)	30,884,287	8,045,807	1,071,101	9,116,908	1.0035

[1] Figures are in thousands of dollars.
Sources: San Bernardino County Assessor Combined Tax Rolls.

Set forth in Table 5 are property tax collections and delinquencies in the City as of June 30 for the last ten Fiscal Years. Although the County has adopted the Alternative Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (known as the Teeter Plan), as provided for in Section 4701 *et seq*. of the Revenue and Taxation Code of the State, the City does not participate in such plan. As a result, the City is exposed to the risk of property tax payment delinquencies but receives penalties and interest on delinquent collections. The City also receives supplemental taxes throughout the year.

TABLE 5
CITY OF ONTARIO
PROPERTY TAX LEVIES AND COLLECTIONS

Fiscal Year	Total Tax Levy	Collections within the Fiscal Year of Levy[1]	Percent of Levy Collected within the Fiscal Year of Levy	Collections in Subsequent Years	Percent of Levy Collected to Date
2015	$25,868,724	$25,584,269	98.90%	$ 768,052	101.87%
2016	27,397,660	27,022,201	98.63	755,577	101,39
2017	28,598,396	28,237,630	98.74	628,491	100.94
2018	30,476,605	30,258,907	99.29	662,586	101.46
2019	33,855,137	33,811,751	99.87	275,397	100.69
2020	36,873,998	36,420,730	98.77	332,350	99.67
2021	39,726,163	39,415,629	99.22	341,296	100.80
2022	43,670,142	43,624,885	99.87	496,967	101.01
2023	49,348,272	49,693,817	100.70	948,837	102.62
2024	55,422,768	54,818,657	98.91	1,336,307	101.32

[1] The amounts shown in this column do not reflect property tax revenues that are attributable to the City's redevelopment successor agency.

Source: Annual Comprehensive Financial Report of the City for Fiscal Year Ended June 30, 2024. Information with respect to the ten largest property taxpayers in the City as shown on the Fiscal Year 2023-24 tax roll is set forth in Table 6.

TABLE 6
CITY OF ONTARIO
TEN LARGEST PROPERTY TAXPAYERS

Taxpayer	2024 Taxable Assessed Valuation	% of Total Assessed Valuation[1]
Prologis	$1,438,166,872	3.57%
United Parcel Service Company	526,706,551	1.31%
Ontario Mills LP	438,295,832	1.09%
Costco Wholesale Corporation	402,837,408	1.00%
Ontario Lan Ventures LLC	378,882,004	0.94%
Rexford Express Corporation	375,759,895	0.93%
Federal Express Corporation	352,759,895	0.88%
WRPV XIV Ontario TA LLC	316,287,710	0.79%
Vineyard Industrial LLC	308,296,317	0.77%
Palmer Ontario Properties LP	290,893,063	0.72%
Total Top Ten Taxpayers	$4,828,954,601	12.00%

Source: HDL, Coren & Cone

Sales Taxes

Sales tax receipts of $184,307,995 provided the largest tax revenue source for the City in Fiscal Year 2023-24 contributing approximately 57.4% of General Fund tax revenues and approximately 42.1% of total General Fund revenues during Fiscal Year 2023-24. Retail sales at the Ontario Mills Mall and automobile sales at the Ontario Auto Center contribute significantly to such receipts. Additionally, a large increase in sales tax was due to the recent passage of Measure Q, the one percent additional sales tax in Ontario that became effective April 1, 2023.

A sales tax is imposed on retail sales or consumption of personal property and collected and distributed by the California Department of Tax and Fee Administration (the "CDTFA"). The basic sales tax rate is established by the State Legislature, and local overrides may be approved by voters. The current sales tax rate in the City is 8.75%.

Transient Occupancy Taxes

Transient occupancy tax receipts of $16,625,996 provided the fourth largest tax revenue source for the City in Fiscal Year 2023-24, contributing approximately 5.2% of General Fund tax revenues and approximately 3.8% of total General Fund revenues during Fiscal Year 2023-24. Transient occupancy taxes are imposed upon hotel guests at a rate of 11.75% of room rental rates. The City is a popular leisure and conference destination in the Inland Empire, having both a sports and entertainment arena (the Toyota Arena) and the Convention Center.

Other Taxes

Other taxes collected by the City include parking taxes, property transfer taxes, franchise taxes and business license taxes. Parking taxes are levied at the rate of $1.75 per vehicle per day or 12.5% of monthly parking charges. Nearly 80% of the City's parking tax revenues come from parking structures at ONT. Franchise taxes are levied on gas, electric, cable television and fiber optic service providers within the City. Business license taxes are based on either a flat rate or a gross receipts basis.

Services

Charges of $55,383,343 collected for services provided by the City in Fiscal Year 2023-24, including but not limited to fees for plan checks and other planning services, police services and recreational program fees, provided approximately 12.6% of General Fund revenues during Fiscal Year 2023-24. The largest proportion of such charges consists of payments received from the operator of ONT for law enforcement and fire protection services provided by the City at ONT at $22,723,450 for Fiscal Year 2023-24. Additionally, the City receives moneys from community facilities districts which pay for public safety and public maintenance services. Amounts received from communities facilities districts for were $9,417,637 for Fiscal Year ending 2022; $10,667,454 for Fiscal Year ending 2023; and $13,509,864 for Fiscal Year 2024.

State of California Motor Vehicle In-Lieu Payments

The State imposes a Vehicle License Fee (the "VLF"), which is the portion of the fees paid in lieu of personal property taxes on a vehicle. The VLF is based on vehicle value and declines as the vehicle ages. Prior to the adoption of the Fiscal Year 2004-05 State Budget, the VLF was 2% of the value of a vehicle. Through legislation in prior Fiscal Years, the State enacted VLF reductions under which the State was required to "backfill" local governments for their revenue losses resulting from the lowered fee. The Fiscal Year 2004-05 State Budget permanently reduced the VLF from 2% to 0.65% of the value of a vehicle and deleted the requirement for backfill payments, providing instead that the amount of the backfill requirement will be met by an increase in the property tax allocation to cities and counties.

VLF receipts, comprising Property Tax and In Lieu amounts, totaled $29,560,538 in Fiscal Year 2023-24. Such revenues provided the third largest tax revenue source for the City in Fiscal Year 2023-24, contributing approximately 9.2% of General Fund tax revenues and approximately 6.7% of total General Fund revenues.

TABLE 7
CITY OF ONTARIO
STATE OF CALIFORNIA MOTOR VEHICLE IN-LIEU PAYMENTS

	Fiscal Year Ended June 30,				
Source	**2020**	**2021**	**2022**	**2023**	**2024**
Motor Vehicle In-Lieu Payments	$20,213,750	$21,691,584	$23,774,739	$26,634,620	$29,560,538

Source: City.

Federal Funding

The City receives funding from the federal government for several programs, including CDBG and HOME, Asset Forfeiture, and various grants for a total of approximately $11.3 million for Fiscal Year 2024-25. The City has received notification that the federal grants are earmarked for funding. See "RISK FACTORS – Federal Funding," herein.

Other Indebtedness

The table below shows outstanding long-term obligations of the City's General Fund. Below the table is a brief narrative of each obligation.

CITY OF ONTARIO
OUTSTANDING LONG TERM GENERAL FUND OBLIGATIONS

Long-Term Debt	Issuance Date	Maturity Date	Interest Rate	Principal Balance as of June 30, 2024
2017 Lease Revenue Refunding Bonds	July 11, 2017	November 1, 2042	3.0%- 5.0%	$ 23,655,000
2020 Pension Obligation Bonds	May 21, 2020	June 1, 2050	2.071%- 3.979%	217,815,000
2020 Lease/Purchase Agreement	September 30, 2020	November 1, 2040	2.320%- 2.961%	26,755,517
2021 California Energy Commission Loan	May 11, 2021	June 22, 2031	1.00%	2,301,770
2021 Lease/Purchase Agreement	August 11, 2021	August 12, 2042	3.55%	17,399,584
2021 Lease Revenue Refunding Bonds	December 16, 2021	October 1, 2043	0.665%- 3.283%	32,560,000
2022 Lease Revenue Bonds	June 15, 2022	November 1, 2052	1.890%- 3.780%	89,495,000
2023 Lease Revenue Bonds	March 21, 2023	March 1, 2053	4.39%- 12.00%	100,000,000
2023 Land Purchase Agreement	March 31, 023	March 31, 2033	3.68%	89,655,862
				$599,637,733

Issued after June 30, 2024	Issuance Date	Maturity Date	Interest Rate	Issuance Amount
2024 Land Purchase Agreement	July 11, 2024	January 5, 2034	4.56%	$28,690,200
2024 Land Purchase Agreement	September 12, 2024	January 4, 2034	4.75%	18,805,500
				$47,495,700

General Fund-Supported Debt.

2017 Bonds. In 2017, the Authority issued the 2017 Bonds to refinance certain capital improvements of the City. The 2017 Bonds mature on November 1, 2042 and bear interest at rates varying from 3% to 5% per annum. The 2017 Bonds are payable from rental payments payable from the City to the Authority under the Original Lease Agreement. As of June 30, 2024, the 2017 Bonds were outstanding in the aggregate principal amount of $23,655,000.

2020 Bonds. In 2020, the City issued its 2020 Taxable Pension Obligation Bonds (the "2020 Bonds") to pay a portion of the City's unfunded pension liabilities. The 2020 Bonds mature on June 1, 2050 and bear interest at rates varying from 2.071% to 3.979% per annum. The 2020 Bonds are payable from legally available funds of the City, including the General Fund. As of June 30, 2024, the 2020 Bonds were outstanding in the aggregate principal amount of $217,815,000.

2020 Lease/Purchase Agreement. In 2020, the City entered into a lease/purchase agreement (the "2020 Lease/Purchase Agreement") with Banc of America Public Capital Corp to finance certain energy efficiency improvements to City facilities. The agreement matures in 2040 and bears interest at rates of 2.320% (tax-exempt component) and 2.961% (taxable component). The 2020 Lease/Purchase Agreement is payable from legally available funds of the City, including the General Fund; the City notes that the financed improvements are expected to generate energy efficiency cost savings for the General Fund. As of June 30, 2024, the 2020 Lease/Purchase Agreement was outstanding in the principal amount of $26,755,517.

2021 Energy Commission. In June 2021, the City entered into a direct borrowing loan agreement with the California Energy Commission in the amount of $2,898,220. The purpose of the loan is to provide funding for the installation of LED lights. The loan bears a 1% interest rate and is due in semi-annual payments in

December and June through June 2031. Annual payments are $341,295 and the obligation matures in 2031. As of June 30, 2024, the 2021 Energy Commission Loan was outstanding in the principal amount of $2,301,770.

2021 Lease/Purchase Agreement. In August 2021, the City entered into a lease/purchase agreement (the "2021 Lease/Purchase Agreement") with Citizens Business Bank to finance certain improvements to the City's broadband fiber optic network. The agreement matures in 2042 and bears interest at the rate of 3.55% per annum. The 2021 Lease/Purchase Agreement is payable from legally available funds of the City, including the General Fund, although the primary repayment source is expected to be the City's Broadband/Fiber Optic Fund. As of June 30, 2024, the 2021 Lease/Purchase Agreement was outstanding in the principal amount of $17,399,584.

2021 Bonds. In 2021, the Authority issued its 2021 Lease Revenue Refunding Bonds, Series A (Federally Taxable) (the "2021 Bonds") to refinance certain capital improvements of the City. The 2021 Bonds mature on October 1, 2043 and bear interest at rates varying from 0.665% to 3.283% per annum. The 2021 Bonds are payable from rental payments payable by the City to the Authority under an Amended and Restated Lease Agreement, dated as of December 1, 2021 (the "2021 Lease"). As of June 30, 2024, the 2021 Bonds are currently outstanding in the aggregate principal amount of $32,560,000.

2022 Bonds. In 2022 the Authority issued its 2022 Lease Revenue Bonds, Series A (the "2022 Bonds") in the amount of $90,830,000 to finance the acquisition and construction of capital projects. The 2022 Bonds dated June 15, 2022, are payable semiannually on May 1 and November 1 of each year, commencing November 1, 2022, and mature in 2052. The bonds are payable from base rental payments to be made by the City for the right to the use certain real property and improvements of the City pursuant to a Lease Agreement, dated June 1, 2022 (the "2022 Lease"). Annual lease payments are approximately $5.8million. As of June 30, 2024, the 2022 Bonds are currently outstanding in the aggregated principal amount of $89,495,000.

2023 Bonds. In March 2023, the Ontario Public Financing Authority issued its 2023 Lease Revenue Bonds (the "2023 Bonds") in the amount of $100,000,000 to finance land acquisition and infrastructure improvements. The bonds are payable semiannually on September 1 and March 1 of each year, commencing September 1, 2023 with a mandatory tender date of March 1, 2026. The current rate is 4.39%, with a maximum rate of 12%. As of June 30, 2024, the 2023 Bonds are currently outstanding in the aggregate principal amount of $100,000,000.

Other Long Term Debt Payable from General Fund.

In February 2023 the City entered into a purchase and loan agreement with the Ronald and Kristine Pietersma Family Trust in the principal amount of $100,269,446. The purpose of the loan is to provide funding for the purchase of a property located in the City to be used for construction of a sports complex. The loan bears a 3.68% interest rate and is due in monthly payments of $1,000,000 from April 2023 to March 2033. As of June 30, 2024, the loan was outstanding in the principal amount of $89,655,862.

On July 11, 2024, the City entered into a purchase agreement with 15 Dairy River, LLC, for the principal amount of $28,690,200.00, with interest accruing at a rate of 4.56%. The purpose was to acquire vacant land by the City for the future development of the Ontario Sports Empire project. The City will make annual payments of principal and interest in the amount of $3,556,359.76 for a period of ten years beginning on January 5, 2025. The City has the right to prepay this obligation at any time without penalty.

On September 12, 2024, the City entered into a purchase arrangement with Ontario WF Farm, LLC, for the principal amount of $18,805,500.00 together with interest accruing at a rate of 4.75%. The purpose was to acquire vacant land by the City for the future development of the Ontario Sports Empire project. The City will make annual payments of principal and interest in the amount of $2,331,368.13 for a period of ten years. The City has the right to prepay this obligation at any time without penalty.

Short-Term Debt. The City currently has no short-term debt outstanding.

Anticipated Borrowings and Capital Program.

In furtherance of the City's capital program for parks and other amenities, the City has entered into a purchase and sale agreements for an animal shelter site in the City and additional land for the planned Phase 1 of the Great Park. The obligation relating to the acquisition of the parcel for the Great Park is the principal amount of $21,820,500, payable over ten years at an interest rate of ___%, and is prepayable on any date. The obligation relating to the acquisition of the parcel for an animal shelter the principal amount of $7,056,823, payable over ten years at an interest rate of ____%, and is prepayable on any date. The animal shelter site will be leased to the Animal Resource Center of the Inland Empire, which is a joint powers authority comprised of the City and other surrounding cities and the County of San Bernardino, and which will pay lease payments to the City for its occupancy and use of the site.

Additionally, the City has a robust capital improvement program which will be funded from a combination of pay-as-you-go and additional lease revenue bonds and is discussed below. See, "CITY FINANCIAL INFORMATION – Capital Improvement Program," herein.

Capital Improvement Program

The City is undertaking a series of significant public infrastructure projects designed to enhance public amenities and support regional growth. These projects include the Ontario Sports Empire, Ontario Grand Park, and the Toyota Arena, among others. For fiscal years 2024-25 through 2029-30, the City has budgeted approximately $1.6 billion in capital improvements.

A major component of this program is the Ontario Sports Empire, which includes land acquisition for the new stadium, construction of surrounding sports fields and parking facilities, and associated public infrastructure. The total estimated investment for this project over the current and following five fiscal years is $577 million.

Additionally, the City is investing heavily in civic center enhancement and fire station construction, with projected costs exceeding $300 million during the same period. Other key infrastructure investments include park and playground improvements, public infrastructure upgrades, downtown revitalization efforts, and the renovation and expansion of museum and library facilities.

The City plans to finance these improvements through a combination of public financing and pay-as-you-go funding. In addition to the 2025 Bonds, the City anticipates issuing an additional $150 million of lease revenue bonds in December 2025 and an additional $200 million of lease revenue bonds in calendar year 2026.

Estimated Direct and Overlapping Bonded Debt. The estimated direct and overlapping bonded debt of the City as of June 30, 2024 is set forth in Table 8. The information in Table 8 has been derived from data assembled and reported to the City by California Municipal Statistics, Inc. None of the City, the Authority or the Underwriter have independently verified the information in Table 8 and do not guarantee its accuracy.

TABLE 8
CITY OF ONTARIO
ESTIMATED DIRECT AND OVERLAPPING BONDED DEBT AS OF JUNE 30, 2024

	Outstanding Debt 6/30/2024	Governmental Activities Debt Est. Share of Overlapping Percentage Debt Applicable	Governmental Activities Debt Est. Share of Overlapping Debt 6/30/2024
City Assessed Valuation	**$30,994,001,113**		
Redevelopment Agency Incremental Valuation	**9,116,907,878**		
Total Assessed Valuation	**40,110,908,991 ***		
Overlapping Debt Repaid with Property Taxes:			
Metropolitan Water District	$ 18,210,000	1.036%	$ 188,656
Chaffey Community College District	278,160,000	24.764	68,883,542
Chino Valley Unified School District	763,817,971	8.018	61,242,925
Chaffey Union High School District	587,088,245 #	43.864	257,520,388
Ontario-Montclair School District	128,010,015	70.419	90,143,372
Mountain View School District School Facilities Improvement			
District No. 1	$ 5,829,676	99.457%	$ 5,798,021
Mountain View School District School Facilities Improvement			
District No. 2	$ 18,490,000	$ 98.881%	$ 18,283,097
Mountain View School District CFD No. 1997-1	304,000	100.000	304,000
Ontario Community Facilities District No. 13	2,930,000	100.000	2,930,000
Ontario Community Facilities District No. 24	13,890,000	100.000	13,890,000
Ontario Community Facilities District No. 25	7,915,000	100.000	7,915,000
Ontario Community Facilities District No. 26	8,205,000	100.000	8,205,000
Ontario Community Facilities District No. 28	7,940,000	100.000	7,940,000
Ontario Community Facilities District No. 30	12,595,000	100.000	12,595,000
Ontario Community Facilities District No. 31	4,455,000	100.000	4,455,000
Ontario Community Facilities District No. 33	5,675,000	100.000	5,675,000
Ontario Community Facilities District No. 34	7,120,000	100.000	7,120,000
Ontario Community Facilities District No. 38	9,705,000	100.000	9,705,000
Ontario Community Facilities District No. 39	4,705,000	100.000	4,705,000
Ontario Community Facilities District No. 40	6,000,000	100.000	6,000,000
Ontario Community Facilities District No. 41	13,430,000	100.000	13,430,000
Ontario Community Facilities District No. 42	6,975,000	100.000	6,975,000
Ontario Community Facilities District No. 43	14,985,000	100.000	14,985,000
Ontario Community Facilities District No. 45	8,525,000	100.000	8,525,000
Ontario Community Facilities District No. 46	6,865,000	100.000	6,865,000
Ontario Community Facilities District No. 53	21,050,000	100.000	21,050,000
Ontario Community Facilities District No. 54	6,035,000	100.000	6,035,000
Ontario Community Facilities District No. 55	9,305,000	100.000	9,305,000
Ontario Community Facilities District No. 56	19,490,000	100.000	19,490,000
Ontario Community Facilities District No. 57	12,795,000	100.000	12,795,000
Total overlapping debt repaid with property taxes	$2,010,499,907		$712,954,001
Overlapping General Fund Debt:			
San Bernardino County General Fund Obligations	$ 131,565,000	12.592%	$ 16,566,665
San Bernardino County Flood Control District GF Obligation	37,295,000	12.592	4,696,186
Chaffey Community College District Certificates of Participation	23,835,000	24.764	5,902,499
Cucamonga School District Certificate of Participation	1,776,000	50.927	904,464
City of Ontario General Fund Obligations	245,710,000	100.000	245,710,000
City of Ontario Pension Obligation Bonds	217,815,000	100.000	217,815,000
City of Ontario General Fund Obligations-Unamortized			
Bond Premium and Discount	$ 12,449,217		$ 12,449,217
Loans Payable	141,096,202		141,096,202
West Valley Vector Control District Certificate of Participation	1,491,876	34.641%	516,801
Total overlapping general fund debt	$ 813,033,295		$645,657,034
Overlapping Tax Increment Debt (Successor Agency):	10,952,200	100.00%	10,952,200
Total overlapping debt			**752,492,816**
City direct debt			**617,070,419**
Total direct and overlapping debt			**1,369,563,235**

* Does not include deduction of the homeowner's exception of $109,713,888
Source: California Municipal Statistics, Inc.

Retirement Contributions

Accounting and financial reporting by state and local government employers for defined benefit pension plans is governed by GASB Statement No. 68 ("GASB 68"). GASB 68 includes the following components: (i) unfunded pension liabilities are included on the employer's balance sheet; (ii) pension expense incorporates

rapid recognition of actuarial experience and investment returns and is not based on the employer's actual contribution amounts; (iii) lower actuarial discount rates are required to be used for underfunded plans in certain cases for purposes of the financial statements; (iv) closed amortization periods for unfunded liabilities are required to be used for certain purposes of the financial statements; and (v) the difference between expected and actual investment returns will be recognized over a closed five-year smoothing period. GASB 68 affects the City's accounting and reporting requirements, but it does not change the City's pension plan funding obligations.

The City participates in three plans to fund pension benefits for employees: (i) a Police Safety Plan for police personnel; (ii) a Fire Safety Plan for fire department personnel; and (iii) a Miscellaneous Plan for all other eligible personnel. The City's pension plans are administered by CalPERS. CalPERS administers agent multiple-employer public employee defined benefit pension plans for all of the City's full-time and certain part-time employees. CalPERS provides retirement, disability and death benefits to plan members and beneficiaries and acts as a common investment and administrative agent for participating public entities within the State, including the City. CalPERS plan benefit provisions and all other requirements are established by State statute and the City Council.

City employees are subject to different benefit levels based on their hire date. The plans' provisions and benefits in effect at June 30, 2024 are summarized as follows:

CITY OF ONTARIO
CALPERS PENSION PLANS – SUMMARY OF BENEFIT PROVISIONS

Police Safety Plan

	Employees Hired Before July 1, 2012	Employees Hired between July 1, 2012 and December 31, 2012	Employees Hired after December 31, 2012 (Not Previously CalPERS members)
Benefit Formula	3.0% @ age 50	3.0% @ age 55	2.7% @ age 57
Benefit Vesting	5 years of service	5 years of service	5 years of service
Benefit Payments	Monthly for life	Monthly for life	Monthly for life
Minimum Retirement Age	50	50	50
Monthly Benefits as % of Eligible Compensation	3.0%	2.4% - 3.0%	2.0% - 2.7%
Employee Normal Cost	9.00%(1)	9.00%(1)	12.00%(1)
Employer Normal Cost Rate	23.12%	23.12%	23.12%

Fire Safety Plan

	Employees Hired Before July 1, 2012	Employees Hired between July 1, 2012 and December 31, 2012	Employees Hired after December 31, 2012 (Not Previously CalPERS members)
Benefit Formula	3.0% @ age 50	3.0% @ age 55	2.7% @ age 57
Benefit Vesting	5 years of service	5 years of service	5 years of service
Benefit Payments	Monthly for life	Monthly for life	Monthly for life
Minimum Retirement Age	50	50	50
Monthly Benefits as % of Eligible Compensation	3.0%	2.4% - 3.0%	2.0% - 2.7%
Employee Normal Cost	9.00%(1)	9.00%(1)	12.00%(1)
Employer Normal Cost Rate	19.93%	19.93%	19.93%

Miscellaneous Plan

	Employees Hired on or before December 31, 2012	Employees Hired after December 31, 2012 (Not Previously CalPERS members)
Benefit Formula	2.5% @ age 55	2.0% @ age 62
Benefit Vesting	5 years of service	5 years of service
Benefit Payments	Monthly for life	Monthly for life
Minimum Retirement Age	50	52
Monthly Benefits as % of Eligible Compensation	2.0% - 2.5%	1.0% - 2.5%
Employee Normal Cost	8.00%(1)	6.25%(1)
Employer Normal Cost Rate	10.56%	10.56%

(1) Employees are required to make the full employee contribution themselves. The City does not make any portion of the employee contribution.

Source: City.

Contributions to the City's pension plans consist of contributions from plan participants (i.e., employees) and contributions by the City.

City employees who were hired after December 31, 2012 and who were not previously CalPERS members receive benefits based on a 2.7% at age 57 formula (for Police Safety Plan and Fire Safety Plan employees) or a 2.0% at age 62 formula (for Miscellaneous Plan employees). Such employees are required to make the full amount of required employee contributions themselves under the California Public Employees' Pension Reform Act of 2013 ("AB 340"), which was signed by the State Governor on September 12, 2012. AB

340 established a new pension tier for such employees. Benefits for such participants are calculated on the highest average annual compensation over a consecutive 36-month period. Employees are required to pay at least 50% of the total normal cost rate. AB 340 also capped pensionable income as noted below. Amounts are set annually, subject to Consumer Price Index increases, and retroactive benefits increases are prohibited, as are contribution holidays and purchases of additional non-qualified service credit.

CITY OF ONTARIO
PENSIONABLE INCOME CAPS FOR CALENDAR YEAR 2024
(AB 340 AND NON-AB 340 EMPLOYEES)

	Employees Hired On or Before December 31, 2012 (Non-AB 340 Employees)	**Employees Hired After December 31, 2012 (AB 340 Employees)**
Maximum Pensionable Income	$345,000	$181,734
Maximum Pensionable Income if also Participating in Social Security	N/A	151,446

Source: City.

Additional employee contributions, limits on pensionable compensation and higher retirement ages for new members as a result of the passage of AB 340 are expected to reduce the City's unfunded pension lability and potentially reduce City contribution levels in the long term.

The City is also required to contribute the actuarially determined remaining amounts necessary to fund benefits for its members. Employer contribution rates for all public employers are determined on an annual basis by the CalPERS actuary and are effective on the July 1 following notice of a change in the rate. Total plan contributions are determined through the CalPERS annual actuarial valuation process. The total minimum required employer contribution is the sum of: (i) the plan's employer normal cost rate, which funds pension benefits for current employees for the upcoming Fiscal Year (expressed as a percentage of payroll); plus (ii) the employer unfunded accrued liability contribution amount, which funds pension benefits that were previously earned by current and former employees (billed monthly).

For Fiscal Year 2024-25, required employer normal cost rates as a percentage of payroll were 22.90% for Police Safety Plan employees, 19.55% for Fire Safety Plan employees and 10.44% for Miscellaneous Plan employees. For Fiscal Year 2025-26, required employer normal cost rates as a percentage of payroll are 22.82% for Police Safety Plan employees, 19.94% for Fire Safety Plan employees and 10.09% for Miscellaneous Plan employees.

For Fiscal Year 2024-25, the total required employer payment of the unfunded accrued liability for the City's Police Safety Plan was $1,936,800. For Fiscal Year 2025-26, the total required employer payment of the unfunded accrued liability for the City's Police Safety Plan is $3,058,059, reflecting the City's issuance of the 2020 Bonds, the proceeds of which were applied to pay down a portion of the unfunded accrued liability of $139,203,264. See the caption "—Other Indebtedness—General-Fund Supported Debt—2020 Bonds."

For Fiscal Year 2024-25, the total required employer payment of the unfunded accrued liability for the City's Fire Safety Plan was $1,228,001. For Fiscal Year 2025-26, the total required employer payment of the unfunded accrued liability for the City's Fire Safety Plan is $2,370,845, reflecting the City's issuance of the 2020 Bonds, the proceeds of which were applied to pay down a portion of the unfunded accrued liability of $94,180,092. See the caption "—Other Indebtedness—General-Fund Supported Debt—2020 Bonds."

For Fiscal Year 2024-25, the total required employer payment of the unfunded accrued liability for the City's Miscellaneous Plan was $1,470,627. For Fiscal Year 2025-26, the total required employer payment of the unfunded accrued liability for the City's Miscellaneous Plan is $2,799,398, reflecting the City's application of available cash balances to pay down a portion of the unfunded accrued liability of $102,069,092. See footnote (14) to Table 1 under the caption "—Budget Procedure, Current Budget and Historical Budget Information."

Beginning in Fiscal Year 2017-18, CalPERS began collecting employer contributions toward a pension plan's unfunded liability as dollar amounts instead of the prior method of a percentage of payroll. According to CalPERS, this change was intended to address potential funding issues that could arise from a declining payroll or a reduction in the number of active members in the plan. Funding the unfunded liability as a percentage of payroll could lead to underfunding of pension plans. Due to stakeholder feedback regarding internal needs for total contributions expressed as an estimated percentage of payroll, the CalPERS reports include such results in the contribution projection for informational purposes only. Contributions toward a pension plan's unfunded liability will continue to be collected as set dollar amounts.

The City's required contributions to CalPERS fluctuate each year and, as noted, include a normal cost component and a component equal to an amortized amount of the unfunded liability. Many assumptions are used to estimate the ultimate liability of pensions and the contributions that will be required to meet those obligations. The CalPERS Board of Administration has adjusted and may in the future further adjust certain assumptions used in the CalPERS actuarial valuations, which adjustments may increase the City's required contributions to CalPERS in future years. Accordingly, the City cannot provide any assurances that the City's required contributions to CalPERS in future years will not significantly increase (or otherwise vary) from any past or current projected levels of contributions. CalPERS earnings reports for Fiscal Years 2011-12 through 2022-23 report investment gains of approximately 1.0%, 12.5%, 18.4%, 2.4%, 0.6%, 11.2%, 8.6%, 6.7%, 4.7%, 21.3%, -6.1% and 5.8%, respectively. Future earnings performance may increase or decrease future contribution rates for plan participants, including the City.

On December 21, 2016, the CalPERS Board of Administration voted to lower its discount rate from 7.50% to 7.00% over a three period. For public agencies such as the City, the new discount rate took effect July 1, 2017. Lowering the discount rate means that employers which contract with CalPERS to administer their pension plans will see increases in their normal costs and unfunded actuarial liabilities. Active members hired after January 1, 2013 will also see their contribution rates rise under AB 340. The reduction of the discount rate will result in average employer rate increases of approximately 1% to 3% of normal cost as a percentage of payroll for most retirement plans such as the City's plans. Additionally, many employers will see a 30% to 40% increase in their current unfunded accrued liability payments (relative to the unfunded accrued liability payments projected in the June 30, 2015 valuation report) for pension plans. These payments are made to amortize unfunded liabilities over 20 years to bring pension funds to a fully funded status over the long-term.

The announcement on July 12, 2021 that CalPERS achieved an investment return of 21.3% for the period from July 1, 2020 through June 30, 2021 caused the CalPERS Board of Administration to lower CalPERS' discount rate from 7.00% to 6.80% on November 15, 2021 in accordance with a risk mitigation policy that was adopted in 2015, which calls for the discount rate to be lowered if returns exceed the then-current discount rate by two or more percentage points.

Portions of the above disclosures are primarily derived from information that has been produced by CalPERS, its independent accountants and its actuaries. The City has not independently verified such information and neither makes any representations nor expresses any opinion as to the accuracy of the information that has been provided by CalPERS.

The comprehensive annual financial reports of CalPERS are available on CalPERS' Internet website at www.calpers.ca.gov. The CalPERS website also contains CalPERS' most recent actuarial valuation reports and other information that concerns benefits and other matters. The textual reference to such Internet website is provided for convenience only. None of the information on such Internet website is incorporated by reference herein. The City cannot guarantee the accuracy of such information. Actuarial assessments are "forward-looking" statements that reflect the judgment of the fiduciaries of the pension plans, and are based upon a variety of assumptions, one or more of which may not materialize or be changed in the future.

A summary of principal assumptions and methods used to determine the total pension liability for Fiscal Year 2022-23 is shown below.

CITY OF ONTARIO
ACTUARIAL ASSUMPTIONS FOR CALPERS PENSION PLAN

Actuarial Cost Method	Entry Age Normal in accordance with the requirements of GASB 68
Asset Valuation Method	Market Value of Assets
Actuarial Assumptions:	
Discount Rate	6.80%
Inflation	2.30%
Salary Increases	Varies by entry age and service
Investment Rate of Return	6.80% net of pension plan investment and administrative expenses; includes projected inflation rate of 2.30%
Mortality Rate Table[(1)]	Derived using CalPERS' membership data for all funds

(1) The mortality table used was developed based on CalPERS-specific data from a 2017 actuarial experience study for the period from 1997-2015.

Source: City.

Changes in the pension liability and funded ratio for the City's pension plans in the most recent Fiscal Year for which information is available were as follows:

CITY OF ONTARIO
CHANGES IN CALPERS PENSION PLANS PENSION LIABILITY

Police Safety Plan

	June 30, 2022	**June 30, 2023**
Present Value of Benefits	$646,564,455	$671,911,214
Entry Age Accrued Liability	525,276,255	545,512,302
Market Value of Assets	464,080,440	479,898,062
Unfunded Accrued Liability	$61,195,815	$65,614,240
Funded Ratio	88.3%	88.0%

Fire Safety Plan

	June 30, 2022	**June 30, 2023**
Present Value of Benefits	$463,649,308	$483,846,676
Entry Age Accrued Liability	378,164,851	392,782,632
Market Value of Assets	333,060,160	342,226,523
Unfunded Accrued Liability	$ 45,104,691	$50,556,109
Funded Ratio	88.1%	87.1%

Miscellaneous Plan

	June 30, 2022	**June 30, 2023**
Present Value of Benefits	$580,103,457	$610,083,322
Entry Age Accrued Liability	483,988,774	505,029,913
Market Value of Assets	436,735,780	449,133,287
Unfunded Accrued Liability	$47,252,994	$55,896,626
Funded Ratio	90.2%	88.9%

Source: City.

The table below presents the net pension liability of the City's pension plans, calculated using the discount rate applicable to Fiscal Year 2022-23 (6.80%), as well as what the net pension liability would be if it were calculated using a discount rate that is 1 percentage point lower (5.80%) or 1 percentage point higher (7.80%) than the Fiscal Year 2022-23 rate:

CITY OF ONTARIO
SENSITIVITY OF THE CALPERS PENSION PLANS NET PENSION LIABILITY
TO CHANGES IN THE DISCOUNT RATE

Plan's Net Pension Liability/(Asset)	Discount Rate – 1% (5.80%)	Applicable Discount Rate (6.80%)	Discount Rate + 1% (7.80%)
Police Safety Plan	$143,743,047	$65,614,240	$ 2,045
Fire Safety Plan	103,849,016	50,556,109	6,814,900
Miscellaneous Plan	125,087	55,896,626	(938,057)

Source: City.

For additional information relating to the City's pension plans, see Note 9 to the City's audited financial statements set forth in Appendix C.

Other Post-Employment Benefits

The City provides post-employment health care benefits to qualified retired employees. Employees are eligible for such benefits in accordance with applicable MOUs with employee bargaining units. The City administers a single-employer defined benefit post-employment healthcare plan (the "OPEB Plan"). A menu of benefit provisions, as well as other requirements, are established by state statutes within the Public Employees' Retirement Law. The City selects optional benefit provisions from the benefit menu by contract with CalPERS and adopts those benefits through local ordinance.

At June 30, 2023 (the census date), the following employees were covered by the benefit terms:

Category	Count
Active employees	1,067
Inactive employees or beneficiaries currently receiving benefit payments	731
Inactive employees entitled to but not yet receiving benefit payment	1,798

Source: City.

The City funds benefits under the OPEB Plan based on an Actuarially Determined Contribution (the "ADC"). For the year ended June 30, 2023, the City's funded rate was 90.3% of covered employee payroll. Employees do not contribute to the plan, but may pay the difference between the benefit that they receive and monthly premiums for that benefit.

GASB has issued two pronouncements, known as GASB 74 and GASB 75, related to funding and accounting for the OPEB Plan. Under these pronouncements, OPEB Plan benefits are intended to be accounted for in a manner that is similar to the accounting treatment of pensions under GASB 68. See the caption "— Retirement Contributions." Under GASB 74 and 75, unfunded OPEB Plan benefits will be recognized on the City's financial statements and the City is required to use the Entry Age actuarial cost method when calculating OPEB Plan liabilities. In addition, a 20-year municipal bond rate is used to discount unfunded OPEB Plan payments and the long-term rate of return on plan investments is used to discount benefits that are projected to be paid by plan assets.

The City retained a consultant (the "Actuarial Consultant") to calculate the City's post-employment benefits funding status. In a report dated November 22, 2024 (the "Report"), the Actuarial Consultant concluded that the City's Net OPEB liability is $25,244,194. The City is not required to fund the amortization of the unfunded actuarial liability. Prior to Fiscal Year 2019-20, the City's policy was to pay for OPEB Plan costs as they are incurred. In Fiscal Year 2019-20, the City Council approved the establishment of an irrevocable trust to fund OPEB Plan benefits (the "OPEB Trust") with the California Employers' Retiree Benefit Trust, an agent multiple-employer plan that is administered by CalPERS, and approved and authorized an agreement with CalPERS to administer the OPEB Trust on its behalf. As of June 30, 2023, the City held $164,683,608in the OPEB Trust. Based on the most recent actuarial valuation, the actuarial unfunded liability of the OPEB Plan was estimated to be approximately $25,244,194using a methodology that is compliant with GASB 75. For Fiscal Year 2022-23, the City also paid $13,100,303 in post-employment health care benefits.

Changes in the total liability for the City's OPEB Benefit plan for Fiscal Year 2022-23 were as follows.

CITY OF ONTARIO
CHANGES IN OPEN PLAN LIABILITY

	Increase / (Decrease)		
	Total OPEB Plan Liability	**Plan Fiduciary Net Position**	**Net OPEB Plan Liability / (Asset)**
Balance at June 30, 2022	$168,188,787	$149,077,163	$19,111,624
Net Changes for period from July 1, 2022 through June 30, 2023	21,739,015	15,606,445	6,132,570
Balance at June 30, 2023	$189,927,802	$164,683,608	$ 25,244,194

Source: City.

The following table presents the net liability of the OPEB Plan, calculated using the discount rate applicable to Fiscal Year 2022-23 (6.25%), as well as what the net pension liability would be if it were calculated using a discount rate that is 1 percentage point lower (5.25%) or 1 percentage point higher (7.25%) than the current rate:

CITY OF ONTARIO
SENSITIVITY OF THE OPEB PLAN TOTAL LIABILITY
TO CHANGES IN THE DISCOUNT RATE

	Discount Rate – 1% (5.25%)	**Current Discount Rate (6.25%)**	**Discount Rate + 1% (7.25%)**
Plan's Total Liability/(Asset)	$52,488,181	$25,244,194	$3,053,816

Source: City.

Future changes in funding policies and assumptions, including those related to assumed rates of investment return and healthcare cost inflation, could trigger increases in the City's annual required OPEB Plan contributions, and such increases could be material to the finances of the City. No assurance can be provided that such expenses will not increase significantly in the future. The City does not expect that any increased funding of OPEB Plan benefits will have a material adverse effect on the ability of the City to pay the 2025A Bonds.

For additional information relating to the City's OPEB Plan, see Note 10 to the City's audited financial statements set forth in Appendix C.

City Investment Policy

The City invests its funds in accordance with the City's investment policy (the "Investment Policy"), which was most recently reviewed and revised by the City Council on December 3, 2024. The Investment Policy: (a) describes the policies and procedures to be utilized in the City's investment management system; (b) establishes guidelines for the prudent investment of the City's funds, and (c) lists and describes suitable investments. The goals of the City's investment policy and investment management function are compliance with law, enhancement of the economic status of the City and protection of the City's funds by limiting credit and market risks.

In accordance with Section 53600 et seq. of the California Government Code, idle cash management and investment transactions are the responsibility of the City Treasurer. Eligible investments are generally limited to the Local Agency Investment Fund which is operated by the California State Treasurer, local agency bonds, United States Treasury bills, notes and bonds, obligations issued by United States Government agencies, FDIC insured or negotiable certificates of deposit, repurchase agreements, banker's acceptances and commercial paper rated A1/P1, as applicable, or better, and issued by a domestic corporation having assets in excess of $500 million. Funds are invested in the following order of priority:

- Safety of Principal;
- Liquidity; and
- Return on Investment.

The City Treasurer is required to provide a quarterly report to the City Manager and the City Council showing the type of investment, date of maturity, amount invested, current market value, rate of interest, and other such information as may be required by the City Council.

A summary of the City's investments as of June 30, 2024 is set forth in the below table. Approximately $72.8 million (7.8%) of the total investment portfolio as of June 30, 2024 was attributed to the General Fund.

CITY OF ONTARIO
SUMMARY OF INVESTMENTS[1]

	Investment Maturity			
Investment Type	**6 Months to 1 Year**	**1 to 3 Years**	**3 to 5 Years**	**Total**
United States Treasury Obligations	$ 137,492,690	$ 133,688,570	$ 53,862,050	$325,043,310
Federal Agency Obligations	47,633,660	114,941,700	55,856,024	218,431,384
Medium Term Corporate Notes	31,729,174	44,473,877	9,857,900	86,060,951
Municipal Bonds	7,216,200			7,216,200
Supranational	9,844,500	9,317,200	9,748,150	28,909,850
California Asset Management Program	30,302,994	-	-	30,302,994
Local Agency Investment Fund	68,767,282	-	-	68,767,282
Subtotals	$332,986,500	$302,421,347	$129,324,124	$764,731,971
Investment with Fiscal Agents:				
Money Market Funds	$163,454,996	-	-	$163,454,996
Totals	$496,441,496	$302,421,347	$129,324,124	$928,186,967

(1) Totals may not add due to rounding.
Source: City.

For additional information relating to the City's investments, see Note 2 to the City's audited financial statements set forth in Appendix C.

City Insurance

The City is exposed to various risks of loss related to torts, theft of, damage to and destruction of assets, errors and omissions, injuries to employees and natural disasters. The City has established self-insurance funds to finance uninsured risks of loss up to a maximum of $750,000 for each workers' compensation claim and $1,000,000 for each general liability claim. For workers' compensation claims in excess of amounts provided by its internal fund, the City maintains coverage from a private carrier for claims up to the statutory requirements. For general liability claims in excess of amounts provided by its internal fund, the City maintains coverage from the Authority for California Cities Excess Liability ("ACCEL"). ACCEL maintains a shared risk pool for claims up to $4,000,000, with private carriers covering amounts in excess thereof. City is self-insured for unemployment liability claims. The City will pay all claims based on the individual reimbursement account method, as provided by the State of California. Claims have not exceeded the City's insurance coverage in any of the last three years.

The City purchases all-risk, replacement cost value property insurance coverage through ACCEL up to a maximum amount of $500,000,000, including a $750,000 sublimit for unscheduled assets. Certain portions of the Water System, including pipelines that are located more than 1,000 feet from City-owned above-ground infrastructure, are not covered by the City's property insurance except for the $750,000 sublimit that is described in the previous sentence. In addition, the City does not maintain insurance coverage for earthquake damage. See the caption "CERTAIN RISKS TO BONDHOLDERS—Natural Disasters."

No assurance can be given as to the adequacy of the insurance maintained now or in the future by the City to fund necessary repairs or replacement of any portion of the Water System, and the City does not have any obligation under the Indenture to maintain earthquake coverage or other coverage in the current coverage amounts. Significant damage to the Water System could affect the City's ability to generate sufficient Net Revenues to pay the 2025A Bonds. See the caption "CERTAIN RISKS TO BONDHOLDERS—Natural Disasters."

The City has not paid or settled any claims that exceeded its insurance coverage in the past three years.

See Appendix B under the caption "COVENANTS OF THE CITY—Insurance" for a description of insurance coverages that are required to be maintained while the 2025A Bonds are outstanding.

Economic Development in the City

The City of Ontario has established itself as a premier destination for corporate expansion into the Western United States, supported by a diverse and growing economic base. Home to more than 14,000 businesses, Ontario benefits from a strategic location and an extensive transportation network. Ontario International Airport continues to be a major driver of economic activity, offering both commercial and cargo services. The City is also connected to three major highways-Interstate 10, Interstate 15, and State Route 60-providing seamless access to regional and national markets. Additionally, two major rail lines further enhance Ontario's logistical capabilities, while the proximity to the Ports of Los Angeles and Long Beach facilitates international trade.

These advantages have attracted significant investment and development, leading to a growing tax base and increasing property values. Several major residential, commercial, and industrial projects currently underway will further bolster the City's economic strength by increasing property tax revenues and sales tax collections.

Ontario Ranch. Ontario Ranch is located in the southern portion of the City near the western boundary of the County. Ontario Ranch spans 13.5 square miles and is the largest master-planned community in Southern California. The area covers 8,200 acres of the former 14,000-acre San Bernardino Agricultural Preserve, historically used for dairy and cattle farming by Dutch, French Basque, Portuguese, and Mexican families. In 1999, the preserve was divided, with portions incorporated into Chino, Chino Hills, and Ontario. Ontario Ranch, named after the original Model Colony of Ontario established in 1882 by the Chaffey Brothers, continues the legacy of innovative land development, including water rights distribution with land purchases, the grand boulevard (Euclid Avenue), and Chaffey College (1885).

While much of Ontario Ranch remains undeveloped, construction of numerous planned communities on the east side are either completed or in progress. At full buildout, Ontario Ranch is expected to include approximately 60,000 residential units, approximately 12 million square feet of commercial and office development, approximately 22.7 million square feet of industrial space, and approximately 5.8 million square feet of retail space. Ontario Ranch will also feature ten new schools and over 400 acres of public parkland.

Currently, Ontario Ranch has a population of 30,000 with 2,150 employed in the area. Population growth is accelerating at an annual rate of 11.26%, and the community has been consistently ranked as California's top-selling master-planned community by John Burns Research and Consulting. The future Ontario Sports Empire will further enhance Ontario Ranch's status as a premier residential and recreational destination.

Ontario Sports Empire. Currently under construction and expected to be completed in 2026, the Ontario Sports Empire is a 200 acre sports and entertainment complex designed to attract 1.2 million visitors annually. The facility will feature the new Los Angeles Dodgers single-A team. The development will feature a 6,000-seat Minor League Baseball stadium, a vibrant stadium village with restaurants, entertainment venues, and a hotel, as well as professional-quality soccer, baseball, and softball fields. Additionally, the complex will include a state-of-the-art youth sports training facility. This project is anticipated to generate substantial tax revenue and create more than 600 full-time jobs. Its completion will further solidify Ontario's position as a regional center for sports and entertainment.

Ontario Grand Park. Ontario Grand Park, an integral part of Ontario Ranch, will span approximately 340 acres and extend over 3.7 miles, serving as a major recreational and open space asset for the City. Phase 1, covering approximately 130 acres in the eastern portion of Ontario Ranch, is currently under construction and is expected to be completed by 2030. Once fully developed, the park will provide a variety of public amenities, enhancing the quality of life for Ontario residents and visitors alike.

Toyota Arena. The City is significantly upgrading the Toyota Arena and its surrounding entertainment district to enhance its role as a major sports and entertainment hub. Planned improvements include a new plaza with 26,000 square feet of commercial, office, and retail space, as well as the development of approximately 384 multi-family residential units. The plaza will also feature outdoor entertainment areas, concession kiosks, and dedicated public gathering spaces. These enhancements will increase visitor engagement and generate long-term economic benefits for the City.

Ontario International Airport Redevelopment. Between 1994 to 2011, the City acquired multiple residential properties that were adversely impacted by noise from Ontario International Airport operations. The City has since initiated efforts to redevelop these properties with land uses that align with Ontario International Airport's long-term growth strategy. As part of this initiative, the Ontario International Airport Authority ("Airport Authority") has received 226 parcels under its noise land program, with plans to sell these properties for commercial and industrial development in Fiscal Year 2025-2026. This effort is expected to drive business activity, support regional economic growth, and further establish Ontario as a leading logistics hub.

Manufacturing and Distribution. With 120 million square feet of industrial space and over 240 logistics establishments, Ontario remains a key player in global trade and distribution. The City continues to attract major industrial investments, creating job opportunities and expanding economic base. The HUB at Ontario International Airport is a logistics complex that a private developer is building on 215 acres ONT owns just east of the airport. When complete, the complex will include nine warehouses totaling 4.3 million square feet of logistics space that will support goods movement, generate revenue and create jobs for the region.

Ontario Ranch recently welcomed the world's largest Amazon fulfillment center, a 4.5 million-square-foot facility capable of processing up to 50 million items for local, national, and global distribution. Once fully operational, the facility is expected to create 2,000 new jobs, reinforcing Ontario's status as a critical logistics and distribution hub in the Western United States.

Ontario International Airport. Ontario International Airport Authority (OIAA) continues to expand services and investment in ONT. The Southern California gateway reported 7,084,864 passengers in 2024, 10.2% more than 2023 and 27% more than pre-pandemic 2019, making it the fastest growing among medium- and large-size airports in California. The 2024 count also represents a 67% increase since 2016, when ONT was transferred to local control from the City of Los Angeles. OIAA will upgrade and expand the TSA security area for a faster and smoother travel experience and is repaving and adding underground infrastructure improvements to Airport Drive in front of ONT to accommodate continued growth of the airport.

THE AUTHORITY

The Authority was organized pursuant to the provisions of Articles 1 through 4 of Chapter 5 of Division 7 of Title 1 of the State Government Code and a Joint Exercise of Powers Agreement, dated as of June 1, 2013, by and between the City and the Housing Authority. The Authority has no financial liability to the Owners of the 2025A Bonds with respect to the payment of 2025 Base Rental Payments by the City or with respect to the performance by the City of the other agreements and covenants that the City is required to perform.

CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS

There are a number of provisions of the State Constitution that limit the ability of the City to raise and expend tax revenues.

Article XIIIA of the State Constitution

On June 6, 1978, State voters approved an amendment (commonly known as both Proposition 13 and the Jarvis-Gann Initiative) to the State Constitution. The amendment, which added Article XIIIA to the State Constitution, among other things affects the valuation of real property for the purpose of taxation in that it defines the full cash property value to mean "the county assessor's valuation of real property as shown on the 1975/76 tax bill under 'full cash value', or thereafter, the appraised value of real property newly constructed, or when a change in ownership has occurred after the 1975 assessment." The full cash value may be adjusted annually to reflect inflation at a rate not to exceed 2% per year, or a reduction in the consumer price index or comparable local data at a rate not to exceed 2% per year, or reduced in the event of declining property value caused by damage, destruction or other factors including a general economic downturn. The amendment further limits the amount of any *ad valorem* tax on real property to 1% of the full cash value, except that additional taxes may be levied to pay debt service on indebtedness approved by the voters prior to December 1, 1978, and bonded indebtedness for the acquisition or improvement of real property approved on or after December 1, 1978 by two-thirds of the votes cast by the voters voting on the proposition (55% in the case of certain school facilities). Property taxes that are subject to Proposition 13 are a significant source of the City's General Fund revenues. See the caption "CITY FINANCIAL INFORMATION."

Legislation enacted by the State Legislature to implement Article XIIIA provides that all taxable property is shown at full assessed value as described above. Tax rates for voter approved bonded indebtedness are also applied to 100% of assessed value.

Future assessed valuation growth allowed under Article XIIIA (for new construction, change of ownership or 2% annual value growth) is allocated on the basis of "situs" among the jurisdictions that serve the tax rate area within which the growth occurs. Local agencies and school districts share the growth of "base" revenue from the tax rate area. Each year's growth allocation becomes part of each agency's allocation the following year. Article XIIIA effectively prohibits the levying of any other *ad valorem* property tax above the 1% limit except for taxes to support indebtedness approved by the voters as described above.

Article XIIIA has subsequently been amended to permit reduction of the "full cash value" base in the event of declining property values caused by damage, destruction or other factors, and to provide that there would be no increase in the "full cash value" base in the event of reconstruction of property damaged or destroyed in a disaster and in certain other limited circumstances.

Article XIIIB of the State Constitution

At the Statewide special election on November 6, 1979, the voters approved an initiative entitled "Limitation on Government Appropriations," which added Article XIIIB to the State Constitution. Under Article XIIIB, State and local government entities have an annual "appropriations limit" which limits the ability to spend certain money which are called "appropriations subject to limitation" (consisting of tax revenues and investment proceeds thereof, certain State subventions and regulatory license fees, user charges and user fees to the extent that the proceeds thereof exceed the costs of providing such services, together called "proceeds of taxes," and certain other funds) in an amount higher than the "appropriations limit." Article XIIIB does not affect the appropriation of moneys which are excluded from the definition of "appropriations limit," including debt service on indebtedness existing or authorized as of October 1, 1979, or bonded indebtedness subsequently approved by the voters. In general terms, the "appropriations limit" is to be based on certain 1978-79 expenditures and is to be adjusted annually to reflect changes in the consumer price index, population and services provided by these entities. Among other provisions of Article XIIIB, if those entities' revenues in any year exceed the amounts permitted to be spent, the excess would have to be returned by revising tax rates or fee schedules over the subsequent two years.

To the best of the City's knowledge, the City's appropriations have never exceeded the limitation on appropriations under Article XIIIB of the State Constitution.

Proposition 62

A statutory initiative ("Proposition 62") was adopted by the voters of the State at the November 4, 1986 general election which: (a) requires that any tax for general governmental purposes imposed by local governmental entities be approved by resolution or ordinance adopted by two-thirds vote of the governmental agency's legislative body and by a majority of the electorate of the governmental entity; (b) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters within the jurisdiction; (c) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax is imposed; (d) prohibits the imposition of *ad valorem* taxes on real property by local governmental entities except as permitted by Article XIIIA; (e) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities; and (f) requires that any tax that is imposed by a local governmental entity on or after August 1, 1985 be ratified by a majority vote of the electorate within two years of the adoption of the initiative or be terminated by November 15, 1988. The requirements imposed by Proposition 62 were upheld by the State Supreme Court in *Santa Clara County Local Transportation Authority v. Guardino*, 11 Cal.4th 220 (1995).

Proposition 62 applies to the imposition of any taxes or the implementation of any tax increases after its enactment in 1986, but the requirements of Proposition 62 are largely subsumed by the requirements of Proposition 218 for the imposition of any taxes or the effecting of any tax increases after November 5, 1996. See the caption "—Proposition 218" below.

Proposition 218

On November 5, 1996, State voters approved Proposition 218, an initiative measure entitled the "Right to Vote on Taxes Act." Proposition 218 added Articles XIIIC and XIIID to the State Constitution, imposing certain vote requirements and other limitations on the imposition of new or increased taxes, assessments and property-related fees and charges. Proposition 218 states that all taxes imposed by local governments are deemed to be either general taxes or special taxes. Special purpose districts, including school districts, have no power to levy general taxes. No local government may impose, extend or increase any general tax unless and until such tax is submitted to the electorate and approved by a majority vote. No local government may impose, extend or increase any special tax unless and until such tax is submitted to the electorate and approved by a two-thirds vote.

Proposition 218 also provides that no tax, assessment, fee or charge may be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except: (a) the *ad valorem* property tax imposed pursuant to Articles XIII and XIIIA of the State Constitution; (b) any special tax receiving a two-thirds vote pursuant to the State Constitution; and (c) assessments, fees and charges for property-related services as provided in Proposition 218. Proposition 218 then goes on to add voter requirements for assessments and fees and charges imposed as an incident of property ownership, other than fees and charges for sewer, water, and refuse collection services. In addition, all assessments and fees and charges imposed as an incident of property ownership, including sewer, water and refuse collection services, are subjected to various additional procedures, such as hearings and stricter and more individualized benefit requirements and findings.

Proposition 218 also extended the initiative power to reducing or repealing any local taxes, assessments, fees and charges. This extension of the initiative power is not limited to taxes imposed on or after November 6, 1996, the effective date of Proposition 218, and could result in retroactive repeal or reduction in any existing taxes, assessments, fees and charges, subject to overriding federal constitutional principles relating to the impairments of contracts. Legislation implementing Proposition 218 provides that the initiative power provided for in Proposition 218 "shall not be construed to mean that any owner or beneficial owner of a municipal security, purchased before or after (the effective date of Proposition 218) assumes the risk of, or in any way consents to, any action by initiative measure that constitutes an impairment of contractual rights" protected by the United States Constitution. However, no assurance can be given that the voters of the City will not, in the future, approve an initiative which reduces or repeals local taxes, assessments, fees or charges that currently are deposited into the City's General Fund.

Although a portion of the City's General Fund revenues are derived from general taxes purported to be governed by Proposition 218, as discussed under the caption "CITY FINANCIAL INFORMATION — Other

Taxes," all of such taxes were imposed in accordance with the requirements of Proposition 218. No assurance can be given that the voters of the City will not, in the future, approve an initiative or initiatives which reduce or repeal local taxes, assessments, fees or charges which support the City's General Fund.

Unitary Property

Some amount of property tax revenue of the City is derived from utility property which is considered part of a utility system with components located in many taxing jurisdictions ("unitary property"). Under the State Constitution, such property is assessed by the CDTFA as part of a "going concern" rather than as individual pieces of real or personal property. State-assessed unitary and certain other property is allocated to the counties by the CDTFA, taxed at special county-wide rates, and the tax revenues distributed to taxing jurisdictions (including the City) according to a statutory formula that is generally based on the distribution of taxes in the prior year.

Proposition 22

On November 2, 2010, State voters approved Proposition 22, which eliminates the State's ability to borrow or shift local revenues and certain State revenues that fund transportation programs. Proposition 22 restricts the State's authority over a broad range of tax revenues, including property taxes allocated to cities (including the City), counties and special districts, the VLF, State excise taxes on gasoline and diesel fuel, the State sales tax on diesel fuel, and the former State sales tax on gasoline. It also makes a number of significant other changes, including restricting the State's ability to use motor vehicle fuel tax revenues to pay debt service on voter-approved transportation bonds.

Proposition 26

On November 2, 2010, State voters approved Proposition 26. Proposition 26 amends Article XIIIC of the State Constitution to expand the definition of "tax" to include "any levy, charge, or exaction of any kind imposed by a local government" except the following: (a) a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege; (b) a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product; (c) a charge imposed for the reasonable regulatory costs of a local government for issuing licenses and permits, performing investigations, inspections and audits, enforcing agricultural marketing orders and the administrative enforcement and adjudication thereof; (d) a charge imposed for entrance to or use of local government property, or the purchase, rental or lease of local government property; (e) a fine, penalty or other monetary charge imposed by the judicial branch of government or a local government as a result of a violation of law; (f) a charge imposed as a condition of property development; and (g) assessments and property-related fees imposed in accordance with the provisions of Article XIIID. Proposition 26 provides that the local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity. The City does not believe that Proposition 26 will adversely affect its General Fund revenues.

Future Initiatives

Articles XIIIA and XIIIB and Propositions 62, 218, 22 and 26 were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time other initiative measures could be adopted, further affecting the City's current revenues or its ability to raise and expend revenues.

RISK FACTORS

Prospective purchasers of the 2025A Bonds should consider carefully all possible factors that may affect the ability of the City to pay 2025 Base Rental Payments under the Lease Agreement. The 2025A Bonds may not be a suitable investment for all prospective purchasers.

The following factors, along with the other information in this Official Statement, should be considered by potential investors in evaluating the purchase of the 2025A Bonds. However, the following does not purport to be an exhaustive listing of risks and other considerations which may be relevant to an investment in the 2025A Bonds and there can be no assurance that other risk factors will not become material in the future. In addition, the order in which the following factors are presented is not intended to reflect the relative importance of any such risks.

General Considerations – Security for the 2025A Bonds

The 2025A Bonds are special obligations of the Authority, payable solely from 2025 Base Rental Payments. Neither the faith and credit nor the taxing power of the Authority, the City, the State or any political subdivision thereof is pledged to the payment of the 2025A Bonds. The Authority has no taxing power.

The obligation of the City to make the Base Rental Payments does not constitute a debt of the City, the County, the State or any political subdivision thereof within the meaning of any constitutional or statutory debt limit or restriction, and does not constitute an obligation for which the City, the County or the State is obligated to levy or pledge any form of taxation or for which the City, the County or the State has levied or pledged any form of taxation.

Although the Lease Agreement does not create a pledge, lien or encumbrance upon the funds of the City, the City is obligated under the Lease Agreement to pay the Base Rental Payments and Additional Rental Payments from any source of legally available funds, and the City has covenanted in the Lease Agreement to take such action as may be necessary to include all such Base Rental Payments and Additional Rental Payments due thereunder in its annual budgets, and to make necessary annual appropriations for all such Base Rental Payments and Additional Rental Payments, subject to abatement. The City is currently liable and may become liable on other obligations payable from general revenues. See the caption "CITY FINANCIAL INFORMATION—Other Indebtedness—General Fund-Supported Debt."

The City has the capacity to enter into other obligations which may constitute additional charges against its revenues, including pension obligations and essential services. To the extent that additional obligations are incurred by the City, the funds available to make Base Rental Payments may be decreased. In the event that the City's revenue sources are less than its total obligations, the City could choose to fund other activities before making Base Rental Payments. The same result could occur if, because of State Constitutional limits on expenditures, the City is not permitted to appropriate and spend all of its available revenues. However, to the best of the City's knowledge, the City's appropriations have never exceeded the limitation on appropriations under Article XIIIB of the State Constitution. See the caption "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS—Article XIIIB of the State Constitution."

Abatement

In the event of substantial interference with the City's right to use and occupy any portion of the Property by reason of damage to or destruction or condemnation of the Property, or any defects in title to the Property, the Base Rental Payments will be subject to abatement. See the caption "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Abatement." The amount of abatement will be such that the resulting payments of Base Rental Payments and Additional Rental Payments do not exceed the fair rental value for the use and possession of the remaining portions of the Property as to which the City has beneficial use and occupancy and as to which such damage or destruction or defect in title do not substantially interfere.

In the event that such portion of the Property, if damaged or destroyed by an insured casualty, could not be replaced during the period of time in which proceeds of the City's rental interruption insurance will be available in lieu of the Base Rental Payments, plus the period in which funds are available from the funds and accounts established under the Indenture, or in the event that casualty insurance proceeds are insufficient to provide for complete repair or replacement of such portion of the Property or redemption of the 2025A Bonds, there could be insufficient funds to make payments to Owners in full.

It is not always possible to predict the circumstances under which abatement of rental may occur. In addition, there is no statute, case or other law specifying how such an abatement of rental should be measured.

For example, it is not clear whether fair rental value is established as of commencement of the lease or at the time of the abatement. If the latter, the value of the Property could be substantially higher or lower than its value at the time of the issuance of the 2025A Bonds. Abatement, therefore, could have an uncertain and material adverse effect on the security for and payment of the 2025A Bonds.

If damage, destruction, title defect or eminent domain proceedings with respect to the Property results in abatement of the Base Rental Payments and if such abated Base Rental Payments, if any, together with moneys from rental interruption or use and occupancy insurance (in the event of any insured loss due to damage or destruction), and eminent domain proceeds, if any, are insufficient to make all payments of principal and interest with respect to the 2025A Bonds during the period that the Property is being replaced, repaired or reconstructed, then all or a portion of such payments of principal and interest may not be made. Under the Lease Agreement and the Indenture, no remedy is available to the 2025A Bond Owners for nonpayment under such circumstances.

Initiative and Referendum

The ability of the City to comply with its covenants under the Lease Agreement and to generate revenues that are sufficient to pay Base Rental Payments may be adversely affected by actions and events outside the control of the City, including without limitation actions taken (or not taken) by voters. Under the State Constitution, voters of the State have the ability to initiate legislation and require a public vote on legislation passed by the State Legislature through the powers of initiative and referendum, respectively. The Authority and the City are unable to predict whether any such initiatives might be submitted to or approved by the voters, the nature of such initiatives, or their potential impact on the City and its operations. See the caption "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS—Future Initiatives."

Insurance on the Property

Under the Lease Agreement, the City is required to maintain through the term of the Lease Agreement policies of insurance covering loss or damage to the Property up to replacement costs and covering title defects. If the Property is damaged or destroyed, there can be no assurance that the insurance proceeds will be sufficient to repair or restore the Property, or to redeem or defease all of the then-Outstanding 2025A BONDS. In addition, neither the Authority nor the City can provide any assurance as to whether the provider of an insurance policy will pay under such policy. See the caption "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Insurance" for a description of the insurance coverages that are required by the Lease Agreement. See the caption "THE CITY—Risk Management" for a description of the City's current insurance coverages. Certain risks, such as earthquakes and floods, are not required to be covered under the Lease Agreement unless available at reasonable rates and the City does not currently maintain such coverage.

Condemnation of the Property

If all of the Property (or portions thereof such that the remainder is not usable for the public purposes by the City) is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the term of the Lease Agreement will cease as of the day possession is taken. If less than all of the Property is taken permanently, or if the Property or any part thereof is taken temporarily, under the power of eminent domain, and the remainder is usable for public purposes by the City at the time of such taking: (a) the Facilities Sublease will continue in full force and effect as to such remainder, and will not be terminated by virtue of such taking; and (b) there will be a partial abatement of Base Rental Payments as a result of the application of insurance proceeds of any eminent domain award to the prepayment of the Base Rental Payments, in an amount to be agreed upon by the City and the Authority such that the resulting Base Rental Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

If all or a portion of the Property were condemned, there can be no assurance that any such award or payment will be sufficient at the time to prepay or defease all of the then-Outstanding 2025A Bonds. If the award is less than the amounts remaining on such Outstanding 2025A Bonds, then the Owners will be paid less than the amounts remaining on such Outstanding 2025A Bonds.

Value of Property

In the event that the Trustee re-enters or re-lets the Property upon the occurrence of an Event of Default, there can be no assurance such actions will provide funds in an amount that is sufficient to pay the principal of and interest on the 2025A Bonds. The security under the Lease Agreement extends only to the Authority's leasehold interest in the Property and is subject to the restrictions of the Lease Agreement and all other use restrictions applicable to the Property. The Property have not been appraised in connection with the issuance of the 2025A Bonds.

No Acceleration of Base Rental Payments

Nothing in the Lease Agreement permits the Authority or the Trustee to accelerate Base Rental Payments. Although the Trustee is entitled to pursue all available remedies under the Indenture, there can be no assurance that sufficient funds will be available at the time to redeem or defease all of the then-Outstanding 2025A Bonds.

Certain Risks Associated with Sales Tax and Other Local Tax Revenues

Sales and use tax revenues are consistently among the largest sources of General Fund revenues of the City. See the caption "CITY FINANCIAL INFORMATION."

Sales and use tax revenues are based upon the gross receipts of retail sales of tangible goods and products by retailers with taxable transactions in the City, which could be impacted by a variety of factors. For example, in times of economic recession, the gross receipts of retailers often decline, and such a decline would cause the sales tax revenues received by the City to decline. An economic recession would also be expected to affect hotel occupancy within the City, and consequently, the City's receipt of transient occupancy taxes. See the captions "CITY FINANCIAL INFORMATION."

In addition, changes or amendments in the laws applicable to the City's receipt of sales tax revenues or other local taxes, whether implemented by State legislative action or voter initiative, could have an adverse effect on sales tax revenues received by the City. See the caption "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

Many categories of transactions are exempt from the Statewide sales tax, and additional categories could be added in the future. Currently, most sales of food products for human consumption are exempt; this exemption, however, does not apply to liquor or to restaurant meals. The rate of sales tax levied on taxable transactions in the City or the fee charged by the CDTFA for administering the City's sales tax could also be changed.

Assessed Value of Taxable Property

Property taxes are consistently among the largest sources of General Fund revenues of the City. Natural and economic forces can affect the assessed value of taxable property within the City. The City is located in a seismically active region, and damage from an earthquake in or near the area could cause extensive damage to taxable property. Other natural or manmade disasters, such as flood, fire, wildfire, ongoing drought, toxic dumping, erosion, civil unrest or acts of terrorism, could cause a reduction in the assessed value of taxable property within the City. See the captions "—Natural Disasters" and "—Hazardous Substances."

In addition, economic and market forces, such as a downturn in the regional economy, could affect assessed values, particularly as these forces might reverberate in the residential housing and commercial property markets as has been experienced in the past. The total assessed value could also be reduced through the reclassification of taxable property to a class exempt from taxation, whether by ownership or use (such as exemptions for property owned by State and local agencies and property used for qualified educational, hospital, charitable or religious purposes).

Reductions in the market values of taxable property may cause property owners to appeal assessed values and may also be associated with an increase in delinquency rates for property taxes. Section 2(b) of

Article XIIIA of the State Constitution and Section 51 of the State Revenue and Taxation Code, which were adopted pursuant to Proposition 8 in 1978, require the County assessor to annually enroll either a property's adjusted base year value (the "Proposition 13 Value") or its current market value, whichever is less. When the current market value replaces the higher Proposition 13 Value on the assessor's roll, such lower value is referred to as the "Proposition 8 Value."

Although the annual increase for a Proposition 13 Value is limited to no more than 2%, the same restriction does not apply to a Proposition 8 Value. The Proposition 8 Value of a property is reviewed annually as of January 1; the current market value must be enrolled as long as the Proposition 8 Value falls below the Proposition 13 Value. Thus, any subsequent increase or decrease in market value is enrolled regardless of any percentage increase or decrease. Only when a current Proposition 8 Value exceeds the Proposition 13 Value attributable to a piece of property (adjusted for inflation) does a county assessor reinstate the Proposition 13 Value.

Decreases in the assessed value of taxable property within the City resulting from a natural disaster or other calamity, economic recession, reclassification by ownership or use or as a result of the implementation of Proposition 8 all may have an adverse impact on property tax collections by the City, and consequently, the General Fund revenues that are available to make Base Rental Payments.

Dependence on State for Certain Revenues

A number of the City's revenues are collected and dispersed by the State (such as sales taxes and the VLF) or allocated in accordance with State law (most importantly, property taxes). Therefore, State budget decisions can have an impact on City finances. In the event of a material economic downturn in the State, there can be no assurance that any resulting revenue shortfalls to the State will not reduce revenues to local governments (including the City) or shift financial responsibility for programs to local governments as part of the State's efforts to address any such related State financial difficulties.

Although the State's ability to undertake such revenue reductions or shifting has been limited by provisions of the State Constitution, as described under the caption "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS—Proposition 22," declining revenues and fiscal difficulties that arose in the State commencing in 2009 led the State to undertake a number of budgeting strategies, which had subsequent impacts on local agencies within the State. These techniques included the issuance of IOUs in lieu of warrants (checks), the enactment of statutes deferring amounts owed to public schools until a later date in the fiscal year or even into the following fiscal year (known as statutory deferrals), trigger reductions, which were budget cutting measures which were implemented or could have been implemented if certain State budgeting goals were not met and the dissolution of local redevelopment agencies in part to make available additional funding for local agencies.

Although recent State budgets have been balanced, largely attributable to improvements in the economy, the additional revenues generated due to the passage of Proposition 30 at the November 6, 2012, Statewide election as well as other spending cuts, there can be no certainty that budget-cutting strategies such as those used in prior years will not be used in the future, should the State budget again be stressed and if projections included in such budget do not materialize, or that Proposition 30 will be renewed.

Litigation

The City may be or become a party to litigation that has an impact on the General Fund. Although the City maintains certain insurance policies that provide liability coverage under certain circumstances and with respect to certain types of incidents (as discussed under the caption "THE CITY—Risk Management"), the City cannot predict what types of liabilities may arise in the future. See the caption "LITIGATION."

Natural Disasters

The occurrence of any natural disaster in the City, including, without limitation, fire, wildfire, windstorm, drought, earthquake, landslide, mudslide or flood, could have an adverse material impact on the economy within the City, its General Fund and the revenues available for the payment of Base Rental Payments.

The City is not required to do maintain earthquake insurance by the Lease Agreement unless such insurance is available at reasonable rates. See the captions "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Insurance" and "THE CITY—Risk Management."

Earthquakes are considered a threat to the City due to the highly active seismic region and the proximity of fault zones, which could influence the entire coastal portion of the State. There are also likely to be unmapped faults in or near the City. Seismically induced ground shaking has affected the City in the past and is expected to affect the City in the future.

An earthquake along one of the faults in the vicinity of the City, either known or unknown, could cause a number of casualties and extensive property damage. The effects of an earthquake could be aggravated by aftershocks and secondary effects such as fires, landslides, dam failure, liquefaction, floods and other threats to public health, safety and welfare. The potential direct and indirect consequences of a major earthquake could easily exceed the resources of the City and would require a high level of self-help, coordination and cooperation.

In recent years, wildfires have caused extensive damage throughout the State. In some instances, entire neighborhoods have been destroyed. Several of the fires that occurred in recent years damaged or destroyed property in areas that were not previously considered to be at risk from such events. Some commentators believe that climate change will lead to even more frequent and more damaging wildfires in the future. Additionally, wildfires increase the risk of mudslides in areas that are surrounded by hillsides because, when wildfires scorch land, they destroy all vegetation on mountains and hillsides. As a result, when heavy rain falls in the winter, there is nothing to stop the rain from penetrating directly into the soil. In addition, waxy compounds in plants and soil that are released during fires create a natural barrier in the soil that prevents rain water from seeping deep into the ground. The result is erosion, mudslides and excess water running off the hillsides often causing flash flooding. In general, property damage due to wildfire or mudslides could result in a significant decrease property tax and other revenues received by the City.

The occurrence of natural disasters in the City could result in substantial damage to the City and the Property which, in turn, could substantially reduce General Fund revenues and affect the ability of the City to make Base Rental Payments or cause an abatement in Base Rental Payments if the City is unable to use and occupy the Property. The City maintains liability insurance, rental interruption insurance and property casualty insurance for the Property. See the caption "THE CITY—Risk Management." However, there can be no assurance that specific losses will be covered by insurance or, if covered, that claims will be paid in full by the applicable insurers.

Climate Change

The State has historically been susceptible to wildfires and hydrologic variability. As greenhouse gas emissions continue to accumulate in the atmosphere as a result of economic activity, climate change is expected to intensify, increasing the frequency, severity and timing of extreme weather events such as coastal storm surges, drought, wildfires, floods and heat waves, and raising sea levels. The future fiscal impact of climate change on the City is difficult to predict, but it could be significant and it could have a material adverse effect on the General Fund by requiring greater expenditures to counteract the effects of climate change or by changing the operations and activities of City residents and business establishments.

Cybersecurity

Municipal agencies, like other business entities, face significant risks relating to the use and application of computer software and hardware. Recently, there have been significant cybersecurity incidents affecting municipal agencies, including a freeze affecting computer systems of the City of Atlanta, an attack on the City of Baltimore's 911 system, an attack on the Colorado Department of Transportation's computers and an attack that resulted in the temporary closure of the Port of Los Angeles' largest terminal.

The City employs a multi-layer cyber protection scheme that includes third party consultant assistance, next-generation firewalls, anti-virus software, anti-spam/malware software, intrusion detection/prevention, domain name system filtering services, duplicate systems in a disaster recovery site and multiple copies of all information that is backed up. The City implements recommended strategies suggested by security vendors and

makes internal system changes as needed. Over eight years ago, the City experienced a successful ransomware attack that affected a small number of files. The City was able to immediately isolate the issue and recover. The City has not experienced a successful attack against its network and servers since the above security measure have been put in place. There can be no assurance that a future attack or attempted attack would not result in the disruption of City operations. However, the City expects that any such disruptions would be temporary in nature due to its backup/restore procedures and disaster recovery planning.

The City has not experienced a successful attack against its network and servers since the above security measure have been put in place. Over eight years ago, the City experienced a successful ransomware attack that affected a small number of files. The City was able to immediately isolate the issue and recover. However, there can be no assurance that a future attack or attempted attack would not result in disruption of City operations. The City expects that any such disruptions would be temporary in nature due to its backup/restore procedures and disaster recovery planning.

Hazardous Substances

A condition that may result in the reduction in the assessed value of property, and therefore property tax revenue available to pay Base Rental Payments, would be the discovery of a hazardous substance that would limit the beneficial use of taxable property within the City. In general, the owners and operators of a property may be required by law to remedy conditions of the property relating to releases or threatened releases of hazardous substances. The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, sometimes referred to as "CERCLA" or the "Superfund Act," is the most well-known and widely applicable of these laws, but State laws with regard to hazardous substances are also stringent and similar in effect. Under many of these laws, the owner or operator may be required to remedy a hazardous substance condition of property whether or not the owner or operator has anything to do with creating or handling the hazardous substance. The effect, therefore, should any of the property within the City be affected by a hazardous substance, could be to reduce the marketability and value of such property by the costs of remedying the condition, because the purchaser, upon becoming owner, will become obligated to remedy the condition just as is the seller.

The City and the Authority have not independently verified, but are not aware of, the presence of any hazardous substances on the Property. Hazardous substance liabilities may arise in the future with respect to any of the property in the City resulting from the existence, currently, of a substance presently classified as hazardous but which has not been released or the release of which is not presently threatened, or may arise in the future resulting from the existence, currently, on the parcel of a substance not presently classified as hazardous but which may in the future be so classified. Additionally, such liabilities may arise from the method of handling such substance. These possibilities could significantly affect the value of a parcel.

Additional City Obligations

The Base Rental Payments under the Lease Agreement are payable from funds that are lawfully available to the City. The City is currently liable for other obligations payable from general revenues of the City. The City has the authority to enter into other obligations that constitute additional claims on such general revenues, including Additional Bonds payable from a lease of the Property. To the extent that the City incurs additional obligations, the funds available to make Base Rental Payments may be decreased. See the captions "CITY FINANCIAL INFORMATION—Other Indebtedness—General Fund-Supported Obligations" and "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Additional Bonds."

Remedies

Upon an Event of Default under the Indenture, the Trustee may exercise certain remedies under the Indenture and the Lease Agreement. In the event of a monetary default under the Indenture, the Trustee has the right to enter and take possession of the Property, and the Trustee may hold, operate and manage the Property and apply revenues therefrom toward payment of the 2025A Bonds. There can be no assurance that the Trustee will be able to realize from such actions an amount that is sufficient to pay the principal of and interest on the 2025A Bonds. In addition, the Trustee may incur significant operating costs in connection with the Property.

Limitation on Trustee's Obligations under the Indenture

The Trustee has no obligation to advance its own funds to pursue any remedies. As a consequence, the Trustee's willingness and ability to pursue any of the remedies provided in the Indenture and the Lease Agreement may be dependent upon the availability of funds from an interested party. Additionally, the Trustee is not required to acquire possession of the Property if doing so subjects it to potential liability. There can be no assurance that the Trustee will be willing and able to perform its duties under the Indenture.

Release of Property; Additional Bonds

The Authority and the City may amend the Lease Agreement to substitute or release a portion of the Property upon compliance with all of the conditions set forth in the Lease Agreement. After a substitution or release, the portion of the Property for which the substitution or release has been effected will be released from the leasehold encumbrance of the Lease Agreement. Moreover, the City may issue Additional Bonds secured by Base Rental Payments which are increased above current levels. See the captions "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Substitution or Release of the Property" and "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Additional Bonds."

Although the Lease Agreement requires, among other things, that the Property, as constituted after such substitution or release, have an annual fair rental value at least equal to the maximum Base Rental Payments for the Property coming due in the then-current Fiscal Year or in any subsequent Fiscal Year, it does not require that the Property have an annual fair rental value equal to the annual fair rental value of the Property prior to the substitution release of any portion thereof. Thus, a portion of the Property could be replaced with less valuable real property, or could be released altogether. Such a substitution or release could have an adverse impact on the security for the 2025A Bonds, particularly if an event requiring abatement of the Base Rental Payments were to occur subsequent to such substitution or release.

Upon the issuance of Additional Bonds, the Lease Agreement will be amended, to the extent necessary, so as to increase the Base Rental Payments payable by the City thereunder by an aggregate amount that is sufficient to pay the principal of and interest on such Additional Bonds; provided, however, that no such amendment may be made such that the sum of such Base Rental Payments, including any increase in Base Rental Payments as a result of such amendment, plus Additional Rental Payments, in any Fiscal Year is in excess of the annual fair rental value of the Property after taking into account the use of the proceeds of any Additional Bonds issued in connection therewith. See the caption "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS—Additional Bonds" for a full description of the requirements that must be met in order for the City to deliver Additional Bonds.

Limitations on Enforceability

General. The enforcement of any remedies that are provided for in the Lease Agreement and the Indenture could prove both expensive and time consuming. The rights and remedies provided in the Lease Agreement and the Indenture may be limited by and are subject to: (i) the limitations on legal remedies against cities in the State, including State constitutional limits on expenditures and limitations on the enforcement of judgments against funds that are needed to serve the public welfare and interest; (ii) federal bankruptcy laws, as now or later enacted, as discussed in detail under the subcaption "—Bankruptcy" below; (iii) applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights generally, now or later in effect; (iv) equity principles which may limit the specific enforcement under State law of certain remedies; (v) the exercise by the United States of America of the powers delegated to it by the federal Constitution; and (vi) the reasonable and necessary exercise, in certain exceptional situations, of the police powers that are inherent in the sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or State government, if initiated, could subject the Owners of the 2025A Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation or modification of their rights.

The legal opinions that will be delivered concurrently with the issuance of the 2025A Bonds will be qualified, as to the enforceability of the 2025A Bonds, the Indenture, the Lease Agreement and other related

documents, by bankruptcy, insolvency, reorganization, moratorium, arrangement, fraudulent conveyance and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases, and to the limitations on legal remedies against counties in the State.

Failure by the City to pay Base Rental Payments or failure to observe and perform any other terms, covenants or conditions of the Lease Agreement for a period of 30 days after written notice of such failure and request that it be remedied has been given to the City by the Trustee constitute Events of Default under the Indenture and permit the Trustee or the Authority to pursue the remedies that are described in the Lease Agreement and Indenture. Upon an Event of Default, there is no right under any circumstances to accelerate Base Rental Payments or otherwise declare any Base Rental Payment that is not then in default to be immediately due and payable, nor do the Authority or the Trustee have any right to re-enter or re-let the affected Property, except to the limited extent that is described in the Lease Agreement, and only to the extent of the Authority's leasehold interest under the Lease Agreement. Rather, if the City defaults on its obligation to pay Base Rental Payments with respect to such Property, the Trustee must sue to recover Base Rental Payments on an annual basis.

Alternatively, the Authority or the Trustee may terminate the Lease Agreement, retake possession of the Property and proceed against the City to recover damages pursuant to the Lease Agreement. Due to the specialized and limited nature of the Property (as discussed under the caption "THE PROPERTY"), it is unlikely that 2025A Bond Owners would be able to generate rental income that is sufficient to make all payments of principal of and interest on the 2025A Bonds when due. Moreover, the Trustee is not empowered to sell the fee interest in the Property (which is owned by the City) for the benefit of the Owners of the 2025A Bonds. Any suit for money damages against the City would be subject to limitations on legal remedies against cities in the State, including a limitation on enforcement of judgments against funds needed to serve the public welfare and interest.

Bankruptcy. Enforceability of the rights and remedies of the Owners of the 2025A Bonds, and the obligations incurred by the City, may become subject to the provisions of Title 11 of the United States Code (the "Bankruptcy Code") and applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally, now or later in effect, equity principles which may limit the specific enforcement under State law of certain remedies, the exercise by the United States of America of the powers delegated to it by the federal Constitution, the reasonable and necessary exercise, in certain exceptional situations, of the police powers inherent in the sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose and the limitations on remedies against cities in the State. Bankruptcy proceedings, or the exercise of powers by the federal or State government, if initiated, could subject the Owners of the 2025A Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation or modification of their rights. Under Chapter 9 of the Bankruptcy Code, which governs the bankruptcy proceedings of public agencies such as the City, involuntary petitions are not permitted. If the City were to file a petition under Chapter 9 of the Bankruptcy Code, the Owners of the 2025A Bonds, the Trustee and the Authority could be prohibited from taking any steps to enforce their rights under the Lease Agreement or from taking any steps to collect amounts due from the City under the Lease Agreement.

In particular, if the City were to become a debtor under the Bankruptcy Code, the City would be entitled to all of the protective provisions of the Bankruptcy Code as applicable in a Chapter 9 case. Among the adverse effects of such a bankruptcy might be: (i) the application of the automatic stay provisions of the Bankruptcy Code, which, until relief is granted, would prevent collection of payments from the City or the commencement of any judicial or other action for the purpose of recovering or collecting a claim against the City, and which could prevent the Trustee from making payments from funds in its possession; (ii) the avoidance of preferential transfers occurring during the relevant period prior to the filing of a bankruptcy petition; (iii) the existence of unsecured or secured debt which may have a priority of payment that is superior to that of Owners of the 2025A Bonds; and (iv) the possibility of the adoption of a plan (an "Adjustment Plan") for the adjustment of the City's various obligations over the objections of the Trustee or all of the Owners of the 2025A Bonds and without their consent, which Adjustment Plan may restructure, delay, compromise or reduce the amount of any claim of the Owners if the Bankruptcy Court finds that such Adjustment Plan is "fair and equitable" and in the best interests of creditors. The Adjustment Plans approved by the Bankruptcy Courts in connection with the bankruptcies of the cities of Vallejo, San Bernardino and Stockton resulted in significant reductions in the amounts payable by

the cities under lease revenue obligations that were substantially identical or similar to the 2025A Bonds. The City can provide no assurances about the outcome of the bankruptcy cases of other California municipalities or the nature of any Adjustment Plan if it were to file for bankruptcy.

In addition, the City could either reject the Lease Agreement or assume the Lease Agreement despite any provision of such documents that makes the bankruptcy or insolvency of the City an event of default thereunder. If the City rejects the Lease Agreement, the Trustee, on behalf of the Owners of the 2025A Bonds, would have a pre-petition unsecured claim that may be substantially limited in amount, and this claim would be treated in a manner under an Adjustment Plan over the objections of the Trustee or Owners of the 2025A Bonds. Moreover, such rejection would terminate the Lease Agreement and the City's obligations to make payments thereunder. The City may also be permitted to assign the Lease Agreement to a third party, regardless of the terms of the transaction documents.

Secondary Market

There can be no guarantee that there will be a secondary market for the 2025A Bonds, or, if a secondary market exists, that the 2025A Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing in connection with a particular issue is suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon the then prevailing circumstances. Such prices could be substantially different from the original purchase price.

In addition, the City has entered into a continuing disclosure undertaking in connection with the 2025A Bonds. Any material failure to comply with such undertaking in the future may adversely affect the liquidity of the affected 2025A Bonds and their market price in the secondary market.

Covenant to Budget and Appropriate

Under the Lease Agreement, the City has covenanted to take such actions as are necessary to include the Base Rental Payments and the estimated Additional Rental Payments in its annual budgets and to make the necessary annual appropriations for all Base Rental Payments. Such covenant is deemed to be a duty imposed by law, and it is the duty of the public officials of the City to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable such entity to carry out and perform such covenants. A court, however, in its discretion may decline to enforce such covenant. Upon execution and delivery of the 2025A Bonds, Bond Counsel will render its opinion (substantially in the form of Appendix D) to the effect that, subject to certain limitations and qualifications, the Lease Agreement constitutes a valid and binding obligation of the City.

Federal Funding

The federal government provides funding for several City programs. On January 20, 2025, President Trump issued a series of executive orders, which include ensuring that federal funds are used in a manner approved by the current administration. In response to and in an effort to carry out such orders, on January 27, 2025, the White House Office of Management and Budget ("OMB") released its Memorandum M-25-13, Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs (the "OMB Memorandum"). The OMB Memorandum directed federal agencies to temporarily pause all activities related to obligation or disbursement of all federal financial assistance, and said temporary pause was to become effective at 5:00 p.m. on January 28, 2025. The OMB Memorandum caused mass confusion as to whether certain Federal funding and grants would be paused. On January 28, 2025, shortly before the OMB Memorandum became effective, a federal judge blocked the pause on federal funding. On January 29, 2025, OMB rescinded the OMB Memorandum. Although the OMB Memorandum was rescinded, the executive orders are in effect and the matter is ongoing as spending reviews continue. On January 31, 2025, a federal judge issued a temporary restraining order prohibiting the administration from pausing, freezing, impeding, blocking, canceling, or terminating federal financial assistance obligations to the states. Responding to the petition of several state Attorneys General, on February 10, 2025, a federal judge issued an Enforcement Order clarifying the scope of temporary restraining order and ordering the Trump Administration to release federal funds and comply with the earlier order. The Trump Administration's request to stay the temporary restraining order was denied. The City cannot predict any action

to be taken in carrying out the executive orders, but anticipates that any termination in federal funding will not have a material impact on the City's finances.

Risks Associated with Bond Insurance

In the event that the Authority defaults in the payment of principal of or interest on the 2025A Bonds when due, the owners of the 2025A Bonds will have a claim under the Policy for such payments. See the caption "BOND INSURANCE." In the event that the Insurer becomes obligated to make payments with respect to the 2025A Bonds, no assurance can be given that such event will not adversely affect the market for the 2025A Bonds. In the event that the Insurer is unable to make payment of principal of and interest on the 2025A Bonds when due under the Policy, the 2025A Bonds will be payable solely from Base Rental Payments and amounts held in certain funds and accounts established under the Indenture, as described under the caption "SECURITY AND SOURCES OF PAYMENT FOR THE 2025A BONDS."

The long-term rating on the 2025A Bonds is dependent in part on the financial strength of the Insurer and its claims-paying ability. The Insurer's financial strength and claims-paying ability are predicated upon a number of factors which could change over time. If the long-term ratings of the Insurer are lowered, such event could adversely affect the market for the 2025A Bonds. See the caption "RATINGS."

None of the Authority, the City or the Underwriter have made an independent investigation of the claims-paying ability of the Insurer and no assurance or representation regarding the financial strength or projected financial strength of the Insurer is being made by the Authority, the City or the Underwriter in this Official Statement. Therefore, when making an investment decision with respect to the 2025A Bonds, potential investors should carefully consider the ability of the City to pay Base Rental Payments, assuming that the Policy is not available to make payments on the 2025A Bonds, and the claims-paying ability of the Insurer through final maturity of the 2025A Bonds.

So long as the Policy remains in effect and the Insurer is not in default of its obligations thereunder, the Insurer has certain notice, consent and other rights under the Indenture and will have the right to control all remedies for default under the Indenture with respect to the 2025A Bonds. The Insurer is not required to obtain the consent of the owners of the 2025A Bonds with respect to the exercise of remedies. See Appendix B.

TAX MATTERS

In the opinion of Stradling Yocca Carlson & Rauth LLP, Newport Beach, California, Bond Counsel ("Bond Counsel"), under existing statutes, regulations, rulings and judicial decisions, and assuming the accuracy of certain representations and compliance with certain covenants and requirements described herein, interest on the 2025A Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals. However, it should be noted that, with respect to applicable corporations as defined in Section 59(k) of the Internal Revenue Code of 1986, as amended (the "Code"), generally certain corporations with more than $1,000,000,000 of average annual adjusted financial statement income, interest (and original issue discount) with respect to the 2025A Bonds might be taken into account in determining adjusted financial statement income for purposes of computing the alternative minimum tax imposed by Section 55 of the Code on such corporations. In the further opinion of Bond Counsel, interest on the 2025A Bonds is exempt from State of California personal income tax.

Bond Counsel's opinion as to the exclusion from gross income for federal income tax purposes of interest on the 2025A Bonds is based upon certain representations of fact and certifications made by the Authority, the City and others and is subject to the condition that the Authority and the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the 2025A Bonds to assure that interest on the 2025A Bonds will not become includable in gross income for federal income tax purposes. Failure to comply with such requirements of the Code might cause interest on the 2025A Bonds to be included in gross income for federal income tax purposes retroactive to the date of issuance of the 2025A Bonds. The Authority and the City have covenanted to comply with all such requirements.

The amount by which a Bond Owner's original basis for determining loss on sale or exchange in the applicable 2025A Bond (generally, the purchase price) exceeds the amount payable on maturity (or on an earlier

call date) constitutes amortizable bond premium, which must be amortized under Section 171 of the Code; such amortizable bond premium reduces the Bond Owner's basis in the applicable 2025A Bond (and the amount of tax-exempt interest received with respect to the 2025A Bonds), and is not deductible for federal income tax purposes. The basis reduction as a result of the amortization of bond premium may result in a 2025A Bond Owner realizing a taxable gain when a 2025A Bond is sold by the Owner for an amount equal to or less (under certain circumstances) than the original cost of the 2025A Bond to the Owner. Purchasers of the 2025A Bonds should consult their own tax advisors as to the treatment, computation and collateral consequences of amortizable bond premium.

The IRS has initiated an expanded program for the auditing of tax exempt bond issues, including both random and targeted audits. It is possible that the 2025A Bonds will be selected for audit by the IRS. It is also possible that the market value of the 2025A Bonds might be affected as a result of such an audit of the 2025A Bonds (or by an audit of similar municipal obligations). No assurance can be given that in the course of an audit, as a result of an audit, or otherwise, Congress or the IRS might not change the Code (or interpretation thereof) subsequent to the issuance of the 2025A Bonds to the extent that it adversely affects the exclusion from gross income of interest on the 2025A Bonds or their market value.

SUBSEQUENT TO THE ISSUANCE OF THE BONDS, THERE MIGHT BE FEDERAL, STATE OR LOCAL STATUTORY CHANGES (OR JUDICIAL OR REGULATORY CHANGES TO OR INTERPRETATIONS OF FEDERAL, STATE OR LOCAL LAW) THAT AFFECT THE FEDERAL, STATE OR LOCAL TAX TREATMENT OF THE BONDS, INCLUDING THE IMPOSITION OF ADDITIONAL FEDERAL INCOME OR STATE TAXES ON OWNERS OF TAX-EXEMPT STATE OR LOCAL OBLIGATIONS, SUCH AS THE 2025A BONDS. THESE CHANGES COULD ADVERSELY AFFECT THE MARKET VALUE OR LIQUIDITY OF THE 2025A BONDS. NO ASSURANCE CAN BE GIVEN THAT SUBSEQUENT TO THE ISSUANCE OF THE 2025A BONDS STATUTORY CHANGES WILL NOT BE INTRODUCED OR ENACTED OR JUDICIAL OR REGULATORY INTERPRETATIONS WILL NOT OCCUR HAVING THE EFFECTS DESCRIBED ABOVE. BEFORE PURCHASING ANY OF THE 2025A BONDS, ALL POTENTIAL PURCHASERS SHOULD CONSULT THEIR TAX ADVISORS REGARDING POSSIBLE STATUTORY CHANGES OR JUDICIAL OR REGULATORY CHANGES OR INTERPRETATIONS, AND THEIR COLLATERAL TAX CONSEQUENCES RELATING TO THE 2025A BONDS.

Bond Counsel's opinions may be affected by actions taken (or not taken) or events occurring (or not occurring) after the date hereof. Bond Counsel has not undertaken to determine, or to inform any person, whether any such actions or events are taken or do occur. The Indenture and the Tax Certificate relating to the 2025A Bonds permit certain actions to be taken or to be omitted if a favorable opinion of Bond Counsel is provided with respect thereto. Bond Counsel expresses no opinion as to the effect on the exclusion from gross income of interest for federal income tax purposes with respect to any 2025A Bond if any such action is taken or omitted based upon the advice of counsel other than Stradling Yocca Carlson & Rauth LLP.

Although Bond Counsel has rendered an opinion that interest on the 2025A Bonds is excluded from gross income for federal income tax purposes provided that the Authority and the City continue to comply with certain requirements of the Code, the ownership of the 2025A Bonds and the accrual or receipt of interest on the 2025A Bonds may otherwise affect the tax liability of certain persons. Bond Counsel expresses no opinion regarding any such tax consequences. Accordingly, before purchasing any of the 2025A Bonds, all potential purchasers should consult their tax advisors with respect to collateral tax consequences relating to the 2025A Bonds.

Should interest on the 2025A Bonds become includable in gross income for federal income tax purposes, the 2025A Bonds are not subject to early redemption and will remain outstanding until maturity or until redeemed in accordance with the Indenture.

A copy of the proposed form of opinion of Bond Counsel is set forth in Appendix D.

CERTAIN LEGAL MATTERS

The valid, legal and binding nature of the 2025A Bonds is subject to the approval of Stradling Yocca Carlson & Rauth LLP, Newport Beach, California, acting as Bond Counsel. The form of such legal opinion is attached hereto as Appendix D, and such legal opinion will be attached to each 2025A Bond. Certain legal matters will be passed upon for the City by Best Best & Krieger LLP, Riverside, California, as Disclosure Counsel, and by Best Best & Krieger LLP, Ontario, California, the City Attorney, for the Underwriter by its counsel, Kutak Rock, Irvine, California, for the Insurer by its counsel and for the Trustee by its counsel.

From time to time Bond Counsel and Disclosure Counsel serve as counsel to the Underwriter with respect to transactions other than the issuance of the 2025A Bonds.

MUNICIPAL ADVISOR

The Authority has retained Urban Futures, Inc., Walnut Creek, California (the "Municipal Advisor") as municipal advisor in connection with the sale of the 2025A Bonds. The Municipal Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or to assume any responsibility for the accuracy, completeness or fairness of the information contained herein.

The Municipal Advisor is an independent advisory firm and is not engaged in the business of underwriting, trading or distributing municipal or other public securities.

LITIGATION

At the time of issuance of the 2025A Bonds, the Authority and the City will deliver certificates substantially to the effect that there is no litigation then pending or threatened to restrain or enjoin the issuance of the 2025A Bonds or in any way contesting or affecting the validity of the 2025A Bonds, the Lease Agreement, any proceedings of the Authority or the City taken with respect to the delivery or sale of the 2025A Bonds, the pledge or application of any money or security provided for the payment of the 2025A Bonds, the existence or powers of the Authority or the City or the title of any officers of the Authority or the City to their respective positions, or the outcome of which could materially adversely affect the ability of the City to make the Base Rental Payments.

UNDERWRITING

The 2025A Bonds will be purchased by Samuel A. Ramirez & Co., Inc. (the "Underwriter"), pursuant to a purchase contract, dated the date hereof (the "Purchase Contract"), by and among the City, the Authority and Samuel A. Ramirez & Co., Inc. Under the Purchase Contract, the Underwriter has agreed to purchase all, but not less than all, of the 2025A Bonds for an aggregate purchase price of $_____ (representing the principal amount of the 2025A Bonds, less an Underwriter's discount of $_____, plus an original premium of $_____). The Purchase Contract provides that the Underwriter will purchase all of the 2025A Bonds if any are purchased, the obligation to make such a purchase being subject to certain terms and conditions set forth in the Purchase Contract, the approval of certain legal matters by counsel and certain other conditions.

The initial public offering prices stated on the inside cover page of this Official Statement may be changed from time to time by the Underwriter. The Underwriter may offer and sell the 2025A Bonds to certain dealers (including dealers depositing 2025A Bonds into investment trusts), dealer banks, banks acting as agents and others at prices lower than said public offering prices.

RATINGS

S&P has assigned the insured rating of "__" (stable outlook) and Fitch has assigned to insured rating of "__" to the 2025A Bonds based upon the delivery of the Policy by the Insurer at the time of issuance of the 2025A Bonds. S&P has also assigned the 2025A Bonds its underlying rating of "___" notwithstanding the delivery of the Policy.

There is no assurance that any credit rating that is given to the 2025A Bonds will be maintained for any period of time or that a rating may not be qualified, downgraded, lowered or withdrawn entirely by S&P or Fitch if, in the judgment of S&P or Fitch, circumstances so warrant. Any such qualification, downgrade, lowering or withdrawal of a rating may have an adverse effect on the market price of the 2025A Bonds. The ratings reflect only the views of S&P or Fitch (which views and criteria could change at any time), and an explanation of the significance of such ratings may be obtained from S&P or Fitch, as applicable. Generally, a rating agency bases its ratings on the information and materials furnished to it (which may include information and material from the City that is not included in this Official Statement) and on investigations, studies and assumptions of its own.

The City has covenanted in a Continuing Disclosure Certificate to file notices of any rating changes on the 2025A Bonds with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system. See the caption "CONTINUING DISCLOSURE" and Appendix E. Notwithstanding such covenant, information relating to rating changes on the 2025A Bonds may be publicly available from the rating agencies prior to the time that such information is provided to the City and prior to the date by which the City is obligated to file a notice of rating change. Purchasers of the 2025A Bonds are directed to the rating agencies and their respective websites and official media outlets for the most current ratings with respect to the 2025A Bonds after the initial issuance of the 2025A Bonds.

None of the Authority, the City or the Underwriter make any representation as to the Insurer's creditworthiness and no representation that the Insurer's credit rating will be maintained in the future. S&P has previously taken action to downgrade the ratings of certain municipal bond insurers and has published various releases outlining the processes that S&P intends to follow in evaluating the ratings of financial guarantors. For some financial guarantors, the result of such evaluations could be a rating affirmation, a change in rating outlook, a review for downgrade or a downgrade. Potential investors are directed to S&P for additional information on S&P's evaluations of the financial guaranty industry and individual financial guarantors, including the Insurer, and to Fitch for additional information on Fitch's evaluation of the financial guaranty industry and individual financial guarantors, including the Insurer. See the caption "BOND INSURANCE" for further information relating to the Insurer.

CONTINUING DISCLOSURE

The City has covenanted in a Continuing Disclosure Certificate, dated the date of issuance of the 2025A Bonds, for the benefit of the holders and Beneficial Owners of the 2025A Bonds, to provide certain financial information and operating data relating to the City by not later than April 1 following the end of the City's Fiscal Year (currently its Fiscal Year ends on June 30) (the "Annual Report"), commencing on April 1, 2026 with the report for the Fiscal Year ending June 30, 2025, and to provide notices of the occurrence of certain enumerated events. The Annual Report and the notices of enumerated events will be filed by the City with EMMA, which is maintained on the Internet at http://emma.msrb.org/. The specific nature of the information to be contained in the Annual Report and the notices of enumerated events is set forth in Appendix E. These covenants have been made in order to assist the Underwriter in complying with subsection (b)(5) of Rule 15c2-12.

The City and its related governmental entities (the "City Entities") for whom City staff is responsible for undertaking compliance with continuing disclosure undertakings have previously entered into numerous disclosure undertakings under Rule 15c2-12 in connection with the issuance of long-term obligations. In order to ensure ongoing compliance with its continuing disclosure undertakings, the City has designated staff members within the Investments & Revenue Resources Department with the responsibility of ensuring timely and complete filings. In addition, the City has retained an outside consultant to conduct periodic reviews of City compliance. The City's debt management policy includes continuing disclosure compliance policies and procedures. See the caption "CITY FINANCIAL INFORMATION—General Economic Condition and Outlook of the City—Fiscal Policies—Debt Management Policy."

Within the last five years, the City and the City Entities have not failed to timely comply with their respective prior continuing disclosure obligations under Rule 15c2-12 in all material respects except that certain information with respect to outstanding indebtedness of the City was not included in the Fiscal Year 2021 annual report for the Ontario Public Financing Authority 2017 Lease Revenue Refunding Bonds, the City of Ontario 2020 Taxable Pension Obligations Bonds and the Ontario Public Financing Authority 2021 Lease Revenue Refunding Bonds, Series A (Federally Taxable); the City's Fiscal Years 2020-21 and 2022-23 audited financial

statements were not available at the time of the filing of 2021 and 2023 respective annual reports, but have since been posted and such information is included in the notes to the City's Fiscal Year 2020-21 and 2022-23 audited financial statements.

FINANCIAL INTERESTS

The fees being paid to the Underwriter, Bond Counsel, Disclosure Counsel and counsel to the Underwriter are contingent upon the issuance and delivery of the 2025A Bonds.

MISCELLANEOUS

The Authority and the City have approved and authorized the preparation, execution and distribution of this Official Statement. Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such, and are not representations of fact. This Official Statement is not to be construed as an agreement or contract among any of the City, the Authority and the purchasers or holders of any 2025A Bonds.

ONTARIO PUBLIC FINANCING AUTHORITY

By: _____
Executive Director

CITY OF ONTARIO

By: _____
City Manager

APPENDIX A

DEMOGRAPHIC AND ECONOMIC INFORMATION

The following information is presented as general background data. The 2025A Bonds are payable solely from moneys of the City as described in the Official Statement. The taxing power of the City, the County, the State of California or any political subdivision thereof is not pledged to the payment of the 2025A Bonds.

Introduction

City of Ontario. The City is located in southwestern San Bernardino County (the "County"), approximately 35 miles east of Los Angeles near the intersection of Interstates 10 and 15 in the area of southern California known as the "Inland Empire." The City is adjacent to the cities of Upland, Montclair, Chino and Rancho Cucamonga. The City had a population of approximately 181,224 as of January 1, 2024, and covers approximately 50 square miles. The City was incorporated in 1891 and is a general law city operating under a council/manager form of government.

The City is a full service city and provides police and fire protection, street construction and maintenance, parks and recreational programs, water and sewer utilities and arts, cultural and social programs. The City also operates a municipal golf course, convention center and sports and entertainment arena (the Toyota Arena, which opened in 2008).

San Bernardino County. The County was established by an act of the State Legislature on April 26, 1853. Located in the southern portion of the State, the County covers 20,105 square miles, making it the largest county in the United States. The County has a population of over 2 million and extends from dense suburban development in the southwest portion of the County near the Los Angeles urban area to large expanses of desert and federally owned land in the eastern portion of the County, which stretches to the Nevada border.

Population

The table below summarizes population of the City, the County, and the State of California for the last ten calendar years.

CITY OF ONTARIO, SAN BERNARDINO COUNTY AND CALIFORNIA
Population

Year	City of Ontario	San Bernardino County	State of California
2015	166,556	2,114,182	38,810,306
2016	166,515	2,124,990	39,036,749
2017	169,285	2,142,339	39,273,915
2018	170,593	2,153,258	39,429,439
2019	173,450	2,169,538	39,503,656
2020	175,297	2,185,348	39,541,722
2021	176,070	2,183,756	39,246,702
2022	178,564	2,179,263	39,146,273
2023	179,555	2,170,593	39,109,070
2024	181,224	2,180,503	39,119,734

Source: California Department of Finance, E-4 Population Estimate for Cities, Counties, and the State, 2015-2024.

Employment

The following table summarizes historical employment and unemployment for the County, the State of California and the United States for the last five calendar years.

SAN BERNARDINO COUNTY, CALIFORNIA AND UNITED STATES
Civilian Labor Force, Employment, and Unemployment
(Annual Averages)

Year	Area	Labor Force	Employment	Unemployment	Unemployment Rate[1]
2019	San Bernardino County	965,000	927,400	37,600	3.9
	California	19,353,700	18,550,500	803,200	4.2
	United States	163,539,000	157,538,000	6,001,000	3.7
2020	San Bernardino County	966,200	874,900	91,300	9.4
	California	18,821,200	16,913,100	1,908,100	10.1
	United States	160,742,000	147,795,000	12,947,000	8.1
2021	San Bernardino County	990,000	916,600	73,500	7.4
	California	18,956,600	17,568,700	1,387,800	7.3
	United States	161,204,000	152,581,000	8,623,000	5.3
2022	San Bernardino County	1,003,000	961,200	41,700	4.2
	California	19,169,300	18,348,900	820,400	4.3
	United States	164,287,000	158,291,000	5,996,000	3.6
2023	San Bernardino County	1,013,700	966,500	47,200	4.7
	California	19,308,300	18,388,300	920,000	4.8
	United States	167,116,000	161,037,000	6,080,000	3.6

[1] The unemployment rate is computed from unrounded data; therefore, it may differ from rates computed from rounded figures available in this table.

Source: California Employment Development Department, Monthly Labor Force Data for Counties, Annual Average 2010-23, March 2020 Benchmark, and US Department of Labor.

Major Industries in the City and County

The table below sets forth the ten largest industries by employment in the City in Fiscal Year 2023-24.

CITY OF ONTARIO
MAJOR INDUSTRIES
FY 2023-24

Employer	*Number of Employees(1)*
Ontario International Airport	5,000 - 9,999
United Parcel Service	5,000 - 9,999
Workforce Personnel, Inc	5,000 - 9,999
Chaffey Union High School	1,000 - 4,999
City of Ontario	1,000 - 4,999
Ontario-Montclair School District	1,000 - 4,999
Primary Care Assoc Med Group	1,000 - 4,999
FedEx	500 - 999
The Home Depot	500 - 999
QVC, Inc	500 - 999

(1) Per EDD, the Employment numbers are confidential and only the data for the range of numbers of employees are available.
Source: State of California Employment Development Department.

The following table sets out the largest employers in the County:

COUNTY OF SAN BERNARDINO
MAJOR INDUSTRIES
FY 2023-24

Employer Name	Location	Industry
Amazon Fulfillment Ctr	Redlands	Mail Order Fulfillment Service
Amazon Fulfillment Ctr	San Bernardino	Mail Order Fulfillment Service
Arrowhead Regional Medical Ctr	Colton	Hospitals
Bear Mountain	Big Bear Lake	Skiing Centers & Resorts
Burlington Distribution Ctr	San Bernardino	Distribution Centers (whls)
California State Univ Sn	San Bernardino	Schools-Universities & Colleges Academic
Dignity Health Cmnty Hosp-Sn	San Bernardino	Hospitals
Dignity Health-St Bernardine	San Bernardino	Hospitals
Environmental Systems Research	Redlands	Geographics Information Systems
Fedex Ground	Bloomington	Delivery Service
Inland Empire Health Plan	Rancho Cucamonga	Health Plans
Kaiser Permanente Fontana Med	Fontana	Hospitals
Loma Linda Univ Health Board	Loma Linda	Univ/Clg-Governing Body/Regent/Trustee
Loma Linda University Med Ctr	Loma Linda	Hospitals
Mountain High Ski Resort	Wrightwood	Skiing Centers & Resorts
Ontario International Airport	Ontario	Airports

Ontario-Montclair School Dist	Ontario	School Districts
Patton State Hospital	Patton	Hospitals
Primary Care Assoc Med Group	Ontario	Physicians & Surgeons
Radial	Rialto	Mail Order Fulfillment Service
Redlands Community Hospital	Redlands	Hospitals
San Antonio Regional Hospital	Upland	Hospitals
San Bernardino County Sch Supt	San Bernardino	Schools & Educational Services NEC
San Bernardino County Sheriff	San Bernardino	General Justice Public Order & Safety Activit
Snowline Joint Unified Sch Dst	Phelan	Schools

Source: State of California Employment Development Department.

Construction Activity

The following table reflects building permit valuations for the City for the five most recent calendar years for which information is available.

CITY OF ONTARIO
Building Permits and Valuation
(Dollars in Thousands)

	2020	2021	2022	2023	2024
Permit Valuation:					
New Single-family	$101,990	$134,735	$133,332	$182,845	$ 36,582
New Multi-family	8,459	15,378	38,669	147,416	60,710
Res. Alterations/Additions	3,709	6,315	4,884	6,218	4,884
Total Residential	114,158	156,428	176,885	336,479	102,176
Total Nonresidential	125,537	516,481	371,120	421,377	514,186
Total All Building	$239,695	$672,909	$548,005	$757,856	$616,362
New Dwelling Units:					
Single Family	472	737	737	581	193
Multiple Family	74	22	40	369	399
Total	546	759	777	950	592

Note: Columns may not sum to totals due to independent rounding.
Source: City of Ontario.

APPENDIX B

SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

The following is a summary of certain definitions and provisions of the Amended and Restated Lease Agreement and the Indenture which are not described elsewhere in the Official Statement. This summary does not purport to be comprehensive and reference should be made to the Lease Agreement and the Indenture for a full and complete statement of their provisions.

[TO COME FROM BOND COUNSEL]

APPENDIX C

AUDITED FINANCIAL STATEMENTS

APPENDIX D

FORM OF BOND COUNSEL OPINION

Upon the issuance of the 2025A Bonds, Bond Counsel, proposes to render its final approving opinion in substantially the following form:

APPENDIX E

FORM OF CONTINUING DISCLOSURE CERTIFICATE

Upon issuance of the 2025A Bonds, the City proposes to enter into a Continuing Disclosure Certificate in substantially the following form:

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of Ontario (the "**City**") in connection with the issuance by the Ontario Public Financing Authority (the "Authority") of the Authority's 2025A Lease Revenue Bonds (the "Bonds"). The Bonds are being issued pursuant to an Indenture, dated as of _____, 2025 (the "Indenture"), by and between the Authority and Zion's Bancorporation, National Association, as trustee. The City covenants and agrees as follows:

1. Purpose of this Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with the Rule.

2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

Annual Report. The term "Annual Report" means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

Beneficial Owner. The term "Beneficial Owner" means any person which: (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries); or (b) is treated as the owner of any Bonds for federal income tax purposes.

EMMA. The term "EMMA" means the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System for municipal securities disclosures, maintained on the Internet at http://emma.msrb.org/.

Financial Obligation. The term "Financial Obligation" means a: (A) debt obligation; (B) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (C) guarantee of (A) or (B). The term "Financial Obligation" does not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with the Rule.

Fiscal Year. The term "Fiscal Year" means the one-year period ending on the last day of June of each year.

Holder. The term "Holder" means a registered owner of the Bonds.

Insurer. The term "Insurer" means [to come].

Listed Events. The term "Listed Events" means any of the events listed in Sections 5(a) and (b) of this Disclosure Certificate.

Official Statement. The term "Official Statement" means the Official Statement relating to the Bonds dated _____, 2025 delivered in connection with the issuance of the Bonds.

Participating Underwriter. The term "Participating Underwriter" means the original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

Rule. The term "Rule" means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

3. Provision of Annual Reports.

(a) The City shall provide not later than each April 1 following the end of its Fiscal Year (commencing April 1, 2026 with the Annual Report for Fiscal Year 2025) to EMMA an Annual Report relating to the immediately preceding Fiscal Year which is consistent with the requirements of Section 4 of this Disclosure Certificate, which Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate.

(b) If the City is unable to provide to EMMA an Annual Report by the date required in subsection (a), the City shall send to EMMA a notice in substantially the manner prescribed by the Municipal Securities Rulemaking Board.

4. Content of Annual Reports. The Annual Report shall contain or incorporate by reference the following:

(a) The audited financial statements of the City for the prior Fiscal Year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If such audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Principal amount of the Bonds outstanding.

(c) To the extent not already included in the City's audited financial statements, an update of the information substantially in the form of the following tables or captions in the Official Statement for the Fiscal Year prior to the filing of such Annual Report:

1. Table 2 – General Fund Statement of Revenues, Expenditures and Charges in Fund Balance;

2. Table 3 – General Fund Balance Sheets;

3. Table 4 – Assessed Valuation History;

4. Table 5 – Property Tax Levies and Collections; and

5. Information under the caption "CITY FINANCIAL INFORMATION—Other Indebtedness—General Fund Supported Debt" (provided that such information may be located in the notes to the City's audited financial statements).

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which have been submitted to EMMA or the Securities and Exchange Commission; provided that if any document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board; and provided further that the City shall clearly identify each such document so included by reference.

5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds in a timely manner not more than ten (10) Business Days after the event:

1. principal and interest payment delinquencies;

2. unscheduled draws on debt service reserves reflecting financial difficulties;

3. unscheduled draws on credit enhancements reflecting financial difficulties;

4. substitution of credit or liquidity providers, or their failure to perform;

5. issuance by the Internal Revenue Service of proposed or final determination of taxability or of a Notice of Proposed Issue (IRS Form 5701 TEB);

6. tender offers;

7. defeasances;

8. ratings changes;

9. bankruptcy, insolvency, receivership or similar proceedings; Note: For the purposes of the event identified in subparagraph (9), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person; and

10. default, event of acceleration, termination event, modification of terms or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

(b) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

1. unless described in Section 5(a)(5), other notices or determinations by the Internal Revenue Service with respect to the tax status of the Bonds or other events affecting the tax status of the Bonds;

2. modifications to the rights of Bondholders;

3. optional, unscheduled or contingent Bond calls;

4. release, substitution or sale of property securing repayment of the Bonds;

5. non-payment related defaults;

6. the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms;

7. appointment of a successor or additional trustee or the change of the name of a trustee; and

8. incurrence of a Financial Obligation of the City, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders.

(c) If the City determines that knowledge of the occurrence of a Listed Event under Section 5(b) would be material under applicable federal securities laws, the City shall file a notice of such occurrence with EMMA in a timely manner not more than ten (10) Business Days after the event.

6. Customarily Prepared and Public Information. Upon request, the City shall provide to any person financial information and operating data regarding the City which is customarily prepared by the City and is publicly available.

7. Termination of Obligation. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that, in the opinion of nationally recognized bond counsel, such amendment or waiver is permitted by the Rule.

9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall not thereby have any obligation under this Disclosure Certificate to update such information or include it in any future notice of occurrence of a Listed Event.

10. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, any Holders or Beneficial Owners of at least 50% aggregate principal amount of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

No Holder or Beneficial Owner of the Bonds may institute such action, suit or proceeding to compel performance unless they shall have first delivered to the City satisfactory written evidence of their status as such, and a written notice of and request to cure such failure, and the City shall have refused to comply therewith within a reasonable time.

11. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the Authority, the City, the Insurer, the Participating Underwriter and Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Dated: _____, 2025

CITY OF ONTARIO

By: _____
Its: City Manager

APPENDIX F

BOOK-ENTRY ONLY SYSTEM

The information in this section concerning DTC and DTC's book-entry only system has been obtained from sources that the Authority and the City believe to be reliable, but the Authority and the City take no responsibility for the completeness or accuracy thereof. The following description of the procedures and record keeping with respect to beneficial ownership interests in the 2025A Bonds, payment of principal, premium, if any, accreted value, if any, and interest on the 2025A Bonds to DTC Participants or Beneficial Owners, confirmation and transfers of beneficial ownership interests in the 2025A Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC.

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the 2025A Bonds. The 2025A Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered 2025A Bond will be issued for each annual maturity of the 2025A Bonds, each in the aggregate principal amount of such annual maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC is rated AA+ by Standard & Poor's. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of 2025A Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2025A Bonds on DTC's records. The ownership interest of each actual purchaser of each 2025A Bonds ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2025A Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive bonds representing their ownership interests in 2025A Bonds, except in the event that use of the book-entry system for the 2025A Bonds is discontinued.

To facilitate subsequent transfers, all 2025A Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of 2025A Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2025A Bonds; DTC's records reflect only the identity of the Direct Participants to whose

accounts such 2025A Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of 2025A Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the 2025A Bonds, such as redemptions, tenders, defaults, and proposed amendments to the 2025A Bonds documents. For example, Beneficial Owners of 2025A Bonds may wish to ascertain that the nominee holding the 2025A Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the 2025A Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to 2025A Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts 2025A Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the 2025A Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A 2025A Bond Owner shall give notice to elect to have its 2025A Bonds purchased or tendered, through its Participant, to the Trustee, and shall effect delivery of such 2025A Bond by causing the Direct Participant to transfer the Participant's interest in the 2025A Bonds, on DTC's records, to the Trustee. The requirement for physical delivery of 2025A Bond in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the 2025A Bond are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered 2025A Bond to the Trustee's DTC account.

DTC may discontinue providing its services as depository with respect to the 2025A Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, physical certificates are required to be printed and delivered.

The Authority may decide to discontinue use of the system of book-entry only transfers through DTC (or a successor securities depository). In that event, 2025A Bonds will be printed and delivered to DTC.

THE TRUSTEE, AS LONG AS A BOOK-ENTRY ONLY SYSTEM IS USED FOR THE 2025A BONDS, WILL SEND ANY NOTICE OF REDEMPTION OR OTHER NOTICES TO OWNERS ONLY TO DTC. ANY FAILURE OF DTC TO ADVISE ANY DTC PARTICIPANT, OR OF ANY DTC PARTICIPANT TO NOTIFY ANY BENEFICIAL OWNER, OF ANY NOTICE AND ITS CONTENT OR EFFECT WILL NOT AFFECT THE VALIDITY OF SUFFICIENCY OF THE PROCEEDINGS RELATING TO THE REDEMPTION OF THE 2025A BONDS CALLED FOR REDEMPTION OR OF ANY OTHER ACTION PREMISED ON SUCH NOTICE.

APPENDIX G

SPECIMEN MUNICIPAL BOND INSURANCE POLICY

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **PUBLIC HEARINGS**
Department: Economic Development Prepared By: Karen Khukoyan Department: Prepared By: Karen Khukoyan Staff Member Presenting: Jennifer McLain Hiramoto, Economic Development Director Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 24

SUBJECT: APPROVAL OF RESOLUTIONS FOR SALE OF PROPERTY AT 100 BLOCK OF NORTH EUCLID AVENUE FROM ONTARIO HOUSING AUTHORITY TO CITY OF ONTARIO

RECOMMENDATION: That the Ontario Housing Authority and the City Council take the following actions:

A. Adopt a Resolution declaring certain Ontario Housing Authority-owned real property at 100 Block of North Euclid Avenue (APN's 1048-553-01,1048-553-05 Through 1048-553-15) to be exempt surplus land; approve the transfer of real property at 100 Block North Euclid Avenue (APN's 1048-553-01,1048-553-05 Through 1048-553-15) from the Ontario Housing Authority to the City of Ontario; and declare the conveyance of the property exempt from environmental review under the California Environmental Quality Act pursuant to CEQA Guidelines Section 15312.
B. Adopt a Resolution approving and accepting the transfer of real property at 100 Block North Euclid Avenue (APN's 1048-553-01,1048-553-05 Through 1048-553-15) from the Ontario Housing Authority to the City of Ontario.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: If approved, Quarterly Budget update will be presented to City Council to reflect land sale proceeds in the amount of $3,699,325.61 transferred into the Ontario Housing Authority Low and Moderate Income Housing Asset Fund and $3,699,326 expense from the Economic Development Fund. The payments will be made over a 10-year period, with annual installments of $369,933. If the City pays the loan in advance, there will be no prepayment penalty. The first payment will be made on December 31, 2025.

BACKGROUND & ANALYSIS: Prior to the Great Recession, the Ontario Housing Authority (the "Authority") acquired a portion of the 100 Block of North Euclid Avenue, as depicted in Exhibit "A" as part of a redevelopment initiative. The vision was to incorporate the historic buildings—formerly housing the Yangtzee, Lerch, and Bridal Shop—into a mixed-use development that would include high-density affordable housing, retail spaces, commercial services, and a public commons area. This adaptive reuse was intended to enable the occupancy of businesses such as a restaurants and other retail establishments that would serve local workers, shoppers, and residents, thereby contributing to the City's broader goal of revitalizing and enhancing the Downtown area both economically and aesthetically while providing integrated affordable housing. However, due to the economic downturn, the planned redevelopment did not move forward as originally envisioned.

Given that the Property will no longer be developed into affordable housing and is currently owned by the Authority, it is recommended that the City of Ontario (the "City") acquire the Property from the Authority with the intent of repaying the Authority for the purchase price of the property when it was acquired. Under Health and Safety Code Section 34312.3(b), the Authority is permitted to sell the Property provided that the sale proceeds are allocated toward affordable housing in the future.

The conveyance is exempt from CEQA pursuant to the Class 12 exemption – Surplus Government Property Sales. The property isn't located in an area of statewide, regional, or areawide concern identified in Section15206(b)(4).

The Authority has met all public hearing notice requirements as outlined in Section 33430 of the Health and Safety Code.

Staff recommends approval of the attached Resolutions facilitating the transfer of the Property from the Authority to the City.

RESOLUTION NO. OHA-____

A RESOLUTION OF THE GOVERNING BOARD OF THE ONTARIO HOUSING AUTHORITY, OF THE CITY OF ONTARIO, CALIFORNIA, PURSUANT TO GOVERNMENT CODE SECTION 54221 DECLARING THAT CERTAIN REAL PROPERTY (100 BLOCK NORTH EUCLID AVENUE) IS EXEMPT SURPLUS LAND AND APPROVING THE CONVEYANCE OF 100 BLOCK NORTH EUCLID AVENUE (APN'S 1048-553-01, 1048-553-05 THROUGH 1048-553-15) FROM THE ONTARIO HOUSING AUTHORITY TO THE CITY OF ONTARIO AND FINDING SUCH ACTION / DECLARATION IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SECTION 15312 OF THE CEQA GUIDELINES.

WHEREAS, the Ontario Housing Authority ("Authority") is owner of certain real property in the County of San Bernardino, State of California, generally located at 100 BLOCK NORTH EUCLID AVENUE in the City of Ontario, California (APN'S 1048-553-01, 1048-553-05 through 1048-553-15) (the "Property"). The Property is currently not being utilized to provide affordable housing in the City to qualified low- and moderate-income persons; and

WHEREAS, the Authority is the owner of the Property within the corporate limits of the City of Ontario.

WHEREAS, the Surplus Land Act, Government Code sections 54220 et seq. (the "Act") applies when a local agency disposes of "surplus land," which is defined in the Act as "land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use." (Government Code section 54221(b)(1).)

WHEREAS, the Act expressly does "not apply to the disposal of exempt surplus land." (Government Code section 54222.3.)

WHEREAS, under the Act, "exempt surplus land" includes land that a local agency is transferring to another local, state, or federal agency for the transferee agency's use. (Government Code section 54221(f)(1)(D).)

WHEREAS, the Act requires local agencies such as the Authority to declare certain real property they own as either "surplus land" or "exempt surplus land," as supported by written findings, prior to any disposition of the real property.

WHEREAS, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City of Ontario ("City") has designated the Authority as the housing entity for the City.

WHEREAS, pursuant to the Housing Authority Law, the Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers.

WHEREAS, the Authority desires to transfer the Property to the City, which is a "local agency" under the Act;

WHEREAS, the Authority Board has reviewed this Resolution and now desires to declare the Property as exempt surplus land under the Act, based on the findings and justifications contained in this Resolution.

WHEREAS, the Authority wishes to convey the Property to the City of Ontario ("City") for Three Million Six Hundred Ninety-Nine Thousand Three Hundred Twenty-Five Dollars and Sixty-One Cents ($3,699,325.61), with the intent of recovering costs. The payments will be interest free and the first payment will be made on December 31, 2025. If the City were to complete all payments ahead of schedule as shown in Exhibit "A" Loan Amortization Schedule, there will be no prepayment penalty. The Authority will use the proceeds of the sale of the Property for future development of low-income housing in accordance with Health and Safety Code section 34312.3(b); and

WHEREAS, the City desires to purchase the Property from the Authority for the intent of repayment of the purchase price when acquired by the Authority and for future development to benefit the City and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Ontario Housing Authority as follows:

SECTION 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

SECTION 2. The Authority Board hereby declares that the Property is exempt from the Act as exempt surplus land pursuant to Government Code section 54221(f)(1)(D), based on the findings contained in this Resolution for the Property, namely that the Authority intends to transfer the Property to the City, another local agency, for future development to benefit the City and its residents.

SECTION 3. Approval of Conveyance of Property by Grant Deed. The Authority Board hereby directs and approves the transfer of the Property from the Authority to the City pursuant to the Grant Deed attached as Exhibit "B" to this Resolution. The Executive Director is hereby authorized to execute the Grant Deed for the Property following approval of the exemption from the Surplus Land Act by the California Department of Housing and Community Development.

SECTION 4. CEQA EXEMPTION. This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA"). Housing Authority has determined that the declaration of the Property as "exempt surplus land" under the Act does not constitute a project under CEQA, and no environmental assessment is required. Furthermore, the sale of the Property to a third-party purchaser is categorically exempt under CEQA Guidelines section 15312 (Surplus Government Property Sales). Pursuant to CEQA, the Housing Authority directs staff to file a Notice of Exemption with the County Clerk within five (5) working days of adoption of this resolution.

SECTION 5. Further Acts. The Executive Director, or his designee, is hereby authorized and directed to take any action necessary to carry out the purposes of this Resolution and comply with applicable law.

SECTION 6. Effective Date. This Resolution will take effect immediately upon its adoption.

SECTION 7. Certification. The Authority Secretary shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of April 2025.

_____
PAUL S. LEON, CHAIRMAN

ATTEST:

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER LLP
AUTHORITY COUNSEL

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, Secretary of the Ontario Housing Authority, DO HEREBY CERTIFY that foregoing Resolution No. OHA- was duly passed and adopted by the Board Members of the Ontario Housing Authority at their regular meeting held April 15, 2025 by the following roll call vote, to wit:

AYES: CHAIRMAN/BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

The foregoing is the original of Resolution No. OHA duly passed and adopted by the Ontario Housing Authority at their regular meeting held April 15, 2025.

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

EXHIBIT “A”

Ontario Housing Authority Loan- Purchase 100 Block of N Euclid

Computation Interval: Annual

Nominal Annual Rate: 0.000%

Cash Flow Data - Loans and Payments

	Event	Date	Amount	Number	Period	End Date
1	Loan	04/15/2025	3,699,325.61	1		
2	Payment	12/31/2025	369,932.56	10	Annual	12/31/2034

TValue Amortization Schedule - U.S. Rule, 360 Day Year

	Date	Payment	Interest	Principal	Balance
Loan	04/15/2025				3,699,325.61
1	12/31/2025	369,932.56	0.00	369,932.56	3,329,393.05
2	12/31/2026	369,932.56	0.00	369,932.56	2,959,460.49
3	12/31/2027	369,932.56	0.00	369,932.56	2,589,527.93
4	12/31/2028	369,932.56	0.00	369,932.56	2,219,595.37
5	12/31/2029	369,932.56	0.00	369,932.56	1,849,662.81
6	12/31/2030	369,932.56	0.00	369,932.56	1,479,730.25
7	12/31/2031	369,932.56	0.00	369,932.56	1,109,797.69
8	12/31/2032	369,932.56	0.00	369,932.56	739,865.13
9	12/31/2033	369,932.56	0.00	369,932.56	369,932.57
10	12/31/2034	369,932.56	-0.01	369,932.57	0.00
Grand Totals		3,699,325.60	-0.01	3,699,325.61	

EXHIBIT "B"

RECORDING REQUESTED BY
City of Ontario
AND WHEN RECORDED MAIL TO:
City of Ontario
City Clerk/Records Management Dept.
303 East "B" Street
Ontario, CA 91764

Parcel No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FORM OF GRANT DEED

THE UNDERSIGNED GRANTOR(s) DECLARE(s)

Documentary Transfer Tax is $0.00

☐ unincorporated area

☑ the City of Ontario

☑ computed on full value of interest or property conveyed, or

☐ full value less value of liens or encumbrances remaining at the time of sale

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **THE ONTARIO HOUSING AUTHORITY, a public body, corporate and politic** hereby GRANT(s) to **THE CITY OF ONTARIO, a municipal corporation,** the following real property in the County of San Bernardino, State of California:

ONTARIO HOUSING AUTHORITY, a public body, corporate and politic

Date: _____

By: _____
Scott Ochoa
Executive Director

ATTEST:

_____
Claudia Y. Isbell
Assistant Authority Secretary

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE CONVEYANCE OF 100 BLOCK NORTH EUCLID AVENUE (APN'S 1048-553-01, 1048-553-05 THROUGH 1048-553-15) FROM THE ONTARIO HOUSING AUTHORITY TO THE CITY OF ONTARIO AND APPROPRIATING FUNDS THEREFORE.

WHEREAS, the Ontario Housing Authority ("Authority") is owner of certain real property in the County of San Bernardino, State of California, generally located at 100 BLOCK NORTH EUCLID AVENUE in the City of Ontario, California (APN'S 1048-553-01, 1048-553-05 THROUGH 1048-553-15) (the "Property"). The Property is currently not being utilized to provide affordable housing in the City to qualified low- and moderate-income persons; and

WHEREAS, the Authority wishes to convey the Property to the City of Ontario ("City") for Three Million Six Hundred Ninety-Nine Thousand Three Hundred Twenty-Five Dollars and Sixty-One Cents ($3,699,325.61), with the intent of recovering costs. The payments will be interest free and the first payment will be made on December 31, 2025. If the City were to complete all payments ahead of schedule as shown in Exhibit "A" Loan Amortization Schedule, there will be no prepayment penalty. The Authority will use the proceeds of the sale of the Property for future development of low-income housing in accordance with Health and Safety Code section 34312.3(b); and

WHEREAS, the City desires to purchase the Property from the Authority for future development to benefit the City and its residents.

WHEREAS, the Housing Authority has declared that the sale of the Property from the Authority to the City is exempt from the Surplus Land Act pursuant to California Government Code Section 54221(f)(1)(D), property transferred to another local agency for the local agency's use.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, as follows:

SECTION 1. The recitals above are true and correct and are incorporated into this Resolution by reference and are expressly made a part hereof.

SECTION 2. The City Council hereby directs and approves the transfer of the Property from the Housing Authority to the City pursuant to the Acceptance of Grant Deed attached as Exhibit "B" to this Resolution. The City Manager is hereby authorized to execute the Grant Deed for the Property.

SECTION 3. The City Manager, or his designee, is hereby authorized, subject to City Attorney review, to execute any and all documents to implement the sale of the Property.

SECTION 4. The City Council hereby appropriates $3,699,325.61 from the fund for the acquisition of the Property.

SECTION 5. This Resolution shall become effective immediately upon its passage.

The City Clerk of the City of Ontario shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 15th day of April 2025.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Resolution No. 2025- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held April 15, 2025 by the following roll call vote, to wit:

AYES: MAYOR/COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025- duly passed and adopted by the Ontario City Council at their regular meeting held April 15, 2025.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT “A”

Ontario Housing Authority Loan- Purchase 100 Block of N Euclid

Computation Interval: Annual

Nominal Annual Rate: 0.000%

Cash Flow Data - Loans and Payments

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10	12/31/2034	369,932.56	-0.01	369,932.57	0.00
Grand Totals		3,699,325.60	-0.01	3,699,325.61	

EXHIBIT “B”

ACCEPTANCE OF
GRANT DEED

This is to certify that all of the estates and/or interests in real property conveyed by the foregoing Grant Deed from Ontario Housing Authority, a public agency, to the City of Ontario, a California municipal corporation (“City”), are hereby accepted by the undersigned authorized officer on behalf of City, pursuant to authority conferred on such authorized officer by City, and City consents to recordation of such Grant Deed in the Official Records of the Recorder of the County of San Bernardino, California.

CITY:

CITY OF ONTARIO, a California municipal corporation

By: _____
City Manager

Dated: _____, 2025

Exhibit “A”

Lemon Ave



B St

Holt Blvd

Euclid Ave

Ontario Housing Authority Loan- Purchase 100 Block of N Euclid

Computation Interval: Annual

Nominal Annual Rate: 0.000%

Cash Flow Data - Loans and Payments

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9	12/31/2033	369,932.56	0.00	369,932.56	369,932.57
10	12/31/2034	369,932.56	-0.01	369,932.57	0.00
Grand Totals		**3,699,325.60**	**-0.01**	**3,699,325.61**	

CITY OF ONTARIO *Agenda Report* **April 15, 2025**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
Department: Management Services Prepared By: Michael Krouse Staff Member Presenting: Darlene M. Sanchez, Assistant City Manager Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 25

SUBJECT: RENEWAL OF THE GREATER ONTARIO TOURISM MARKETING DISTRICT

RECOMMENDATION: That the City Council take testimony and accept public comment that will result in a public hearing on May 20, 2025, on the renewal of the Greater Ontario Tourism Marketing District (GOTMD) and the levy of assessments on lodging businesses, including short-term rentals, located within the boundaries of the GOTMD.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Invest in the Growth and Evolution of the City's Economy
Operate in a Businesslike Manner
Pursue City's Goals and Objectives by Working with Other Governmental Agencies

FISCAL IMPACT: There is no immediate fiscal impact associated with this action. Continuation of the Greater Ontario Tourism Marketing District (GOTMD) programs are intended to increase visitation to the Greater Ontario area, there may be an increase in transient occupancy tax and sales tax collections in the future.

BACKGROUND & ANALYSIS: The Greater Ontario Tourism Marketing District (GOTMD) is a benefit assessment district proposed to continue as a revenue source to help fund Sales & Marketing and Tourism Development & Enhancement efforts for Greater Ontario *lodging* businesses. This approach has been used successfully in other destination areas throughout the state to improve tourism and drive additional room nights to assessed businesses. The renewed GOTMD includes all lodging businesses, including short-term rentals, existing and in the future, available for public occupancy within the boundaries of the cities of Ontario and Rancho Cucamonga.

Lodging business owners decided to pursue renewal of the GOTMD in order to continue a revenue source devoted to marketing Greater Ontario as a tourist, meeting and event destination. If renewed, the GOTMD would generate approximately $6,000,000 on an annual basis for promotion of travel and tourism specific to Greater Ontario.

Tourism Marketing Districts

Tourism Marketing Districts (TMDs) utilize the efficiencies of private sector operation in the market-based promotion of tourism. These special assessment districts allow assessed business owners to

organize their efforts to increase tourism. Business owners within the TMD fund the TMD, and those funds are used to provide services that are desired by and benefit the assessed businesses within the TMD.

TMD benefits:

- Funds cannot be diverted for other government programs;
- They are customized to fit the needs of each destination;
- They allow for a wide range of services; including: destination marketing, tourism promotion, and sales lead generation;
- They are designed, created and governed by those who will pay the assessment; and
- They provide a stable funding source for tourism promotion.

In California, TMDs are primarily formed pursuant to the Property and Business Improvement District Law of 1994 (94 Law). This law allows for the creation of special benefit assessment districts to raise funds within a specific geographic area. The key difference between TMDs and other special benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the TMD.

MANAGEMENT DISTRICT PLAN

The Management District Plan **(Attachment 1)** includes the proposed boundary of the GOTMD, a service plan and budget and a proposed means of governance. The GOTMD will include all lodging businesses, including short-term rentals, existing and in the future, available for public occupancy within the boundaries of the cities of Ontario and Rancho Cucamonga.

The annual assessment rate is three percent (3%) of gross short-term sleeping room rental revenue. Because the marketing programs will not promote or seek certain stays, assessments will not be collected on revenue resulting from: stays of more than thirty (30) consecutive days; stays by any Federal officer or employee when on official Federal government business; nor on stays by any officer or employee of a foreign government who is exempt by express provision of Federal law or international treaty.

The renewed GOTMD will have a ten (10) year term, beginning July 1, 2028, or as soon as possible thereafter, and ending ten (10) year from its start date. The assessment will be implemented beginning July 1, 2028 or as soon as possible thereafter. Once per year beginning on the anniversary of GOTMD renewal there is a thirty (30) day period in which business owners paying fifty percent (50%) or more of the assessment may protest and begin proceedings to terminate the GOTMD.

The Greater Ontario Convention and Visitors Bureau dba GOCAL (GOCAL) or the cities of Ontario and Rancho Cucamonga will be responsible for collecting the assessment on a monthly basis from each assessed business located in each respective jurisdiction. GOCAL shall have the responsibility of managing GOTMD programs as provided in the Management District Plan.

GOTMD renewal PROCESS

March 18, 2025 RESOLUTION OF INTENTION HEARING **(COMPLETED)**

Upon the submission of a written petition, signed by the business owners in the renewed GOTMD who will pay more than fifty percent (50%) of the assessments proposed to be levied, the Ontario City Council (Council) may initiate proceedings to renew the GOTMD by the adoption of a resolution expressing its intention to renew the GOTMD.

Petition Status: Petitions in favor of GOTMD renewal were submitted by assessed businesses which represent over 50% of the total GOTMD assessment. This majority petition allows the Council to initiate proceedings for GOTMD renewal at the March 18, 2025 meeting.

No later than

April 4, 2025 NOTICE **(COMPLETED)**

The 94 Law requires the City of Ontario to mail written notice to the owners of all businesses proposed to be assessed within the GOTMD. Mailing the notice begins a mandatory forty-five (45) day period in which assessed business owners may protest GOTMD renewal.

April 15, 2025 PUBLIC MEETING

Allow public testimony on the renewal of the GOTMD and levy of assessments. No Council action required.

May 20, 2025 FINAL PUBLIC HEARING

If written protests are received from the owners of businesses in the renewed GOTMD which will pay fifty percent (50%) or more of the assessments proposed to be levied, and protests are not withdrawn so as to reduce the protests to less than fifty percent (50%), no further proceedings to levy the proposed assessment against such businesses shall be taken for a period of one (1) year from the date of the finding of a majority protest by the Council.

If the Council, following the public hearing, decides to establish the renewed GOTMD, the Council shall adopt a Resolution of Formation.

ALTERNATIVES

The Council could choose not to hold the public meeting. Staff does not recommend this option.

GOCAL
GREATER ONTARIO CALIFORNIA









GREATER ONTARIO TOURISM MARKETING DISTRICT

MANAGEMENT DISTRICT PLAN

Prepared Pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code Section 36600 et seq.
MARCH 5, 2025

2028-2038

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Prepared by
Civitas

CIVITAS
PARTNERSHIPS • PROGRESS • PROSPERITY
(800)999-7781
www.civitasadvisors.com

GOCAL
GREATER ONTARIO CALIFORNIA

I. OVERVIEW

Developed by Greater Ontario area lodging businesses and the Greater Ontario Convention and Visitors Bureau dba GOCAL, the Greater Ontario Tourism Marketing District (GOTMD) is an assessment district proposed to continue to provide specific benefits to payors, by funding marketing and sales promotion efforts for assessed businesses. This approach has been used successfully in other destination areas throughout the country to provide the benefit of additional room night sales directly to payors. The GOTMD was formed in 2013 for an initial five (5) year term and was subsequently renewed in 2018 for a ten (10) year term. Lodging businesses now wish to renew the GOTMD for an additional ten (10) year term.

Location: The renewed GOTMD includes all lodging businesses, including short-term rentals, existing and in the future, available for public occupancy within the boundaries of the cities of Ontario and Rancho Cucamonga (Cities), as shown on the map in Section IV.

Services: The GOTMD is designed to provide specific benefits directly to payors by increasing awareness and demand for room night sales. Sales & Marketing and Tourism Development & Enhancement programs will increase demand for overnight tourism and market payors as tourist, meeting and event destinations, thereby increasing demand for room night sales.

Budget: The total GOTMD annual assessment budget for the initial year of its ten (10) year operation is anticipated to be approximately $6,000,000. A similar assessment budget is expected to apply to subsequent years, but this assessment budget is expected to fluctuate as room sales do, and as businesses open and close.

Cost: The annual assessment rate is three percent (3%) of gross short-term sleeping room rental revenue. Because the marketing programs will not promote or seek certain stays, assessments will not be collected on revenue resulting from: stays of more than thirty (30) consecutive days; stays by any Federal officer or employee when on official Federal government business; nor on stays by any officer or employee of a foreign government who is exempt by express provision of Federal law or international treaty.

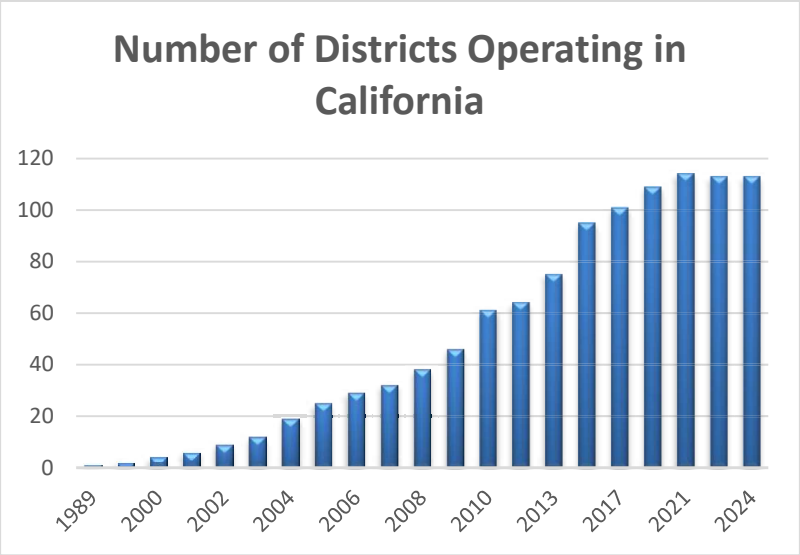
Collection: GOCAL or Cities will be responsible for collecting the assessment on a monthly basis (including any delinquencies, interest, and overdue charges) from each lodging business located in each respective jurisdiction. GOCAL and Cities shall take all reasonable efforts to collect the assessments from each lodging business.

Duration: The renewed GOTMD will have a ten (10) year life, beginning July 1, 2028, or as soon as possible thereafter, and ending ten (10) years from its start date. After ten (10) years, the GOTMD may be renewed pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code section 36600 et seq. (94 Law) if lodging business owners support continuing the GOTMD programs.

Management: GOCAL shall continue to serve as the GOTMD's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with this Plan and must provide annual reports to the City Council.

II. BACKGROUND

Tourism Marketing Districts (TMDs) are an evolution of the traditional Business Improvement District. The first TMD was formed in West Hollywood, California in 1989. Since then, over 100 California destinations have followed suit. In recent years, other states have begun adopting the California model – Illinois, Minnesota, Massachusetts, Montana, South Dakota, Washington, Colorado, Texas and Louisiana have adopted TMD laws. Several other states are in the process of adopting their own legislation. The cities of Wichita, Kansas and Newark, New Jersey used an existing business improvement district law to form a TMD. Additionally, some cities, like Portland, Oregon and Memphis, Tennessee have utilized their home rule powers to create TMDs without a state law.



California's TMDs collectively raise over $300 million annually for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that the Greater Ontario area lodging businesses continue to invest in stable, commerce-specific marketing programs.

TMDs utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TMDs allow tourism business owners to organize their efforts to increase commerce. Lodging business owners within the TMD pay an assessment and those funds are used to provide services that increase commerce.

In California, most TMDs are formed pursuant to the Property and Business Improvement District Law of 1994. This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area. *The key difference between TMDs and other benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

There are many benefits to TMDs:

- Funds must be spent on services and improvements that provide a specific benefit only to those who pay;
- Funds cannot be diverted to general government programs;
- They are customized to fit the needs of payors in each destination;
- They allow for a wide range of services;
- They are ***designed, created and governed by those who will pay*** the assessment; and
- They provide a stable, long-term funding source for tourism promotion.

III. ACCOMPLISHMENTS & FUTURE OUTLOOK

Since its formation, the GOTMD has played a pivotal role in strengthening and enhancing the local tourism economy to drive overnight visitation to assessed businesses. As the GOTMD looks ahead to its next chapter, this section highlights key accomplishments from the most recent term, and looks to the future for the renewed GOTMD.

The following charts illustrate the economic impact and tourism activity generated by the GOTMD over the past decade. The first chart demonstrates the total economic impact by fiscal year, while the second chart provides data on sales leads and room nights generated, showing the number of leads pursued and hotel room nights booked as a result of GOTMD efforts.

Fiscal Year	Economic Impact
2013-2014	$52M
2014-2015	$69M
2015- 2016	$97M
2016-2017	$94M
2017-2018	$95M
2018-2019	$92M
2019-2020	--------
2020-2021	$76.5M LOSS
2021-2022	$77.7M
2022-2023	$96.5M
2023-2024	$110M
	TOTAL $792.2M

Fiscal Year	Sales Leads	Room Nights Generated
2013-2014	325	58,584
2014-2015	316	49,417
2015-2016	290	54,540
2016-2017	389	65,937
2017-2018	383	65,937
2018-2019	295	39,456
2019-2020	--------	---------
2020-2021	58 DOWN 75%	No data due to COVID
2021-2022	350	60,009
2022-2023	425	59,000
2023-2024	320	87147

GOCAL is attracting new hotel development and increasing its hotel supply, with 5 new hotels in the works with the Ontario Planning Department. In addition, GOCAL will be experiencing anticipated growth in its tourism and convention assets to expand GOCAL's desirability as a tourism and convention destination. Hotels in development are:

- Hyatt House/Hyatt Place – 256 Rooms (anticipated opening in March/April 2026)
- Residence Inn A-Loft – 225 Rooms (anticipated opening in October 2026)
- Ontario Hotel – 650 Rooms (anticipated opening in Fall 2027)
- Hilton Hampton Inn – 124 (anticipated opening in Spring 2026)
- Everhome Suites – 113 Rooms (anticipated opening in Winter 2025)

Upon completion of the properties above, hotel rooms for the Greater Ontario area will increase by another 1,369 hotel inventory to a total of over 8,000 rooms.

In addition to the anticipated add of more hotels:

- Michael Krouse, President & CEO of GOCAL, led the CalTravel Association's Convention Centers Coalition for the reopening of convention center to begin hosting meetings and conventions and recovery for the industry. GOCAL received a grant for $974,768 combined from the US Department of Commerce Economic Development Administration to assist in those efforts of restoring the meetings and conventions.
- Plans are in the works to expand the Ontario Convention Center to include a 650-room headquarter hotel onsite and a newly constructed parking structure. Construction to begin in 2026.

- Ontario Convention Center has 300 active days per year and has attracted larger conventions for multiple years. This expansion to double the size of the center will allow us to secure meetings and conventions in a next higher tier in size. Coupled with new hotel products, this also supports our ability to grow in the meetings and convention sector.
- Route 66 Cruisin' Reunion, established in 2013, is a two-day classic car show that attracts enthusiasts from all over the country. Each year, we see an increase in classic car participants, and in 2024, an all-time record of over 1,300 cars were on display. This event attracts over 100,000 attendees from several states nationwide over the two days.
- The development of the 200-acre Ontario Sports Empire, a new minor league baseball stadium in South Ontario and future home of a minor league team and LA Dodger affiliate, will increase demand for overnight stays for the projected 1.4 million new visitors.
- The Adept project surrounding the Toyota Arena will be a world-class entertainment district with plans for a Performing Arts Center, open spaces and an outdoor concert venue, restaurants, dining, and a new hotel.
- Ontario International Airport continues to add domestic flights to destinations such as El Paso, Nashville, Washington DC, and Hawaii. The airport is working on future plans for expansion and development of a dedicated state-of-the-art international Terminal 3. Our convention center is located within one mile of the Ontario International Airport.
- Brightline West will provide high-speed rail service to and from Cucamonga Station in Rancho Cucamonga and Las Vegas in 2028, with connectivity to all of Southern California via Metrolink and Amtrak.
- Having established the Greater Ontario Sports and Entertainment Authority, we have dedicated sales and marketing staff booking and marketing to this specific growing industry for professional and youth sports of all kinds.
- Since 2013, we have produced over $1B in economic impact to our region.
- The State of the Region Event hosted annually at the Ontario Convention Center is a premier event for the region to discuss current statistics, provide an economic forecast for the coming year

learn about the dynamic strength of our economy, how to adapt to changing conditions, and build a network of forward-thinking professionals as we plan for the future.

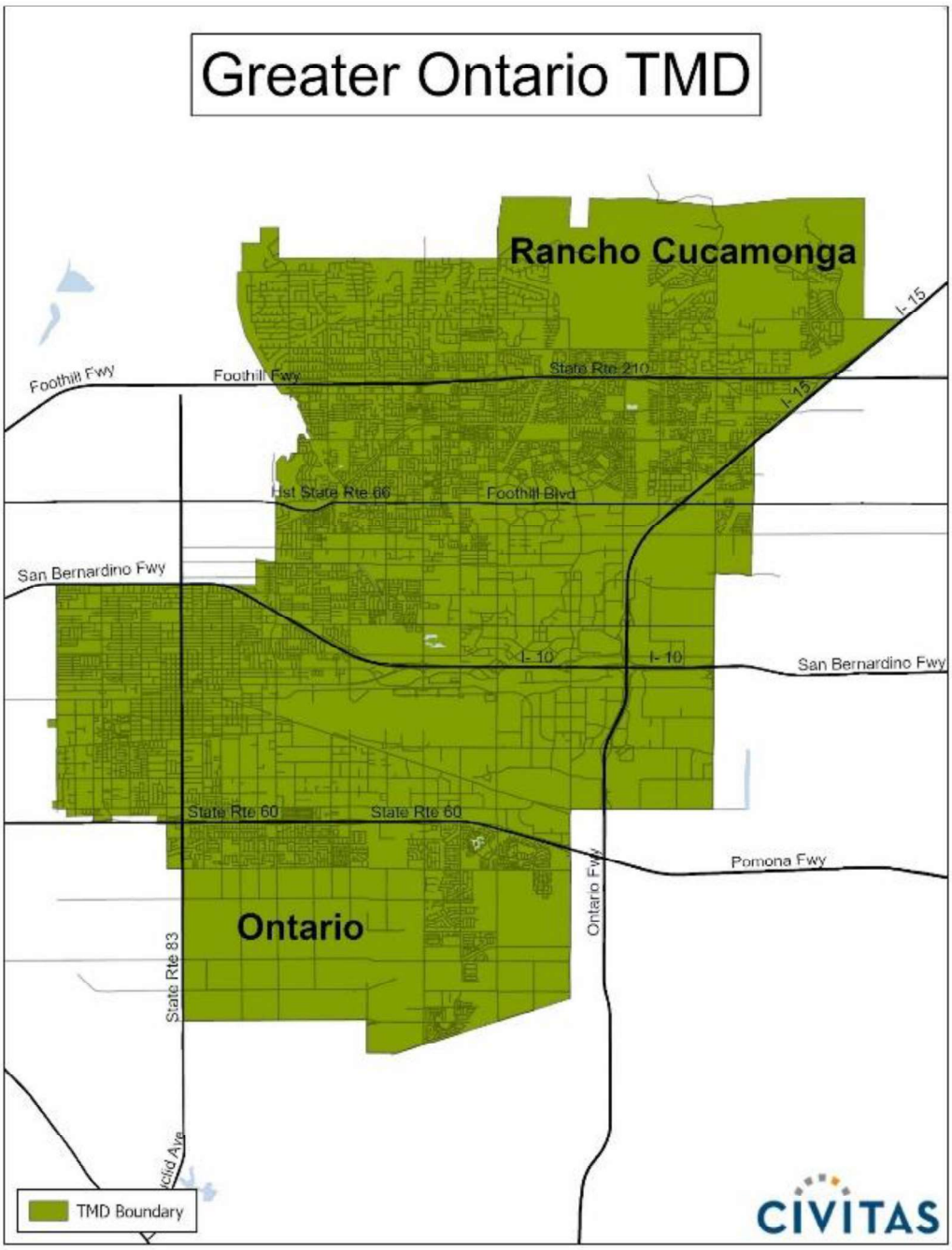
IV. BOUNDARY

The GOTMD will include all lodging businesses, including short-term rentals, existing and in the future, available for public occupancy within the boundaries of the Cities of Ontario and Rancho Cucamonga, as shown in the map below.

Lodging business definition: any structure, or any portion of any structure, which is occupied, or intended or designed for occupancy, by transients for dwelling, lodging, or sleeping purposes and shall include any hotel, inn, tourist home, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, or portion thereof.

Short-term rental definition: a dwelling unit, or any portion thereof, that is rented by the host to another party for a period of not more than 30 consecutive days in exchange for any form of monetary or non-monetary compensation or consideration. "Short-term rental" shall include rental activity in which the host remains on the site of his or her primary residence throughout the duration of the guest's stay, rental activity in which the host remains off the site of his or her primary residence-site for some or all of the duration of the guest's stay, and rental activity that is not a primary residence, and which is available for temporary lodging, for compensation or any form of consideration. "Short-term rental" shall not include: single-room occupancy buildings and a dwelling unit for which a tenant has a month-to-month rental agreement and the rental payments are made on a monthly basis, or corporate housing.

A complete listing of assessed lodging businesses within the renewed GOTMD can be found in Appendix 2.



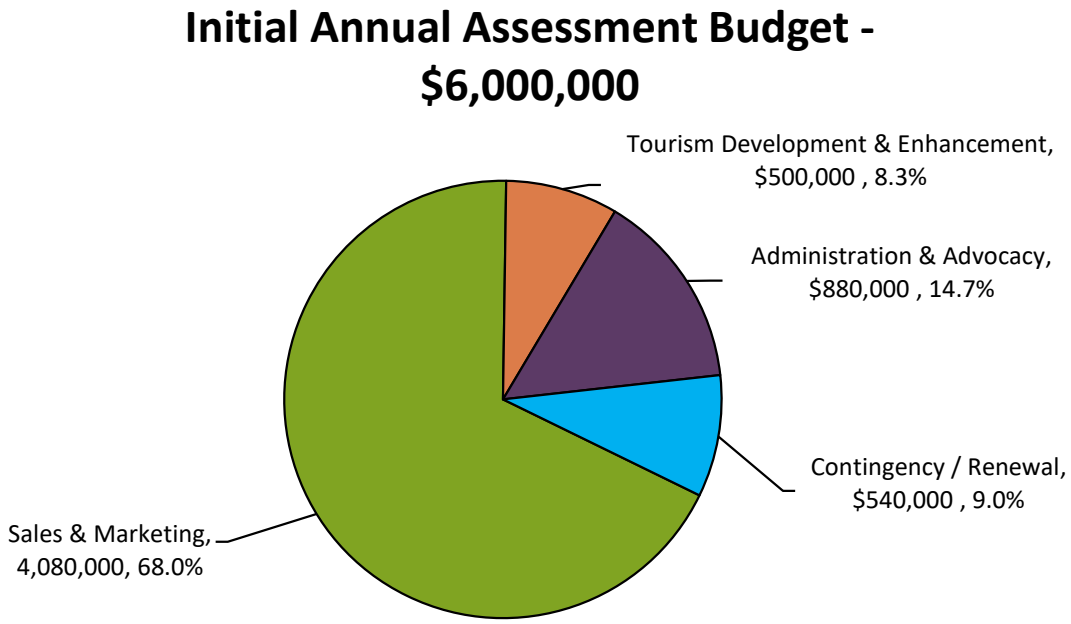
Total Square Miles: 90.21
Distance to Los Angeles: 37 Miles
Distance to Palm Springs: 72 Miles
Distance to San Diego: 113 Miles

V. ASSESSMENT BUDGET AND SERVICES

A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred or privileges granted directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of Ontario (City) of conferring the benefits or granting the privileges. The privileges and services provided with the GOTMD funds are Sales & Marketing and Tourism Development & Enhancement programs available only to assessed businesses.

A service plan assessment budget has been developed to deliver services that benefit the assessed businesses. A detailed annual assessment budget will be developed and approved by GOCAL. The chart below illustrates the initial annual assessment budget allocations. These activities and allocations will also apply in subsequent years. The total initial assessment budget is estimated to be $6,000,000.



Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. However, the City and the GOCAL board shall have the authority to adjust budget allocations between the categories by no more than fifteen percent (15%) of the total budget per year. A description of the proposed improvements and activities for the initial year of operation is below. The same activities are proposed for subsequent years. In the event of a legal challenge against the GOTMD, any and all assessment funds may be used for the costs of defending the GOTMD.

Each budget category includes all costs related to providing that service. For example, the Sales & Marketing budget includes the cost of staff time dedicated to overseeing and implementing the sales and marketing program. Staff time dedicated purely to administrative tasks is allocated to the Administration & Advocacy portion of the budget. The costs of an individual staff member may be allocated to multiple budget categories. The staffing levels necessary to provide the services below will be determined by GOCAL on an as-needed basis.

Sales & Marketing

A Sales & Marketing program will promote assessed businesses as tourist, meeting, and event destinations. The Sales & Marketing program will have a central theme of promoting Ontario and Rancho Cucamonga as desirable places for overnight visits to leisure travelers and meeting planners. The program will have the goal of increasing overnight visitation and room night sales at assessed businesses, and may include the following activities:

- Internet marketing efforts to increase awareness and optimize internet presence to drive overnight visitation and room sales to assessed businesses;
- Print ads in magazines and newspapers targeted at potential visitors to drive overnight visitation and room sales to assessed businesses;
- Television ads targeted at potential visitors to drive overnight visitation and room sales to assessed businesses;
- Promotion and production of special events that draw overnight visitors to assessed businesses;
- Radio ads targeted at potential visitors to drive overnight visitation and room sales to assessed businesses;
- Attendance of trade shows to promote assessed businesses;
- Sales blitzes for assessed businesses;
- Familiarization tours of assessed businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed businesses;
- Attendance of professional industry conferences and affiliation events to promote assessed businesses;
- Market research to identify targets and opportunities to attract overnight visitors to assessed businesses;
- Incentivizing conferences and meetings to book at the destination to increase overnight visitation at assessed businesses.
- Partnership with both local, state and national tourism organizations to target key domestic and international markets to increase overnight visitation at assessed businesses;
- Development and implementation of a public relations and communications strategy, inclusive of social media outlets and press release distribution designed to drive overnight visitation at assessed businesses;
- Lead generation activities designed to attract tourists and group events to assessed businesses; and
- Director of Sales and General Manager meetings to plan and coordinate tourism promotion efforts for assessed businesses

Tourism Development & Enhancement

A Tourism Development & Enhancement program will be designed to improve the visitor experience in an effort to increase overnight visitation at assessed lodging businesses and short-term rentals. It will provide potential funding for programs and initiatives based on criteria to be developed. The focus of the program will be on the entire destination brand footprint to ensure a consistent brand experience. The program may include the following activities, but is not limited to:

- A transportation program connecting hotels with points of interest, the airport and tourism assets, to increase room night sales and enhance the visitor experience;
- An ambassador program with stakeholders to improve the overall destination experience and encourage overnight visitation; and

- Operation of a California Welcome Center (WC) to provide visitor resources and ensure a consistent brand experience throughout the destination.

Administration & Advocacy
The Administration & Advocacy portion of the budget will be utilized to provide the activities and improvements for the GOTMD. These costs may include rent, telephone charges, legal fees, accounting fees, postage, administrative staff, insurance, and other general office expenses. A small portion of the budget may be utilized towards dedicated staff time to provide unified attention, communication and responsiveness throughout the GOTMD and provide a unified voice to represent the GOTMD's best interests.

Contingency / Renewal
A prudent portion of the budget will be allocated to a contingency fund, to account for lower than anticipated collections. If there are contingency funds collected and near the expiration of the GOTMD there are contingency funds remaining, and businesses wish to renew the GOTMD, the contingency funds may be used for renewal costs.

B. Annual Budget

The total ten (10) year assessment budget is projected at approximately $6,000,000 annually, or $60,000,000 through June 2038. A similar budget is expected to apply to subsequent years, but this budget is expected to fluctuate as room sales do and as businesses open and close.

C. California Constitutional Compliance

The GOTMD assessment is not a property-based assessment subject to the requirements of Proposition 218. Courts have found Proposition 218 limited the term 'assessments' to levies on real property.[1] Rather, the GOTMD assessment is a business-based assessment, and is subject to Proposition 26. Pursuant to Proposition 26 all levies are a tax unless they fit one of seven exceptions. Two of these exceptions apply to the GOTMD, a "specific benefit" and a "specific government service." Both require that the costs of benefits or services do not exceed the reasonable costs to the City of conferring the benefits or providing the services.

1. Specific Benefit

Proposition 26 requires that assessment funds be expended on, "a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege."[2] The services in this Plan are designed to provide targeted specific benefits directly to assessed businesses, and are intended only to provide specific benefits and services directly to those businesses paying the assessment. These services are tailored not to serve the general public, businesses in general, or parcels of land, but rather to serve the specific businesses within the GOTMD. The activities described in this Plan are specifically targeted to increase demand for room night sales for assessed lodging businesses within the boundaries of the GOTMD and are narrowly tailored. GOTMD funds will be used exclusively to provide the specific benefit of increased demand for room night sales directly to the assessees. Assessment funds shall not be used to feature non-assessed lodging businesses in GOTMD programs, or to directly generate sales for non-assessed businesses. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses. Nothing in this Plan limits the ability of the

[1] *Jarvis v. the City of San Diego* 72 Cal App. 4th 230
[2] Cal. Const. art XIII C § 1(e)(1)

Owners' Association to enter into private contracts with non-assessed lodging businesses for the provision of services to those businesses.

The assessment imposed by this GOTMD is for a specific benefit conferred directly to the payors that are not provided to those not charged. The specific benefit conferred directly to the payors is an increase in demand for room night sales. The specific benefit of an increase in demand for room night sales for assessed lodging businesses will be provided only to lodging businesses paying the district assessment, with Sales & Marketing programs promoting lodging businesses paying the GOTMD assessment. The Sales & Marketing programs will be designed to increase room night sales at each assessed lodging businesses. Because they are necessary to provide the Sales & Marketing programs that specifically benefit the assessed lodging businesses, the Administration & Advocacy and Contingency/Renewal services also provide the specific benefit of increased demand for room night sales to the assessed lodging businesses.

Although the GOTMD, in providing specific benefits to payors, may produce incidental benefits to non-paying businesses, the incidental benefit does not preclude the services from being considered a specific benefit. The legislature has found that, "A specific benefit is not excluded from classification as a 'specific benefit' merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific benefit to the payor."[3]

2. Specific Government Service

The assessment may also be utilized to provide, "a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product."[4] The legislature has recognized that marketing and promotions services like those to be provided by the GOTMD are government services within the meaning of Proposition 26[5]. Further, the legislature has determined that "a specific government service is not excluded from classification as a 'specific government service' merely because an indirect benefit to a nonpayor occurs incidentally and without cost to the payor as a consequence of providing the specific government service to the payor."[6]

3. Reasonable Cost

GOTMD services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. The full amount assessed will be used to provide the services described herein. Funds will be managed by GOCAL, and reports submitted on an annual basis to the City. Only assessed lodging businesses will be featured in marketing materials, receive sales leads generated from GOTMD-funded activities, be featured in advertising campaigns, and benefit from other GOTMD-funded services. Non-assessed lodging businesses will not receive these, nor any other, GOTMD-funded services and benefits. The assessed lodging business list was compiled from records provided by each jurisdiction and complies with the requirements of the 94 Law. Pursuant to Streets and Highways Code Section 36615, the City Council's determination of ownership is final and conclusive, with no obligation to obtain other information.

The GOTMD-funded programs are targeted directly to benefit assessed businesses. It is, however, possible that there will be a spillover benefit to non-assessed businesses. If non-assessed lodging businesses receive incremental room nights, that portion of the promotion or program generating

[3] Government Code § 53758(a)
[4] Cal. Const. art XIII C § 1(e)(2)
[5] Government Code § 53758(b)
[6] Government Code § 53758(b)

those room nights shall be paid with non-GOTMD funds. GOTMD funds shall only be spent to benefit the assessed businesses and shall not be spent on that portion of any program which directly generates incidental room nights for non-assessed businesses.

D. Assessment

The annual assessment rate is three percent (3%) of gross short-term sleeping room rental revenue. Because the marketing programs will not promote or seek certain stays, assessments will not be collected on: stays of more than thirty (30) consecutive days; stays by any Federal officer or employee when on official Federal government business; nor on stays by any officer or employee of a foreign government who is exempt by express provision of Federal law or international treaty.

The assessment was calculated based on the total cost of the activities to be provided for the benefit of the businesses within the GOTMD, with costs allocated based on the proportional benefit conferred to each assessed business. Activities funded by the GOTMD, are specifically targeted to increase room nights at assessed businesses. All room night sales do not represent the same benefit to the payors. For example, a higher priced room night is of greater benefit than a lower priced room night because the assesses derive greater revenue. To account for this benefit differential and to make sure the benefits are proportional, an assessment formula based on a percentage of revenue has been selected. The proposed formula accurately reflects greater benefit to assessed businesses with higher priced room nights.

The term "gross sleeping room rental revenue" as used herein means: the consideration charged for the occupancy of space in a lodging business valued in money. Gross sleeping room rental revenue shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

The assessment is levied upon and a direct obligation of the assessed lodging business. However, the assessed lodging business may, at its discretion, pass the assessment on to transients. The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. If the GOTMD assessment is identified separately it shall be disclosed as the "GOTMD Assessment." As an alternative, the disclosure may include the amount of the GOTMD assessment and the amount of the assessment imposed pursuant to the California Tourism Marketing Act, Government Code §13995 et seq. and shall be disclosed as the "Tourism Assessment." The assessment is imposed solely upon and is the sole obligation of the assessed lodging business even if it is passed on to transients. The assessment shall not be considered revenue for calculation of transient occupancy taxes.

Bonds shall not be issued.

E. Interest and Overdue Charges

The GOTMD shall reimburse the Cities of Ontario and Rancho Cucamonga for any costs associated with collecting unpaid assessments. If sums in excess of the delinquent GOTMD assessment are sought to be recovered in the same collection action by the Cities, the GOTMD shall bear its pro rata share of such collection costs.

1. Any business which fails to remit any assessment within thirty (30) days shall pay an overdue charge in the amount of one-half of one percent (0.5%) per day of the assessment due and owning in addition to the amount of the assessment.

2. Any business which fails to remit any delinquent assessment on or before a period of thirty (30) days following the date on which the assessment first became delinquent (or sixty [60] days after the initial due date) shall pay a second delinquency overdue charge in the amount of ten percent (10%) of the assessment due and owing in addition to the amount of the assessment and the one-half of one percent (0.5%) overdue charge first imposed pursuant to section 1 above.
3. If the collecting City determines that the non-payment of any assessment is due to fraud, an overdue charge in the amount of twenty-five (25%) of the amount of assessment due and owning shall be added thereto in addition to the overdue charges set forth in section 1 and 2 above.
4. In addition to the overdue charges imposed, any business which fails to remit any assessment shall pay interest at the rate of one-half of one percent (0.5%) per month, or fraction thereof, on the amount of the assessment due and owing, exclusive of overdue charges, from the date on which the assessment first became delinquent until paid.

F. Time and Manner for Collecting Assessments

The GOTMD assessment will be implemented beginning July 1, 2028 or as soon as possible thereafter, and end ten (10) years from its start date. The Cities or GOCAL will be responsible for collecting the assessment on a monthly basis (including any delinquencies, overdue charges and interest) from each assessed lodging business located in their respective jurisdictions. GOCAL and Cities shall take all reasonable efforts to collect the assessments from each lodging business within the GOTMD.

1. GOCAL and/or Cities shall make all reasonable efforts to enter into an agreement with all Hosting Platforms to collect and remit the GOTMD assessment on behalf of assessed businesses using the hosting platform.

2. An assessed business, using a Hosting Platform, reserves the right to have the Hosting Platform collect the assessment based on information supplied by the assessed business, and remit such assessment to the assessed business for ultimate reporting and remittance by the assessed business to GOCAL and/or Cities. In such case, the Hosting Platform, upon request from GOCAL and/or Cities, and not more than once per consecutive twelve-month period, shall provide GOCAL and/or Cities with copies of documentation related to assessed business which have provided acknowledgement of its obligation to collect all assessments owed on a gross short-term room rental revenue and to remit and report any assessments collected directly to GOCAL and/or Cities.

VI. GOVERNANCE

A. Owners' Association

The Ontario City Council, through adoption of this Plan, has the right, pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the GOTMD as defined in Streets and Highways Code §36612. The Ontario City Council has determined that GOCAL will continue to serve as the Owners' Association for the GOTMD.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association acts as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Board and certain committees must be held in compliance with the public notice and other requirements of the Brown Act. Accordingly, the Owners' Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act.

C. Annual Report

GOCAL shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report shall include:

- Any proposed changes in the boundaries of the improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

APPENDIX 1 – LAW

*** THIS DOCUMENT IS CURRENT THROUGH THE 2023 EXTRA SESSION CH 1, 2023 REGULAR SESSION CH. 890***
(ALL 2023 LEGISLATION)

STREETS AND HIGHWAYS CODE
DIVISION 18. PARKING
PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

CHAPTER 1. General Provisions

ARTICLE 1. Declarations

36600. Citation of part

This part shall be known and may be cited as the "Property and Business Improvement District Law of 1994."

36601. Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

(a) Businesses located and operating within business districts in some of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.

(d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.

(e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:

(1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.

(2) Job creation.

(3) Business attraction.

(4) Business retention.

(5) Economic growth.

(6) New investments.

(f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.

(g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.

(h) The act amending this section is intended to provide the Legislature's guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.

(1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.

(2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.
(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5 Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions

36606. "Activities"

"Activities" means, but is not limited to, all of the following that benefit businesses or real property in the district:
(a) Promotion of public events.
(b) Furnishing of music in any public place.
(c) Promotion of tourism within the district.
(d) Marketing and economic development, including retail retention and recruitment.
(e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
(f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

36606.5. "Assessment"

"Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. "Business"

"Business" means all types of businesses and includes financial institutions and professions.

36608. "City"

"City" means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. "City council"

"City council" means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. "Clerk"

"Clerk" means the clerk of the legislative body.

36609.5. "General benefit"

"General benefit" means, for purposes of a property-based district, any benefit that is not a "special benefit" as defined in Section 36615.5.

36610. "Improvement"

"Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

(a) Parking facilities.
(b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
(c) Trash receptacles and public restrooms.
(d) Lighting and heating facilities.
(e) Decorations.
(f) Parks.
(g) Fountains.
(h) Planting areas.
(i) Closing, opening, widening, or narrowing of existing streets.
(j) Facilities or equipment, or both, to enhance security of persons and property within the district.
(k) Ramps, sidewalks, plazas, and pedestrian malls.
(l) Rehabilitation or removal of existing structures.

36611. "Management district plan"; "Plan"

"Management district plan" or "plan" means a proposal as defined in Section 36622.

36612. "Owners' association"

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), for all records relating to activities of the district.

36614. "Property"

"Property" means real property situated within a district.

36614.5. "Property and business improvement district"; "District"

"Property and business improvement district," or "district," means a property and business improvement district established pursuant to this part.

36614.6. "Property-based assessment"

"Property-based assessment" means any assessment made pursuant to this part upon real property.

36614.7. "Property-based district"

"Property-based district" means any district in which a city levies a property-based assessment.

36615. "Property owner"; "Business owner"; "Owner"

"Property owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. "Business owner" means any person recognized by the city as the owner of the business. "Owner" means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. "Special benefit" [Effective January 1, 2023]

(a) "Special benefit" means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

(b) "Special benefit" also includes, for purposes of a property-based district, a particular and distinct benefit provided directly to each assessed parcel within the district. Merely because parcels throughout an assessment district share the same special benefits does not make the benefits general.

36616. "Tenant"

"Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

ARTICLE 3 Prior Law

36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

CHAPTER 2. Establishment

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

36621. Initiation of proceedings; Petition of property or business owners in proposed district

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

(1) A map showing the boundaries of the district.

(2) Information specifying where the complete management district plan can be obtained.

(3) Information specifying that the complete management district plan shall be furnished upon request.

(c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

36622. Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

(a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements, maintenance, and activities proposed for each year of operation of the district and the estimated cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities

and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.
(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.
(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against their property or business. The plan also shall state whether bonds will be issued to finance improvements.
(g) The time and manner of collecting the assessments.
(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.
(i) The proposed time for implementation and completion of the management district plan.
(j) Any proposed rules and regulations to be applicable to the district.
(k)

(1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.
(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.
(3) In a property-based district, properties throughout the district may share the same special benefits. In a district with boundaries that define which parcels are to receive improvements, maintenance, or activities over and above those services provided by the city, the improvements, maintenance, or activities themselves may constitute a special benefit. The city may impose assessments that are less than the proportional special benefit conferred, but shall not impose assessments that exceed the reasonable costs of the proportional special benefit conferred. Because one or more parcels pay less than the special benefit conferred does not necessarily mean that other parcels are assessed more than the reasonable cost of their special benefit.

(l) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.
(m) Any other item or matter required to be incorporated therein by the city council.

<u>36623.</u> Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.
(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be

mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

(1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the

district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

CHAPTER 3: Assessments

36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.
(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.
(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in an action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36625. An appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

36636. Modification of plan by resolution after public hearing; Adoption of the resolution of intention

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:
(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.
(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.
(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

36638. Assessment as government improvised fee on Civ C § 1770 transaction [Operative July 1, 2024]

(a) A business assessment pursuant to this part is a fee imposed by a government on the transaction for purposes of paragraph (29) of subdivision (a) of Section 1770 of the Civil Code.
(b) This section shall become operative on July 1, 2024.

CHAPTER 3.5 Financing

36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks–Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.
(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.
(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

CHAPTER 4. Governance

36650. Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.
(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

(1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.
(2) The improvements, maintenance, and activities to be provided for that fiscal year.
(3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.
(4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.
(5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
(6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.
The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

36651. Designation of owners' association to provide improvements, maintenance, and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

CHAPTER 5. Renewal

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

(a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.
(b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.
(c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

CHAPTER 6. Disestablishment

36670. Circumstances permitting disestablishment of district; Procedure

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the city council in either of the following circumstances:
(1) If the city council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.
(2) During the operation of the district, there shall be a 30-day period each year in which assessees may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.
(b) The city council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

(a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by

applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.
(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

APPENDIX 2 – ASSESSED BUSINESSES

LODGING BUSINESS	ADDRESS	CITY, STATE ZIP
205 N EUCLID LLC	203 N Euclid Ave 1B	Ontario CA 91762
205 N EUCLID LLC	203 N Euclid Ave 6A	Ontario CA 91762
205 N EUCLID LLC	203 N Euclid Ave 8	Ontario CA 91762
AARON LI	2720 Eagle Creek Pl	Ontario CA 91761
ABEL II MORA	223 S Bermuda Dunes St	Ontario CA 91762
ABEL MORA	8890 Church St	Rancho Cucamonga CA 91730
AIDA SEGURA	2902 Palomino Ct	Ontario CA 91761
Airport Stay Motel	1211 North Grove Avenue	Ontario CA 91764
ALFRED T FONG	2550 E Canterbury Trail	Ontario CA 91761
ALLEN PENG	541 N Vine Ave	Ontario CA 91762
Aloft Ontario-Rancho Cucamonga	10480 Fourth Street	Rancho Cucamonga CA 91730
American Inn	755 North Euclid Avenue	Ontario CA 91762
ANGEL T TONGCO	3159 Clover Ln	Ontario CA 91761
ANNETTE DUSSETT	11149 Summerside Ln	Rancho Cucamonga CA 91701
Armendariz Family Living TR 12/16/22	2632 E Dunes St	Ontario CA 91761
Ayres Suites at the Mills Mall	4370 Mills Circle	Ontario CA 91764
Azure Hotel & Suites Ontario Airport	1945 East Holt Boulevard	Ontario CA 91761
Baymont Inn & Suite Ontario	1655 East 4th Street	Ontario CA 91764
BENJAMIN BINLING CHEN	2246 Loggers Ln	Ontario CA 91762
BENNY ANTHONY RAMIREZ AGUILAR	1446 N Campus Ave	Ontario CA 91764
Best Ontario Inn	1045 West Mission Boulevard	Ontario CA 91762
Best Western Ontario Airport	209 North Vineyard Avenue	Ontario CA 91764
Best Western Ontario Mills Mall	4395 Ontario Mills Parkway	Ontario CA 91764
Best Western Plus Heritage Inn	8179 Spruce Ave.	Rancho Cucamonga CA 91730
BING JIANG	2614 GARFIELD AVE	Ontario CA91761
BINGWU GENG	559 E ROSEWOOD CT	Ontario CA 91764
BOWEN LI	608 E Joseph Privado	Ontario CA 91761
BRANDI GREWAL	6009 JADEITE AVE	Alta Loma CA 91737
Bright Star Motel	1530 West Mission Boulevard	Ontario CA 91762
CAI LIVING TRUST	6322 Semillon Pl	Rancho Cucamonga CA 91737
Canden HEUTON	2637 S Quaker Ridge Pl	Ontario CA 91761
Candlewood Suites	1818 East Holt Boulevard	Ontario CA 91761
Capri Inn	1217 East Holt Boulevard	Ontario CA 91764
CATHY WANG	105 E Rosewood Ct	Ontario CA 91764
Chan Phoebe Family Trust 2/11/12	704 W Granada Ct	Ontario CA 91762
CHEAN NANCY & MICHAEL FAM TR	908 W 4TH ST	Ontario CA 91762
CHESTER GILCHRIST	1004 W PRINCETON ST	Ontario Ca 91762
Cheung Family Revocable Trust 8/19/1	845 Virginia Ave	Ontario CA 91764
Cheung Family Revocable Trust 9/19/1	638 W Harvard Pl	Ontario CA 91762
CHRISTIAN TAI	3684 Hyche Ave	Ontario CA 91761
Christmas House Bed and Breakfast Inn	9240 Archibald Avenue	Rancho Cucamonga CA 91730
CHU-JAN CHENG	10460 Alta Loma Dr	Rancho Cucamonga CA 91737

CHUNHUA LI	2476 Salem St	Ontario CA91761
CLEMONS CARMEN REVOCABLE TRUST 4/20	5219 Cartilla Ave	Rancho Cucamonga CA 91737
Comfort Inn & Suites	3333 Shelby Drive	Ontario CA 91764
Comfort Suites	1811 E. Holt Blvd.	Ontario CA 91761
Country Inn	2359 South Grove Avenue	Ontario CA 91761
Country Inn & Suites - Ontario Mills	4674 E. Ontario Mills Pkwy	Ontario CA 91764
Courtyard by Marriott Rancho Cucamonga	11525 Mission Vista Dr.	Rancho Cucamonga CA 91730
CRT FAMILY TRUST 2/5/13	1105 S Elderberry Ave	Ontario CA 91762
CRYSTAL EARWOOD	6963 SHAMROCK LN	ALTA LOMA CA 91701
D & R TRUST	3674 S HYCHE AVE	Ontario CA 91761
DANIEL T JR CLARK	5554 Glen Ridge Ct	Rancho Cucamonga CA 91739
DANIEL VASQUEZ	11618 Mt Hood Ct	Rancho Cucamonga CA 91737
DANIEL YANG	2465 E Bennington St	Ontario CA 91761
DARRYL R LEVESQUE	1016 E I St	Ontario CA 91764
Days Inn	1405 East 4th Street	Ontario CA 91764
DEJUN XU	5400 Stoneview Rd	Rancho Cucamonga CA 91739
Delta Hotels by Marriott	2200 East Holt Boulevard	Ontario CA 91761
DEYANIRA REQUENES	9949 Meadowood Dr	Rancho Cucamonga CA 91737
Doubletree by Hilton Ontario Airport	222 North Vineyard Avenue	Ontario CA 91764
DO-YOUNG PARK	8623 Adega Dr	Rancho Cucamonga CA 91730
DX FAMILY TRUST	750 W Hollowell St	Ontario CA 91762
Economy Inn	2301 South Euclid Avenue	Ontario CA 91762
Element Ontario	900 Via Piemonte	Ontario CA 91764
Embassy Suites Ontario	3663 East Guasti Road	Ontario CA 91761
ERIC JAMES HONANIE	1309 W Mission Dr 81	Ontario CA 91762
Express Inn & Suites	1150 North Grove Avenue	Ontario CA 91764
Extended Stay America #911	3990 East Inland Empire Boulevard	Ontario CA 91764
Fairfield Inn and Suites	9550 Pittsburgh Avenue	Rancho Cucamonga CA 91730
FENG ZHU YI	4345 S Amherst Ave	Ontario CA91762
Four Points Rancho Cucamonga	11960 Foothill Blvd.	Rancho Cucamonga CA 91739
FRANCISCO JAVIER MEZA	307 W 6th St	Ontario CA 91762
FRANCISCO PILA	300 N Allyn Ave	Ontario CA 91764
GABRIEL SANCHEZ	1138 S Greenwood Ave	Ontario CA 91761
GARDUNO MARIA RODRIGUEZ LIV TR 9/9	2107 S Euclid Ave	Ontario CA 91762
GEORGINA MILANES FONTANILLA	9472 Sunglow Ct	Rancho Cucamonga CA 91730
GEORGINA MILANES FONTANILLA	9472 Sunglow Ct	Rancho Cucamonga CA 91730
GUANG SHOU LIN	1609 E DEODAR ST	Ontario CA 91764
HAI ZHU	818 W Bonnie Brae Ct	Ontario CA 91762
HAICHUCK ZHANG	9743 Woodleaf Dr	Rancho Cucamonga CA 91737
HAIFENG WANG	13215 River Oaks Dr	Rancho Cucamonga CA 91739
HAIZHU LIN	4835 S Monarch Pl	Ontario CA 91762
Hampton Inn & Suites - Ontario	4500 East Mills Circle	Ontario CA 91764
Hampton Inn & Suties Rancho Cucamonga	11669 Foothill Blvd	Rancho Cucamonga CA 91730
HANA A AL JABARI	11700 BRANDYWINE PL	Rancho Cucamonga CA 91730

HAO ZHANG	7032 Avenida Leon	Rancho Cucamonga CA 91701
HARDY NGUYEN	12409 HARWICK DR	Rancho Cucamonga Ca 91739
HARDY NGUYEN	13198 FIRESTONE DR	Rancho Cucamonga CA 91739
HDK GROUP LLC	2440 E Salem St	Ontario CA 91761
HENRY KE	2238 Loggers Ln	Ontario CA 91762
Heritage Inn of Rancho Cucamonga	11481 Mission Vista Dr.	Rancho Cucamonga CA 91730
Holiday Inn Express & Suites Ontario	2280 South Haven Ave.	Ontario CA 91761
Holiday Inn Express Hotel & Suites	9589 Milliken Ave.	Rancho Cucamonga CA 91730
Holiday Inn Ontario	2155 E. Convention Center Way	Ontario CA 91764
HOLLY QIAOYI HUANG	3342 S NEWTON AVE	Ontario CA 91761
Homewood Suites RC	11433 Mission Vista Dr.	Rancho Cucamonga CA 91730
HONG BAO	9153 CANDLEWOOD ST	Rancho Cucamonga CA 91730
HONG CHU	7676 Marine Ave	Rancho Cucamonga CA 91730
HONGWEI SHI	9596 SEASONS DR	Rancho Cucamonga Ca 91730
Hotel d'Lins	3400 East Shelby Street	Ontario CA 91764
Hotel Hacienda	2425 South Archibald Avenue	Ontario CA 91761
Hotel Seville	2441 South Euclid Avenue	Ontario CA 91762
Hyatt Place Ontario	4760 East Mills Circle	Ontario CA 91764
ICE BLUE LLC	1672 E Harvard Pl A	Ontario CA 91764
ICE BLUE LLC	1672 E Harvard Pl B	Ontario CA 91764
I-CHUN CHEN	604 W Bonnie Brae Ct	Ontario CA 91762
IM STILL WITH YOU TRUST 5/2/22	4381 Amherst Ave	Ontario CA 91762
IWINI SURROGACY INC	1153 Whittlers Pl	Ontario CA 91762
JENNY LI	3954 E Catalina St	Ontario CA 91761
JIA WANG	1013 S EUCLID AVE	Ontario Ca 91762
JIAHAO WU	2938 E Arbor Ln	Ontario CA 91762
JIAHUI HUANG	938 W GRANADA CT	Ontario CA 91762
JIAMING LIU	768 W H St	Ontario CA 91762
JIANLI WANG	10663 ORANGE BLOSSOM DR	Rancho Cucamonga CA 91730
JIANLI WANG	8602 Stoneside Dr	Rancho Cucamonga CA 91730
JIASHUN JI	2714 S Garfield Ave	Ontario CA 91761
JILL HUANG WONG	321 E Maple St	Ontario CA 91761
JINGTAO GAO	5090 S CENTENNIAL CIR	Ontario CA 91762
JINGTAO GAO	5090 S CENTENNIAL CIR EAST	Ontario CA 91672
JOANNA D TSAI	11450 Church Street 9	Rancho Cucamonga CA 91730
JORGE RAFAEL GUERRERO MAYO	13178 CHATHAM DR	Rancho Cucamonga CA 91739
JOSEPH C NG	11241 Terra Vista Pkwy	Rancho Cucamonga CA 91730
JOSEPH XANO & ADELE REV T WANG & TAN	926 W HAWTHORNE ST	Ontario CA 91762
JOSEPH XANO WANG	1749 E Yale St	Ontario CA 91764
JUMING SUN	9821 La Vine Ct	Rancho Cucamonga CA 91701
JUNG KAI LAI	6868 Aberdeen Ct	Rancho Cucamonga CA 91739
KATHY A MADISON	3266 Sweetwater Dr	Ontario CA 91761
KEITH DION BRATTON	944 Divino Privado N 64	Ontario CA 91764
KE-JIA YU	3255 S Newton Ave	Ontario CA 91761
KENNY CHEN	10311 FINCH ST	Rancho Cucamonga CA 91737

Kittitod Pongvattanasomporn	6767 RAMONA AVE	Alta Loma Ca 91701
Konomi Marie LLC	2164 E Alondra St	Ontario CA 91764
KRISTINE SUZANNE ESCUJURI	7710 EASTWOOD AVE	Rancho Cucamonga CA 91730
KUN SHI	11002 Getaway Dr	Rancho Cucamonga CA 91730
La Quinta Inn & Suites #170	3555 E. Inland Empire Boulevard	Ontario CA 91764
LAI YIM WONG	315 N Marin Privado	Ontario CA 91764
LAI YIM WONG	6584 Vianza Pl	Rancho Cucamonga CA 91701
LAZARUS SAINT FAMILY TRUST 12/29/16	7639 Archibald Ave 7645	Rancho Cucamonga CA 91730
Le Doux Jennifer Revocable TR 6-26	125 E H St	Ontario CA 91764
LI LI	552 E Hawthorne St	Ontario CA 91764
LI LI	558 E HAWTHORNE ST A	Ontario CA 91764
LIAN HUANG	203 W G St	Ontario CA 91762
LIU DONGMEI	4014 E Catalina St	Ontario CA 91761
LIUTAO TANG	8510 Monte Vista St	Alta Loma California 91701
Lotus Inn & Suites	724 South San Antonio Avenue	Ontario CA 91762
MAJID REZA ZEREHI	740 Camalot Ct	Ontario CA 91762
MARIO PEREZ	1453 E RIVERSIDE DR	Ontario Ca 91761
MAT HO	13062 MALVASIA WAY	Rancho Cucamonga CA 91739
MAURICIO GARCIA RECILLAS	540 E D St	Ontario CA 91764
Mayfair Inn	1120 East Holt Boulevard	Ontario CA 91761
MEI LI	2819 S Euclid Ave	Ontario CA 91761
MEIRONG DENG	9313 Valley View St	Rancho Cucamonga CA 91737
MENG-HSIEN SUN	715 E Boxwood Ct	Ontario CA 91761
Metaverse Kingdom Castle LLC	3099 E Arbor Ln	Ontario CA 91762
MICHAEL CARR BARRON	2884 E La Avenida Dr	Ontario CA91761
MICHAEL WILLIAMS	6351 CARNABY CT	Rancho Cucamonga CA 91739
MICHELE CHADEAYNE	219 E GRANADA CT	Ontario Ca 91764
MICHELLE MA	1369 S EUCLID AVE	Ontario CA 91762
MICHELLE QIAOLI XU	1985 E Harvard Privado A	Ontario CA 91764
MIGUEL A JR NAJERA	1516 W Stoneridge Ct	Ontario CA 91762
MINA MICHAEL	2638 S CALAVERAS PL	Ontario Ca 91761
MINYANG WANG	4892 S Jordan Ave	Ontario CA 91762
Mission Motel	1514 W. Mission Boulevard	Ontario CA 91762
Moreno Family Trust 10/27/23	951 E D ST	Ontario CA 91764
Motel 6 Ontario Airport	1560 East 4th Street	Ontario CA 91764
Mountain Inn	2289 South Mountain Avenue	Ontario CA 91762
NADINE ROUFAIL SAMAAN	12183 Appian Dr	Rancho Cucamonga CA 91739
New Kansan Motel	9300 Foothill Blvd.	Rancho Cucamonga CA 91730
Ontario Airport Hotel	700 North Haven Avenue	Ontario CA 91764
Ontario Airport Inn	1801 East G Street	Ontario CA 91764
Ontario Golden Bear Inn	661 West Holt Boulevard	Ontario CA 91762
Ontario Motor Inn	1522 W Mission Blvd	Ontario CA 91762
Ontario SpringHill Suites	3595 E. Guasti Rd.	Ontario CA 91761
Pepper Tree Motel	1241 East Holt Boulevard	Ontario CA 91761
PING LUO	6235 VALINDA AVE	Rancho Cucamonga CA 91737

QIHE CHEN	543 W Francis St	Ontario CA 91762
Quality Inn Ontario Airport	514 North Vineyard Avenue	Ontario CA 91764
Ramada Ontario Airport	1841 East G Street	Ontario CA 91764
Rancho Cucamonga Garden Inn	11481 Mission Vista Drive	Rancho Cucamonga CA 91730
Rancho Motel	1440 West Mission Boulevard	Ontario CA 91762
RAQUEL BIANCA ACOSTA	1159 W E St	Ontario CA 91762
RAYMOND CALDERON	1004 W YALE ST	Ontario Ca 91762
RC DICKSON TRUST 7/11/22	723 W Camalot Ct	Ontario CA 91762
Red Carpet Motel	1117 North Baker Avenue	Ontario CA 91764
Residence Inn Ontario	2025 E. Convention Center Way	Ontario CA 91764
Residence Inn-Rancho Cucamonga	9299 Haven Avenue	Rancho Cucamonga CA 91730
RICHARD OPPELAAR	551 E H St	Ontario CA 91764
ROCHA EDUARDO & ADRIANA FAM TR 2/16	7376 Reserve Pl	Rancho Cucamonga CA 91739
Rodeway Inn - Ontario Mills Mall	4075 East Guasti Road	Ontario CA 91761
RUBY Khanal	4491 S GRANT PASEO	Ontario CA 91762
RUI JIAN	2942 S Halton	Ontario CA 91761
Sands Motel	1240 West Mission Boulevard	Ontario CA 91762
SEN LI	1403 N Amador Ave	Ontario CA 91764
SHARIF S WAFFIN	9404 Somerset Dr	Rancho Cucamonga CA 91701
SHEN KUO HSU	13858 Nash Dr	Rancho Cucamonga CA 91739
Sheraton Ontario Airport	429 North Vineyard Avenue	Ontario CA 91764
SHILONG LEI	963 Orchard Ln	Ontario CA 91764
Sol Investments & Solutions Inc	720 N ALAMEDA AVE	Ontario CA 91764
Star Motel	1250 West Mission Boulevard	Ontario CA 91762
STEVENS FAMILY TRUST 1/4/19	4869 S MONARCH PL	Ontario Ca 91762
Studio 6	231 North Vineyard Avenue	Ontario CA 91764
SureStay (Fromerly Fairfield Inn by Marriott)	3201 East Centrelake Drive	Ontario CA 91761
TAM NGOC NGUYEN	751 W Holt Blvd	Ontario CA 91762
TownePlace Suites	9625 Milliken Ave.	Rancho Cucamonga CA 91730
USA LUCKY BABY INC	6998 ETIWANDA AVE	Rancho Cucamonga CA 91739
Vandermeer Alan & Isabel Rev TR 9/2	6689 Sevilla Pl	Rancho Cucamonga CA 91739
Wayne Tung	3739 Pinto Pl	Ontario CA 91761
WEI XIE	1456 E Merion Ct	Ontario CA 91761
WEICE CHEN	12792 N Rim Way	Rancho Cucamonga CA 91739
WEIJIE XIE	501 E Princeton St	Ontario CA 91764
WENDY ELIZABETH BELTRAN	735 N Imperial Ave	Ontario CA 91764
WENQING CUI	846 W CHESTNUT ST	Ontario Ca 91762
WENYIN ZHANG	4714 S JASMINE LN	Ontario CA 91762
WING LUN NG	1952 E Brookside Dr	Ontario CA 91761
WING LUN NG	2242 S Augusta Pl	Ontario CA 91761
WING LUN NG	734 E J ST	Ontario CA 91764
WOLE A ADEGOKE	6229 LAUREL BLOSSOM PL	Rancho Cucamonga CA 91739
XIANXING JIANG	6132 CELESTITE AV	Rancho Cucamonga CA 91701
XIAO HUANG	4061 E LUNA PASEO 31	Ontario CA 91764
XIAOFANG XIONG	642 W H St	Ontario CA 91762

XIAOGANG SHI	2633 E Clara Ln	Ontario CA 91762
XIAOLING YU	11159 ST TROPEZ DR	Rancho Cucamonga CA 91730
XIAOMIN XIAN	214 E F St	Ontario CA91764
XIAOYU ZHANG	1824 S Fern Ave	Ontario CA 91762
XIN ZUO	2492 E WILLIAMSBURG LN	Ontario Ca 91761
XU YANHUA FAMILY TRUST	709 W CEDAR ST	Ontario CA 91762
YAN RONG ZHENG	8960 LARAMIE DR	RANCHO CUCAMONGA CA 91737
YANJUN YANG	9370 Valley View St	Rancho Cucamonga CA 91737
YANVESTMENT	1924 S Helen Ave	Ontario CA91762
YANYING SUN	5595 Malachite Ave	Alta Loma CA 91737
YAO CHEN	12258 MOUNTAIN ASH CT	Etiwanda CA 91739
YI Y ROBERTS	14066 Glendale Ct	Rancho Cucamonga CA 91739
YING REN	9703 La Vine Ct	Rancho Cucamonga CA 91701
YIQIAN ZHOU	213 E F ST	Ontario CA 91764
YU & CHIU FAMILY TRUST 03/06/08	10663 WILDROSE DR	Rancho Cucamonga CA 91730
YUGUANG YUAN	3275 E BUTTERFLY LN	Ontario CA 91762
YUSHENG NI	9387 Shadowgrove Dr	Rancho Cucamonga CA 91730
YUYA SUZUKI	4853 S PRINCE WAY	Ontario CA 91762
ZHIQIANG QI	9206 Placer St	Rancho Cucamonga CA 91730
ZIHUAN LIU	1125 East E Street	Ontario CA 91764
ZILIANG GU	1711 E Hawthorne St	Ontario CA 91764
ZIYOU HUANG	9553 HAMMOCK PL	RANCHO CUCAMONGA CA 91730

Jurisdiction list as of December 2024.

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GRIZZLY
ENTERTAINMENT

sUAS Service Agreement

This Small Unmanned Aerial System Service Agreement (“sUAS Agreement”) is entered into this Feb 12, 2025 (the “Effective Date”), by and between **Grizzly Entertainment LLC ("GRZ")**, of 1135 Passage Street, Palm Springs, CA 92262 and CITY OF ONTARIO ("COO"), of 1265 S Palmetto Avenue, Ontario, CA 91762 ("Customer") (collectively referred to as the “Parties”).

WHEREAS **GRZ** provides photography, videography, and data collection services (“sUAS Services”) using unmanned aerial vehicles (“UAVs”), also known as “drones”.

WHEREAS **GRZ** will provide sUAS Services and license or provide rights in its copyright protected photographs, video and/or data to Customer under the terms set forth in this Agreement.

WHEREAS **GRZ** provides sUAS Services and operates under FAA Part 107 Regulations, COAs, waivers and permissions issued by the FAA and/or Section 44807 Exemptions, as required.

WHEREAS **GRZ** is insured for liability and property damage coverage for its sUAS Services.

WHEREAS Customer wishes to hire **GRZ** to provide sUAS Services and license or transfer rights to certain photographs, video and/or data from GRZ as provided herein.

THEREFORE, in consideration of the mutual agreements hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending legally to be bound hereby, agree as follows:

1 sUAS Services

GRZ will perform the following Services for Customer at Westwind Park:

a. Provide drones to perform a drone light show. (UP TO 500 drones)
b. Provide a sample of animations for pre-approval.
c. Provide pilots and animators to operate the show.
d. FAA Regulatory Compliance & Reporting.

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e. Any location changes must be approved by GRZ prior to agreement completion.
f. Other: N/A

2 Fee

Customer will pay **GRZ** a flat fee of **SIXTY THOUSAND ($ 60,000.00)** ("Flat Fee") for the sUAS Services and all other services contemplated under the Agreement which includes, operating the UAV, and all other costs or fees associated with licensing, copyright etc.

2.1 Animation Design and Lighting Changes

No animation changes can be made 7 days prior to the show.
If, however, a change is required for:

a. 1 formation change: GRZ will need to be notified 8 working days prior to the show. The Cost per formation change would be $1000.
b. Every other additional formation, an additional 5 working days notification would be required. The Cost per formation change would be $1000.

2.2 Other Fees

-

3 sUAS Service Deliverables

GRZ will license the following item as set forth in the Copyright Agreement set forth in Addendum A, to COO as part of its sUAS Services:

A. Sample animation for approval before proceeding with the final animation.
B. One Drone Show with maximum 8 animations for the duration of 10-12 minutes maximum.
C. Other: N/A

4 sUAS Service Dates

Customer understands that there are variables, some outside GRZ's control, which affect GRZ's ability to fly on any given date and time at any given flight location. These variables include, but are not limited to, compliance with FAA regulations, conditions, and limitations, third party permissions, weather conditions and safety issues.

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A. Subject to these variables, the Parties will in good faith work together to meet the following timelines:
   i. the UAV flight related activities will take place on or about Jul 4, 2025
   ii. sUAS Deliverables will be provided to Customer before or about Jul 3, 2025.

B. Customer will provide right-of-entry on the flight locations(s) for **GRZ** its agents, representatives, employees, and subcontractors, necessary to perform the sUAS Services. **GRZ** will obtain all other required permissions to provide the Services. In case of non-performance of the show through the fault of the Customer, its responsibility will be limited to re-scheduling for another jointly available date and all direct damages caused to the Customer.

5 Payment Terms

5.1 Customer will pay as follows:

A. A deposit is in the amount of THIRTY THOUSAND ($ 30,000.00) is due upon execution of the Agreement. Remaining balance 3 days prior the Show execution.
B. The sUAS Service Fee is included as part of the Flat Fee.
C. The Copyright License Fee is included as part of the Flat Fee. In case of non-payment or change of plans by the Customer, no show will be held, and the **GRZ** will not have any responsibility for its cancellation.

5.2 Other Payment terms:

A. 50% payment will be applied If cancellation occurs 60 days before the show.
B. 100% payment will be applied If cancellation occurs 30 days before the show.
C. If the show is booked in less than 30 days, then 100% payment will be applied.
D. In case of a cancellation due to weather or any other reason, then **GRZ** will reschedule the show at a convenient day and time for both parties. The customer will then undertake the cost of travel, accommodation, and local transportation expenses of **GRZ**

6 FAA Compliance & Insurance

GRZ warrants that it has obtained all required FAA approvals for the sUAS Services and maintains general liability insurance for bodily injury and property damage with an aggregate limit of Two Million Dollars ($2,000,000.00) per occurrence. GRZ will provide Customer upon the execution of the Agreement with certificates of insurance evidencing a policy endorsement naming CITY OF ONTARIO as an additional insured under the policy. GRZ agrees to hold

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Customer harmless from any loss, damage, injury, or liability, including wrongful death, in law or in equity, from negligent acts by GRZ, its employees, agents, and/or its representatives that are within the limits and coverage of said insurance and paid from the policy, and to hold Customer harmless from any third party claims against Customer alleging intellectual property infringement for the use of the Copyright protected Works. In addition to the general liability insurance requirements specified herein, the party shall also maintain Aviation and/or Drone Liability Insurance in the amount of $1,000,000 per occurrence.

7 Intellectual Property

GRZ owns any and all right, title and interest in and to, without exception and broadly defined, Copyright Protected Works (as herein defined), including, without limitation, all rights under copyright law worldwide and all right to exploit the Copyright Protected Works before, after or during the term of any License to Customer and for any purpose and regardless of the exclusivity of Customer's license and otherwise subject only to the Terms. Works is defined to include all images, videos, graphics, data, and data output, digital or otherwise, including, without limitation, maps, photographs, and videos created and/or generated by GRZ through, or related to, the use of Unmanned Aerial Systems as part of the sUAS Services and/or Deliverables.

8 Term

The Term of this Agreement shall be the Term set forth in Copyright Agreement set forth in Addendum A.

9 sUAS Service Warranty/Limitations

GRZ will perform sUAS Services with that level of care and skill ordinarily exercised by other UAS professionals practicing in the same discipline(s), contemporaneously under the same circumstances and in the same locality as Customer's project. GRZ represents and warrants that all content created for or used to create the Copyright Protected Works, including but not limited to text, source code, images, photographs, videos, or designs, will not violate the rights of third parties, including without limitation intellectual property rights and rights of publicity or privacy. No other warranties, express or implied, or fitness for a particular purpose are made with respect to this Agreement or the sUAS Services, Deliverables or License provided hereunder.

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GRIZZLY
ENTERTAINMENT

10 Integration and Modifications

GRZ hereby incorporates Addendum A into this Agreement. This Agreement constitutes the entire agreement between the parties. The parties further acknowledge that this Agreement supersedes all other proposals, agreements, and/or communications, oral or written between the Parties. No modifications of the Terms and/or Proposal are valid, unless the same is made in a written document executed by both parties.

11 Governing Law, Venue & Personal Jurisdiction

GRZ and Customer consent to the jurisdiction of the State and/or Federal Courts located in Riverside County, California for the resolution of any and all disputes between the parties arising out of this Drone Services Agreement and agree that venue will be proper and convenient in Riverside County, California, and that neither party shall challenge venue in Riverside County, California. The validity and construction of the Drone Services Agreement, and the rights and duties of the parties thereunder, will be governed in accordance with the laws of the State of California.

This agreement has been signed by the parties.

Grizzly Entertainment LLC	CITY OF ONTARIO
Full Name: Themis Violaris	Full Name:
Title: CEO	Title:
Date:	Date:
Signature:	Signature:

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GRIZZLY
ENTERTAINMENT

Addendum A: Copyright Agreement

12 Incorporation by Reference

This Copyright Agreement is an Addendum to the Agreement.

13 The Copyright Protected Works

Customer agrees that the Copyrighted Works, whether registered or unregistered, are defined to include:

1. All photographs and video taken by GRZ as part of the sUAS Services or Deliverables, whether raw, edited, unedited, reproduced, copied, modified or sampled by GRZ, Customer or any third party.
2. All data in whatever form, obtained as part of the sUAS Services or Deliverables including data that is input, output, copied, manipulated, incorporated, edited, reproduced or analyzed into or by any third-party software.

14 Type of License

Subject to the Terms and this Copyright Agreement, GRZ grants to Customer a license to use the Copyright Works provided by GRZ.

14.1 Non-Exclusive

Customer shall have non-exclusive rights in the Copyright Works during the Term of this Agreement

15 Assignment

15.1 Non-assignable

Customer may not assign it rights and/or obligations under the Agreement to another party

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without the prior written consent of GRZ which consent shall not be unreasonably withheld.

16 Scope of Use

This license allows Customer to the following rights related to the Copyright Works ("Rights"), and subject to all other License provisions herein:

1. **Reproduce the Copyright Works.**
2. **Distribute copies of the Copyright Works.**
3. **Display the Copyright Works.**
4. **Non-commercial use only**

17 Territory

The licensed territory wherein the Customer may exercise Rights is limited to the following:

1. **United States of America**

18 Sublicense

GRZ grants to Customer the right to sublicense licensed Rights to a third party. If the agreement is sub-licensable, Customer agrees as part of any sub-license to require the licensee to abide by all the terms of this Agreement.

19 Expressly Prohibited Uses by Customer

1. Use that violates the rights of third parties or violates any applicable local, national, state, provincial, and/or international laws, treaties, and regulations.
2. Claim any proprietary rights of any sort in all or any portion of the Copyright Works or alter or remove any copyright or proprietary noticed contained in or in the Copyright Protected Works.
3. Use all or any portion of the Copyright Works that could be considered offensive, threatening, pornographic, defamatory, or unlawful.

20 Enforcement of Intellectual Property Rights

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GRIZZLY
ENTERTAINMENT

GRZ reserves the exclusive right, but not the obligation, to enforce all copyrights against infringers at its own cost and to its exclusive benefit.

21 Term & Termination

Subject to the Terms mentioned above and this Agreement, the Copyright License granted to Customer by GRZ shall be in effect for/until the date below, and all such licenses or sublicenses that may have been granted by Customer are terminated unless expressly renewed or extended in writing:

1. Perpetual and indefinite.

22 Force Majeure

GRZ will not be liable in case of bad weather, force majeure, other restrictive measures or other reasons outside its responsibility and control, which will make the performance of the show impossible. In this case the show will be rescheduled for a commonly available date.

23 Other

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