CITY OF ONTARIO

Regular City Council/Housing Authority/Ontario Public Financing Authority Meeting
OCTOBER 1, 2024

City Hall
303 East B Street, Ontario, CA 91764

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

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.

ACCOMODATIONS

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 6:15 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

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

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 (d)(2), CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
One Matter

ATTACHMENT: 20241001 Closed Session

PLEDGE OF ALLEGIANCE

Council Member Bowman

INVOCATION

Senior Pastor Thomas
Ontario Seventh-Day Adventist Church

REPORT ON CLOSED SESSION

City Attorney

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.

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.

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.

Each member of the public wishing to address the City Council on items listed on the Consent Calendar will be given a total of 3 minutes.

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of September 3, 2024 and approving same as on file in the Records Management Department.

ATTACHMENT: 20240903 Meeting Minutes (Not Official Until Approved).pdf

2. BILLS & PAYROLL

Bills August 30, 2024 through September 12, 2024, and Payroll August 11, 2024 through August 24, 2024.

3. A RESOLUTION ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR PUBLIC STREET AND UTILITY PURPOSES LOCATED ON SIXTH STREET WEST OF MOUNTAIN AVENUE

That the City Council adopt a Resolution ordering the summary vacation of an easement for public street and utility purposes located on Sixth Street west of Mountain Avenue.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR PUBLIC STREET AND UTILITY PURPOSES LOCATED ON SIXTH STREET WEST OF MOUNTAIN AVENUE.

ATTACHMENT: 20241001 Summary Vacation 314^01 EXH 1.pdf
ATTACHMENT: 20241001 Summary Vacation 314 02^RESO^RM
ATTACHMENT: 20241001 Summary Vacation 314^03 RESO EXH A - B.pdf

4. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR LOT 1 OF TRACT MAP NO. 20316 LOCATED AT THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND EUCALYPTUS AVENUE

That the City Council adopt a Resolution approving an Improvement Agreement and Improvement Security for Lot 1 of Tract Map No. 20316, located at the northwest corner of Archibald Avenue and Eucalyptus Avenue.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR TRACT MAP NO. 20316 LOCATED AT THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND EUCALYPTUS AVENUE.

ATTACHMENT: 20241001 TM 20316 (Lot 1)_01_Exhibit.pdf
ATTACHMENT: 20241001 TM 20316 Lot 1 02^RESO^RM
ATTACHMENT: 20241001 TM 20316 (Lot 1)_03_IA.pdf

5. A RESOLUTION ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR PUBLIC STORM DRAIN PURPOSES LOCATED NEAR THE SOUTHEAST CORNER OF COMMERCE PARKWAY AND SANTA ANA STREET

That the City Council adopt a Resolution ordering the summary vacation of an easement for public storm drain purposes located near the southeast corner of Commerce Parkway and Santa Ana Street.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE

SUMMARY VACATION OF AN EASEMENT FOR STORM DRAIN PURPOSES LOCATED NEAR THE SOUTHEAST CORNER OF COMMERCE PARKWAY AND SANTA ANA STREET.

ATTACHMENT: 20241001 Summary Vacation V-325^01 EXH 1.pdf
ATTACHMENT: 20241001 Summary Vacation V-325 02^RESO^RM
ATTACHMENT: 20241001 Summary Vacation V-325^03 RESO EXH A and B.pdf

6. **AN AMENDMENT TO THE MUNICIPAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY**

That the City Council authorize the City Manager, or his designee, to execute an amendment to the Municipal Services Agreement between the City of Ontario and the Ontario International Airport Authority.

ATTACHMENT: ONT Contract Amendment #1_City of Ontario_689.docx

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

That the City Council approve and authorize the City Manager, or designee, to execute Amendment No. 10 to the Maintenance Services Agreement with Bay Alarm Company, of Concord, California, for a total not-to-exceed amount of $1,513,547, for the fire alarm system upgrade, and a term to June 30, 2025.

ATTACHMENT: Bay Alarm Company Amendment No. 10.pdf

8. **AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH THIRTIETH STREET ARCHITECTS, INC. FOR THE PROPOSED ADAPTIVE REUSE PROJECT AT 114-132 NORTH EUCLID AVENUE**

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 7 to the Design Services Agreement with Thirtieth Street Architects, Inc., of Costa Mesa, California, for the Adaptive Reuse Project at 114-132 North Euclid Avenue in the amount of $120,000 for a total not-to-exceed contract amount of $926,600.

ATTACHMENT: 114-118, 122, 124-126, 128-132 N. Euclid Ave. HSR Proposal REV 9.3.2024.pdf
ATTACHMENT: Amendment No 7_TSA Agr_02152021.doc

9. **AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH SAFE USA, INC. FOR CRACK SEALING SERVICES**

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 3 to the Maintenance Services Agreement with Safe USA, Inc., of Ontario, California, for Contract No. SM1920-5 for crack sealing services in the amount of $116,100 for a total contract amount not-to-exceed $723,600 over the five-year term.

ATTACHMENT: Safe USA, Inc. - Amendment No. 3.pdf

10. **AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CALTEK TECHNOLOGIES, INC. FOR THE OMUC ENGINEERING WORKSTATION PROJECT**

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to complete and execute Amendment No. 6 to the Professional Services Agreement with CalTek Technologies, Inc., of Ontario, California, for the Ontario Municipal Utilities Company (OMUC) Engineering Workstation Project in the amount of $3,788 for a total not-to-exceed contract amount of $175,957; 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, contracts, agreements, assessments, easements, reduction of retention accounts, and filing a notice of completion at the conclusion of all construction related activities.

ATTACHMENT: CalTek Technologies- Amendment No. 6.pdf

11. A CONSTRUCTION CONTRACT WITH RESOURCE ENVIRONMENTAL, INC. FOR THE EMERGENCY DEMOLITION OF THE JAY LITTLETON BALLPARK AT 1076 N. GROVE AVE

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute Construction Contract No. D&C24-016 Jay Littleton Emergency Cleanup, Abatement, and Demolition with Resource Environmental, Inc., of Cerritos, California, for the emergency demolition and site clearance activities on City-owned property located at 1076 N. Grove Avenue in the amount of $991,970 plus a 10% contingency of $99,197 for a total not-to-exceed contract amount of $1,091,167; 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, contracts, agreements, assessments, easements, reduction of retention accounts and filing a notice of completion at the conclusion of all construction related activities.

ATTACHMENT: Resource Environmental- Proposal.pdf
ATTACHMENT: Resource Environmental- Construction Contract.pdf

12. AN AMENDMENT TO THE AGREEMENT FOR SOLID WASTE PROCESSING SERVICES WITH WEST VALLEY MRF, LLC FOR PROCUREMENT OF RECOVERED ORGANIC WASTE PRODUCT

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 1 to the Agreement for Solid Waste Processing Services with West Valley MRF, LLC (West Valley), a limited liability company duly formed and operating under the laws of the State of California and owned in whole or in part by Burrtec Waste Industries, Inc., a California corporation duly formed and operating under the laws of the State of California to provide procurement of Recovered Organic Waste Product in an amount not-to-exceed $1,200,000 over a four-year period.

ATTACHMENT: West Valley MRF- Amendment No. 1.pdf

13. A PROFESSIONAL SERVICES AGREEMENT WITH CAPO PROJECTS GROUP FOR ON-CALL INTEGRATED PROJECT CONTROLS, ASSESSMENT AND REPORTING SERVICES

That the City Council approve and authorize the City Manager, or designee, to execute a three-year Professional Services Agreement with Capo Projects Group (CPG), of San Clemente, California, for On-Call Integrated Project Controls, Assessment and Reporting Services in the amount of $334,848 for Fiscal Year 2024-25 to Fiscal Year 2026-27, with the option to extend the term for up to two successive one-year periods (Fiscal Year 2027-28 to Fiscal Year 2028-29), with up to a one-time 6% increase for a total not-to-exceed amount of $571,474.

ATTACHMENT: 20241001 PSA with CAPO AGMT^01.pdf
ATTACHMENT: Exhibit A.pdf

14. A QUITCLAIM DEED AND A RESOLUTION APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY, AND FINAL PARCEL MAP NO. 20465, LOCATED AT THE SOUTHWEST CORNER OF ONTARIO RANCH ROAD AND HAMNER AVENUE

That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute a Quitclaim Deed to The Ranch at Model Colony, LLC, for fee title ownership transfer of a portion of Ontario Ranch Road; and
B. Adopt a Resolution approving a Subdivision Improvement Agreement, Improvement Security, and Final Parcel Map No. 20465, located at the southwest corner of Ontario Ranch Road and Hamner Avenue, in the Rich Haven Specific Plan.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY, AND FINAL PARCEL MAP NO. 20465, LOCATED AT THE SOUTHWEST CORNER OF ONTARIO RANCH ROAD AND HAMNER AVENUE.

ATTACHMENT: Parcel Map 20465^1_Exhibit A.pdf
ATTACHMENT: 20241001 Parcel Map 20465 02^RESO^RM.docx
ATTACHMENT: Parcel Map 20465^3_Subdivision Improvement Agreement.docx

15. A RESOLUTION APPROVING A FIRST AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND EUCLID INVESTMENT GROUP, LLC, WITH RESPECT TO APPROXIMATELY 1.19 ACRES OF LAND LOCATED AT THE SOUTHEAST CORNER OF D STREET AND LEMON AVENUE (APN'S: 1048-556-01, 1048-556-02, 1048-556-03, 1048-556-04, 1048-556-05, AND 1048-556-14)

That the City Council consider and:

A. Adopt a Resolution approving a First Amendment to a Disposition and Development Agreement (on file with the Records Management Department) between the Euclid Investment Group, LLC.
B. Authorize the City Manager, or his designee, to sign all documents necessary to implement the Disposition and Development Agreement.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE

FIRST AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND EUCLID INVESTMENT GROUP, LLC FOR THE DEVELOPMENT OF REAL PROPERTY LOCATED AT THE SOUTHEAST CORNER OF D STREET AND LEMON AVENUE (APN'S: 1048-556-01, 1048-556-02, 1048-556-03, 1048-556-04, 1048-556-05, AND 1048-556-14).

ATTACHMENT: Resolution DDA Lot North of Library 2^RESO^RM
ATTACHMENT: First Amendment to DDA Lot North of Library^01.docx

16. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH HEXAGON SAFETY & INFRASTRUCTURE FOR THE PURCHASE OF A NEW POLICE RECORDS MANAGEMENT SYSTEM (RMS)

That the City Council authorize the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement with Intergraph Corporation, a Delaware corporation, by and through its Hexagon Safety & Infrastructure division, with its principal place of business in Madison, Alabama, for the purchase of the public safety records management system (RMS) OnCall Records for software and recurring annual maintenance fees, increasing the authorized contract amount by $3,239,580 for a total contract not-to-exceed amount of $8,425,696.

ATTACHMENT: Amend 1 Hexagon Agmt

17. A RESOLUTION APPROVING A FIRST AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LAUREL INVESTMENT PROPERTY GROUP FUND, LLC, WITH RESPECT TO APPROXIMATELY 2.13 ACRES OF LAND LOCATED AT 404, 416 AND 414 NORTH EUCLID AVENUE AND 401 AND 418 NORTH LEMON AVENUE (APNS: PORTION OF 1048-363-02, 1048-363-03, 1048-363-04, AND 1048-363-05)

That the City Council consider and:

A. Adopt a Resolution approving a First Amendment to a Disposition and Development Agreement (on file with the Records Management Department) between the Laurel Investment Property Group Fund, LLC.
B. Authorize the City Manager, or his designee, to sign all documents necessary to implement the Disposition and Development Agreement.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LAUREL INVESTMENT PROPERTY GROUP FUND, LLC FOR THE DEVELOPMENT OF REAL PROPERTY LOCATED AT 404, 416 AND 414 NORTH EUCLID AVENUE AND 401 AND 418 NORTH LEMON AVENUE (APNS: PORTION OF 1048-363-02, 1048-363-03, 1048-363-04, AND 1048-363-05)

ATTACHMENT: Resolution DDA D Block 02^RESO^RM
ATTACHMENT: First Amendment to DDA D Block^01.docx

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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18. A PUBLIC HEARING TO CONSIDER ADOPTING A RESOLUTION OF NECESSITY FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST IN CERTAIN REAL PROPERTY LOCATED AT THE SOUTHEAST CORNER OF RIVERSIDE DRIVE AND VINEYARD AVENUE FOR THE REGIONAL SPORTS COMPLEX PROJECT

That the City Council conduct a public hearing and adopt a Resolution of Necessity declaring that the acquisition of a fee simple interest in certain real property located at the southeast corner of Riverside Drive and Vineyard Avenue, more particularly described as Assessor Parcel Number's 0218-101-03, 0218-101- 04, 0218-101-05 and 0218-101-06 ("The Property"), is necessary for the Regional Sports Complex Project.

RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST IN CERTAIN REAL PROPERTY LOCATED ON THE SOUTHEAST CORNER OF RIVERSIDE DRIVE AND VINEYARD AVENUE IN THE ARMSTRONG SPECIFIC PLAN AREA OF ONTARIO, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NUMBERS 0218-101-03, 0218-101-04, 0218-101-05 AND 0218-101-06, FOR THE ONTARIO REGIONAL SPORTS COMPLEX PROJECT, IN ONTARIO, CALIFORNIA

ATTACHMENT: SEC Riverside and Vineyard Staff Report Exhibit 1^01.pdf
ATTACHMENT: SEC Riverside and Vineyard Resolution of Necessity^02^RESO^RM
ATTACHMENT: SEC Riverside and Vineyard Exhibit A to Reso^03.pdf

19. AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION FOR FILE NOS. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016

That the City Council conduct a public hearing on the Appeals and after receiving all public testimony, uphold the Planning Commission's decision to uphold Zoning Administrator Decision No's. ZA23-024 (File No. PDET23-005), ZA23-030 (File No. PDET23-007), ZA23-031 (File No. PDET23-008), ZA23-032 (File No. PDET23-009), ZA23-033 (File No. PDET23-010), ZA23-038 (File No. PDET23-015) and ZA23-039 (File No. PDET23-016) and deny the Appeals.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-005) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE HOTEL HACIENDA, LOCATED AT 2425 SOUTH ARCHIBALD AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1083-071-26.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-007) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE BRIGHT STAR MOTEL, LOCATED AT 1530 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1011-221-15.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-008) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE DAYS INN ONTARIO MOTEL, LOCATED AT 1405 EAST 4TH STREET, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0108-381-32.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-009) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE ECONOMY INN, LOCATED AT 2301 SOUTH EUCLID AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1051-071-04.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-010) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE MAYFAIR INN, LOCATED AT 1120 EAST HOLT BOULEVARD, WITHIN THE INDUSTRIAL PARK ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1049-141-25.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-015) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE SANDS MOTEL, LOCATED AT 1240 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1101-211-03.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-016) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE WEST COAST INN, LOCATED AT 1211 NORTH GROVE AVENUE, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1047-451-25.

ATTACHMENT: 20240903 Hotel Appeals PC^Back-up
ATTACHMENT: File No. PDET23-005 Hotel Hacienda - Appeal 03^RESO^RM.docx
ATTACHMENT: File No. PDET23-007 Bright Star Motel - Appeal 04^RESO^RM.docx
ATTACHMENT: File No. PDET23-008 Days Inn Ontario - Appeal^05^RESO^RM.docx
ATTACHMENT: File No. PDET23-009 Economy Inn - Appeal^06^RESO^RM.docx
ATTACHMENT: File No. PDET23-010 Mayfair Inn - Appeal^07^RESO^RM.docx
ATTACHMENT: File No. PDET23-015 Sands Motel - Appeal^08^RESO^RM.docx
ATTACHMENT: File No. PDET23-016 West Coast Inn - Appeal^09^RESO^RM.docx

ADMINISTRATIVE REPORTS/DISCUSSION/ACTION

20. AN ORDINANCE AMENDING SECTION 2-1.203 OF THE ONTARIO MUNICIPAL CODE RELATING TO SALARY COMPENSATION FOR THE CITY COUNCIL

That the City Council introduce and waive further reading of Ordinance Amending Section 2-1.203 of the Ontario Municipal Code relating to Salary Compensation for the Mayor and the City Council.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTION 2-1.203 OF THE ONTARIO MUNICIPAL CODE RELATING TO SALARY COMPENSATION FOR THE CITY COUNCIL.

ATTACHMENT: Salary Increase ORD^RM

21. A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE ONTARIO PUBLIC FINANCING AUTHORITY AND THE CITY OF ONTARIO

That the City Council and the Ontario Public Financing Authority take the following actions:

A. The City Council consider and adopt a Resolution authorizing the execution and delivery of Amendment No. 1 to the Lease Agreement; and
B. The Ontario Public Financing Authority consider and adopt a Resolution authorizing the execution and delivery of Amendment No. 1 to the Lease Agreement.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENT NO. 1 TO LEASE AGREEMENT.

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ONTARIO PUBLIC FINANCING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENT NO. 1 TO LEASE AGREEMENT.

ATTACHMENT: Lease Amendment 01^CITY^RESO^RM
ATTACHMENT: Lease Amendment 02^OPFA^RESO^RM
ATTACHMENT: Lease Amendment^03^AGREEMENT.pdf
ATTACHMENT: Lease Amendment ^4^BBK MEMORANDUM.pdf

ATTACHMENT: Ontario PFA 2024 Taxable Lease Revenue Bonds - Cover Memo-c1.docx

STAFF MATTERS

City Manager Ochoa

COUNCIL MATTERS

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

ADJOURNMENT

CITY OF ONTARIO
CLOSED SESSION REPORT
City Council // Housing Authority // Other // *(GC 54957.1)*
October 1, 2024

ROLL CALL: Dorst-Porada _, Wapner _, Bowman _, Valencia _, Mayor / Chairman Leon _.

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

In attendance: Dorst-Porada _, Wapner _, Bowman _, Valencia _, Mayor / Chairman Leon _.

- GC 54956.9 (d)(2), CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
  One Matter

No Reportable Action	Continue	Approved
/ /	/ /	/ /

Disposition: _____

Reported by:

_____
City Attorney / City Manager / Executive Director

ONTARIO CITY COUNCIL/
ONTARIO HOUSING AUTHORITY
MINUTES
SEPTEMBER 3, 2024
(Not Official Until Approved)

JOINT MEETINGS

The regular meetings of the Ontario City Council and the Housing Authority were held on Tuesday, September 3, 2024 at Ontario City Hall, 303 E. B Street Ontario, California.

OPEN MEETING CALLED TO ORDER

Mayor Leon called the joint meetings to order at 6:03 p.m.

ROLL CALL

PRESENT:	Mayor/Chairman:	Paul S. Leon
	Mayor pro Tem/Vice Chair:	Debra Porada
	Council/Authority Members:	Alan D. Wapner, Jim W. Bowman and
ABSENT:	Council/Authority Members:	Ruben Valencia

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

INFORMATION RELATIVE TO POSSIBLE CONFLICTS OF INTEREST

There were no conflicts of interest announced by the City Council.

CLOSED SESSION

Mayor Leon inquired whether persons were present who wished to speak to the Closed Session items. Hearing no one, City Attorney Duran announced the matters for discussion as listed on the agenda and recessed to Closed Session at 6:04 p.m. for discussion of the following:

GC 54956.8, CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN: 0210-211-33; 700 North Haven Avenue; City/Authority negotiator: Scott Ochoa or his designee; Negotiating parties: CORE Hotel Venture, LLC; Under negotiation: Price and terms of payment

OPEN MEETING CALLED TO ORDER

Mayor Leon reconvened the meetings at 6:30 p.m. for the regular session.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Wapner.

INVOCATION

The invocation was led by Pastor Alena Uhamaka, First United Methodist Church.

REPORT ON CLOSED SESSION

City Attorney Duran stated that there was no reportable action.

SPECIAL CEREMONIES

PROCLAMATION OF SEPTEMBER 2024 AS NATIONAL PREPAREDNESS MONTH

The City Council proclaimed the month of September 2024 as National Preparedness Month in the City of Ontario.

PROCLAMATION OF SEPTEMBER 2024 AS NATIONAL SENIOR CENTER MONTH

The City Council proclaimed the month of September 2024 as National Senior Center Month in the City of Ontario.

PUBLIC COMMENT

Assistant City Clerk Isbell announced there were three written comments:
Suzanne Gonzalez, regarding blight near the south east side of Euclid Ave.
Jose Parrilla, regarding a personal grievance.
Miguel Hernandez, regarding blight near Fourth Street.

Mayor Leon called upon the first speaker:
Jamie Rocha, spoke regarding parking issues at his business.
Gary Littleton, spoke on the historical Jay Littleton Ballpark burning down.
Pamela Weatherby, spoke in support of the JC Beauty Salon getting designated customer parking.
Terry Weatherby, spoke in support of the JC Beauty Salon getting designated customer parking.
Brad Neumann, spoke on a personal grievance.
Stephanie, spoke in support of the JC Salon getting designated customer parking.
Henry T. Hidalgo, spoke regarding parking issues on San Antonio and D Street.
Pete Baines, spoke in support of the Senior Center to be open on holidays.
Jesse Fonseca, spoke on air plane noise and flight patterns.

AGENDA REVIEW/ANNOUNCEMENTS

City Manager Ochoa made no announcements.

CONSENT CALENDAR

MOTION: Moved by Council Member Wapner, seconded by Mayor Pro Tem Porada, and carried by a unanimous vote 4-0 with Council Member Valencia absent, to approve the Consent Calendar.

1. APPROVAL OF MINUTES

Minutes for the regular meetings of the City Council and Housing Authority of August 6, 2024, approving same as on file in the Records Management Department.

2. BILLS & PAYROLL

Approved bills August 2, 2024 through August 8, 2024, in the amount of $10,800,694.72, and Payroll July 14, 2024 through July 27, 2024 in the amount of $5,732,610.41.

3. ACCEPTANCE OF GRANT AWARD FUNDS FROM THE U.S. DEPARTMENT OF TRANSPORTATION FISCAL YEAR 2023 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM

The City Council authorized the City Manager to execute all documents necessary to accept grant award funds in the amount of $360,000 from the U.S. Department of Transportation Fiscal Year 2023 Safe Street and Roads for All Grant Program.

4. A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR DEVELOPMENT PLAN NO. PDEV21-020 LOCATED AT 1050 EAST HOLT BOULEVARD

The City Council adopted a Resolution approving an Improvement Agreement and Improvement Security for Project No. PDEV21-020, located at 1050 East Holt Boulevard.

RESOLUTION NO. 2024-158 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR DEVELOPMENT PLAN NO. PDEV21-020 LOCATED AT 1050 EAST HOLT BOULEVARD.

5. A RESOLUTION APPROVING FINAL PARCEL MAP NO. 20583, LOCATED AT THE SOUTHEAST CORNER OF HAVEN AVENUE AND GUASTI ROAD

The City Council adopted a Resolution approving Final Parcel Map No. 20583 located at the southeast corner of Haven Avenue and Guasti Road.

RESOLUTION NO. 2024-159 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FINAL PARCEL MAP NO. 20583 LOCATED AT THE SOUTHEAST CORNER OF HAVEN AVENUE AND GUASTI ROAD.

6. AN ORDINANCE APPROVING A SPECIFIC PLAN (FILE NO. PSP22-001 - EUCLID MIXED USE SPECIFIC PLAN)

The City Council considered and adopted an Ordinance approving the Euclid Mixed Use Specific Plan (File No. PSP22-001). First reading and introduction took placed at a regular meeting on August 20, 2024.

ORDINANCE NO. 3283 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PSP22-001, A SPECIFIC PLAN (EUCLID MIXED USE SPECIFIC PLAN) TO ESTABLISH THE LAND USE DISTRICTS, DEVELOPMENT STANDARDS, GUIDELINES, AND INFRASTRUCTURE IMPROVEMENTS FOR THE POTENTIAL DEVELOPMENT OF UP TO 1,386,776 SQUARE FEET OF BUSINESS PARK LAND USES, 290,110 SQUARE FEET OF OFFICE AND RETAIL LAND USES, AND 466 DWELLING UNITS ON THE 84-ACRE PROJECT SITE, AND MAKING FINDINGS IN SUPPORT THEREOF—APNS: 1053-071-01; 1053-071-02; 1053-071-03; 1053-071-04; 1053-211-01; 1053-211-02; 1053-211-05; 1053-281-01; 1053-281-02; 1053-281-03; 1053-281-04; 1053-281-07; 1053-281-08; 1053-081-01; 1053-081-02; 1053-081-03; 1053-081-04.

7. AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT (FILE NO. PDA23-004) BETWEEN THE CITY OF ONTARIO AND EUCLID LAND INVESTMENT, LLC

The City Council considered and adopted an Ordinance approving a Development Agreement (File No. PDA23-004) between the City of Ontario and Euclid Land Investment, LLC, to establish the terms and conditions associated with Tentative Parcel Map 20714 (File No. PMTT23-005), a 60-acre property located east of Euclid Avenue, south of Schaefer Avenue, west of future Sultana Avenue and north of Edison Avenue within the Euclid Mixed Use Specific Plan. First reading and introduction took place at a regular meeting on August 20, 2024.

ORDINANCE NO. 3284 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDA23-004, A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND EUCLID LAND INVESTMENT, LLC, TO ESTABLISH THE TERMS AND CONDITIONS ASSOCIATED WITH TENTATIVE PARCEL MAP 20714 (FILE NO.PMTT23-005), A 60 ACRE PROPERTY LOCATED EAST OF EUCLID AVENUE, SOUTH OF SCHAEFER AVENUE, WEST OF SULTANA AVENUE AND NORTH OF EDISON AVENUE WITHIN THE EUCLID MIXED USE SPECIFIC PLAN (FILE NO. PSP22-001); (APNS: 1053-071-01; 1053-071-02; 1053-071-03; 1053-071-04; 1053-211-01; 1053-211-02; 1053-281-08; 1053-081-01; 1053-081-02; 1053-081-03; 1053-081-04).

8. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN CITY OF ONTARIO COMMUNITY FACILITIES DISTRICT NO. 52 (SUNDANCE PARK)

The City Council considered and adopted an Ordinance authorizing the levy of special taxes within City of Ontario Community Facilities District No. 52 (Sundance Park). First reading and introduction took place at a regular meeting on August 20, 2024.

ORDINANCE NO. 3286 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. 52 (SUNDANCE PARK).

9. ACCEPTANCE OF SENATE BILL 1383 LOCAL ASSISTANCE GRANT PROGRAM FUNDING FROM CALIFORNIA'S DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

The City Council authorized the City Manager, or his designee, to execute all documents necessary to accept grant award funds in the amount of $476,003 from California's Department of Resources Recycling and Recovery (CalRecycle) for the Senate Bill (SB) 1383 Local Assistance Grant Program.

10. AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH COLLABORATIVE SOLUTIONS, LLC FOR WORKDAY SERVICE SUPPORT

The City Council authorized the City Manager, or his designee, to execute Amendment No. 2 to the Professional Services with Collaborative Solutions, LLC of Teaneck, New Jersey, for ongoing full-suite Workday support and configuration services, increasing the authorized contract amount by $216,020 for a total contract not-to-exceed amount of $514,824.

11. AMERICORPS STATE COMPETITIVE CONTINUATION GRANT FOR 2024-25

The City Council authorized the City Manager or designee to execute grant documents and accept a $368,000 AmeriCorps Competitive Continuation Grant for October 2024 through September 2025 to fund the Ontario Promise Corps project.

12. A PROFESSIONAL SERVICES AGREEMENT WITH ATHENS INSURANCE SERVICES, INC. FOR THIRD-PARTY ADMINISTRATION SERVICES FOR WORKERS' COMPENSATION CLAIMS

The City Council approved and authorized the City Manager, or his designee, to execute a three-year Professional Services Agreement with Athens Insurance Service, Inc. of Concord, California, for third-party administration and training services for workers’ compensation claims for a total not-to-exceed amount of $1,814,460.

PUBLIC HEARINGS

13. AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION FOR FILE NOS. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016

The City Council opened a public hearing on the Appeals and after receiving all public testimony, uphold the Planning Commission's decision to uphold Zoning Administrator Decision No's. ZA23-024 (File No. PDET23-005), ZA23-030 (File No. PDET23-007), ZA23-031 (File No. PDET23-008), ZA23-032 (File No. PDET23-009), ZA23-033 (File No. PDET23-010), ZA23-038 (File No. PDET23-015) and ZA23-039 (File No. PDET23-016) and deny the Appeals.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-005) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE HOTEL HACIENDA, LOCATED AT 2425 SOUTH ARCHIBALD AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1083-071-26.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-007) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE BRIGHT STAR MOTEL, LOCATED AT 1530 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1011-221-15.

Notice of public hearing was duly given and affidavits of compliance are on file in the Records Management Department. 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 announced the appellant wished to continued the public hearing.

MOTION: Moved by Council Member Bowman, seconded by Council Member Wapner and carried by a unanimous vote 4-0 with Council Member Valencia absent, to continue the public hearing to October 1, 2024.

STAFF MATTERS

City Manager Ochoa made no announcements.

COUNCIL MATTERS

Council Member Bowman made no comments.

Council Member Wapner spoke on Rita Nelson resigning from the Recreation and Parks Commission and Randy Del Turco possibly resigning from the Planning Commission.

Mayor Pro Tem Porada announced the receipt of a petition for the 5th Street zoning changes.

Mayor Leon spoke on upcoming events.

ADJOURNMENT

Mayor Leon adjourned the meetings of the Joint Agencies at 7:12 p.m. and announced the next regular meeting was scheduled for September 17, 2024.

Respectfully submitted,

_____
SHEILA MAUTZ, CITY CLERK/SECRETARY

APPROVED:

_____
PAUL S. LEON, MAYOR/CHAIRMAN

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Angela Truong Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Raymond Lee, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 3

SUBJECT: **A RESOLUTION ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR PUBLIC STREET AND UTILITY PURPOSES LOCATED ON SIXTH STREET WEST OF MOUNTAIN AVENUE**

RECOMMENDATION: That the City Council adopt a Resolution ordering the summary vacation of an easement for public street and utility purposes located on Sixth Street west of Mountain Avenue.

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
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: There is not a direct fiscal impact associated with this action. The City did not pay to acquire the subject easement. The Developer has paid the applicable processing fees to defray any City cost to process this request.

BACKGROUND & ANALYSIS: The applicant, Coast to Coast Commercial, LLC, has requested that the City vacate an existing easement, as shown on Exhibit 1, for public street and utility purposes to facilitate the development of the area. The easement is not needed for any present or future street and utility purposes. There are currently no existing public utilities within the easement and the easement is determined to be excess.

Section 8334(a) of the California Streets and Highways Code authorizes the City to summarily vacate (by Resolution with no public hearing) an excess right-of-way of a street or highway not required for street or highway purposes, and there are no public facilities located within the easement.

Section 8333(c) of the California Streets and Highways Code authorizes the City to summarily vacate (by Resolution with no public hearing) a public service easement that has been superseded by relocation or determined to be excess, and there are no other public utilities located within the easement.

This summary vacation meets the California Government Code, Streets and Highways Code, Ontario Municipal Code, and has been reviewed and approved by the City Engineer.

SHEET 1 OF 1

EXHIBIT 1

VACATION NO. V-314



LEGEND

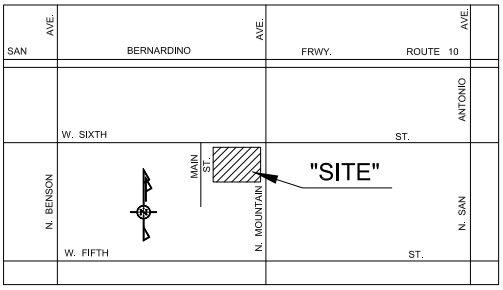
VACATION AREA (279 S.F.)

NORTH

0 25 50 100

SCALE: 1" = 50'

1495 N MOUNTAIN AVENUE, ONTARIO, CA 91762



VICINITY MAP
N.T.S.

Kimley»Horn
1100 TOWN AND COUNTRY ROAD, SUITE 700
ORANGE, CA 92868
PHONE: 714-939-1030
WWW.KIMLEY-HORN.COM

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR PUBLIC STREET AND UTILITY PURPOSES LOCATED ON SIXTH STREET WEST OF MOUNTAIN AVENUE.

WHEREAS, the City Council of the City of Ontario, California, pursuant to Division 9, Part 3, Chapter 4, of the Streets and Highways Code, may summarily vacate an easement under certain conditions specified therein; and

WHEREAS, an easement for public street and utility purposes located along the south side of Sixth Street, west of Mountain Avenue, shown on a portion of Parcel A on Lot Line Adjustment Owner's Certificate No. LLA 05-015, in the City of Ontario, County of San Bernardino, State of California, as per Instrument No. 2007-0115460 recorded February 22, 2007, of Official Records in the Office of the County Recorder of Said County, is not needed for any present or future street or public utility or other municipal purposes and is determined to be excess;

WHEREAS, Section 8334(a) of the California Streets and Highways Code authorizes the City to summarily vacate (by Resolution with no public hearing) an excess right-of-way of a street or highway not required for street or highway purposes;

WHEREAS, Section 8333(c) of the California Streets and Highways Code authorizes the City to summarily vacate (by Resolution with no public hearing) a public service easement that has been superseded by relocation or determined to be excess and there are no other public utilities located within the easement;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California:

1. That the above recitals are true and correct.

2. That title to the above-described said properties, more specifically described in Exhibit "A" and depicted on Exhibit "B" attached hereto, shall be vacated.

3. That the City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino County, California.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT "A"
LEGAL DESCRIPTION
VACATION NO. V-314

A PORTION OF AN EASEMENT AS DESCRIBED TO THE CITY OF ONTARIO FOR STREET AND OTHER MUNICIPAL PURPOSES, RECORDED OCTOBER 13, 1999, AS INSTRUMENT NO. 19990428106 OF OFFICIAL RECORDS, COUNTY OF SAN BERNARDINO BEING A PORTION OF PARCEL A, AS SHOWN ON CERTIFICATE APPROVING A LOT LINE ADJUSTMENT OWNER'S CERTIFICATE NO. LLA 05-015, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AS PER INSTRUMENT RECORDED FEBRUARY 22, 2007, AS INSTRUMENT NO. 2007-0115460 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID EASEMENT, THENCE ALONG THE NORTHERLY LINE OF SAID EASEMENT NORTH 89°58'15" EAST 93.00 FEET, THENCE LEAVING SAID NORTHERLY LINE SOUTH 00°00'00" WEST 3.00 FEET TO THE NORTHWESTERLY TERMINUS OF A LINE SHOWN AS " S 45°01'18" E 24.03' " ON SAID EASEMENT; THENCE ALONG THE GENERAL SOUTHERLY AND WESTERLY LINE OF SAID EASEMENT THE FOLLOWING COURSES:

SOUTH 89°58'15" WEST 93.00 FEET; AND

NORTH 00°00'00" EAST 3.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 279 SQUARE FEET, MORE OR LESS.

SUBJECT TO COVENANTS, CONDITIONS, RESERVATIONS, RESTRICTIONS, EASEMENTS, RIGHTS AND RIGHTS OF WAY OF RECORD, IF ANY

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

THIS LEGAL DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION.

02/05/2024

JEFFREY J. LENHERR DATE

P.L.S. 9305



1495 N Mountain Ave, Ontario, CA 91762

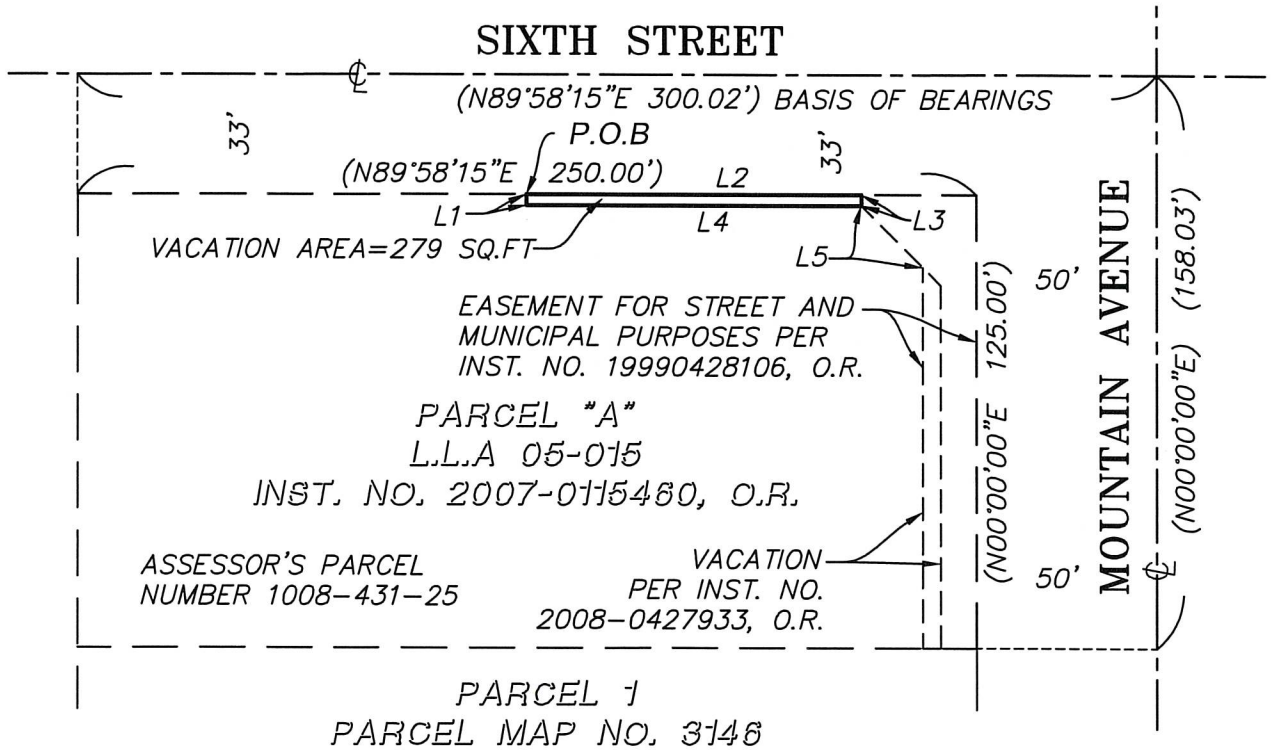
EXHIBIT "B"

VACATION NO. V-314

PLAT

BASIS OF BEARINGS: CENTERLINE OF SIXTH STREET PER INSTRUMENT NO. 2007-0115460, O.R.

NOTE: THIS PLAT IS BASED ON RECORD INSTRUMENT NO. 2007-0115460, O.R.



LEGEND AND ABBREVIATIONS

——·——	STREET CENTERLINE
—— ——	STREET RIGHT OF WAY
— — — —	EXISTING EASEMENT
----------	TIE LINE
▬▬▬▬	VACATION AREA
—— ——	EXISTING LOT LINE
℄	CENTERLINE
INST.	INSTRUMENT
P.M.B.	PARCEL MAP BOOK
LLA	LOT LINE ADJUSTMENT
O.R.	OFFICIAL RECORD

LINE TABLE		
L1	N00°00'00"E	3.00'
L2	N89°58'15"E	93.00'
L3	S00°00'00"W	3.00'
L4	S89°58'15"W	93.00'
L5	S45°01'18"E	24.03'

(XXX) INDICATES RECORD DATA PER INST. NO. 2007-0115460, O.R.

NORTH

GRAPHIC SCALE IN FEET

0 25 50 100

SCALE: 1" = 50'

LICENSED LAND SURVEYOR
JEFFREY J. LENHERR
No. 9305
STATE OF CALIFORNIA

PREPARED UNDER MY DIRECTION

JEFFREY J. LENHERR P.L.S. 9305

DATE: 2/5/2024

1495 N MOUNTAIN AVENUE,
ONTARIO, CA 91762

Kimley»Horn
1100 TOWN AND COUNTRY ROAD, SUITE 700
ORANGE, CA 92868
PHONE: 714-939-1030
WWW.KIMLEY-HORN.COM

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Henry D Pham Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Raymond Lee, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 4

SUBJECT: **A RESOLUTION APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR LOT 1 OF TRACT MAP NO. 20316 LOCATED AT THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND EUCALYPTUS AVENUE**

RECOMMENDATION: That the City Council adopt a Resolution approving an Improvement Agreement and Improvement Security for Lot 1 of Tract Map No. 20316, located at the northwest corner of Archibald Avenue and Eucalyptus Avenue.

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
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

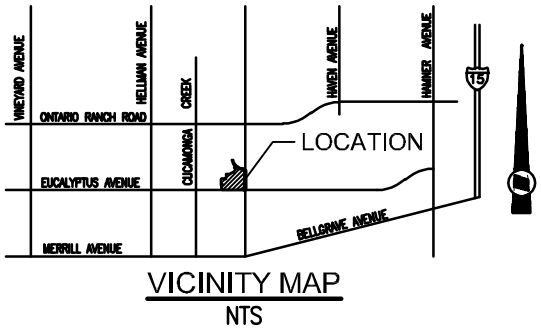
FISCAL IMPACT: There is not a direct fiscal impact associated with this action. All public infrastructure improvements required for this project will be constructed by the Developer at its sole cost.

BACKGROUND & ANALYSIS: Lot 1 of Tract Map No. 20316, to construct 232 multi-family homes on 14.6 acres of land, as shown on Exhibit A, has been submitted by the Developer, Lennar Homes of California, LLC. Tract Map No. 20316 was submitted by SC Ontario Development Company, LLC and approved by the Planning Commission on May 26, 2020.

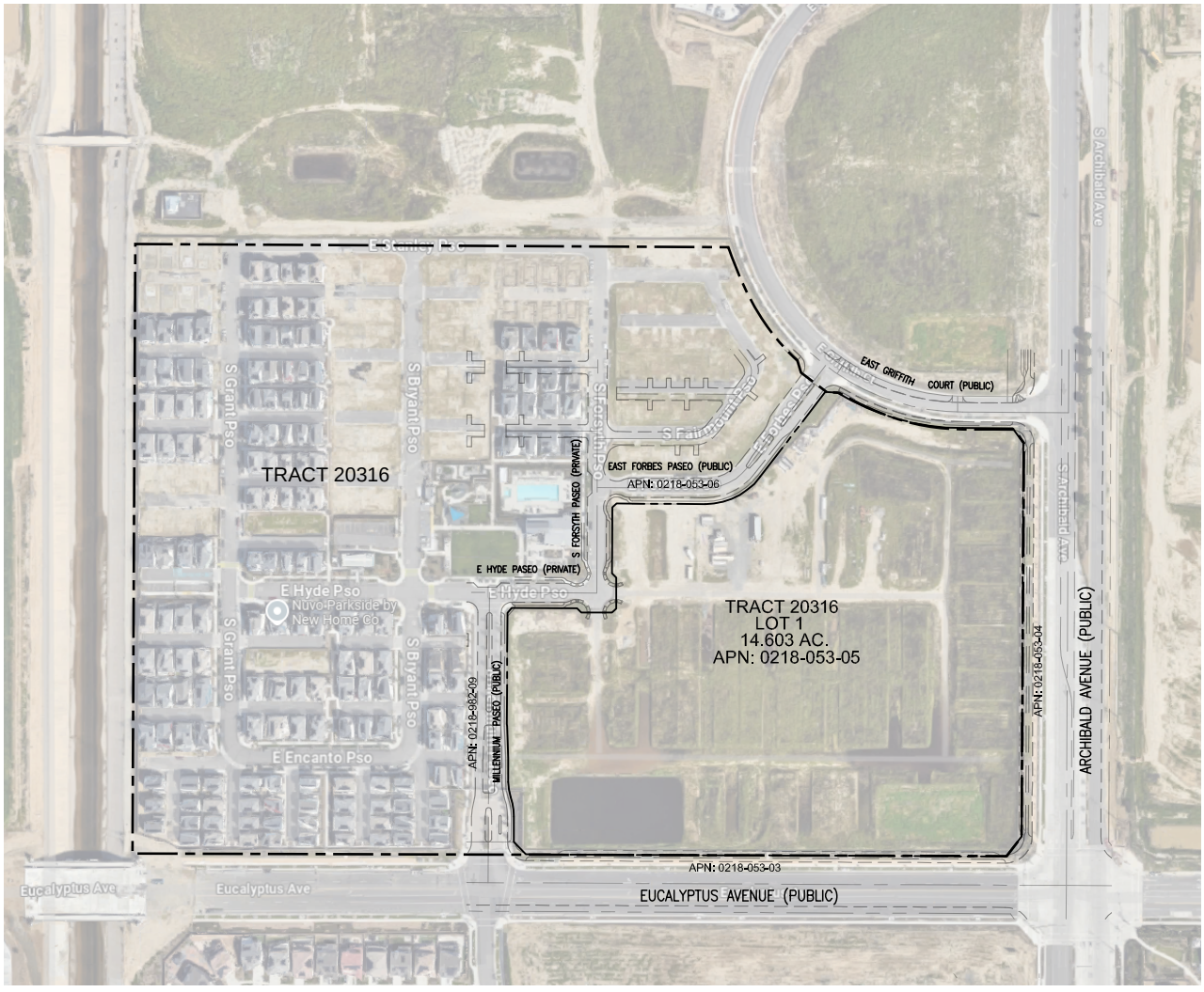
All offsite improvements have been completed. Improvements on Lot 1 of Tract Map No. 20316 will only include in-tract sewer and domestic water.

The Developer, Lennar Homes of California, LLC, has entered into an Improvement Agreement with the City for this project and has posted adequate security to ensure construction of the required improvements. This project meets all conditions of the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

EXHIBIT A
TR - 20316, LOT 1



VICINITY MAP
NTS



SCALE: 1"=200'

PREPARED BY:	APPLICANT/OWNER:	CITY OF ONTARIO ENGINEERING DEPARTMENT
LDKING 975 N. Haven Avenue, Suite 200 Ontario, California 91764 (909) 945-0526	LENNAR HOMES OF CALIFORNIA, INC. 980 MENTECITO DRIVE, SUITE 302 CORONA, CA 92879 (951) 817-3500	TRACT 20316 - LOT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING AN IMPROVEMENT AGREEMENT AND IMPROVEMENT SECURITY FOR LOT 1 OF TRACT MAP NO. 20316 LOCATED AT THE NORTHWEST CORNER OF ARCHIBALD AVENUE AND EUCALYPTUS AVENUE.

WHEREAS, Lot 1 of Tract Map No. 20316 was submitted for approval by Lennar Homes of California, LLC; and

WHEREAS, Tract Map No. 20316, submitted for approval by SC Ontario Development Company, LLC, was approved by the Planning Commission of the City of Ontario on May 26, 2020; and

WHEREAS, Tract Map No. 20316, being all of lots 4, 6, 9, 10, 11, 12, 13, 14, portion of lot F, and lots G, H, K, and M of Tract No. 18048, as per map recorded in book 334, pages 10 through 15, inclusive of maps, those portions of Park Vista Drive and Parkside Drive per Quitclaim recorded February 10, 2021 as Instrument No. 2021-00605088 of Official Records all on file in the office of the County Recorder of said County.

WHEREAS, to meet the requirements established as prerequisite to final approval of Lot 1 of Tract Map No. 20316, Lennar Homes of California, LLC, has offered the Improvement Agreement together with good and sufficient improvement security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, as follows:

1. That said Improvement Agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and

2. That said Improvement Security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

`RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Ontario
303 E. B St.
Ontario, CA 91764
Attn: City Engineer

(Exempt from Filing Fees – Government Code § 6103)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS BETWEEN THE CITY OF ONTARIO AND Lennar Homes of California, LLC

1. PARTIES AND DATE.

This Agreement for Completion of Public Improvements ("Agreement") is entered into as of this _ day of _____, 2024 by and between the **City of Ontario**, a municipal corporation (hereinafter referred to as "City") and **Lennar Homes of California Limited Liability Company** with its principal office located at **4140 Temescal Canyon Rd. Suite 410 92883** (hereinafter referred to as "Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

2. RECITALS.

2.1 Developer's owns real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property"), was approved in accordance with the Ontario Development Code on _____, 20___ to allow [Parkside]. ("Project")

2.2 Developer is the owner of Property, and Developer proposes to do and perform certain work of improvement thereon as set forth in this Agreement.

2.3 Developer has not completed all of the work or made all of the public improvements required by Chapter 2 of Title 9 of the City of Ontario Municipal Code, or such other ordinances, resolutions or policies of the City requiring construction of improvements in conjunction with City entitlements (hereinafter collectively referred to as "City Ordinances") or

by conditions to the approval of [Tract 20316] ("Project Entitlements") in accordance with the City Ordinances.

2.4 Developer and City desire to enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of security acceptable to the City Engineer and City Attorney.

3. TERMS.

3.1 Effectiveness. This Agreement shall not be effective unless and until all three of the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement; (b) Developer executes and records this Agreement in the Recorder's Office of the County of San Bernardino; and (c) the approving body per the Ontario Development Code approves the "Project Entitlements" for the Property. If any of the above described conditions are not satisfied, this Agreement shall automatically terminate without need of further action by either City or Developer, and Developer may not thereafter proceed with the Project Entitlements without modification to the Project Entitlements.

3.2 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all roads, curbing, pavement and other improvements required by the City as part of the approval of Project Entitlements, including, but not limited to, the following: IN-TRACT SEWER AND WATER (hereinafter referred to as the "Public Improvements"). The Public Improvements are more specifically described in Exhibit "B" attached hereto and incorporated herein by this reference. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any utility system or public improvement in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such utility system or public improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or as required by the City to fully and adequately complete the Public Improvements.

3.3 Partially Completed Public Improvements. Where construction of any Public Improvements has been partially completed prior to this Agreement, Developer agrees to complete such Public Improvements or assure their completion in accordance with this Agreement.

3.4 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans, specifications, estimates, and bonds for such Public Improvement have been submitted to and approved by the City Engineer, or his/her authorized designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

3.5 Quality of Work. The Public Improvements shall be constructed and installed pursuant to City review and approval. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all applicable federal, state and local laws,

ordinances, regulations and other requirements. In addition, the Public Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings and special amendments thereto on file with City, as well as all applicable federal, state and local laws, ordinances, regulations and other requirements. It is understood and agreed that all work and improvements done pursuant to this Agreement shall conform to the standards applicable at the time work is actually commenced.

3.6 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

3.7 Alterations to Improvements; Notice to Surety. The Public Improvements in Exhibit "B" are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

3.8 Superintendence by Developer. Developer shall require each contractor and subcontractor to have a competent foreperson on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing work on the Public Improvements. Before starting work on the Public Improvements, each contractor and subcontractor shall submit in writing the name of the proposed foreperson, who shall be subject to the review and approval of City. Following approval by City, each foreperson shall be present at the work site at all times that any work is in progress and at any time that any employee of the contractor or subcontractor is present at the work site. The Developer shall employ a competent construction manager that is responsible for the entire work. Each contractor or subcontractor shall contractually report to the construction manager, either directly or through a subcontract. The construction manager shall be immediately available by phone during hours when construction is in progress and shall be available in person within two hours when requested by the City. The construction manager shall coordinate the work such that construction and the associated inspection happen in an efficient manner. Should a contractor or subcontractor desire to change its foreperson, it shall provide the information specified above and obtain City's prior written approval. City, in its sole and absolute discretion, may require any contractor or subcontractor to replace its foreperson provided that City gives the contractor or subcontractor at least forty-eight hours written notice.

Developer shall, at all times, enforce strict discipline and good order among its employees and those of its subcontractors and shall not employ any unfit person or anyone not skilled in the assigned task. If any person employed by, the Developer, a contractor or subcontractor fails or refuses to carry out the directions of the City or appears to the City, in its sole and absolute discretion, to be incompetent or to act in a disorderly or improper manner, such person shall be removed from the project immediately upon request by the City, and such person shall not again be employed on the work. Such removal shall not be the basis for any claim of compensation or damages against the City.

In addition, Developer shall maintain an office with a telephone, and Developer or a person authorized to make decisions and to act on Developer's behalf in Developer's absence shall be available to be on the job within three (3) hours of being called at such office by the City, during the hours of 9:00 a.m. through 5:00 p.m., Monday through Friday, or any other day or time when work is being performed on the Public Improvements. Developer shall also provide City with a telephone number, at which Developer, or its representative, shall be available twenty-four (24) hours a day in the event of an emergency.

3.9 Maintenance of Public Improvements and Landscaping. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released.

Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, street trees, signals, parkways, water mains and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing and maintaining in good and safe condition all streets and street improvements. Developer shall cause the sweeping of streets to occur weekly at a minimum. Developer shall perform additional street sweeping work as necessary depending on construction activities or as required by, and at the direction of, the City Engineer. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this Section, City may do all necessary work and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

3.9.1 Landscaping and Existing Irrigation Systems. Developer shall plant and maintain parkway trees and landscaping as provided in Section 10-2.07 of the City Municipal Code, and as directed by the Public Facilities Department. The Developer shall also be responsible for the replacement, relocation or removal of any component of any irrigation water system in conflict with the construction or installation of the Public Improvements. Such replacement, relocation or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such water system.

3.10 Construction Schedule. Unless extended pursuant to this Section 3.10, Developer shall fully and adequately complete or have completed the Public Improvements within twelve (12) months following approval of the Project Entitlements. At least fifteen (15) days prior to the commencement of such work, Developer shall notify the City Engineer in writing of the date fixed by Developer for commencement of the work.

3.10.1 Extensions of Schedule. Time is of the essence with regard to this Agreement. The City may in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. Requests for extension of time shall be in writing and shall be delivered to City in the manner hereinafter specified for service of notices. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on City. It is understood that by providing the security required by this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waive any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defenses of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates approved by the City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

3.10.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete required or agreed upon Public Improvements.

3.11 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements or development of Project shall conform to all federal, state and local laws, ordinances, regulations and other requirements, including without limitation, City's grading regulations, the National Pollutant Discharge Elimination Systems (NPDES), and stormwater regulations thereunder as administered by the State Water Resources Control Board and Regional Water Quality Control Boards and City's grading regulations. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the above time schedule for completion of the Public Improvements, and prior to City's approval and acceptance of the Public Improvements and release of Security as set forth in this Agreement. Developer further agrees that the indemnification as set forth in this Agreement shall extend to and include any and all grading contemplated by this Agreement, including but not limited to, any partial or rough grading work. Developer agrees that any and all grading done or to be done in conjunction with of the Property shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements including, In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements.

3.12 Encroachment Permit. Developer shall obtain any necessary encroachment permits from the office of the City Engineer prior to start of any work within the public rights-of-way, and the Developer shall conduct such work in full compliance with the regulations and other requirements contained therein. The Developer shall be responsible for the removal of all loose rock and other debris from the public rights-of-way resulting from work done on adjacent property or within said rights-of-way. Work done within existing public rights-of-way shall be diligently pursued to completion with minimal obstruction or inconvenience to the public and pursuant to the terms of the encroachment permit and any applicable federal, state or local laws, rules or regulations. The City shall have the right to complete any and all work in the event of unjustified delay in completion, and to recover all costs and expenses incurred from the Developer or its surety by any lawful means. Non-compliance with the terms of the encroachment permit or any applicable federal, state or local laws, rules or regulations may result in the City's cessation of the work and assessment of any applicable penalties or other remedies. Prior to, and as a condition precedent to, the issuance of any required encroachment permit(s), Developer shall provide to the City evidence satisfactory to the City of: (1) the certificate(s), endorsement(s), or policy(ies) of insurance as required by this Agreement; and (2) any and all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work.

3.13 City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

3.13.1 Acceptance of Improvements; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by City, and if they comply with all applicable federal, state and local laws, ordinances, regulations and other requirements, City shall be authorized to accept the Public Improvements. Notwithstanding the foregoing, the City may not accept any Public Improvements unless and until the Developer provides reproducible "As-Built" or record drawings or plans to the City Engineer for all such Public Improvements.

3.13.2 Demand to Perform; City Remedies. Upon default of any obligation hereunder, and at any time after any such default, City may make written demand upon Developer or its surety, or both, to immediately remedy the default or complete the Public Improvements. If the required work is not substantially commenced within ten (10) days of such demand, or if it is not thereafter diligently prosecuted to a completion acceptable to City within the time frame contained in the demand, City may then complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required. All such work or remedial activity shall be at the sole and absolute expense and obligation of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the required Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to permit adequate coordination by City. Notwithstanding the foregoing, if the conditions precedent for reversion to acreage can be met

and if the interests of the City will not be prejudiced thereby, the City may also process a reversion to acreage and thereafter recover from the Developer's surety the full cost and expense incurred.

3.13.3 Default; Notice of Violation; Stop Work Order. If City determines that there is a violation of applicable federal, state or local laws, ordinances, regulations or other requirements, or the terms and conditions of this Agreement, the City and/or City Engineer may issue a Notice of Violation and Demand for Compliance and/or a Stop Work Order. The City may declare the Developer to be in default or violation of this Subdivision Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation. Developer shall comply with the Notice of Violation and/or Stop Work Order and shall substantially commence the work required to remedy the default or violation with the time specified in the Notice of Violation. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City and/or City Engineer may provide the Notice of Violation verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof.

3.13.4 Failure to Remedy Violation; City Action. If the work required to remedy the notices of default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice of Violation, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity at its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

3.13.5 Other Remedies. No action by City pursuant to this Section of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise it rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

3.13.6 Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements required by this Agreement within the time set forth herein, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

3.14 Indemnification. Developer shall defend (with Counsel acceptable to City), indemnify and hold harmless City, its elected officials, officers, employees ,agents and volunteers from any and all actual or alleged claims, demands, causes of action, liability, loss,

damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions or willful misconduct of Developer, its officers, employees, agents or contractors in connection with or arising out of or in connection with Developer's maintenance or construction of the Public Improvements, or its performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by Agency, its elected officials, officers, employees, agents, or volunteers

3.15 Security.

3.15.1 Prior to execution of this Agreement, Developer shall provide City with sufficient security in the amounts and under the terms set forth below ("Security"). Nothing in this Section is intended to prevent City, in its sole discretion, from requiring Developer to submit, or prevent Developer from submitting, security in a form other than bonds that may be allowed under California Government Code Section 66499, et seq. and the City's Municipal Code, and acceptable to City. The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all public landscaping ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this Section shall in no way limit or modify Developer's indemnification obligation under this Agreement. Security shall be on forms approved by the City for the purposes and amounts as follows:

3.15.2 To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City security in the amount of **[One million one hundred twenty-eight thousand two hundred seventy-four 24/100]** Dollars (**$[1,128.274.24]**), which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The City may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the Public Improvements are accepted by City, as provided herein, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Project, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period (as defined above), or any extension thereof as provided in this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Project.

3.15.3 To provide in the amount of ten percent (10%) of the Estimated Costs of the Work to guarantee and warrant the Work, for a period of one year following its completion and acceptance, against any defective work or labor done, or defective materials furnished, as required by California Government Code Section 66499.3(d). Any unused portion of the guarantee and warranty security shall be released one year after acceptance of the required improvements by the City Council.

3.15.4 Bond/Surety Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of no less than A:VIII, shall be authorized to do business in the State of California, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorneys' fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

3.15.5 Evidence of Bonds and Security. Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C," unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

3.16 Insurance.

3.16.1 Time for Compliance. Developer 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, Developer shall not allow any contractor to commence work on any contract until it has provided evidence satisfactory to the City that the contractor 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.

3.16.2 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 Developer, 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, Developer 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.

3.16.3 Insurance Endorsements. Required insurance policies shall contain the following provisions, or Developer 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 Developer; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Developer 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) 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) 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.

3.16.4 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.

3.16.5 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 Developer or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Developer hereby waives its own right of recovery

against City, and shall require similar written express waivers and insurance clauses from each of its contractors.

3.16.6 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.

3.16.7 Evidence of Insurance. The Developer, 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, Developer 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.

3.16.8 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.

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

3.16.10 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.

3.16.11 Additional Insurance Provisions

(a) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Developer, 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 Developer 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 Developer.

(c) The City may require the Developer 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 Developer from liability in excess of such coverage, nor shall it limit the Developer'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) Developer shall report to the City, in addition to Developer's insurer, any and all insurance claims submitted by Developer in connection with the Services under this Agreement.

3.17 Evidence of Bonds and Security. Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C," unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

3.18 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation or other requirement. Removal shall be at the expense of Developer. Developer shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

3.19 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer, its contractors, or its subcontractors an agent, contractor or subcontractor of City.

3.20 General Provisions.

3.20.1 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.

3.20.2 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.

3.20.3 Construction; References; Captions. It being agreed the Parties or their agents have participated 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 Developer include all personnel, employees, agents, and contractors and subcontractors of Developer, 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.

3.20.4 Notices. All notices to be given hereunder shall be in writing and may be made either by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses listed below, but each party may change the address by written notice in accordance with this Section. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

CITY	**DEVELOPER**
City of Ontario Engineering Department 303 East "B" Street Ontario, CA 91764	Lennar Homes of California, LLC. Department of Forward Planning 4140 Temescal Canyon Rd, Suite 410 Corona CA 92883

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

3.20.6 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, either written or oral, express or implied. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

3.20.7 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by the Developer without the prior written consent of the City.

3.20.8 Waiver. The City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations of this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or

set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution or performance of the Public Improvements or this Agreement.

3.20.9 Definition. For purposes of enforcing this Agreement, the term "City" shall include, but shall not be limited to, City Council, City Manager, City Attorney, City Engineer, or any of their authorized representatives. City shall have the sole and absolute discretion to determine which public body, public official or public employee may act on behalf of City for any particular purpose.

3.20.10 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement. In the event that City consents in writing to such an assignment, any assignee, hypothecatee, or transferee shall expressly assume Developer's obligations hereunder by a written agreement in a form, and containing such security, as is reasonably acceptable to City.

The agreement, hypothecation, or transfer shall be to the satisfaction of the City Attorney and shall include provisions requiring the assignee to post bonds or submit another form of financial security, satisfactory to City and approved by the City Attorney, to guarantee construction of the Public Improvements. The agreement shall be recorded against the Property to inform successors and assigns of the required Public Improvements to be constructed and their time frame for construction.

Following any permitted assignment, hypothecation, or transfer of the Public Improvements as set forth in this Section, City shall release Developer from its obligations so assigned and shall release to Developer any bonds or other security posted to secure the Public Improvements so assigned; provided, however, that City shall not release any security or undertakings given to secure the performance of any of the Public Improvements not assigned, hypothecated, or transferred.

3.20.11 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This Section shall not be construed as an authorization for any Party to assign any right or obligation.

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

3.20.13 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.

3.20.14 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of San Bernardino, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

3.20.15 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs. This Section shall survive the termination or expiration of this Agreement.

3.20.16 Acquisition and Dedication of Easements or Rights-of-Way. If any of the Public Improvements required by this Agreement are to be constructed on land not within the subdivision or an already-existing public right-of-way, no construction or installation shall be commenced before:

(a) The irrevocable offer of dedication or conveyance to City of appropriate rights-of-way, easements, or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Public Improvements or work; or

(b) The issuance of an order of possession by a court of competent jurisdiction pursuant to California's Eminent Domain Law. Developer shall comply in all respects with any such order of possession.

3.20.17 Nothing in this paragraph shall be construed as authorizing or granting an extension of time to Developer for completion of the Public Improvements.

3.20.18 Prevailing Wages. Developer has been alerted to the requirements of California Labor Code section 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Agreement.

3.20.19 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

CITY OF ONTARIO

By:_____
Scott Ochoa, City Manager

DEVELOPER

By:_____
Signature

Name Geoffrey Smith

Title Vice President

Attest

_____

By:_____
Sheila Mautz, City Clerk

Approved as to Form:

By:_____
Best Best & Krieger, City Attorney

By:_____

_____

NOTE: DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BY LAWS, ARTICLES OF INCORPORATION OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

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 Riverside)

On 8/13/2024 before me, Kim Strutton, Notary Public
(insert name and title of the officer)

personally appeared Geoffrey Smith,
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.

KIM STRUTTON
Notary Public - California
Riverside County
Commission # 2405490
My Comm. Expires May 24, 2026

Signature K Strutton (Seal)

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____,

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

Principal must indicate below in what capacity he/she is signing. If other than in an individual capacity, the Principal must provide evidence satisfactory to demonstrate that he/she serves in such capacity and that he/she is authorized to execute this instrument.

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

AGREEMENT – (DEVELOPER)

Exhibit "A"

Legal Description

REAL PROPERTY IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT 1 OF TRACT MAP 20316, AS PER MAP RECORDED IN BOOK 358, PAGES 59 THROUGH 68, INCLUSIVE OF MAPS.

Exhibit "B"
List of Public Improvements

CITY OF ONTARIO
CONSTRUCTION AND BOND ESTIMATE
IMPROVEMENT AGREEMENT FOR [PROJECT]

[ENGINEERING ESTIMATE ATTACHED]

CITY OF ONTARIO

ENGINEERING DEPARTMENT

Project Cost Estimate

Date	7/2/2024
Project Number	801-002
Location	TR.20316 L1
Computed By	L.D. KING
Contact Phone No.	909-945-0526

Attached project estimate prepared by (or under the direction of)

Carla Berard

Signature of Registered Civil Engineer

RCE No. 45183 Exp. Date: 9-30-24



Civil Engineer Stamp

ACCEPTED
07/30/2024
BY
ENGINEERING DEPARTMENT
FOR BONDING PURPOSES ONLY

Approved By: Henry Pham (FOR BONDING PURPOSES ONLY)
Date: 7/30/24

CITY OF ONTARIO

ENGINEERING DEPARTMENT

Summary of Estimated Cost of Construction in Public Right-Of-Way

For Security (i.e. Bond) Amount

(For Subdivision Maps Only)

Date 7/2/2024
Project Number 801-002
Location TR.20316 L1
Computed By L.D. KING
Contact Phone No. 909-945-0526

A.	STREET	Sub-Total	
B.	WATER	Sub-Total	**$670,543.72**
C.	RECYCLED WATER	Sub-Total	
D.	SEWER	Sub-Total	**$355,160.13**
E.	STORM DRAIN	Sub-Total	

CONTINGENCY FOR UNSIGNED PLANS (10%)	**$102,570.39**
TOTAL SECURITY (i.e. BOND) ESTIMATE AMOUNT	**$1,128,274.24**

SECURITY (BOND) AMOUNTS

Performance Bond (100% of estimated cost)	**$1,128,274.24**
Labor and Material Bond (100% of estimated cost)	**$1,128,274.24**
Maintenance Bond* (10% of Performance Bond)	$112,827.42
Monumentation Cash Deposit**	**$1,000.00**

(No. of Monmuments to set:)

* To be provided prior to release of Performance Bond

**To be provided if monumentation is not completed by the time of Final (Parcel) Map approval

CITY OF ONTARIO

ENGINEERING DEPARTMENT

Date 7/2/2024
Project Number 801-002

		Total Length in feet to be constructed
A.	WATER MAIN	**2650**
B.	SEWER MAIN	**2436**
C.	STORM DRAIN MAIN	
D.	RECYCLED WATER	
E.	FIBER OPTIC	

* To be provided to the Fiscal Services Department

Exhibit "C"

Bonds and other Security

As evidence of understanding the provisions contained in this Agreement, and of the Developer's intent to comply with same, the Developer has submitted the below described security and has affixed the appropriate signatures thereto:

FAITHFUL PERFORMANCE BOND PRINCIPAL AMOUNT: $1,128,274.24
Description: Faithful Performance Bond
Surety: Federal Insurance Company
Attorney-in-fact: Laura E. Sudduth
Title Service Representative: Scott Hoogerwarf
Address: 202B Halls Mill Road
Whitehouse Station, NJ 08889
Phone Number: (908)903-2000
Email: _____

MAINTENANCE GUARANTEE BOND PRINCIPAL AMOUNT: $ 112,827.42
To be posted upon completion of the Public Improvements by Developer and approval and acceptance by City.

This bond supersedes and replaces the Faithful Performance Bond for Subdivision Agreement issued on July 24, 2024.

BOND NO. **K41846136**
PREMIUM **$3,103.00 / annum**

CITY OF ONTARIO

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the City Council of the City of Ontario, State of California ("CITY") and **Lennar Homes of California, LLC** ("PRINCIPAL") have entered into an Agreement for Completion of Public Improvements ("Improvement Agreement") dated on or about the _____ day of _____, 202_ for public improvements to be constructed as part of the **Public In-tract Water and Sewer @ Parkside – Tract 20316** Project; and,

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and,

WHEREAS, the PRINCIPAL is required under the terms of the Improvement Agreement to provide a good and sufficient bond, in a form and from a surety acceptable to the CITY, for the performance of the Improvement Agreement; and,

NOW, THEREFORE, the PRINCIPAL and **Federal Insurance Company**, a company organized and doing business under and by virtue of the laws of the State of **Indiana** and duly licensed to conduct a general surety business in the State of California, as "SURETY," are held and firmly bound unto the CITY, as "OBLIGEES," in the sum of **One Million One Hundred Twenty-Eight Thousand Two Hundred Seventy-Four and 24/100 Dollars** ($**1,128,274.24**) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such, that if the above bonded PRINCIPAL, 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 provisions in said Improvement Agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the CITY, it officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Improvement Agreement, or the work to be performed thereunder or the specifications accompanying the same, shall in any manner affect its obligations on this bond, and it does hereby waive notice of such change, extension, alteration or addition to the terms of the Improvement Agreement or to the work or specifications.

IN WITNESS WHEREOF, the seal and signature of said PRINCIPAL is hereto affixed, and the corporate seal and the name of said SURETY is hereto affixed and attested by its duly authorized Attorney-in-Fact at **Houston** Texas this **13th** day of **August**, 202**4**.

PRINCIPAL	**SURETY**
Lennar Homes of California, LLC, a California limited liability company Print Name	**Federal Insurance Company** Print Name
By: _____ Signature	By: _____ Signature
Geoffrey Smith Name	**Laura E. Sudduth** Name
Vice President Title	**Attorney-in-Fact** Title
August 16, 2024 Date	**August 13, 2024** Date

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPALS AND SURETY MUST BE ATTACHED TO THIS BOND.

A++ XV
RISK MANAGEMENT
DATE 08/29/24
SURETY APPROVED ONLY
INITIAL JA

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 Riverside)

On August 16, 2024, before me, Kim Strutton, Notary Public,

personally appeared Geoffrey Smith,

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.

KIM STRUTTON
Notary Public - California
Riverside County
Commission # 2405490
My Comm. Expires May 24, 2026

WITNESS my hand and official seal.

K. Strutton
Signature of Notary Public

Principal must indicate below in what capacity he/she is signing. If other than in an individual capacity, the Principal must provide evidence satisfactory to demonstrate that he/she serves in such capacity and that he/she is authorized to execute this instrument.

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

PERFORMANCE BOND – (PRINCIPAL)

C-3

46700.00100\34360578.1

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 TEXAS)
COUNTY OF **Harris**)

On **August 13, 2024**, before me, **Amanda R Turman-Avina**,

personally appeared **Laura E. Sudduth**,

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.

AMANDA R TURMAN-AVINA
Notary ID #124048654
My Commission Expires
January 25, 2026

WITNESS my hand and official seal.

Amanda R Turman-Avina
Signature of Notary Public

Principal must indicate below in what capacity he/she is signing. If other than in an individual capacity, the Principal must provide evidence satisfactory to demonstrate that he/she serves in such capacity and that he/she is authorized to execute this instrument.

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

CHUBB®

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, **PACIFIC INDEMNITY COMPANY**, a Delaware corporation, **WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint

Laura E. Sudduth

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** have each executed and attested these presents and affixed their corporate seals on **this 19th day of July, 2024.**

Rupert HD Swindells, Assistant Secretary

Warren Eichhorn, Vice President

STATE OF NEW JERSEY
County of Hunterdon ss.

On this 19th day of **July, 2024** before me, a Notary Public of New Jersey, personally came Rupert HD Swindells and Warren Eichhorn, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Rupert HD Swindells and Warren Eichhorn, being by me duly sworn, severally and each for himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal

Albert Contursi
NOTARY PUBLIC OF NEW JERSEY
No 50202369
Commission Expires August 22,2027

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

(1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.

(2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.

(3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.

(4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.

(5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Rupert HD Swindells, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

(i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this August 13, 2024

Rupert HD Swindells, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903- 3493 Fax (908) 903- 3656 e-mail: surety@chubb.com

This bond supersedes and replaces the Subdivision Maintenance Bond Guarantee and Warranty Security issued on July 24, 2024.

BOND NO. **K41846136-M**
PREMIUM **Included in Performance Bond**

CITY OF ONTARIO

AGREEMENT FOR COMPLETION OF PUBLIC IMPROVEMENTS WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Ontario ("CITY"), a California municipal corporation by its City Council and **Lennar Homes of California, LLC** ("PRINCIPAL") have entered into that certain Agreement for Completion of Public Improvements ("Improvement Agreement") dated _____, referred to and incorporated herein by this reference, whereby PRINCIPAL agrees to install and complete certain designated public improvements for the project identified as **Public In-tract Water and Sewer @ Parkside – Tract 20316**; and

WHEREAS, PRINCIPAL is required under the terms of the Improvement Agreement to furnish a bond to guarantee and warrant the work for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, to comply with the terms of the Improvement Agreement; and

WHEREAS, we **Lennar Homes of California, LLC**, as PRINCIPAL and **Federal Insurance Company**, a corporation organized and existing under the laws of the State of **Indiana**, and authorized to transact surety business in the State of California as surety ("SURETY"), are held and firmly bound onto the CITY, in the full and just sum of **One Hundred Twelve Thousand Eight Hundred Twenty-Seven and 42/100 Dollars** for which payment well and truly to be made, the said PRINCIPAL and SURETY bind themselves, their successors and assigns, jointly and severally, firmly by these presents; and

WHEREAS, PRINCIPAL, required under the Improvement Agreement to construct the designated public improvements in accordance with CITY's Standard Specifications, agrees to repair or replace any and all work required under this Improvement Agreement that may prove defective in workmanship and/or materials, together with any other work which may be effected by this repair, excepting any work necessitated by ordinary wear and tear, or unusual abuse or neglect, within a one-year period from the date of acceptance of the work and improvements by the CITY; and

WHEREAREAS, such work and improvements have been completed in accordance with the Improvement Agreement; and

WHEREAS, CITY is willing and agreeable to accept a bond in the amount of **One Hundred Twelve Thousand Eight Hundred Twenty-Seven and 42/100 Dollars** ($**112,827.42**) (10% of CITY's estimated cost) to be a guarantee that all charges for material and labor accruing in the construction of said work and improvements have been or will be paid in full by PRINCIPAL and that the work and improvements shall remain free form defects resulting from defective material and labor for a period of twelve months from the date of acceptance by the CITY.

NOW, THEREFORE, the condition of this obligation is such that PRINCIPAL, having completed the work and improvements to the satisfaction of CITY, and if all charges for material and labor accruing in the construction of the work and improvements have been paid in full by PRINCIPAL, and if the work and improvements have remained free from defects resulting from the defective materials and labor, all for a period of twelve months from the date of acceptance by CITY. This bond shall remain in full force and effect until a written release is received from the City, at the written request of the Surety or Principal. The CITY may perform a warranty inspection prior to the expiration of the one year warranty period, but no sooner than 45 days prior to expiration. The PRINCIPAL will be notified in writing of any efficiencies revealed by this inspection. The warranty bond will not be released until the required repairs are completed and a one year warranty period has expired. Without any defects resulting from defective materials or labor, has been subsequently completed for all the installed public improvements and any repairs or replacement if necessary per the Improvement Agreement above. If the warranty inspection identifies no necessary repairs or replacement, the CITY will release the warranty bond at the end of the one year warranty period. The PRINCIPAL shall be entitled to seek a release of this bond only at that time when the installed public improvements have been maintained and have remained free of defects for an entire one year.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 3 (commencing with Section 9550) of Part 6 of Division 4 of the Civil code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be full performed, then this obligation shall become null and void; otherwise, it shall remain in full force and effect.

The SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said Improvement Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extensions, alteration or addition; and expressly waives the defenses of statutes of limitation, laches and estoppel in the event said changes, extensions, alterations or additions are granted or made.

SURETY, by executing this Warranty Bond, warrants and alleges that it has read the said Improvement Agreement or by signing this bond shall be deemed to have read said Improvement Agreement and knows the contents and all provisions therein contained, and shall be bound by each and every term, condition and provision contained therein.

IN WITNESS WHEREOF, said PRINCIPAL and SURETY have caused this bond to be duly executed this **13th** day of **August**, 202**4**.

[SIGNATURE PAGE FOLLOWS]

PRINCIPAL	SURETY
Lennar Homes of California, LLC, a California limited liability company	**Federal Insurance Company**
Print Name	Print Name
By: _____ Signature	By: _____ Signature
Geoffrey Smith Name	**Laura E. Sudduth** Name
Vice President Title	**Attorney-in-Fact** Title
August 16, 2024 Date	**August 13, 2024** Date

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPALS AND SURETY MUST BE ATTACHED TO THIS BOND.

A++XV
RISK MANAGEMENT
DATE 08/29/24
SURETY APPROVED ONLY
INITIAL JA

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 Riverside)

On August 16, 2024, before me, Kim Strutton, Notary Public,

personally appeared Geoffrey Smith,

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.

KIM STRUTTON
Notary Public - California
Riverside County
Commission # 2405490
My Comm. Expires May 24, 2026

WITNESS my hand and official seal.

K Strutton
Signature of Notary Public

Principal must indicate below in what capacity he/she is signing. If other than in an individual capacity, the Principal must provide evidence satisfactory to demonstrate that he/she serves in such capacity and that he/she is authorized to execute this instrument.

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

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 TEXAS)
COUNTY OF **Harris**)

On **August 13, 2024**, before me, **Amanda R Turman-Avina**,

personally appeared **Laura E. Sudduth**,

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.

AMANDA R TURMAN-AVINA
Notary ID #124048654
My Commission Expires
January 25, 2026

WITNESS my hand and official seal.

Amanda R Turman-Avina
Signature of Notary Public

Principal must indicate below in what capacity he/she is signing. If other than in an individual capacity, the Principal must provide evidence satisfactory to demonstrate that he/she serves in such capacity and that he/she is authorized to execute this instrument.

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

CHUBB®

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, **PACIFIC INDEMNITY COMPANY**, a Delaware corporation, **WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint

Laura E. Sudduth

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** have each executed and attested these presents and affixed their corporate seals on this **19th** day of **July, 2024.**

Rupert HD Swindells, Assistant Secretary

Warren Eichhorn, Vice President

STATE OF NEW JERSEY
County of Hunterdon ss.

On this **19th** day of **July, 2024** before me, a Notary Public of New Jersey, personally came Rupert HD Swindells and Warren Eichhorn, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Rupert HD Swindells and Warren Eichhorn, being by me duly sworn, severally and each for himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal

Albert Contursi
NOTARY PUBLIC OF NEW JERSEY
No 50202369
Commission Expires August 22,2027

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

(1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.

(2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.

(3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.

(4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.

(5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Rupert HD Swindells, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

(i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this August 13, 2024

Rupert HD Swindells, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Raymond Lee Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 5

SUBJECT: **A RESOLUTION ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR PUBLIC STORM DRAIN PURPOSES LOCATED NEAR THE SOUTHEAST CORNER OF COMMERCE PARKWAY AND SANTA ANA STREET**

RECOMMENDATION: That the City Council adopt a Resolution ordering the summary vacation of an easement for public storm drain purposes located near the southeast corner of Commerce Parkway and Santa Ana Street.

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
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: There is not a direct fiscal impact associated with this action. The City did not pay to acquire the subject easement. The Developer has paid the applicable processing fees to defray any City cost to process this request.

BACKGROUND & ANALYSIS: The Applicant, CanAm Ontario, LLC, is requesting that the City vacate an existing public storm drain easement, as shown on Exhibit 1, to facilitate the development of the property. The easement has been superseded by the relocation of the storm drain and there are currently no other existing public utilities within the easement. The Engineering Department has determined that the easement is no longer needed and therefore recommending the vacation of the easement.

Section 8333(c) of the California Streets and Highways Code authorizes the City to summarily vacate (by Resolution with no public hearing) a public service easement that has been superseded by relocation or determined to be excess, and there are no other public utilities located within the easement.

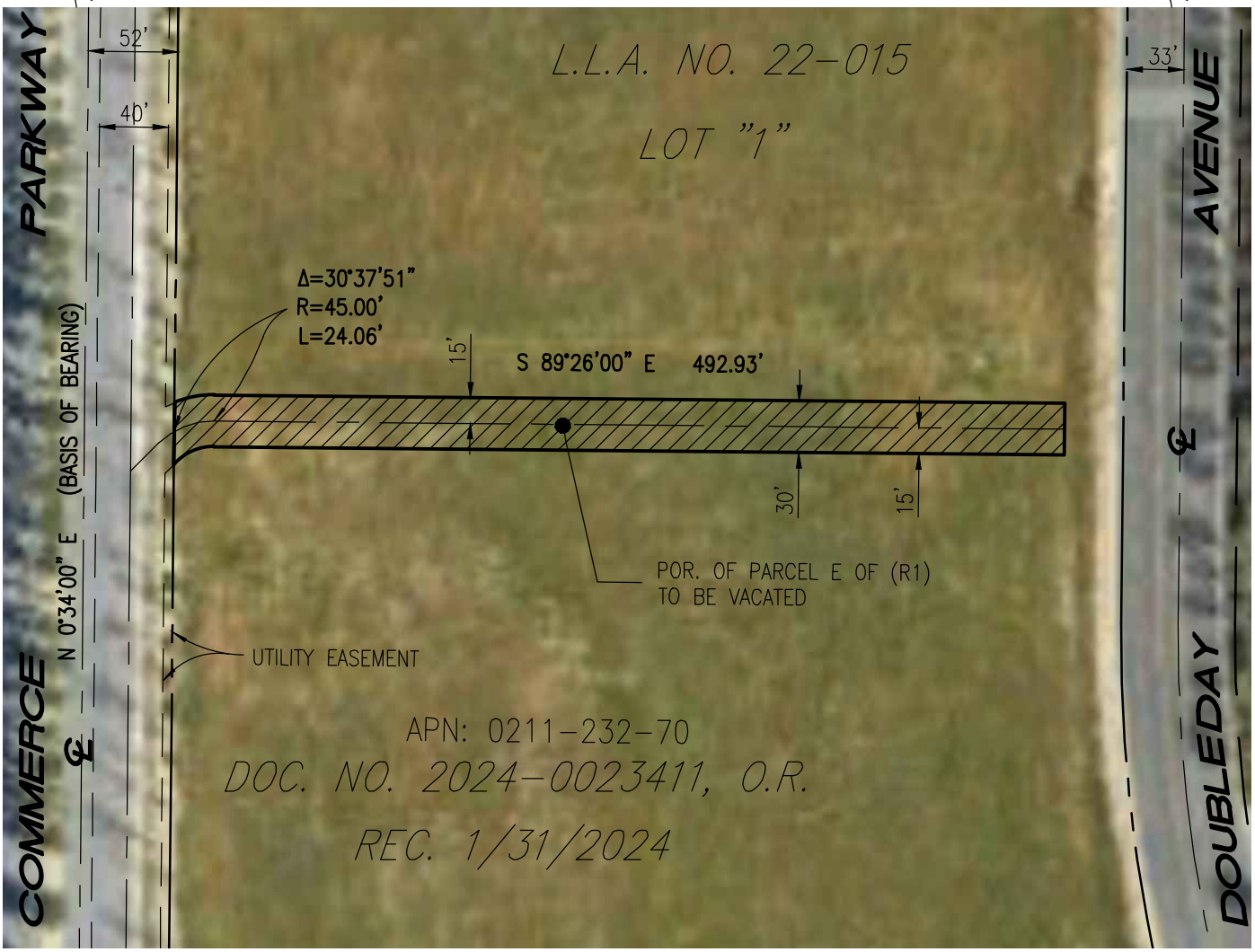
This summary vacation meets the California Government Code, Streets and Highways Code, Ontario Municipal Code, and has been reviewed and approved by the City Engineer.

SCALE: 1"= 100'

EXHIBIT 1

PUBLIC EASEMENT VACATION

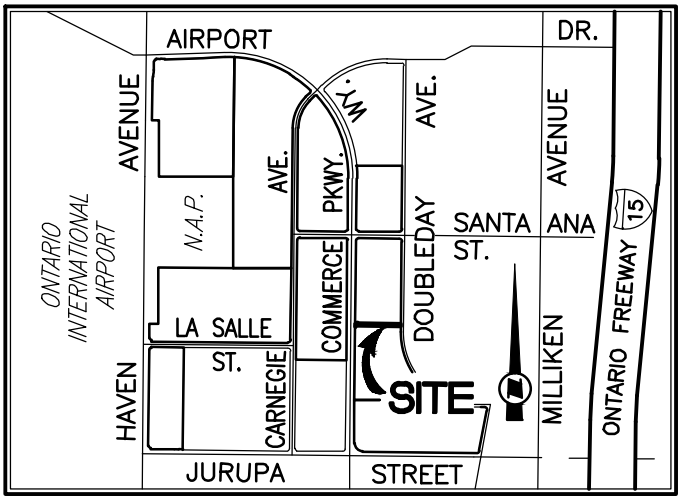
SHEET 1 OF 1



LEGEND:

STORM DRAIN EASEMENT TO BE VACATED

(R1) – AN EASEMENT FOR STORM DRAIN PURPOSES, IN FAVOR OF THE CITY OF ONTARIO, RECORDED OCTOBER 09, 1987 AS INSTRUMENT NO. 87-364547, O.R.



Last Update: 9/3/24
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Thienes Engineering, Inc.
CIVIL ENGINEERING • LAND SURVEYING
14349 FIRESTONE BOULEVARD
LA MIRADA, CALIFORNIA 90638
PH.(714)521-4811 FAX(714)521-4173

SITE ADDRESS: 3880 E. SANTA ANA ST.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ORDERING THE SUMMARY VACATION OF AN EASEMENT FOR STORM DRAIN PURPOSES LOCATED NEAR THE SOUTHEAST CORNER OF COMMERCE PARKWAY AND SANTA ANA STREET.

WHEREAS, the City Council of the City of Ontario, California, pursuant to Division 9, Part 3, Chapter 4, of the Streets and Highways Code, may summarily vacate an easement under certain conditions specified therein; and

WHEREAS, an easement for storm drain purposes located near the southeast corner of Commerce Parkway and Santa Ana Street, shown as a portion of Parcel E in Instrument No. 87-364547 of Official Records in the Office of the County Recorder of County of San Bernardino, lying within lot “1” of the lot line adjustment No. LLA22-015, in the City of Ontario, County of San Bernardino and State of California, recorded as Document No. 2024-0023411 of Official Records of the County of San Bernardino, is determined to be excess as it has been superseded by relocation and has no existing public utilities located within; and

WHEREAS, Section 8333(c) of the California Streets and Highways Code authorizes the City to summarily vacate (by Resolution with no public hearing) a public service easement that has been superseded by relocation or determined to be excess and there are no other public utilities located within the easement; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California:

1. That the above recitals are true and correct.

2. That title to the above-described said properties, more specifically described in Exhibit “A” and depicted on Exhibit “B” attached hereto, shall be vacated.

3. That the City Clerk of the City of Ontario, California, shall cause a copy of this Resolution to be recorded in the office of the County Recorder of San Bernardino County, California.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT "A"

VACATION V-325
LEGAL DESCRIPTION

THAT PORTION OF PARCEL E AS DESCRIBED IN AN EASEMENT FOR STORM DRAIN PURPOSES, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, RECORDED OCTOBER 09, 1987 AS INSTRUMENT NO. 87-364547 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, **LYING WITHIN LOT "1"** OF LOT LINE ADJUSTMENT NO. LLA 22-015, IN SAID CITY, COUNTY AND STATE, AS DOCUMENT NO. 2024-0023411 OF OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING: 15,516 SQUARE FEET OR 0.356 ACRES MORE OR LESS.

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

SUBJECT TO: COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS, RIGHTS AND RIGHTS OF WAY OF RECORD, IF ANY.

SITE ADDRESS: 3880 E. SANTA ANA ST.

Last Update: 7/29/24
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Thienes Engineering, Inc.
CIVIL ENGINEERING • LAND SURVEYING
14349 FIRESTONE BOULEVARD
LA MIRADA, CALIFORNIA 90638
PH.(714)521-4811 FAX(714)521-4173

SURVEYOR:

PREPARED UNDER THE DIRECTION OF:

Naveen Gali 07/29/24

NAVEEN K. GALI — DATE
P.L.S. NO. 9123
EXP. SEPT. 30, 2024

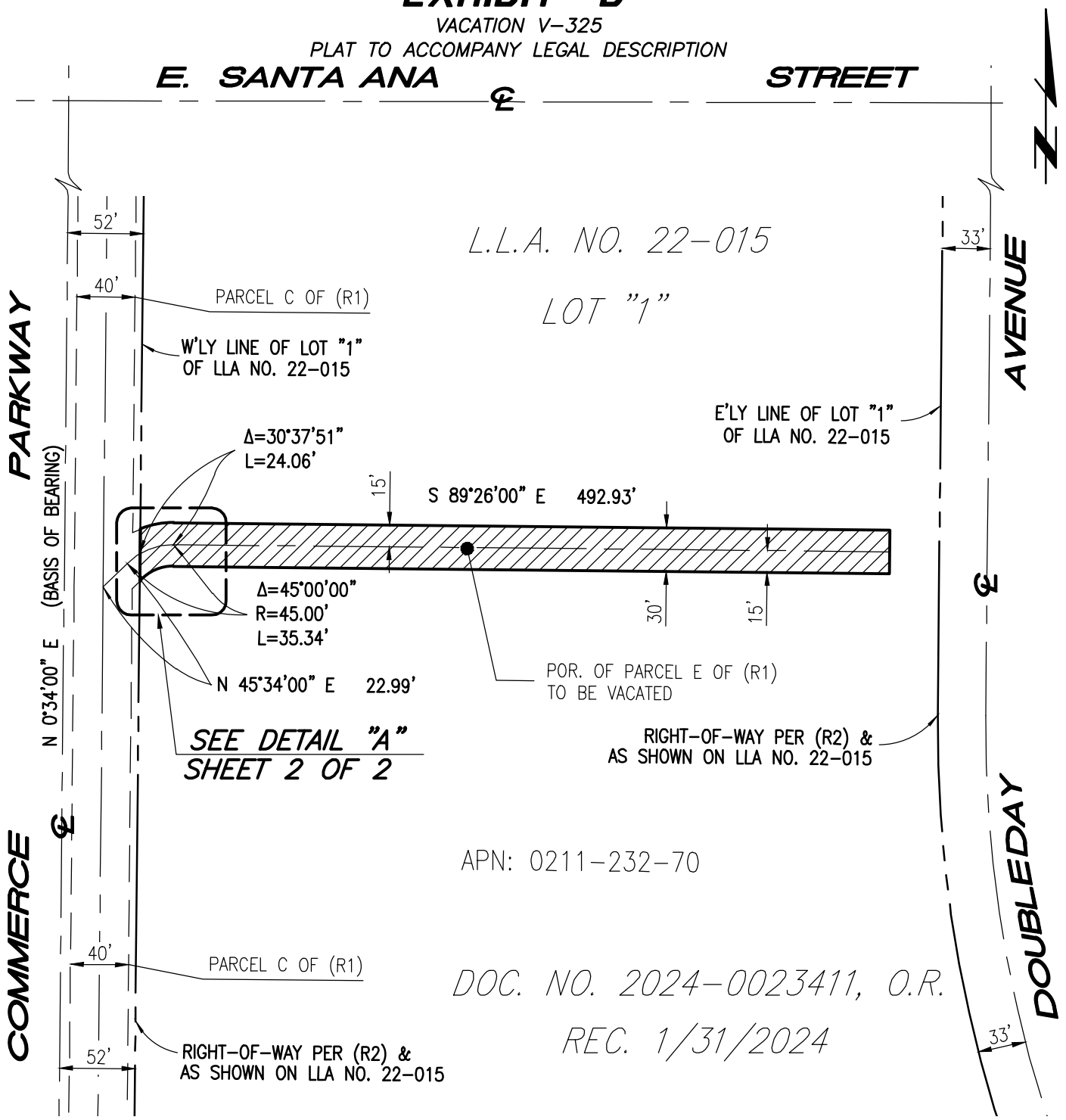
PROFESSIONAL LAND SURVEYOR ★ NAVEEN K. GALI ★ NO. 9123 ★ STATE OF CALIFORNIA

SCALE: 1"= 100'

EXHIBIT "B"

VACATION V-325

PLAT TO ACCOMPANY LEGAL DESCRIPTION



LEGEND:

INDICATES AREA BEING DESCRIBED IN LEGAL DESCRIPTION

CONTAINS: 15,516 SQ. FT.
0.356 AC. ±

(R1) – AN EASEMENT FOR STORM DRAIN PURPOSES, IN FAVOR OF THE CITY OF ONTARIO, RECORDED OCTOBER 09, 1987 AS INSTRUMENT NO. 87-364547, O.R.

(R2) – PARCEL MAP NO. 10112, P.M.B. 138/88-106

Last Update: 7/29/24
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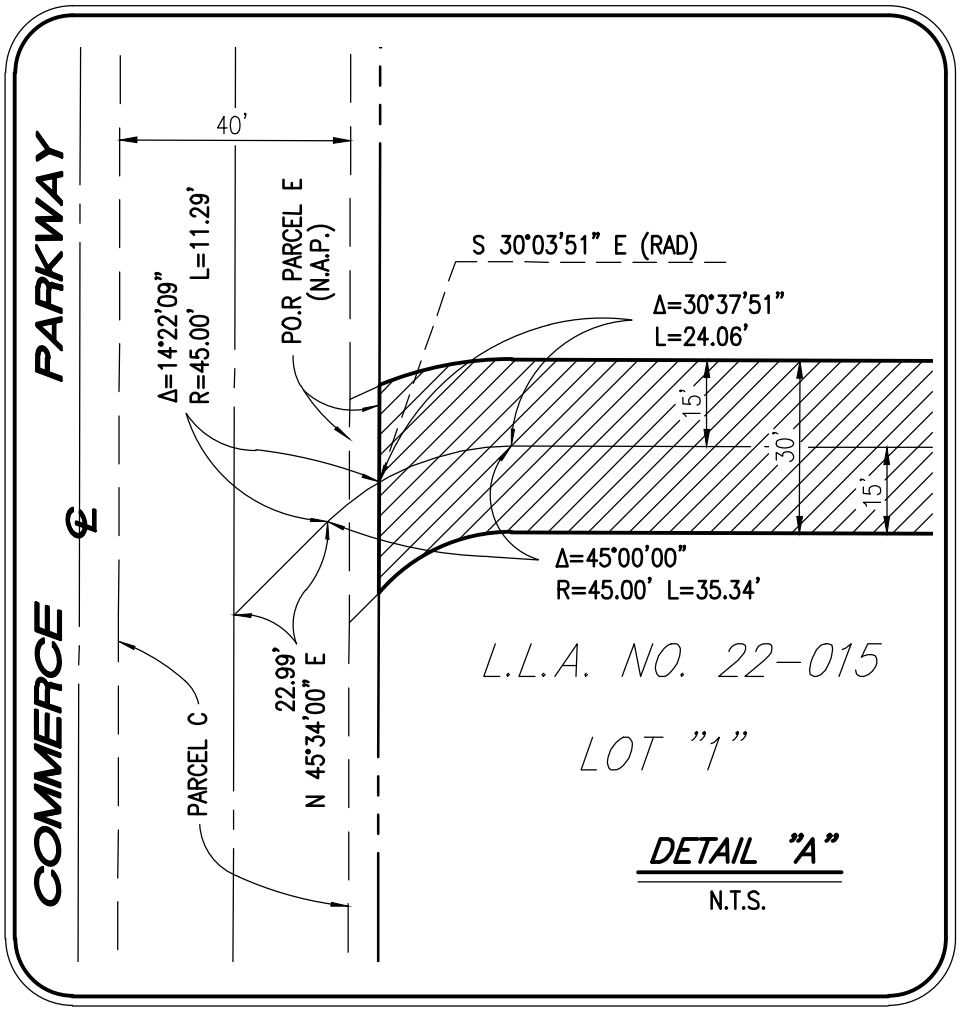
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LA MIRADA, CALIFORNIA 90638
PH.(714)521-4811 FAX(714)521-4173

SITE ADDRESS: 3880 E. SANTA ANA ST.

EXHIBIT "B"

(STORM DRAIN) VACATION V-325

DETAIL



LEGEND:

EXIST. PROPERTY LINE	
EASEMENT TO BE VACATED	
℄ CENTERLINE	
EASEMENT LINE	
APN	– ASSESSOR'S PARCEL NUMBER
LLA	– LOT LINE ADJUSTMENT
DOC. NO.	– DOCUMENT NUMBER
REC	– RECORDED
O.R.	– OFFICIAL RECORDS
N.A.P.	– NOT A PART

BASIS OF BEARINGS:

THE BEARINGS SHOWN HEREON ARE BASED ON THE CENTERLINE OF COMMERCE PARKWAY, BEING N 0°34'00" E AS PER LLA NO. 22-015, RECORDED JANUARY 31, 2024 AS DOCUMENT NO. 2024-0023411, O.R.

NOTE:

THE PLAT IS BASED ON RECORD PER LLA NO. 22-015, RECORDED JANUARY 31, 2024 AS DOCUMENT NO. 2024-0023411, O.R.

LEGEND:

INDICATES AREA BEING DESCRIBED IN LEGAL DESCRIPTION

CONTAINS: 15,516 SQ. FT.
0.356 AC. ±

SITE ADDRESS: 3880 E. SANTA ANA ST.

Last Update: 7/29/24
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PH.(714)521-4811 FAX(714)521-4173

SURVEYOR:

PREPARED UNDER THE DIRECTION OF:

Naveen Gali 07/29/24

NAVEEN K. GALI
P.L.S. NO. 9123
EXP. SEPT. 30, 2024

DATE

PROFESSIONAL LAND SURVEYOR
NAVEEN K. GALI
NO. 9123
STATE OF CALIFORNIA

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Management Services Prepared By: Jordan T Villwock Staff Member Presenting: Jordan Villwock, Management Services Director Reviewed By: Vanny Khu Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 6

SUBJECT: AN AMENDMENT TO THE MUNICIPAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute an amendment to the Municipal Services Agreement between the City of Ontario and the Ontario International Airport Authority.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Maintain the Current High Level of Public Safety
Operate in a Businesslike Manner

FISCAL IMPACT: The proposed Amendment modifies the base service level and reduces the number of Community Services Officers (CSO) by six positions. This modification reduces the cost by $634,822 in Fiscal Year 2024-25 and sets the new annual contract amount not-to-exceed $23,866,579. The reduction in appropriations and associated revenues will be modified at first quarter budget update.

BACKGROUND & ANALYSIS: On June 17, 2024, the City Council approved a three-year contract, with two additional one-year extension options, with the Ontario International Airport Authority (OIAA) to provide municipal services. Since the contract was executed, both parties have agreed to modify the base service level and reduce the number of Community Services Officers (CSO) by six. Originally, the six CSOs were utilized for curb side management and the proposed change allows for that responsibility to be handled by another party. The Ontario Police Department will absorb the six CSOs with current civilian vacancies and they will be assigned to the Field Operations Bureau.

FIRST AMENDMENT TO AGREEMENT NO. SCONT-000689

BETWEEN THE ONTARIO INTERNATIONAL AIRPORT AUTHORITY

AND CITY OF ONTARIO

FOR MUNICIPAL SERVICES AT ONTARIO INTERNATIONAL AIRPORT

THIS FIRST AMENDMENT ("First Amendment") to Agreement No. SCONT-000689 ("Agreement"), is made and entered into this _____ day of _____, 2024 ("Effective Date"), at Ontario, California by and between the ONTARIO INTERNATIONAL AIRPORT AUTHORITY, a joint powers authority created by the City of Ontario and San Bernardino County ("OIAA" or "AUTHORITY"), and the CITY OF ONTARIO ("CITY"). The OIAA and CITY are sometimes individually referred to as "Party" and collectively as "Parties" in this Amendment.

RECITALS

WHEREAS, the OIAA entered into Agreement No. SCONT-000689 on July 1, 2024, for $24,501,401.00 with CITY for the provision of municipal services including Police, Fire, and Fleet Support (hereinafter referred to as "Services") at Ontario International Airport ("Airport" or "ONT"); and

WHEREAS, the OIAA is responsible for the management and administration of this Agreement; and

WHEREAS, the Parties agree Community Service Officers (CSO) could be better utilized by the Ontario Police Department (OPD) on other tasks, and that services provided to OIAA by the CSOs may be better managed through OIAA; and

WHEREAS, the Parties agree that $634,822 of funding and six (6) CSOs in the Base Service Level should be removed from the contract based on the changes beginning November 1, 2024;

Now, THEREFORE, the Parties hereto, for and in consideration of the terms, covenants, and conditions hereinafter to be kept and performed by the respective parties hereto, do mutually agree that the Agreement between the Parties BE AMENDED ONLY AS FOLLOWS:

"EXHIBIT A; SECTION 1.c):

c) Assist with crowd and traffic control:
    i) Assist with protests and disputes at the airport
    ii) Reduce traffic backup, manage peak traffic backup
    iii) Enforce unauthorized parking laws and ordinances"

“EXHIBIT A; SECTION 3 STAFFING MODEL; a):

a) The following staffing model represents the minimum level of staffing for the Base Service Level (BSL) for the Term (subject to adjustment as set forth in Section 1).

Police Staffing	Base Service Level
Police Captain	1
Police Lieutenant**	2
Police Sergeant	5
Sergeant - K9	0.55
Police Detective	1
Police Corporal	6
Police Officer	21
Officers - K9	6
Community Service Officer (CSO)	2
Senior Police Dispatcher*	4

*Police dispatch will continue to handle emergency calls and other police activity related calls that the Airport Command Center (ACC) is not equipped to handle.

**The intent of the OIAA is to have at least 1 designated OPD representative as an alternate Airport Security Coordinator. Because this is a federally regulated position, the OIAA will make the determination when the OPD designee has sufficient experience and job knowledge and is qualified to autonomously perform the responsibilities of the ASC in that person’s absence. During special events requiring OPD officers, officer staffing levels will be determined by collaboration with the OPD Alternate ASC or an OPD supervisor/manager and OIAA ASC.”

“EXHIBIT C; SECTION C-1 COMPENSATION FOR SERVICES; B.:

B. The CITY and the OIAA hereby agree on a not-to-exceed annual fee for the Municipal Services for the duration of the Term ("Annual Fee"), subject to mutually agreed upon rate adjustments as set forth in this Exhibit C. The Annual Fee will be based on the Fully Burdened Rates (FBR) and positions as agreed to by both Parties. The Annual Fee for the first year of the Term will be a not-to-exceed amount of Twenty-Three Million, Eight Hundred Sixty-Six Thousand, Five Hundred Seventy-Nine Dollars ($23,866,579.00) subject to the Base Level Service and the hours worked and positions provided. This amount includes Thirty-Six Thousand, Five Hundred Dollars ($36,500) for dispatch services detailed in Exhibit B. The Annual Fee may be adjusted in years 2 and 3 of the Term. The Parties will negotiate the adjustments to years 2 and 3 if adjustments are necessary. Should negotiations occur, the Parties shall proceed in good faith to best mitigate unreasonable impacts to their respective budgets.”

Except as expressly modified and amended in this First Amendment, the Agreement between the Parties remains unchanged and in full force and effect. The Parties have executed this First Amendment to the Agreement, effective as of the “Effective Date” above.

[SIGNATURES ON FOLLOWING PAGE]

Ontario International Airport Authority

Approved By:

Atif Elkadi
Chief Executive Officer

ATTEST:

Norma I. Alley, MMC
Board Clerk/Assistant Secretary
Board approval on _____, 2024, by _____

APPROVED AS TO FORM AND CONTENT:

OIAA General Counsel

City of Ontario

Signature

Name

Title

Date

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**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: 7

SUBJECT: AN AMENDMENT TO A MAINTENANCE SERVICES AGREEMENT WITH BAY ALARM COMPANY FOR BURGLARY ALARM SERVICES

RECOMMENDATION: That the City Council approve and authorize the City Manager, or designee, to execute Amendment No. 10 to the Maintenance Services Agreement with Bay Alarm Company, of Concord, California, for a total not-to-exceed amount of $1,513,547, for the fire alarm system upgrade, and a term to June 30, 2025.

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 Amendment No. 10 to Bay Alarm Company increases the existing agreement by $26,384, for a total revised agreement amount of $1,513,547. The Fiscal Year 2024-25 Adopted Budget includes appropriations from the General Fund to cover the cost of these services.

BACKGROUND & ANALYSIS: As part of the City's continued efforts to invest in the revitalization of Downtown Ontario, the City has acquired commercial properties located at 215 West C Street and 214-218 North Palm Avenue. These properties will serve as a future site for housing and commercial space. In the interim, staff has engaged with Bay Alarm to provide burglary alarm services at these locations to ensure the safety of the buildings and any current or future short-term tenants as part of the Downtown Ontario Retail Pop-Up Program. The proposed Amendment No. 10 to the Agreement with Bay Alarm will allow the City to install the proper systems for on-going security and monitoring of these buildings.

Staff recommends approving Amendment No. 10 to the Maintenance Services Agreement with Bay Alarm Company in the amount of $26,381 for a new total not-to-exceed contract amount of $1,513,547.

CITY OF ONTARIO

303 EAST B STREET | ONTARIO, CALIFORNIA 91764

(909) 395-2000 FAX (909) 395-2070 OntarioCA.gov

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 10
TO THE MAINTENANCE SERVICE AGREEMENT
BETWEEN THE CITY OF ONTARIO AND
BAY ALARM COMPANY

1. Parties and Date.

This Amendment No. 10 to the Agreement (as defined herein) is made and entered into as of this ____ day of _____ 2024, by and between the City of Ontario ("City") and **Bay Alarm Company**, a Corporation ("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 "Maintenance Service Agreement" dated July 1, 2020 ("Agreement").

2.2 Amendment Purpose. The City and Contractor desire to amend the Agreement to include the following work in the locations listed on Exhibit "A". The scope of work will supply and install burglary alarm systems as well as provide on-going monthly monitoring services at these locations. The City and Contractor agree to increase the Agreement's compensation by $23,384 for a total revised agreement of $1,513,547. The Parties have heretofore entered into that Amendment No. 1 dated April 6, 2021, Amendment No. 2 dated November 15, 2021, Amendment No. 3 dated June 20, 2022, Amendment No. 4 dated November 15, 2022, Amendment No. 5 dated February 21, 2023, and Consent to Assignment Agreement dated June 20, 2022, Amendment No. 6 dated July 1,2023, Amendment No. 7 dated October 17, 2023, Amendment No. 8 dated July 26, 2024, and Amendment No. 9 dated August 20, 2024.

2.3 Amendment Authority. This Amendment No. 10 is authorized pursuant to Section 3 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.1.1 of the Agreement is hereby amended in its entirety to read as follows:

3.1.1 General Scope of Service. Contractor 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 Security and Fire Alann Monitoring 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.

Exhibit "A" is hereby revised adding Attachment A and incorporated herein by reference.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 10, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 10. From and after the date of this Amendment No. 10, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 10.

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. 10.

3.4 Severability. If any portion of this Amendment No. 8 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. 10 TO MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND BAY ALARM COMPANY

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 10 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

BAY ALARM COMPANY

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

ATTACHMENT A

Locations and costs of new burglary alarm systems:

Address: 215 West C Street Ontario, CA 91762
APN: 1048-562-01
Install Cost: $7,000.00
Monthly Monitoring Fee: $450.00

Address: 1236 East Airport Drive Ontario, CA 91762
APN: 0113-22-131
Install Cost: $4,168.94
Monthly Monitoring Fee:

Address: 129 North Euclid Avenue Ontario, CA 91764
APN: 1048-564-04
Install Cost: $3,000.00
Monthly Monitoring Fee: $100.00

Address: 210 – 214 North Palm Avenue Ontario, CA 91764
APN: 1048-562-06
Install Cost: $8,000.00
Monthly Monitoring Fee: $135.00

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Economic Development Prepared By: Karen Khukoyan Department: Prepared By: Karen Khukoyan 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: 8

SUBJECT: **AN AMENDMENT TO THE DESIGN SERVICES AGREEMENT WITH THIRTIETH STREET ARCHITECTS, INC. FOR THE PROPOSED ADAPTIVE REUSE PROJECT AT 114-132 NORTH EUCLID AVENUE**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 7 to the Design Services Agreement with Thirtieth Street Architects, Inc., of Costa Mesa, California, for the Adaptive Reuse Project at 114-132 North Euclid Avenue in the amount of $120,000 for a total not-to-exceed contract amount of $926,600.

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 Fiscal Year 2024-25 Adopted Budget includes, and any subsequent Proposed Budget will include appropriations from the General Fund for these services, as necessary. The proposed Amendment No. 7 increases the Agreement amount by $120,000 for a revised total not-to-exceed amount of $926,600.

BACKGROUND & ANALYSIS: The City of Ontario is investing significant resources in revitalizing the historic downtown into a vibrant, 18-hour destination. It is doing this in several ways, including: acquiring underutilized or dilapidated buildings, with an emphasis on historic properties; partnering with experienced developers capable of infusing new housing, offices, and/or retail into Downtown, and; investing in strategic infrastructure projects, such as improving sewer drains, lighting, wayfinding, and parking.

The City of Ontario is working closely with A Block, LLC ("Developer") whereas the Developer is interested in acquiring certain real property currently owned by the City located at 114-132 North Euclid Avenue for the purposes of an adaptive reuse project ("Project"). The Project will consist of restoring the historic properties along the A Block in the Downtown and creating approximately

17,000 square feet of restaurant space, 25,000 square feet of retail, 145 residential units, and 10,000 square feet of amenities. Throughout the City and Developer's negotiations and due diligence period, it has been mutually agreed upon that an in-depth Historic Structures Report ("HSR") shall be commissioned in order to fully understand the buildings' existing conditions, historical contexts, and what an engineer's cost estimate would be to structurally retrofit the buildings as well as any structural limitations there may be that could affect the Project's design.

As such, the City has engaged with Thirtieth Street Architects to commission the necessary HSR's. As experts in their field and existing knowledge of Downtown Ontario and the City's Historic Preservation codes, they are the preferred consultant to perform this work.

Staff recommends approving Amendment No. 7 to the Design Services Agreement with Thirtieth Street Architects, Inc. in the amount of $120,000 for a new total not-to-exceed contract amount of $926,600.

thirtieth
street
architects
inc.

founding principals
john c. loomis, architect
james c. wilson, architect

principal
elwood l. gulley, architect

AGREEMENT

Agreement made August 28, 2024, between the City of Ontario, 303 "B" Street Ontario, CA, 91764, hereinafter referred to as the Client; and Thirtieth Street Architects, Inc., 2821 Newport Blvd., Newport Beach, CA, 92663, John C. Loomis and James C. Wilson, the Architects. It is the intention of the city to have a new Historic Structures Reports prepared for 114-118, 122, 124-126, and 128-132 N. Euclid Avenue. This Report will evaluate the condition of the existing buildings/site and make recommendations for improvements necessary for a rehabilitation and adaptive use project.

BASIC SERVICES

The Architect's Basic Services consist of the phases described below, including a Preservation Architect, Architectural Historian, Structural, and Mechanical, Plumbing, and Electrical Engineering assessments.

Project Team

Preservation Architect	Thirtieth Street Architects, Inc. 2821 Newport Blvd. Newport Beach, CA 92663 John Loomis, Principal in Charge (949) 274-1092 tsainc@aol.com
Architectural Historian	Daly & Associates 951 Beacon Drive Eugene, OR 97404 Pamela Daly, M.S.H.P. (951) 369-1366 Daly.rvrsde@sbcglobal.net

Structural Engineer	Grimm/Chen 17500 Redhill Ave., Suite #240 Irvine, CA 92614 Alex Chon, P.E. / Project Director (949) 250-3150, Ext. 1004
MP&E Engineer	NV5 133 Technology Dr., Suite #100 Irvine, CA 92618 Andrew Change, P.E. (949) 419-3030 Andrew.Chang@nv5.com
LiDAR Consultant	Precision Property Measurements Los Angeles Office Cameron Slatterbeck (562) 621-9100 cocal@ppmco.net

The following services/consultants are not included in this Agreement and shall be provided by the Owner if needed:

- ☐ Geotechnical Engineering
- ☐ Hazardous Materials Study
- ☐ Termite Study
- ☐ Mold and Mildew Report

SCOPE OF WORK

Phase I, Field Reconnaissance:

The Preservation Architect, Architectural Historian, Structural, and MP&E Engineers shall conduct an intense on-site field reconnaissance to assess conditions of the existing building, including:

Identification of character defining and historically significant features, materials, and finishes
Sequence of construction and change
Prior uses of the buildings
Evaluation of the condition of exterior and interior finishes and features
Review of structural condition and determination if there is any evidence of prior seismic retrofit improvements

Identification of existing MP&E building systems and their age and condition
Evaluation of historic significance
Condition of historic fabric

The Architect shall photo document existing conditions.

The Team shall summarize in writing its findings from the Field Reconnaissance.

Phase I Products:

Field Notes
Photo Documentation
Written summary of Field Reconnaissance

Phase II, Evaluation of Existing Conditions and Make Repair Treatment Recommendations:

Based on the Field Reconnaissance, the Team shall assess and evaluate existing conditions and make protection, maintenance, and repair treatment recommendations for the proposed rehabilitation and adaptive reuse project:

Code compliance
ADA/accessibility compliance and improvements
Exiting and life safety
Identification of hazardous conditions
MP&E systems recommendations
Evaluation of condition of exterior and interior finishes and features
Existing hazards
Fire ratings of wall, floor, and roof assemblies
Seismic retrofit
Energy efficiency improvements

The Team shall summarize its findings and recommendations in writing.

The Team shall prepare a Statement of Probable Cost for Repair Treatment Recommendations.

Phase II Products:

Written summary of evaluation of existing conditions and maintenance and repair treatment recommendations.

Statement of Probable Cost for Repair Treatment Recommendations.

Phase III, Preparation of "As-Builts" Drawings:

The Team shall engage a LiDAR Consultant to prepare CAD As-Built Drawings of 122 N. Euclid Ave. only including:

Floor Plans of all levels
Roof Plan
Exterior Elevation of all façades
Two Building Sections, one in the north-south direction and one in the east/west direction

Phase III Products:

As-Built CAD Drawings of 122 N. Euclid Ave. only

ADDITIONAL SERVICES

The following services are not included in Basic Services.

Providing services and consultants for other than normal Architectural, Architectural Historian, and MP&E and Structural Engineering Services. Hazardous Material Study, Mold and Mildew Inspection, Termite Inspection, and Civil and Geotechnical Engineering are also not a part of this Agreement.

Providing detailed estimates or analysis of owning and operating costs, or detailed quantity surveys or inventories of material, equipment, and labor.

Providing legal services for the preparation of partywall agreements, easements or right of ways.

Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted Architectural practice.

OWNER'S RESPONSIBILITIES

The Owner shall provide full information regarding his requirements for the Project. The Owner shall designate, when necessary, a representative authorized to act in his behalf with respect to the Project. The Owner or his representative shall examine documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect.

COST ESTIMATE

Construction Cost does not include the fees of the Architect and consultants, the cost of land, rights of way, or other costs, which are the responsibility of the Owner.

Cost Estimates prepared by the Architect represent his best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has any control over the cost of labor, materials, or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Architect cannot and does not guarantee that bids will not vary from any cost estimate prepared by him.

PROFESSIONAL FEES

The Professional Fees for Phases I through III shall be as listed below, plus reimbursable expenses.

Phase	Fee
Base Services	
Phase I, Field Reconnaissance	A lump sum of $33,800
Phase II Evaluation of Existing Conditions and Make Repair Treatment Recommendations	A lump sum of $74,400
Phase III, Preparation of As-Builts	A lump sum of $6,800
Total:	$115,000
Reimbursable Allowance:	$5,000 Max.

Additional Services, if requested by the Owner in writing, shall be billed at the following hourly rates:

HOURLY FEE SCHEDULE:

PRESERVATION ARCHITECT

Principal	$225/hr.
Licensed Architect	$190/hr.
Draftsperson	$155/hr.

CONSULTANTS

Architectural Historian	$150/hr.
Structural Engineer	$240/hr.

MP&E Engineer	$220/hr.
LiDAR Technician	$155/hr.

Once the Contract is approved, we will begin work immediately. Billings shall be made to the Owner monthly in proportion to the Work completed plus reimbursable expenses.

Reimbursable expenses include printing and any unusual expenses incurred shall be in addition to any fees above. Reimbursable expenses shall be billed at the multiple of 1.1 times cost to cover processing and bookkeeping per the following reimbursable schedule:

Reimbursable Cost Schedule

Item	Cost
Printing	Invoice
Copying	.25/page
In-house Prints	$3/sheet
In-house Color copies	$1/sheet
Other Expenses*	Cost

The fees listed above, and hourly rates listed are subject to a cost of living increase two years from the date of this Agreement.

TIME OF PERFORMANCE

We estimate the following time frames to complete each phase of work:

Phase	Time to Complete
Base Services	
Phase I, Field Reconnaissance	2-3 weeks
Phase II Evaluation of Existing Conditions and Make Repair Treatment Recommendations	6-8 weeks
Phase III Preparation of As-Builts	Concurrent with Phase II
Total	8-11 weeks

No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors.

If the Project is suspended by the Owner or abandoned in whole or in part, the Architect shall be paid his compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with reimbursable expenses then due.

DEFAULT

In the event Owner fails to pay the Architect within thirty (30) days after invoices are rendered, Owner agrees that the Architect shall have the right to consider said default a total breach of this Agreement and, upon written notice, the duties, obligations, and responsibilities of the Architect under this Agreement are terminated. In such event, Owner shall then promptly pay the Architect all the fees and charges for services rendered by the Architect.

DELAYS

Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the other's control.

TERMINATION

This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the other. In the event of termination due to the fault of others than the Architect, the Architect shall be paid his compensation for services performed to termination date, including reimbursable expenses then due and all terminal expenses.

OWNERSHIP OF DRAWINGS

Drawings and Specifications as Instruments of Service are and shall remain the property of the Architect whether the Project for which they are made is executed or not. They are not to be used by the Owner on other projects or extensions to this Project except by agreement in writing and with appropriate compensation to the Architect. The Owner has rights to print copies or sepias.

TERMITE DAMAGE, MOLD/MILDEW AND HAZARDOUS MATERIALS ABATEMENT

The Owner hereby assumes all responsibility for the discovery, identification and abatement of all termite damage, mold, mildew, or hazardous materials in the existing structure. The Owner shall hold the Architect harmless from any and all liabilities resulting from same.

SEISMIC

Structural Engineering services are observational only and intended to identify Seismic Retrofit issues and make general recommendations for repairs. The preparation of construction documents and structural calculations is not included.

SUCCESSORS AND ASSIGNS

The Owner and Architect each binds himself, his partners, successors, assigns and legal representatives to the other party to this Agreement. Neither the Owner or the Architect shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other.

LIMITATION OF LIABILITY

The Owner agrees to limit the Architect's liability to the Owner and to all Contractors and Subcontractors on the Project, due to professional negligent acts, errors, or omissions of the Architect, to the sum of $50,000. or the Architect's fee, whichever is smaller.

CLAIMS BY PARTIES

All claims, disputes, and other matters in question arising out of or relating to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association then obtaining. This Agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law.

Notice of the demand for arbitration shall be filed in writing with the other party to the contract and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

Should arbitration occur between the two parties relating to the provisions of this Agreement, or any act arising out of the performance of this Agreement, all expenses, collection expenses, witness fees, court costs and attorney's fees shall be paid by the non-prevailing party to the prevailing party.

The Owner agrees that the Architect can not be joined with any other person that is not a party to this Agreement either by joiner or consolidation except by the Architect's written consent.

APPLICABLE LAW

Unless otherwise specified, this Agreement shall be governed by the law of the principal place of business of the Architect.

WARRANTY OF AUTHORITY TO SIGN

The person signing this Agreement warrants he has authority to sign as, and on behalf of, the Owner for whom or for whose benefit Thirtieth Street Architect's services are rendered. If such person does not have such authority, he agrees that he is personally liable for all breaches of this Agreement, and that in any action against him for breach of such warranty a reasonable attorney's fee shall be included in any judgment rendered.

The undersigned hereby acknowledges that he or she has reviewed and accepts all provisions of this Agreement including the payment schedule.

The confirmation is valid for a period of thirty (30) days from the date shown above. If not accepted within thirty (30) days it is void.

This Agreement executed on the day and year first written above.

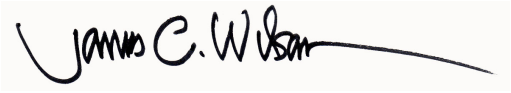
OWNER

Authorized Agent

THIRTIETH STREET ARCHITECTS, INC.



John C. Loomis Lic. #C8684
President



James C. Wilson Lic. #C8994
Secretary/C.F.O.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 7 TO THE DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND THIRTIETH STREET ARCHITECTS, INC.

1. Parties and Date.

This Amendment No. 7 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and Thirtieth Streets Architects, Inc. a Corporation ("Consultant"). 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 "Design Services Agreement" dated February 15, 2021 ("Agreement"). ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to revise the scope of services for the Adaptive Reuse Project at 114-118, 122, 124-126, and 128-132 North Euclid Avenue set forth in Amendment No. 7 – Attachment "A" and increase the not-to-exceed compensation amount by **One Hundred Twenty Thousand Dollars ($120,000)**. The City and Consultant desire to amend the Agreement to extend the Agreement term through December 31, 2025. The Parties have heretofore entered into Amendment No. 1 dated April 19,2022, Amendment No. 2 dated March 21, 2023, Amendment No. 3 dated November 1, 2023, Amendment No. 4 dated March 19, 2024, Amendment No. 5 dated June 6, 2024, and Amendment No. 6 dated August 20, 2024.

2.3 Amendment Authority. This Amendment No. 7 is authorized pursuant to Section 3.8.1 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.10.1 of the Agreement is hereby amended in its entirety to read as follows:

> "3.10.1 Consultant's Compensation for Basic Services. City shall pay to consultant, for the performance of all Services rendered under this Agreement, with the total not to exceed amount of **Nine Hundred Twenty Six Thousand Six Hundred Dollars ($926,600)** ("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 "A" 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 is hereby deleted in its entirety and replaced with Attachment A attached hereto and incorporated herein by reference.

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 7, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 7. From and after the date of this Amendment No. 7, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 7.

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. 7.

3.4 Severability. If any portion of this Amendment No. 7 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. 6 TO THE DESIGN SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND THIRTIETH STREET ARCHITECTS, INC.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 7 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

THIRTIETH STREET ARCHITECTS, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Tim Masot Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Gina Gomez, Andrea Ampig Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 9

SUBJECT: AN AMENDMENT TO THE MAINTENANCE SERVICES AGREEMENT WITH SAFE USA, INC. FOR CRACK SEALING SERVICES

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 3 to the Maintenance Services Agreement with Safe USA, Inc., of Ontario, California, for Contract No. SM1920-5 for crack sealing services in the amount of $116,100 for a total contract amount not-to-exceed $723,600 over the five-year term.

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

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations in the Gas Tax Fund for citywide crack sealing services. The proposed Amendment will increase the contract amount by $116,100 for a contract total of $698,100 plus $25,500 in urgency services for a total not-to-exceed of $723,600.

BACKGROUND & ANALYSIS: City Staff routinely conducts paving inspections and occasionally identifies the need for crack sealing services. Safe USA, Inc., performs crack sealing services on an as-needed basis citywide for the minor overlay program.

In January 2020, the City solicited bids for Contract No. SM1920-5 for citywide crack sealing services. Safe USA, Inc., submitted the lowest bid that met all the required specifications for a three-year total of $321,300. On July 1, 2020, the City Council approved Safe USA, Inc., as the crack sealing services supplier for the City's residential minor overlay program over a five-year period. On July 1, 2024, a Notice to Extend Agreement with Safe USA, Inc., was approved for citywide crack sealing services. Due to price increases in paving material and delivery, Staff recommends increasing the total authorized compensation to ensure the Parks and Maintenance Department can continue to complete citywide crack sealing services.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 3 TO THE MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND SAFE USA, INC.

1. Parties and Date.

This Amendment No. 3 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **Safe USA Inc**., a **Corporation** 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 **"Maintenance Services Agreement"** dated **July 1, 2020** ("Agreement") for the purpose of retaining the services of contractor to provide **Crack Sealing Services**.

2.2 Amendment Purpose. The City and Contractor desire to amend the Agreement to increase the total amount by $116,100 for a total not-to-exceed compensation of $698,100 The Parties have heretofore entered into that Amendment No.1 dated April 18, 2023 and Amendment No. 2. dated July 1, 2024.

2.3 Amendment Authority. This Amendment No 3 is authorized pursuant to Section 5 changes in work of the Agreement.

3. Terms.

3.1 Amendment. Section 2A and 3A of the Agreement is hereby amended in its entirety to read as follows:

"Section 2 Price

A. City agrees to pay, and Contractor agrees to accept, the sum of **One Hundred Sixteen Thousand One Hundred ($116,100)** subject to adjustments for changes in the work as may be directed in writing by City, as payment in full for the Work. If the

City desires to exercise the second option year, the total not-to-exceed contract amount will be Six Hundred Ninety-Eight Thousand One Hundred Dollars ($698,100)."

3.2 Continuing Effect of Agreement. Except as amended by this Amendment No. 3, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 3. From and after the date of this Amendment No. 3, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 3.

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. 3.

3.4 Severability. If any portion of this Amendment No. 3 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. 3 TO THE
MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO
AND SAFE USA, INC.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 3 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

SAFE USA, INC.

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

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

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Gil H Mars Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 10

SUBJECT: AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CALTEK TECHNOLOGIES, INC. FOR THE OMUC ENGINEERING WORKSTATION PROJECT

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to complete and execute Amendment No. 6 to the Professional Services Agreement with CalTek Technologies, Inc., of Ontario, California, for the Ontario Municipal Utilities Company (OMUC) Engineering Workstation Project in the amount of $3,788 for a total not-to-exceed contract amount of $175,957; 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, contracts, agreements, assessments, easements, reduction of retention accounts, 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 Fiscal Year 2024-25 Adopted Budget includes appropriations in the Water Capital Fund and Sewer Capital Fund for the PF0010 Municipal Services Center Renovation Project. The recommended Amendment No. 6 to the Professional Services Agreement with CalTek Technologies, Inc. is in the amount of $3,788 for a total not-to-exceed contract amount of $175,957.

BACKGROUND & ANALYSIS: The City's growth has increased the need for additional staff within the OMUC Agency located at 1333 S. Bon View Ave. To effectively house and support the increased personnel, two cubicle workstations are being added that will house four individuals. CalTek Technologies, Inc. will integrate the new data cables to the new workstations and connect all the network ports. CalTek Technologies, Inc. has been used for several projects city-wide due to their standardization of cable installation. Most recently, the City Council approved Amendment No. 5 to the Design Services Agreement with CalTek Technologies, Inc. on January 16, 2024, for a similar project at the Ovitt Library. Staff is now recommending the City Council to approve Amendment No. 6 for the OMUC Engineering Workstation Project.

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

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DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

AMENDMENT NO. 6 TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND CALTEK TECHNOLOGIES, INC.

1. Parties and Date.

This Amendment No. 6 to the Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **CalTek Technologies, Inc.**, a CORPORATION, "Consultant". 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 "Professional Services Agreement" dated March 2, 2022 ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to provide additional compensation of **Three Thousand Seven Hundred Eighty-Eight Dollars ($3,788).** The Parties have heretofore entered into that Amendment No. 1 dated April 4, 2023, Amendment No. 2 dated July 18, 2023, Amendment No. 3 dated December 5, 2023, Amendment No. 4 dated January 16, 2024, and Amendment No. 5 dated January 16, 2024.

2.3 Amendment Authority. This Amendment No. 5 is authorized pursuant to Section 3.2.4 of the Agreement.

3. Terms.

3.1 Amendment. Section 3.2.1 of the Agreement is hereby amended in its entirety to read as follows:

> "3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Attachment "A" attached hereto and incorporated herein by reference. The total compensation shall not exceed **One Hundred Seventy-Five Thousand Nine Hundred Fifty-Seven Dollars ($175,957)** 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 Continuing Effect of Agreement. Except as amended by this Amendment No. 6, all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. 6. From and after the date of this Amendment No. 6, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. 6.

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. 6.

3.4 Severability. If any portion of this Amendment No. 6 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. 6 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND CALTEK TECHNOLOGIES, INC.

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. 6 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

CALTEK TECHNOLOGIES, INC.

By: _____

Its: _____

Printed Name: _____

By: _____

Its: _____

Printed Name: _____

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

TECHNOLOGIES SYSTEM PROPOSAL

CalTek Technologies, Inc.
1939 S. Lake Place
Ontario, CA 91761
LIC #879706 and Bonded
www.caltekcomm.com

Telephone: (909) 295-3400
Fax: (909) 203-7404
Email: projects@caltektechnologies.com
Prepared By: Patrick Fallesgon

Customer Name	CITY OF ONTARIO	**Proposal Date**	08/12/24
Project Name	CITY OF ONTARIO TRAILER (04) SINGLES AND TV INSTALLATION	**Quote Number**	7687
Requested By	GIL MARS	**Site Address**	1333 S. BON VIEW, ONTARIO CA 91761
Telephone	(909) 395-2052		
Address	1333 S. BON VIEW, ONTARIO CA 91761	**Customer PO**	

PROPOSED SCOPE OF SERVICES
CALTEK TECHNOLOGIES proposes to furnish all parts and labor to install the following:

SCOPE OF WORK:

- **Provide and install (04) CAT6 cables from the TR to the new work area outlet locations provided by City of Ontario.**
  - Provide labor to terminate (04) CAT6 cable in the TR onto existing Patch Panel.
  - Provide and install (04) Leviton CAT6 Extreme Jacks.
  - Provide and install (04) Leviton 2-port Faceplate.
  - Provide labor to Label and Certify CAT6 cables per Customer's Standards.
- **Provide and install (01) Plywood and labor to install (01) TV Mount and TV per the location provide by City of Ontario Its**
  - Provide and install (01) Plywood support TV Mount.
  - Provide labor to install (01) TV Mount and TV IDF.

NOTES OF IMPORTANCE:

- Caltek will be shown the locations of the drops on the wall prior to starting the work.
- Any work outside of the Scope of Work is subject to a change order.

CITY OF ONTARIO TRAILER (04) SINGLES AND TV INSTALLATION

ASSUMPTIONS/QUALIFICATIONS

- Scope of Work is based on a provided floor plan with detailed outlet locations.
- It is assumed the building has drop ceiling with lift out tiles to allow the space above to be used as a pathway to route cables and that ceiling height does not exceed 9 ft. from floor to ceiling or 15 ft. from slab to slab. Must be fishable sheet rock wall construction and hollow.
- Labor is based on regular hours work.
- Pricing does not include horizontal or vertical surface raceway.
- Cost for low voltage permits are not included in this proposal if required shall be considered a change order and billed to the customer.
- Space within all ceilings and walls will be free and clear for the cable pathway at the time of installation.
- Conduits and pull boxes required for cable pathway will be the responsibility of OTHERS and are suitable for the installation of the new proposed cabling.
- Any core holes required for cable pathway or access will be the responsibility of OTHERS. Pricing does not include boring or drilling through concrete or firewalls.
- A ground bar exists in each Telecommunications room and will have connectivity to the main building ground.
- Equipment Room has sufficient space for installation of equipment rack, and all required termination hardware and equipment.
- Unless noted, data and voice patching and switch ports will be the responsibility of others.
- A pathway will be provided for cable access to all modular furniture station outlets.
- No man-lift is included and if required shall be considered a change order and billed to the customer.
- All phone switch programming, connectivity, and related work will be the responsibility of others.
- The proposed pricing is valid for a period of 30-days.
- For Wire Removal – Caltek Communications will remove all ceiling tiles. All building and security alarms, pay phone wiring, and door-strike controls will be identified by the Customer, as well as any other wiring that is not included in the removal.
- Where required, the Customer will supply and install 3/4" plywood backboards of sufficient size to accommodate the proposed cables, blocks or electronic equipment.
- Proposal does include state or federal prevailing wages.
- No other work unless specifically noted is included in this proposal.

PROPOSED FEE SCHEDULE

CALTEK TECHNOLOGIES hereby proposes to provide and install the proposed Cabling System (described above) for the following:

Material: $885.60
Labor: $3,787.09
Tax: $84.13
GRAND TOTAL LUMP SUM: $3,787.09

CITY OF ONTARIO TRAILER (04) SINGLES AND TV INSTALLATION

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**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: 11

SUBJECT: **A CONSTRUCTION CONTRACT WITH RESOURCE ENVIRONMENTAL, INC. FOR THE EMERGENCY DEMOLITION OF THE JAY LITTLETON BALLPARK AT 1076 N. GROVE AVE**

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute Construction Contract No. D&C24-016 Jay Littleton Emergency Cleanup, Abatement, and Demolition with Resource Environmental, Inc., of Cerritos, California, for the emergency demolition and site clearance activities on City-owned property located at 1076 N. Grove Avenue in the amount of $991,970 plus a 10% contingency of $99,197 for a total not-to-exceed contract amount of $1,091,167; 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, contracts, agreements, assessments, easements, reduction of retention accounts 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)
Maintain the Current High Level of Public Safety

FISCAL IMPACT: The recommended Construction Contract with Resource Environmental, Inc. is in the amount of $991,970 plus a 10% contingency of $99,197 for a total not-to-exceed contract amount of $1,091,167. If approved, additional appropriations will be included in future quarterly budget updates to the City Council for approval in the General Liability Fund for PF2504 Emergency Demolition of Jay Littleton Ballpark.

BACKGROUND & ANALYSIS: The Jay Littleton Ballpark at 1076 N. Grove Avenue required Emergency Abatement & Demolition, accepted under South Coast AQMD Rule 1403 (c)(14), due to the major fire that burned the stadium down on August 23, 2024. The condition of the site posed an immediate risk to public safety and after assessment, immediate cleanup and demolition of the

property was in the best interest of the City and all pedestrians within the area. The work under this project consisted of asbestos abatement, demolition, and site clearance of roughly 12,578 square feet of buildings and structures, foundations, demolition, and backfill.

To expedite the demolition process, the contractual services with Resource Environmental, Inc., of Cerritos, California was secured. The City Council approved a Construction Contract with Resource Environmental, Inc. on December 5, 2023, after a bid solicitation process for D&C23-002 404 N. Euclid Demolition Project. The scopes from the 404 N. Euclid Demolition Project and the Emergency Demolition of the Jay Littleton Ballpark are comparable and aligned with the expected requirements. Additionally, the City Council recently approved a Construction Contract with Resource Environmental, Inc. for the emergency demolition of the property at 9155/9381 E. Riverside Drive. Resource Environmental, Inc's. expertise and availability made them the ideal choice to handle emergency demolition and site clearance in a timely and responsible manner.

RESOURCE

September 3, 2024

Final Revision Proposal Number: RE: 24-097-Jim
DEMO & ABATEMENT EMERGENCY

City of Ontario
Design & Construction
1333 S. Bon View
Ontario, Ca. 91761
Attn: Gil H. Mars
gmars@ontario.gov

Project Name: Emergency cleanup of Jay Littleton Ball Park Abatement & Demolition
1076 N. Grove Ave.
Ontario, Ca. 91761

Resource Environmental, Inc. is pleased to provide this bid proposal for furnishing all labor, materials, equipment, disposal, and notifications to perform the following scope of work in accordance with all applicable local, state, and federal rules and regulations.

Resource is a licensed demolition and abatement contractor (Classes A, B, C-21, C-22, D-63, ASB, HAZ) with over 17 years of experience. Resource takes pride in its ability to provide the most competitive pricing, accomplished by the capacity to self-perform all work listed below.

Demolition Site Visit Assessment Only Nothing Else.

- Hazardous Material Report: By- Charles Taylor Environmental Tech Services for the Asbestos/Lead Demolition for Lead and Asbestos containing materials. Received email dated 8.30.2024. File WO-2123579 Two references lead waste profile and asbestos lead survey report.
- Addenda: None referenced

Scope of work:	
Structural and Site Demolition Clean Up:	
Work included within bid form to include the following:	
• Mobilization-	$15,000.00
• Removal and Disposal of all Environmental waste per report-	$260,000.00
• Removal and disposal of all stadium structure remnants from fire indicated so sow received-	$180,000.00
• Removal and disposal of (2) light pole fixtures foundations to remain-	$14,520.00
• Removal of wood netting posts at the burn area/ infield-	$3,800.00
• Backfill dugout area after removal of concrete foundations-	$108,000.00
• Removal of concrete foundations, slabs, and footings, riser platform (seating box)-	$375,450.00
• Removal of electrical switchgear box. Wires will be cut at the conduit stub-out-	$6,800.00
• Removal of pitcher warm-up curb box on both ends of infield-	$5,400.00

• Removal of water fountains indicated on sow and capping of the line-	$4,800.00
• Utility pull to obtain a hand -held box provided by others-	$3,200.00
• Demobilization-	$15,000.00
TOTAL LUMP SUM BID PRICE:	**$991,970.00**
Base Schedule Assumed:	**20 Days**
Assumptions and Additional Clarifications	

Asbestos & Lead work:

- Lead or Asbestos containing materials as identified and quantified in the above referenced Report only and nothing else.
- Work to be notified to OSHA performed under local rules and regulations.
- All material to adequately wet and utilize equipment and hand tools to remove debris.
- Resource to remove and disposal of materials identified in the above-referenced Report per local and state guidelines.

Demolition

- All Demolition of structural remnants within dug out area to include all building foundations and slabs. Slabs are assumed to be 5" and foundations are assumed to be 2'x2' perimeter only.
- Site demolition to include removal items identified in SOW received.
- All building materials will be segregated as demolition work progresses.
- 2 light poles per site visit and sow will be removed down to the foundations.
- Removal of wood netting posts at the burn area / infield.
- All known demolition debris (trash, concrete, and metal) located within the limits of demolition shall be sized, loaded hauled and disposed of to a designated landfill, transfer station/or recycling facility.
- The dugout area will be backfilled and rough graded with free base material provided by the city from grand park location. No compaction or testing has been assumed.
- All debris within the dugout and identified items within the limits of demolition will be removed.
- All metals, wood and salvageable equipment will be loaded, hauled, and recycled for added value to the project.

Contract Conditions: This proposal, including listed clarifications, conditions, and exclusions, will be included as part of any mutually agreed upon contract.

- Emergency OSHA will be obtained, and work is assumed to commence on 9.9.2024.
- Demo permit to be provided by the City of Ontario.
- All concrete slabs assumed at 5" sections, asphalt sections are assumed at 4", and foundations are assumed at 2'x2' not to exceed.
- Site Temp Fence will be provided up to 500 linear feet for a duration of 1 month. Straw Waddle installation has been included up to 500 linear feet. Fencing rental will have to be assumed by City after demolition is complete.
- Prevailing wages are included.
- Bonds are included. Up to $9,000.00.

- Dump fees are based on current rates as of the extended date of this proposal.
- Safe off utilities is assumed as identified in sow only. Nothing else.
- Cutting and capping of sewer and fountain water is assumed at 2 locations total.
- Drain/Dewater or mitigation has not been included.
- Utilities or its removal components have not been assumed or included. Unless identified within proposal.
- This proposal included one (1) mobilization. Additional mobilization will be at $15,000/EA.
- Pricing is based on work being performed during normal business hours. This proposal is based on a 40-hour work week.
- Delays out of Resources control shall constitute additional schedule extensions and standby cost and appropriate general condition cost.

Exclusions: The following are excluded unless explicitly stated in the proposal above.
Permits, site security, engineered plans, weather protection, liquidated damages, unforeseen conditions, salvage for others, only hazardous removal per reports have been assumed no other hazardous materials have been assumed, shoring, relocation, bracing, engineering, traffic control, traffic control plans, staking, layout, lagging, underpinning, pedestrian canopies/barricades, protective covers, standby time due to owner/contractor delays, handling asphalt with Petro-mat fabric or concrete plastic below asphalt, utility removal, rerouting or reconnection, termination of utility accounts, utility safe-offs by owner, specialty insurance items not listed in this proposal.

THIS PROPOSAL IS VALID FOR THIRTY (30) DAYS.

Upon commencement of work, this proposal shall become a binding contract between both parties unless and until superseded by a formal mutually agreed upon contract, at which time this proposal shall become a part of the new contract document.
Regards,

Jim Rawson
Jim Rawson
Sr. Project Executive
jim@resourceenvironmental.com
(951) 475-5650 Cell

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
TREASURER

SCOTT OCHOA
CITY MANAGER

CONTRACT FOR CONSTRUCTION

This Contract for Construction ("Contract"), No. D&C24-016 Jay Littleton Emergency Cleanup 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 **Resource Environmental, 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:

D&C24-016 Jay Littleton Emergency Cleanup

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 **30** 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 **Nine Hundred Ninety-One Thousand Nine Hundred Seventy Dollars ($991,970)**. 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 $200 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.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.

The "Contract Documents" include the following:

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

Resource Environmental, Inc.

By: _____

Its: _____

Printed Name: _____

[DELETE THE FOLLOWING SIGNATURE LINE IF NOT **REQUIRED**]
By: _____

Its: _____

Printed Name: _____

_____
Contractor's License Number and Classification

_____
DIR Registration Number

[IF CORPORATION, TWO SIGNATURES, PRESIDENT **OR** VICE PRESIDENT **AND** SECRETARY **OR** TREASURER **REQUIRED]**

END OF CONTRACT

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Public Works Prepared By: Joe Minasso Staff Member Presenting: Tito Haes, Executive Director Public Works Reviewed By: Andrea Ampig Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 12

SUBJECT: **AN AMENDMENT TO THE AGREEMENT FOR SOLID WASTE PROCESSING SERVICES WITH WEST VALLEY MRF, LLC FOR PROCUREMENT OF RECOVERED ORGANIC WASTE PRODUCT**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 1 to the Agreement for Solid Waste Processing Services with West Valley MRF, LLC (West Valley), a limited liability company duly formed and operating under the laws of the State of California and owned in whole or in part by Burrtec Waste Industries, Inc., a California corporation duly formed and operating under the laws of the State of California to provide procurement of Recovered Organic Waste Product in an amount not-to-exceed $1,200,000 over a four-year period.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Focus Resources in Ontario's Commercial and Residential Neighborhoods

FISCAL IMPACT: The proposed Fiscal Year 2024-25 Budget includes appropriations in the Integrated Waste Fund for the procurement of Recovered Organic Waste Product in an amount of $300,000 per year. The proposed Amendment includes a four-year term through June 30, 2028 for a total amount not-to-exceed $1,200,000.

BACKGROUND & ANALYSIS: On July 18, 2023, the City Council approved an Agreement for Processing Services with West Valley MRF, LLC. California adopted Senate Bill (SB) 1383 that requires communities to reduce organic waste disposal in landfills, such as food waste, by 75% by 2025. SB 1383 also requires jurisdictions to meet individual recovered organic waste product procurement targets based upon a per capita procurement target of 0.08 tons of organic waste per resident. The State recovered organic waste procurement regulations specify conversion factors to convert a jurisdiction's procurement target to equivalent amounts of recovered organic waste products in 14 CCR Section 18993.1.(g).

Jurisdictions can meet their procurement requirement by contracting with a service provider that uses recovered organic waste products, like compost or mulch, on behalf of the jurisdiction. West Valley MRF, LLC will procure recovered organic waste products as required by SB 1383. Burrtec Waste Industries, Inc. will also deliver the product to farming interests and make available product to the City of Ontario as needed.

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 AGREEMENT FOR PROCESSING SERVICES
BETWEEN WEST VALLEY MRF, LLC
AND CITY OF ONTARIO

This Amendment No. 1 to Agreement for Processing Services ("Amendment No. 1") is made and entered into this ____ day of October, 2024, by and between City of Ontario ("City") and West Valley MRF, LLC ("West Valley"). City and West Valley are sometimes individually referred to as "Party" and collectively as "Parties."

Recitals

A. Original Agreement. The Parties entered into that certain Agreement for Processing Services dated September 28, 2023 attached hereto as Exhibit A.

B. Compliance with Law. Whereas, compliance with applicable law is an implied term of every contract. Miracle Auto Center v. Superior Court (1998) 68 Cal.App.4th 818, 821.

C. Senate Bill No. 1383. Whereas, Senate Bill No. 1383 (2016), and specifically those regulations set forth in section17400 et seq. of Title 14 of the California Code of Regulations, now require the City to obtain the services set forth in Exhibit B (the "Extra Work").

D. Amendment. City staff has determined that the Extra Work can be most economically obtained through West Valley under the Existing Agreement as modified by this Amendment No. 1 at the rates set forth in Exhibit C.

Amendment

Now therefore, the Parties hereby modify the Original Agreement as follows:

1. Definitions. All capitalized terms used in this Amendment No. 1 not defined in this Amendment No. 1 shall have the same meaning as set forth in the Original Agreement if defined in the Original Agreement.

2. Exhibits. Exhibit A, Exhibit B, and Exhibit C hereto are hereby incorporated by reference.

3. Added Services. Exhibit B is hereby added to the Original Agreement as section 4, subd. (g) ("Extra Work").

4. Added Compensation. Exhibit C is hereby added to the Original Agreement as section 5, subd. (a)(19) ("Extra Compensation"), provided that subd. (b) of section 5 of the Original Agreement shall not apply to Extra Compensation until May 15, 2025.

5. Continuing Effect of Agreement. All provisions of the Original Agreement otherwise remain in full force and effect and are reaffirmed. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Original Agreement, it shall mean the Agreement as amended by this Amendment No. 1.

6. 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.

7. 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.

CITY OF ONTARIO	**WEST VALLEY MRF, LLC**
Approved By:	*Approved By:*
_____	_____
City Manager	_____
_____	_____
Date	Date

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Exhibit A

AGREEMENT FOR PROCESSING SERVICES

THIS AGREEMENT FOR PROCESSING SERVICES RECOVERY FACILITY ("Agreement") is entered into this 28 day of September, 2023, by and between the City of Ontario, a municipal corporation and a political subdivision of the State of California ("City") and West Valley MRF, LLC, a limited liability company duly formed and operating under the laws of the State of California ("West Valley").

RECITALS

A. The State has, through enactment of the California Integrated Waste Management Act of 1989 (AB 939) (California Public Resources Code Section 40000, et seq.) and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote a reduction in landfill disposal and to maximize the use of feasible waste reduction, reuse, and recycling in order to reduce the amount of material that must be disposed.

B. The City desires to enter into an exclusive services contract for the Processing of Recyclable Materials, C&D Debris, Green Materials and Food Waste collected by the City or on behalf of the City.

C. The Legislature, by enactment of California Public Resources Code sections 40059 and 49300 et seq., has provided a means by which cities may enter into solid waste handling and recycling service contracts with an independent contractor without utilizing the competitive bidding process.

D. West Valley owns and operates a Material Recovery Facility (MRF) commonly known as the "West Valley MRF," ("MRF" or "West Valley MRF") located in San Bernardino County, which meets the applicable State and local regulatory requirements. West Valley is prepared to accept Recyclable Materials, C&D Debris, Green Materials and Food Waste at the West Valley MRF.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions. For purposes of this Agreement, the following terms shall have the following definitions:

   a. "Applicable Law" means all Federal, State, County, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation,

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Processing, and disposal of discarded materials that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383 and corresponding regulations.

b. "Cardboard" means cardboard including old corrugated containers made from brown craft liner board/paper.

c. "Carpet" means all types of carpet and carpet padding.

d. "Construction and Demolition Debris" (C&D Debris) means building materials and solid waste resulting from the construction, remodeling, repair, cleanup, or demolition operations. C&D Debris materials includes, but is not limited to, asphalt concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard and other associated packaging, roofing material. ceramic tile, carpeting, plastic pipe, and steel.

e. "Drywall" means clean and painted gypsum wall board.

f. "Food Waste" means all Source Separated food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells, compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons. Food Waste excludes fats, oils, and grease when such materials are Source Separated from other Food Waste.

g. "Green Materials" means plant material which has been Source Separated or commingled with similar materials and can be recycled or processed into a form suitable for recycling through composting, grinding or other reprocessing. Green Materials include grass, leaves, prunings, tree branches, tree stumps, palms, yucca, untreated wood wastes, natural fiber products, manufactured wood products, and construction and demolition wood waste and such other materials designated as green materials by the California Department of Resources Recycling and Recovery (CalRecycle), or other agency with jurisdiction.

h. "Inerts-1" means Source Separated clean rock, concrete, asphalt, dirt and other inert materials, excluding bricks and other clay materials.

i. "Inerts-2" Source Separated means clean rock, concrete, asphalt, dirt and other inert materials, including bricks and other clay materials.

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j. "Landfill Materials" means material suitable for disposal in a Class III landfill in compliance with Applicable Law. Landfill Materials includes Residual Material (as defined herein).

k. "Manufactured Wood Materials" means Source Separated painted wood, laminated board, plywood, chip board, particle board, and other manufactured wood products.

l. "Mixed Organics" means Green Materials with securely bagged Food Waste in added in by the generator.

m. "Mixed Paper" means a fiber mixture including office paper, magazines, books, newspaper, cardboard, chip board, etc.

n. "Palm Materials" means Source Separated waste from palm trees including fronds, trunks and stumps.

o. "Processing" means the controlled separation, recovery, volume reduction, conversion, or recycling of solid waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

p. "Recyclable Materials" means material which has been Source Separated or commingled with similar materials and can be reused or processed into a form suitable for reuse through reprocessing or remanufacture as determined by City and accepted by West Valley at the West Valley MRF for Processing. Recyclable Materials includes paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, PET, HDPE, polystyrene, beverage containers and such other materials designated as recyclables by the California Department of Resources Recycling and Recovery ("CalRecycle"), or any other agency with jurisdiction.

q. "Scrap Metal" means Source Separated ferrous and non-ferrous metal items.

r. "Source Separated" means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or Processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace; or, as otherwise defined in 14 California Code of Regulations (CCR) Section 17402.5(b)(4).

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s. "Wood Materials" means Source Separated clean blonde wood waste, including pallets and lumber. Wood Materials does not include painted wood, laminated board, plywood, chip board, particle board, and other manufactured wood products.

2. Delivery of Materials. The City shall deliver, or cause to be delivered to the MRF the Recyclable Materials, C&D Debris, Green Materials and Food Waste and other materials included herein (collectively the "Materials") generated and collected in the City limits to be Processed pursuant to this Agreement. Except as expressly required by this Section, the City shall have no additional obligation to deliver any Materials under this Agreement.

3. Scope of Services.

a. Residential Recyclables Processing. West Valley will process at the MRF all Recyclable Materials originating from residential premises, delivered to the MRF by the City or on behalf of the City, and identified by the City as residential recycling. West Valley will prepare and send to the City a monthly report of City residential recycling deliveries, showing total weight and weight for each delivery, the dates of all deliveries, the allocation of Recyclable Materials recovered, based on the then current characterization of recyclable content, and the then current values for each recovered Recyclable Material based on the MRF's actual sales price (less transportation charges) for each recovered Material, and the Processing cost and rebates described in Section 6.a.1.

b. Commercial Recycling Processing. West Valley will Process at the MRF all Recyclable Materials originating from commercial and industrial premises, delivered to the MRF by the City or on behalf of the City, and identified by the City as commercial recycling. West Valley will prepare and send to the City a monthly report of City commercial recycling deliveries, showing total weight and weight for each delivery, the dates of all deliveries, the allocation of Recyclable Materials recovered, based on the then current characterization of recyclable content, and the then current values for each recovered Recyclable Material based on West Valley's actual sales price (less transportation charges) for each recovered Material, and the Processing cost and rebates described in Section 6.a.2

c. C&D Debris Processing. West Valley will Process at the MRF all mixed C&D Debris delivered to the MRF by the City or on behalf of the City. West Valley shall recover all Recyclable Materials from such C&D Debris to the extent possible. West Valley will prepare and send to the City a monthly report of C&D Debris deliveries, showing total weight and weight for each delivery and the dates of all deliveries.

d. Commercial Mixed Loads. TBD

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e. Characterizations. West Valley will perform periodic characterizations of City residential recycling, commercial recycling, and C&D Debris loads. The characterization will determine percentages of Recyclable Materials and non-Recyclable Materials. West Valley will notify the City's Solid Waste Manager at least 72 hours in advance of any scheduled characterization, and the City may observe any such characterization as it is performed and applied to all incoming loads.

f. Palm Material Processing. West Valley will Process at the MRF Palm Materials delivered to the MRF by the City or on behalf of the City.

g. Wood Materials Processing. West Valley will Process at the MRF Wood Materials delivered to the MRF by the City or on behalf of the City.

h. Manufactured Wood. West Valley will Process at the MRF Manufactured Wood delivered to the MRF by the City or on behalf of the City.

i. Inerts-1 Processing. West Valley will Process at the MRF Inerts-1 delivered to the MRF by the City or on behalf of the City

j. Inerts-2 Processing. West Valley will Process at the MRF Inerts-2 delivered to the MRF by the City or on behalf of the City.

k. Scrap Metal. West Valley will Process at the MRF Scrap Metal delivered to the MRF by the City or on behalf of the City.

l. Carpet Processing. West Valley will Process at the MRF Carpet delivered to the MRF by the City or on behalf of the City.

m. Cardboard Processing. West Valley will Process at the MRF Cardboard delivered to the MRF by the City or on behalf of the City.

n. Mixed Paper Processing. West Valley will Process at the MRF Mixed Paper delivered to the MRF by the City or on behalf of the City.

o. Drywall Processing. West Valley will Process at the MRF Drywall delivered to the MRF by the City or on behalf of the City

p. Green Materials Processing. West Valley will Process at the MRF Green Materials delivered to the MRF by the City or on behalf of the City. A monthly report of materials received by category will be prepared.

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q. Food Waste Processing. West Valley will Process at the MRF Food Waste delivered to the MRF by the City or on behalf of the City. If permitted by Applicable Law and at the City's election, West Valley shall process Food Waste along with other Green Materials. However, if required by CalRecycle or then Applicable Law, Food Waste shall be separately processed or processed in percentage mixtures with other Green Waste as may be required.

r. Mixed Organics Processing. West Valley will Process at the MRF Mixed Organics delivered to the MRF by the City or on behalf of the City.

s. Disposal of Non-Recoverable Materials. If notified by City, West Valley shall arrange for the transfer, transportation and disposal of non-recoverable solid waste materials processed out of the Recyclable Materials, C&D Debris or Green Materials ("Residual Material"). Moreover, West Valley may dispose of Landfill Materials pursuant to this section. For all Landfill Materials and Residual Material, West Valley will identify a disposal site which is licensed and operating in accordance with all Applicable Law. All Landfill Materials and Residual Material shall be disposed at a site which complies with Applicable Law.

4. Acceptance of Materials. West Valley guarantees that during the term of this Agreement, it shall, at its sole cost and expense, provide management, supervision, personnel, materials, equipment, services and supplies necessary to operate and maintain the MRF and to have sufficient capacity at the MRF to enable it to accept the Materials collected within the boundaries of the City.

a. West Valley shall immediately advise the City by phone and facsimile of any event which results in the partial or complete inability of Materials to be received at the MRF, its effect on West Valley's ability to perform this Agreement, and West Valley's best estimate of the probable duration. West Valley shall confirm such advice in writing within 24 hours of any such inability. Normal operation of the MRF shall resume as soon as possible in accordance with this Agreement. In the event such Processing capacity cannot be provided for a period in excess of seven (7) days, West Valley shall be obligated to make arrangements to accept such Materials at another facility and to reimburse the City for any increased transportation and Processing cost (including without limitation, increased Processing fees, equipment rental costs, overtime and increased fuel costs resulting from the unavailability of the designated MRF) incurred by the City in transporting the materials to another Processing facility. City shall not be obligated to transport a distance of greater than fifty percent (50%) additional average mileage.

b. West Valley shall have a scale house and computer software capable of tracking all loads of materials delivered to the MRF, all Materials Processed, and applicable Processing fees charged to City. Monthly reports shall be generated to the City

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showing the tonnage of all materials delivered and all materials, by category, Processed at the MRF for purposes of reporting City's diversion of waste pursuant to the requirements of Applicable Law. West Valley agrees to use its best efforts in assisting the City by providing information in its possession needed for the preparation of compliance documents required Applicable Law, including SB 1383. Said information shall be provided by West Valley in a format consistent with CalRecycle guidelines. West Valley shall maintain books and records of all financial transactions made pursuant to this Agreement. Such records shall be made available to the City at any time during business hours upon reasonable demand as required to verify West Valley's performance of its obligations pursuant to this agreement.

c. West Valley represents and warrants that it currently has, and will maintain, or cause to be obtained and maintained, all contracts, licenses, permits, qualifications, and approvals of whatever nature that are legally required for the operation, maintenance and use of the MRF. West Valley agrees to comply with all Applicable Law, including, but not limited to, social security and income tax withholding laws, unemployment compensation laws, and all applicable laws involving environmental, safety, or health procedures.

d. West Valley shall, at its sole cost and expense, operate and maintain the MRF in a good clean and orderly condition including implementing necessary repairs and replacements, purchasing and maintaining necessary replacement equipment or parts for the MRF, and maintaining an adequate inventory of spare parts and equipment.

e. West Valley shall operate the MRF with a sufficient amount of personnel to enable West Valley to perform all of West Valley's obligations and duties under this Agreement in a timely and efficient manner. All of West Valley's personnel shall be appropriately trained in accordance with all applicable rules, regulations and law so that the MRF will be operated and maintained in accordance with and consistent with applicable law and good industry standards and practices, for Recyclable Materials ~~Green Materials~~ Processing facilities.

f. West Valley shall provide additional Green Materials Processing services upon the request of the City where the City is obligated to collect and transport Green Materials due to a windstorm, natural disaster or other emergency ("Emergency Green Materials"). West Valley agrees to accept such Emergency Green Materials and grind, pulverize and otherwise process them into a form suitable for City's use as ground cover.

g. The parties acknowledge the responsibility of the City to meet the recycling and landfill diversion goals in SB 1383 and other Applicable Law. Nothing in this

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Agreement is intended or shall be interpreted to prohibit or impair the ability of the City to meet or exceed such responsibilities, or to exceed such responsibilities, or to restrict the rights of residents, businesses or organizations within the City to practice source separation, source reduction, recycling, composting or other materials recovery activities, or to restrict the right of the City to conduct, sponsor, encourage or require such activities in any form. No reduction in the amount of Materials generated within the City and delivered to the MRF by or on behalf of the City which may result from any source separation or recycling program, or from any other cause, shall cause the City any liability hereunder and no such reduction shall constitute a breach of this Agreement. Whenever possible the material from the City shall be used for the highest diversion credit possible.

5. Term. The term of this Agreement shall begin on July 1, 2023 ("Commencement Date") and end on June 30, 2028 (the "Term"). The Agreement may be extended at the parties' mutual option for one (1) additional five (5) year term. Each party shall provide the other party with at least ninety (90) days notice prior to the expiration of the intial term to exercise the mutual option extension. In the event the City has not finalized and completed the construction of its Facility as set forth in Section 6 below, the Term shall be automatically extended for an additional five (5) year term.

6. Transfer Station. In the event the City constructs a permitted Transfer or Processing Station as defined in Public Resources Code section 40200 or any such equivalent processing facility ("Facility"), the City may elect to terminate this Agreement, on not less than one hundred eighty (180) days prior written notice to West Valley, after the City has received final and complete necessary licenses, permits, approvals, authorizations and entitlements for and completed construction of the Facility. In the event the City is desirous of engaging or contracting with an outside entity to own, construct or operate the Facility, West Valley shall have the right of first refusal to own, construct or operate the subject Facility. Further, the City may contract with West Valley to jointly (with the City) or solely own, construct or operate the Facility.

7. Fees. In consideration for the services to be provided by West Valley for the Processing of all Recyclable Materials pursuant to this Agreement, the City agrees to compensate West Valley in accordance with the following procedures:

    a. The City shall be charged an initial rate based on the following services:

        1. Residential Recyclables Processing. The cost for Processing of residential Recyclable Materials is identified in Exhibit A less a rebate to the City for material revenues calculated monthly at 30% of the net value of the Recyclable Materials, and California Redemption value calculated monthly at 30% of the value. Transportation related costs will be covered by the sales

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value before the revenue share/rebate is calculated. Negative value materials such as mixed glass will be charged at 100% of their costs. The cost for Processing Residential Recyclable Materials shall be adjusted as provided for in Section 6.b.

2. Commercial Recyclables Processing. The cost for Processing of commercial Recyclable Materials is identified in Exhibit A less a rebate to the City for material revenues calculated monthly at 50% of the net value of the Recyclable Materials, and California Redemption value calculated monthly at 81% of the value. Transportation related costs will be covered by the sales value before the revenue share/rebate is calculated. Negative value materials such as mixed glass will be charged at 100% of their costs. The cost for Processing Commercial Recyclable Materials shall be adjusted as provided for in Section 6.b.

3. C&D Debris Processing. The cost for Processing C&D Debris is identified in Exhibit A. The cost for Processing C&D Debris shall be adjusted as provided for in Section 6.b

4. Green Materials Processing. The cost for Processing of Green Materials is identified in Exhibit A . The cost for Processing Green Materials shall be adjusted as provided for in Section 6.b.

The following applies to contamination, which shall be measured by weight:

0% to 5%: no processing or cleaning fee.
6% to 25%: per load cleaning fee is identified in Exhibit A
26% to 50%: load may be processed as C&D Debris.
51% plus: load will be processed as Landfill Materials.

Palm is contamination. If a Palm contaminated Green Material load cannot be cleaned, it may be downgraded to Palm. Hard to handle fees may apply to tree trunks or stumps greater than 3 feet in diameter

5. Wood Materials Processing. The cost for Processing of Wood Materials is identified in Exhibit A.. The cost for Blonde Wood Materials Processing shall be adjusted annually to the standard, market rate for Blonde Wood Materials Processing that West Valley charges to other third-party customers for Blonde Wood Materials Processing at the West Valley MRF.

The following applies to contamination, which shall be measured by weight:
0% to 5%: no processing or cleaning fee.
6% to 25%: per load cleaning fee is identified in Exhibit A.
26% to 50%: load may be processed as C&D Debris.

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51% plus: load will be processed as Landfill Materials.

Loads containing Manufactured Wood items such as painted, laminated, chip, ply, particle board may be result in a downgrade of the load to Manufactured Wood if they cannot be cleaned from the load. No treated wood allowed.

6. Palm Materials Processing. The cost for Processing of Palm Materials is identified in Exhibit A. . The cost for Palm Materials Processing shall be adjusted annually to the standard, market rate for Palm Materials Processing that West Valley charges to other third party customers for Palm Materials Processing at the West Valley MRF.

The following applies to contamination, which shall be measured by weight:

0% to 5%: no processing or cleaning fee.
6% to 25%: per load cleaning fee is identified in Exhibit A.
26% to 50%: load may be processed as C&D Debris.
51% plus: load will be processed as Landfill Materials.

7. Manufactured Wood Materials. The cost for Processing of Manufactured Wood Materials is identified in Exhibit A. The cost for Manufactured Materials Processing shall be adjusted annually to the standard, market rate for Manufactured Wood Materials Processing that West Valley charges to other third-party customers for Wood Materials Processing at the West Valley MRF.

The following applies to contamination, which shall be measured by weight:

0% to 5%: no processing or cleaning fee.
6% to 25%: per load cleaning fee is identified in Exhibit A.
26% to 50%: load may be processed as C&D Debris.
51% plus: load will be processed as Landfill Materials.

8. Inerts-1. The cost for Processing of Inerts-1 will is identified in Exhibit A. . The cost for Inerts-1 Processing shall be adjusted annually to the standard, market rate for Inerts-1 Processing that West Valley charges to other third party customers for Inerts-1 Processing at the West Valley MRF.

No contamination of Inerts-1 loads is allowed. Clay bricks and other clay materials are contaminants. Hard to handle fees may apply to items larger than two feet by two feet by two feet or items with excess metal such as rebar or poles. Inerts- 1 loads contaminated with clay or trash may be downgraded to Inerts-2 by West Valley with written notice to City. City shall have the opportunity to inspect with load. Loads contaminated with sod/organics may be downgraded to Green Waste and processed pursuant to the Green

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Materials Agreement with written notice to City. City shall have the opportunity to inspect with load.

9. Inerts-2. The cost for Processing of Inerts-2 is identified in Exhibit A . The cost for Inerts-2 Processing shall be adjusted annually to the standard, market rate for Inerts-2 Processing that West Valley charges to other third party customers for Inerts-2 Processing at the West Valley MRF.

The following applies to contamination, which shall be measured by weight:

0% to 5%: no processing or cleaning fee.
6% to 25%: per load cleaning fee is identified in Exhibit A.
26% to 50%: load may be processed as C&D Debris at West Valley's election with written notice to City.
51% plus: load will be processed as Landfill Materials at West Valley's election with written notice to City.

Inerts-2 containing organics such as sod that cannot feasibly be cleaned may be downgraded to Green Materials.

10. Scrap Metal. The cost for accepting and processing source-separated Scrap Metal loads shall be $0.00 per ton. This rate shall not be adjusted during the term of the Agreement. West Valley will pay the City the current market rate for Scrap Metal that is delivered for recycling. This rebate amount will be updated monthly to the standard, market rate and communicated with the City.

The following applies to contamination, which shall be measured by weight:
0% to 5%: no processing or cleaning fee.
6% to 25%: per load cleaning fee is identified in Exhibit A.
26% to 50%: load may be processed as C&D Debris at West Valley's election with written notice to City.
51% plus: load will be processed as Landfill Materials at West Valley's election with written notice to City.

11. Carpet. The cost for Processing of Carpet is identified in Exhibit A. The cost for Carpet Processing shall be adjusted annually to the standard, market rate for Carpet Processing that West Valley charges to other third-party customers for Carpet Processing at the West Valley MRF.

The following applies to contamination, which shall be measured by weight:

0% to 5%: no processing or cleaning fee.
6% to 25%: per load cleaning fee is identified in Exhibit A.

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26% to 50%: load may be processed as C&D Debris at West Valley's election with written notice to City.
51% plus: load will be processed as Landfill Materials at West Valley's election with written notice to City.

12. Drywall. The cost for Processing of Drywall is identified in Exhibit A. The cost for Drywall Processing shall be adjusted annually to the standard, market rate for Drywall Processing that West Valley charges to other third-party customers for Drywall Processing at the West Valley MRF.

The following applies to contamination, which shall be measured by weight:

0% to 5%: no processing or cleaning fee.
6% to 25%: per load cleaning fee is identified in Exhibit A.
26% to 50%: load may be processed as C&D Debris at West Valley's election with written notice to City.
51% plus: load will be processed as Landfill Materials at West Valley's election with written notice to City.

13. Cardboard. The cost for Processing of Cardboard will be $0.00/ton. This rate shall not be adjusted during the term of the Agreement. West Valley will pay the City the current market rate for Cardboard that is delivered for recycling. This rebate amount will be updated monthly to the standard, market rate and communicated with the City.

The following applies to contamination, which shall be measured by weight:

0% to 5%: no processing or cleaning fee.
6% to 25%: per load cleaning fee is identified in Exhibit A.
26% to 50%: load may be processed as Commercial Recycling.
51%plus: load will be processed as Landfill Materials.

Cardboard loads contaminated with other paper fibers may be downgraded to Mixed Paper.

14. Mixed Paper. The cost for Processing of Mixed Paper will be $0.00/ton. West Valley will pay the City the current market rate for Mixed Paper that is delivered for recycling. This rebate amount will be updated monthly to the standard, market rate and communicated with the City.

The following applies to contamination, which shall be measured by weight:
0% to 5%: no processing or cleaning fee.
6% to 25%: per load cleaning fee is identified in Exhibit A.
26% to 50%: load may be processed as Commercial Recycling.

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51% plus: load will be processed as Landfill Materials

15. Mixed Organics. The cost for Processing Mixed Organics is identified in Exhibit A. The cost for Mixed Organics Processing shall be adjusted annually to the standard, market rate for Mixed Organics Processing at West Valley charges to other third party customers for Mixed Organics Processing at West Valley MRF.

16. Food Waste. The cost for Processing Food Waste is identified in Exhibit A. . The cost for Food Waste Processing shall be adjusted annually to the standard, market rate for Food Waste Processing at West Valley charges to other third party customers for Food Waste Processing at West Valley MRF.

17. Contaminated Materials Loads. Recyclable Materials Loads which contain more than five percent (5%) contamination by weight shall be deemed a contaminated load and shall be subject to a contaminated load processing fee identified in Exhibit A. Recyclable Manterial Loads that contain a higher level of contamination, 25%-50% or more by weight, may be downgraded to a lesser commodity or identified as trash.

18. Non-Processable Residue. The cost for transfer of all non-recyclable residue or Residual Materials is identified in Exhibit A. West Valley shall arrange for the delivery all non-recyclable residue or Residual Materials to El Sobrante Landfill or any other licensed disposal facility as permitted by the City. Transportation and disposal costs will be incurred as actual costs to a landfill identified by West Valley.

b. The rates set forth in Section 6.a 1-4. shall be adjusted as follows:

Pursuant to the terms and conditions provided herein, the Processing fees ("Processing Fee") for Materials pursuant to Section 6a.1-4. shall be subject to change every one (1) year during the term of this Agreement. On or before May 15 of each year (or the next business day if May 15 be a City holiday or if it is a Sunday or Saturday), West Valley shall notify the City in writing that the change to the Processing Fee as provided herein shall go into effect and be implemented as provided herein. West Valley's failure to timely notify the City of a change in the Processing Fee shall be deemed a waiver of West Valley's right to an adjustment for the following calendar year. In the event West Valley fails to request an adjustment as provided in this subsection, City shall have the option of requesting an adjustment. City shall provide notice of this election on or before June 15th of each year (or the next business day if June 15 be a City holiday or if it is a Sunday or Saturday). The "Adjustment Date" shall be July 1, of each year during the term of this Agreement, beginning July 1, 2023. Any change shall be made in accordance with the following formula ("Formula"):

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1. The base for computing the adjustment shall be the Consumer Price Index [All Urban Consumers] Riverside-San Bernardino-Ontario, CA, published by the United States Department of Labor, Bureau of Labor Statistics ("index") which is published for the month of September. The Processing Fee shall be set by multiplying the then-current Processing Fee by a fraction, the numerator of which is the adjustment index (the most recently published month of September) and the denominator of which is the beginning index (the month of September for the year prior to the most recently published). If the index is changed so that the base year differs from that used as of the month of September of the year preceding the adjustment date, the index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the index is discontinued or revised during the term of this Agreement, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the index had not been discontinued or revised.

2. West Valley, at its sole cost and expense, shall test and recalibrate the MRF's weigh scales on a quarterly basis or in event of dispute. When, at any time, testing of the weigh scales indicates that the scales do not meet the accuracy requirements of Applicable Law, or if the scales are being tested, West Valley, absent more accurate information, shall estimate the quantity of delivered on the basis of truck volumes and estimated data obtained from historical information pertinent to West Valley and shall assume, for purposes of such estimate, that the weigh scale inaccuracy occurred on a linear basis from the test most recently preceding the test demonstrating such inaccuracy. These estimates shall take the place of actual weighing records until correction of the weigh scales is completed. West Valley shall use all reasonable efforts to repair the scales within three (3) days. West Valley shall provide a monthly listing of scale records for each calendar month to the City within thirty (30) days after the close of each month. Copies of all daily weigh records shall be maintained by West Valley for a period of at least three (3) years.

8. Cost Increases. West Valley shall be solely responsible for any increase or additional costs or expenses that may arise in regard to performance of this Agreement except in regard to the following circumstances:

In addition to, and not in lieu of, the Cost of Living adjustment described in Section 6.b, West Valley may request rate adjustments to the Processing Fee from time to time in an amount equal to West Valley's extraordinary increases or decreases in its cost of Processing, transportation and disposal services. Any extraordinary adjustment shall be subject to prior consideration and approval by the City Manager or his/her designee. Such extraordinary change in West Valley's costs of providing services shall include, by

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way of example and not by way of limitation: (1) new or increased taxes or fees payable by the West Valley based upon its operations hereunder by a governmental body; (2) changes in local, state or federal laws governing Processing, transportation or disposal of solid waste; and (3) material increases or decreases in fuel not otherwise provided in the cost of living adjustment. West Valley may request rate adjustments in an amount equal to the West Valley's extraordinary increases in its cost of fuel, to the extent that any such annual increase exceeds two hundred percent (200%) of the change in the Consumer Price Index for such period, as determined by a year over year comparison of the diesel, Liquefied Natural Gas "LNG", and/or Compressed Natural Gas "CNG" index for fuel weighted according to the proportion of West Valley's vehicles providing services under this Agreement that run on each type of fuel.

9. Billing, Payment, and Audits.

a. West Valley shall submit monthly invoices for Materials delivered in the preceding month. West Valley's invoices shall clearly set forth the calculation for the total amount of the invoice, including specifying Materials Processing costs by category. The City shall promptly review all invoices and notify West Valley in writing of any objections thereto in accordance with the dispute procedures set forth in herein. Absent West Valley's receipt of written objections within 15 days of receipt of an invoice by the City, the invoice shall be deemed proper and acceptable. Subject to the City's objections, the City shall pay West Valley the sum equal to the amount due under an invoice (or the undisputed amount, if any, in the event of an objection by City) within 30 days after receipt. If City disputes any amount billed pursuant to this Agreement, the City shall submit to West Valley a written objection within 15 days of receipt of the disputed billing indicating the amount that is being disputed and providing all reasons for objection. If the parties are not able to resolve such dispute with 30 days after the response, either party may pursue applicable legal remedies.

b. All records of West Valley related to or prepared in connection with its performance of this Agreement shall be subject to audit and inspection by City, its auditors or other agents, at any reasonable time. Such audit or inspection shall take place at City's City Hall, if practicable, or at a West Valley facility located in San Bernardino County. The City shall initially bear the cost of such audit. If such audit discloses a material breach of this Agreement or an overpayment of sums owed by the City under this Agreement in excess of five percent (5%) of the amount which should have been paid, West Valley shall promptly tender to the City the amount of such overpayment, together with interest at the rate of twelve percent (12%) computed from the date of overpayment, and shall further reimburse the City for the entirety of its audit costs, including, without limitation, auditor's costs and expenses, internal costs and expenses, and legal and other third party expenses. If such audit discloses an overpayment of less than five percent (5%), West Valley shall promptly repay such overpayment, together

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with interest at the rate of twelve percent (12%) computed from the date of overpayment, and the City shall bear the City of the audit. If an audit discloses an underpayment by City, the City shall promptly tender the underpayment without interest.

10. Hours of Operation. The MRF shall be open for the delivery of Materials by the City, or on behalf of the City during normal business hours of 6:00 A.M. to 6:00 P.M., Monday through Saturday, excluding the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and such other holidays as may be required by a binding union agreement applicable to the operations of the West Valley MRF or as customary in the waste industry. Said schedule shall not be changed without West Valley's prior written notice to the City at least 30 days in advance. Except for specific dates of holidays, the hours and days of operation shall remain in accordance with this Section. The City shall have access to the West Valley MRF during normal business hours as set forth in this Agreement. West Valley agrees to receive Materials at the West Valley MRF at hours other than as set forth herein if requested by the City to accommodate unusual quantities of Materials resulting from an emergency or from programs of the City or any local governmental entity designed to promote clean-up of an area serviced by the West Valley MRF.

11. Compliance with Laws and Regulations. West Valley covenants with the City to use its best skill, judgment and effort to process all Recyclable Materials delivered to the MRF. West Valley warrants that it will comply with all Applicable Law, including regulations, as they, from time to time, may be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601, et seq the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. the California Integrated Waste Management Act of 1989, California Public Resources Code Section 43601, and all applicable laws of the State of California, County of San Bernardino, ordinances of the City, the requirements of local enforcement agencies and other agencies with jurisdiction. Notice shall be promptly provided to the City in the event West Valley should receive any enforcement action arising out of the services performed under this Agreement. West Valley shall establish and maintain safety procedures for the MRF for the protection of employees of West Valley and all other persons, invitees and permittees at the MRF in connection with the operation and maintenance thereof at a level consistent with Applicable Law and with good industry standards and practices for material processing facilities. West Valley shall comply with all applicable laws, ordinances, rules and regulations relating to the safety of persons or property at the MRF from damage, injury or loss.

12. Field Visits to the MRF. The City may, with the full cooperation of West Valley, conduct field visits to the MRF to determine whether West Valley is in compliance with all of its obligations under this Agreement. In connection with such inspections or visits, the City shall, on behalf of itself, its agents and representatives, comply, and cause its

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agents and representatives to comply, with all reasonable rules and regulations adopted by West Valley.

12. Events of Default- Termination. The parties agree that in the event of the breach by any party of an obligation under this Agreement, neither party shall have the right to terminate this Agreement except for, and as a result of, an event of default as described in this section ("Event of Default"). With respect to, and as a result of, any breach or default under this Agreement which is not an Event of Default as described this section that would warrant termination, the parties acknowledge that the exclusive remedies of the non-defaulting party shall be specific performance or such other remedies in law or equity as may be available to compel specific performance, as well as the recovery of damages incurred by the non-defaulting party as a result of the breach or default. Each of the following shall constitute an Event of Default:

    a. The material failure or refusal by a party to proceed with activities contemplated by this Agreement; unless such failure or refusal shall be excused or justified by an event covered by the Force Majeure provisions of this Agreement; provided, however, that no such default shall constitute an Event of Default giving rise to the right to terminate this Agreement under this section unless or until:

        1. The non-defaulting party shall have given prior written notice to the breaching party specifying that a particular default exists which will, unless corrected, constitute a material breach of this Agreement on the part of the defaulting party, and

        2. The defaulting party has not corrected such default or has not taken reasonable steps to commence to correct the same within thirty (30) days from the date of the notice given pursuant to this section or thereafter does not diligently continue to take reasonable steps to correct such default.

    b. In the case of West Valley only, the following Event of Default may also be determined to exist: West Valley becomes insolvent or bankrupt or ceases to pay its debts as they mature, makes arrangements with or for the benefit of creditors, consents to or acquiesces to the appointment of a receiver, becomes part of a voluntary or involuntary bankruptcy, insolvency or similar proceeding. In the event of such insolvency or bankruptcy, West Valley shall assume or reject this Agreement within sixty (60) days after the order for relief, promptly cure any failure to perform under this Agreement and provide adequate assurance of future performance under this Agreement.

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c. Failure of either party to pay all or any amount required to be paid to the other party under this Agreement, when such amount becomes due and payable, unless the same is paid within thirty (30) days after written demand therefor by the other party accompanied by notice that unless the same is not so paid, such failure to pay shall constitute an Event of Default unless a dispute with respect to any such amount is being pursued.

d. If a party terminates this Agreement for an Event of Default on the part of the other party, the non-defaulting party shall have the right to seek legal and equitable remedies provided by law for such default provided, however, that the non-defaulting party is obligated, to the extent not detrimental to its interests and within any applicable provision of law, to mitigate the damages, costs and expenses incurred by reason of such Event of Default and to credit the savings therefrom to any damages, costs and expenses otherwise payable by the defaulting party.

13. Indemnification. (a) West Valley shall indemnify, defend with competent counsel reasonably approved by the City, protect and hold harmless the City, its officers, employees and assigns from and against all claims, including natural resources damages, injuries, costs, response, assessment, remediation, and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City or its officers or employees arising from or attributable to: (i) any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) or replacement or restoration of natural resources arising from or related to Hazardous Substance (as defined under Applicable Law) or Hazardous Wastes (as defined under Applicable Law) or petroleum products at any place where West Valley transfers, stores or disposes of all Recyclable Materials pursuant to this Agreement; (ii) West Valley's activities pursuant to this Agreement which result in a release or threatened release of Hazardous Substances or Hazardous Wastes or petroleum products into the environment; (iii) any failure by West Valley to comply with any applicable law, regulation, or order; and/or (iv) any breach by West Valley of this Agreement. The forgoing indemnity is intended to operate as an agreement pursuant to but not limited to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify the City from liability. This indemnity shall not apply with respect to (i) vehicle accidents or other Recyclable Materials delivery activities or (ii) to any Hazardous Substances, Hazardous Waste, petroleum product or other unacceptable waste not accepted by West Valley for Processing at the MRF. The City agrees that West Valley may provide counsel to jointly represent itself, the City and all other parties who

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disposed of waste at the MRF. The City hereby agrees to waive, in writing, any conflict, actual or apparent, created by joint representation of such parties pursuant to this indemnity. The City also hereby agrees to cooperate fully and completely with West Valley and with counsel provided by West Valley in resolving any legal matter that arises pursuant to this indemnity. The City further agrees that West Valley has complete discretion in the conduct of any matter to which this indemnity applies and may resolve or settle such matters to which this indemnity applies in its sole discretion without the permission or approval of the City, provided that written consent from the City shall be required for any such resolution or settlement requiring the City to make any payment or admit liability. West Valley agrees that it will not bring any action against the City claiming or alleging that the City has any responsibility for matters, actions, or liabilities within the scope of the indemnity provided above, except to the extent of the negligence or willful misconduct of City, its officers, employees or assigns.

a. West Valley's Indemnity. Except as otherwise specifically set forth in Section 13.a of this Agreement, West Valley shall indemnify, defend, and hold harmless the City, its officers, employees, agents, contractors and consultants, to the maximum extent allowed by law, from and against all liability, claims, losses, actions, and expenses (including attorney's fees), on account of bodily injury to or death of any person or damage to or loss of property arising out of or resulting from the acts or omissions to act of West Valley, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them are liable in the performance of this Agreement, unless caused by the negligence or willful misconduct of the parties to be indemnified.

b. City Indemnity. Except as otherwise specifically set forth in Section 13.a of this Agreement, the City shall indemnify, defend, and hold harmless the West Valley, its officers, officials, employees, agents, contractors and consultants, to the maximum extent allowed by law, from and against all liability, claims, losses, actions, and expenses (including attorney's fees), on account of bodily injury to or death of any person or damage to or loss of use of property arising out of or resulting from the acts or omissions to act of the City, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them are liable in the performance of this Agreement, unless caused by the negligence or willful misconduct of the parties to be indemnified.

14. Force Majeure. Neither party shall be in default under this Agreement in the event that the delivery of Materials to the MRF is temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President of Congress and affecting the City of Ontario or the area in which the MRF is located; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fire; strikes, or other catastrophic events which are beyond the reasonable control of the City or West Valley. "Other catastrophic events"

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does not include (1) strikes, lockouts, or other labor unrest, (2) the financial inability of West Valley to perform their obligations under this Agreement, (3) for failure of West Valley to obtain any necessary permits from other governmental agencies or (4) the right to use the facilities of any public entity where such failure occurs because West Valley did not exercise reasonable diligence.

15. Insurance. West Valley shall obtain and maintain, at its own cost and expense, the following insurance policy, or policies of liability insurance of the following coverages and limits for the duration of this Agreement:

    Workers Compensation - Statutory; Employer's Liability - $1,000,000 each occurrence; Comprehensive General Liability - $1,000,000 each occurrence combined single limit; Comprehensive Automobile Liability - $1,000,000 each occurrence combined single limit.

    West Valley agrees to furnish to the City, upon request, certificates of insurance attesting to the insurance coverages and limits above. Each certificate shall contain a statement requiring the insurer to notify the certificate holder at least thirty (30) days prior to cancellation of any policy covered thereunder. Each certificate shall also name the City as an additional insured.

16. Notices. All notices, requests, demands and other communications hereunder shall be furnished at the addresses listed below (or such address as notified in writing), shall be in writing, and deemed as duly given when delivered personally or three (3) days after the date mailed by certified mail, return receipt requested as follows:

If to City:	If to West Valley:
City of Ontario	West Valley MRF, LLC
303 East "B" Street	9890 Cherry Ave
Ontario, California 91764	Fontana, CA 92335
Attention: City Manager	Attention: Cole Burr

17. Attorney's Fees. In the event an action is commenced by either party to this Agreement to enforce or construe its rights or obligations arising under this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the Court, shall be entitled to recover all statutory costs plus a reasonable amount for attorney's fees as said reasonable amount of attorney's fees may be determined by the Court.

18. Binding Upon Successors. All agreements, covenants, conditions and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

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19. Captions. The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties only and are not part of this Agreement.

20. Governing Law and Venue. This Agreement shall be deemed to be made in California and shall be governed under the laws of the State of California in all respects, without regard to the principles of conflict of laws, including matters of construction, validity, and performance. Any action to interpret or enforce this Agreement shall be maintained exclusively inthe courts of and for San Bernardino County.

21. Amendment. This Agreement can be modified only by writing expressly referring to this Agreement and signed by each of the parties hereto.

22. Invalidity of Provisions. Every provision of this Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable, and to the extent possible all of the other provisions shall nonetheless remain in full force and effect.

23. Assignment and Subcontracting. Neither party hereto may assign, transfer, or permit the assignment of transfer of this Agreement, or any rights or obligations hereunder without the prior written consent of the other party hereto, which such consent shall not unreasonably be withheld. Either party may subcontract the performance of its respective obligations hereunder upon written consent of the other, which shall not be unreasonably withheld. In addition, City hereby consents to West Valley's subcontracting of the operation of the MRF to American Green Waste, Inc.

24. Independent Contractor. Each party is and shall perform this Agreement as an independent contractor and, as such, shall have and maintain complete control over all its employees, agents and operations. Neither party nor anyone employed by it shall be , represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other party.

25. Exclusive Agreement. This Agreement is exclusive and City shall deliver or caused to be delivered all such Materials collected by the City from within the City limits to the West Valley MRF unless West Valley fails to perform pursuant to the terms and conditions of this Agreement, in which case City retains the right to enter into additional contracts with other parties for the services provided by this Agreement.

26. Counterparts. This Agreement may be signed in counterparts.

27. Subcontracting. Any permitted subcontract approved by City shall contain a provision making the subcontractor subject to all provisions of this Agreement.

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28. Incorporation of Recitals. The Recitals hereto are incorporated in this Agreement in entirety.

[Signatures on following page]

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CITY OF ONTARIO

By: DocuSigned by: Scott Ochoa 943ADB3C46DD448...
Scott Ochoa, City Manager

WEST VALLEY MRF, LLC

By: West Valley Recycling & Transfer, Inc. (Member)

By: DocuSigned by: Cole Burr EEC00A0DA7B1409...
Cole Burr, President

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Exhibit A

Service	Fee/Rate
Residential Recyclables Processing	$67.52/ton
Commercial Recyclables Processing	$83.83/ton
C&D Debris Processing	$81.89/ton
Green Materials Processing	$59.10/ton
Wood (Blonde) Materials Processing	$33.29/ton
Palm Materials Processing	$69.89/ton
Manufactured Wood Materials Processing	$59.00/ton
Inert-1	$14.32/ton
Inert-2	$42.50/ton
Carpet	$54.27/ton
Drywall	$72.50/ton
Mixed Organics	$106.74/ton
Food Waste	$107.99/ton
Non-Recoverable Residual Material Transfer Fee (Contamination/Residue)	$11.03/ton
Contamination Cleaning Fee (6-25% contamination)	$50.00/load

DEFINITIONS

"Compost" has the same meaning as in 14 CCR Section 17896.2(a)(4), as may be amended from time to time.

PROVISION FOR PROCUREMENT OF RECOVERED ORGANIC WASTE PRODUCT

Contractor agrees to coordinate and cooperate with the City in meeting its recovered Organic Waste product procurement target, as required by SB 1383 Regulations, 14 CCR Section 18993.1.

Annually City shall directly procure from the Contractor at the mutually agreed upon rate including transportation costs, and Contractor shall make available, Recovered Organic Waste Products in an amount not more than the quantity specified in 14 CCR Section 18993.1 as requested by the City. Recovered Organic Waste Products shall comply with 14 CCR 18993.1(f) throughout the Term of this agreement.

Contractor shall act as a direct service provider and give away the material directly procured by the City from the contractor (or affiliates) in a manner consistent with SB 1383 regulations. Contractor shall comply with the recordkeeping and verification requirements of 14 CCR 18993.2. City reserves the right to direct the contractor to deliver some or all of the material procured to a specific location(s) including the applicable transportation and delivery costs.

Recovered Organic Waste Product pricing shall be adjusted annually based on mutual consent with appropriate justification.

Except as expressly required by this section, Contractor shall have no obligation to deliver any additional Recovered Organic Waste Products under this agreement.

PRODUCT	UNIT	COST
Compost	Ton	$15.00
Freight	Ton	$18.00

The total compensation for this amendment varies based on the volume and population of organic materials collected.

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Utilities Prepared By: Thomas Palmieri Staff Member Presenting: Scott Burton, Utilities General Manager Reviewed By: Albert G Gastelum, Michael Sigsbee Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 13

SUBJECT: A PROFESSIONAL SERVICES AGREEMENT WITH CAPO PROJECTS GROUP FOR ON-CALL INTEGRATED PROJECT CONTROLS, ASSESSMENT AND REPORTING SERVICES

RECOMMENDATION: That the City Council approve and authorize the City Manager, or designee, to execute a three-year Professional Services Agreement with Capo Projects Group (CPG), of San Clemente, California, for On-Call Integrated Project Controls, Assessment and Reporting Services in the amount of $334,848 for Fiscal Year 2024-25 to Fiscal Year 2026-27, with the option to extend the term for up to two successive one-year periods (Fiscal Year 2027-28 to Fiscal Year 2028-29), with up to a one-time 6% increase for a total not-to-exceed amount of $571,474.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner
Invest in the Growth and Evolution of the City's Economy
Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)

FISCAL IMPACT: The Fiscal Year 2024-25 Adopted Budget includes appropriations from the Water Capital and Sewer Capital Funds for these services. The recommended Agreement is for a total not-to-exceed amount of $334,848 for the initial term, which will be from October 1, 2024, to October 1, 2027. At the City's discretion, up to two additional one-year extensions may be executed. Should the City exercise the two successive one-year extensions, the projected total amount to be spent for the five years (October 1, 2024, to October 1, 2029) would amount to a total not-to-exceed of $571,474.

The City and CPG have agreed to an annual license fee for project management software and staff support budget for the first three years and a one-time 6% escalation for the two extension years per Exhibit "A". The City and Consultant have agreed to fixed billing rates and will be compensated for on-call, as-needed services at the billing rates set forth in their respective agreement. The total compensation paid to the consultant in any year under the term of this agreement will be commensurate with the City Council-approved plans and budgets. There is no impact to the General Fund.

BACKGROUND & ANALYSIS: The City's Water, Recycled Water, and Sewer Master Plans identify the water production, transmission, distribution, and sewer collection system improvements necessary to serve existing and future residents and businesses of the City. The Master Plans form the basis for the respective Utilities Capital Improvement Programs (CIP), currently including over 60 projects and projected to be $377.5 million over the next five years in engineering and construction work for water, recycled water and sewer improvements, facility retrofits and upgrades, and the construction of a new water treatment facility.

The scope of services for the proposed Professional Services Agreement with CPG includes continued project management and scheduling software (CPM Axis), and support services. In October 2019, the City contracted with CPG after an extensive Request for Proposal selection process to establish internal project management policy and procedures that utilize their CPM Axis. The proposed sole source Agreement will ensure the continuity of project management software and support services. The software has proven to be an effective tool that enables City Staff to efficiently plan and administer the Utilities CIP.

The software and expert support allow Staff to obtain project summaries and reporting dashboards that assist in effectively and efficiently administering the Utility CIP projects. The reports included in the software are project summary reports, scheduling reports, cost summary dashboards, project detailed dashboards, live program detail, critical variance reports, advance scheduling, and time impact analysis on the Utilities CIP projects. The process and tools provided by CPG allow for program management that assists in delivering these capital projects in a timely manner and aligns the City with public water sector capital project management lifecycle best management practices.

Staff is recommending approval of the Professional Services Agreement based upon CPG's experience, qualifications, familiarity with the projects, and performance in providing integrated project controls, assessment, and reporting services.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SHEILA MAUTZ
CITY CLERK

JAMES R. MILHISER
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 **Capo Projects Group**, a **California Limited Liability Company**, with its principal place of business at **942 Calle Negocio – Suite 300, San Clemente, CA 92673** ("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 **On-Call Integrated Project Controls, Assessment and Reporting** 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 **On-Call Integrated Project Controls, Assessment and Reporting** 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 **On-Call Integrated Project Controls, Assessment and Reporting** 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 **October 1, 2024** to **October 1, 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 (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 "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Three Hundred Thirty-Four Thousand, Eight Hundred Forty-Eight ($334,848)** without written approval of the City Council or City Manager, as applicable. The City shall have the unilateral option, at its sole discretion, to **increase the compensation** for this Agreement automatically for no more than **two (2) additional one-year terms at a not to exceed amount of One Hundred Eighteen Thousand, Three Hundred Thirteen ($118,313) per additional one-year term. The total yearly compensation schedule shall be per Exhibit "B".** 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 "C" 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.

3.3 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 are as follows: **Adam Trimm, Principal Partner**.

3.3.5 City's Representative. The City hereby designates **Dennis Mejia, Utilities Engineering Division Manager**, or his/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 **Adam Trimm, Principal Partner**, or his/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 Exhibits "A" or "B" 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: **Capo Projects Group**
942 Calle Negocio – Suite 300
San Clemente, CA 92673
ATTN: Adam Trimm

City: City of Ontario
303 East "B" Street
Ontario, CA 91764
ATTN: **Dennis Mejia, P.E., Utilities Engineering Division Manager, OMUC**

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 CAPO PROJECTS GROUP

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

CAPO PROJECTS GROUP

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

Capo Projects Group
942 Calle Negocio – Suite 300
San Clemente, CA 92673

May 9, 2024

Thomas Palmieri
Ontario Municipal Utilities Company

RE: INTEGRATED PROJECT CONTROLS, ASSESSMENT & REPORTING

Capo Projects Group is excited to continue working with the Ontario Municipal Utility Company to advance project controls, schedule assessment and reporting efforts. Below is a proposal for the technical requirements and service hours required to execute the proposed scope:

Objective:

Leverage technology and approach to provide full scale project management organization (PMO) project controls insight with efficiency and cost commensurate with CIP program budget and volume. Below are the (6) foundational principles that drive our approach:

- Eliminate administrative workflow redundancies
- Simple, Single point of engagement with the project team
- Accessible information cerates accountability
- Streamlined communication
- Structured data
- Automated Reporting

Recommended Technology Stack:

- Primavera P6 – Primary CPM Scheduling tool ---------- $ No Charge
- ☑ **Task A - CPM Axis – Schedule and cost administration application ----------$2,500 / month - Unlimited Users**

Program & Project PMO Project Controls Services (1 to 35 Projects) (CPG Resource Janet Castellanos):

Below are the steps (tasks) required to deliver monthly CIP program and project level schedule and cost snapshots with baseline, actual and planned data points for each project with key notes and documentation.

1. CIP Program / Project Schedule Updates
    a. Provide each project manager with a current project schedule for activity progress and cost update by the second and fourth Friday of each month. The project team shall have all updates in by the second and fourth Friday of each month for the CPG project scheduler to review and update the capital improvement program master schedule.

☑ **Task B - Project Schedule Updates and CIP Master Schedule Update: 10 hours @ $183/hr. =$1,830**

b. Meet with each project manager (8 total project managers), during the last week of each month to review their project status, risks, upcoming issues & challenges as well as current status of schedule activities and project cost.

☑ Task C - Create new project update files in P6 for each project:

- 1 hour per meeting X 6 meetings@$183/hr. = $1,098

c. CIP and Project Monthly Reporting maintenance

I. Program Summary Report
II. ASO Goal Summary Report
III. Program Schedule Report By PM
IV. Weekly Project Mangers Report
V. Live Schedule Summary Dashboard
VI. Live Cost Summary Dashboard
VII. Live Project Detail Dashboard
VIII. Live Program Detail
IX. Live Critical Variance Dashboard
X. Live ASO & DG Dashboard
XI. Live OMUC CIP Dashboard

☑ Task D – Monthly maintenance reporting and live dashboard: 3 hours @ $183/hr. = $549

New Business Intelligence Dashboards & Reports (Each) (CPG Resource Autumn Childers):

1. Steps:
   a. Report/Dashboard design and data requirements – 2 hours
   b. Report/Dashboard data diagram and mockup – 2 hours
   c. Report/Dashboard development and release – 8 hours

Task E - As needed Business Intelligence Dashboards & Reports (Each) (12hrs x $183/hr.) ----------$2,196 Each

Schedule Training (CPG Resources):

a. Custom PlanGo configuration including user interface change, new functionality and as needed training.

Task F – Custom Configuration (100hrs x $172/hr.) ----------$17,200 Each

Miscellaneous Time Impact Analysis (CPG Resource Autumn Childers):

a. Baseline Schedule Review (Per Project) Original Plan – 2 hours
b. Previous Month (Base File) Schedule Review "As Planned" (Per Project/Per Month/18 Months) – 2 hours
c. Impact File Analysis and Findings Report (Per Project) – 8 hours

Task G - As needed Time Impact Analysis (72hrs x $183/hr.) ----------$13,176 Each

Schedule Training (CPG Resources):

a. Scheduling 101 (2x)– 4 hours
b. Advanced Scheduling (2x) – 4 hours

Task H - As needed Schedule Training (16hrs x $183/hr.) ----------$2,928 Each

Summary:

Below is the summary of service units and cost for the 36-month period starting October 1, 2024, ending September 30, 2027 (please note CAPO's increased hourly rates will not take effect until after October 1, 2024. An additional 24-month option extension is included with a 6% escalation. Janet Castellanos will serve as our primary resource for all OMUC project controls services with Autumn Childers as the secondary support resource. Should Autumn Childers not be available for any reason Capo Projects Group will assign a new primary resource to support the project controls service scope.

Total Cost:

Description	Price/Unit	Units	Subtotal
Task A - CPMaxis Subscription	$ 2,500.00	12 months	$30,000.00
Task B - Monthly Project Package for the Team	$ 1,830.00	12 months	$21,960.00
Task C - Monthly Meetings with Project Managers	$ 1,098.00	12 months	$13,176.00
Task D - Monthly Maintenance	$ 549.00	12 months	$ 6,588.00
Task E - New Dashboards	$ 2,196.00	3 EA	$6,588.00
Task F - Custom Configuration	$ 172.00	100 hours	$17,200.00
Task G - As Needed Time Impact Analysis	$ 183.00	72 hours	$ 13,176.00
Task H - Schedule Training	$ 2,928.00	1x	$ 2,928.00
Subtotal for Yearly Services Years 1 to 3			**$ 111,616.00**
Total: 36 Month Contract Starting 10.01.2024	$ 111,616/ yearly	3	$334,848.00
Total Option: 24 Month Option Start 10.01.2027 6% Escalation	$ 118,313/ yearly	2	$236,626.00
Total 60 Month Contract Value			**$571,474.00**

The budgets above would represent our best prediction of the time needed to provide you this service at the level you would expect. All amounts due will be per hour, subject to the rates outlined above. If you would like to discuss this proposal further or feel that these estimations are not aligned with your expected scope requirements, please do not hesitate to contact me.

Sincerely,

Adam Trimm
Principal Partner – Capo Projects Group(CPG)
C. 310.612.1327 E. adamtrimm@capopg.com

EXHIBIT "B"
SCHEDULE OF SERVICES

The services shall be completed within the duration specified below, beginning ten (10) calendar days after Notice to Proceed is issued:

Amend No.	Task No.	Project Title	Project Duration	Not to Exceed Fee	P.O. Number
-	0	On-Call Integrated Project Controls, Assessment and Reporting	10/1/2024 to 9/30/2027	$334,848	
	0.1	Extension No. 1	10/1/2027 to 9/30/2028	$118,313	
	0.2	Extension No. 2	10/1/2028 to 10/1/2029	$118,313	
			Total	$571,474	

EXHIBIT "C"
COMPENSATION

Schedule Training (CPG Resources):

a. Scheduling 101 (2x)– 4 hours
b. Advanced Scheduling (2x) – 4 hours

Task H - As needed Schedule Training (16hrs x $183/hr.) ----------$2,928 Each

Summary:

Below is the summary of service units and cost for the 36-month period starting October 1, 2024, ending September 30, 2027 (please note CAPO's increased hourly rates will not take effect until after October 1, 2024. An additional 24-month option extension is included with a 6% escalation. Janet Castellanos will serve as our primary resource for all OMUC project controls services with Autumn Childers as the secondary support resource. Should Autumn Childers not be available for any reason Capo Projects Group will assign a new primary resource to support the project controls service scope.

Total Cost:

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Sincerely,

Adam Trimm
Principal Partner – Capo Projects Group(CPG)
C. 310.612.1327 E. adamtrimm@capopg.com

Exhibit "A"

Professional Services Agreement with CAPO Project Group
for On-Call Integrated Project Controls, Assessment and Reporting Services
Costs Per Year

Year	Duration	Pretreatment Services	Max % Increase (Negotiated Yearly)
First Year	10/1/2024 to 9/30/2025	$ 111,616	N/A
Second Year	10/1/2025 to 9/30/2026	$ 111,616	N/A
Third Year	10/1/2026 to 9/30/2027	$ 111,616	N/A
Fourth Year	10/1/2027 to 9/30/2028	$ 118,313	6%
Fifth Year	10/1/2028 to 9/30/2029	$ 118,313	N/A
Total		$ 571,474	

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Engineering Prepared By: Jeffrey Tang Staff Member Presenting: Scott Murphy, Executive Director Community Development Reviewed By: Raymond Lee, Khoi Do Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 14

SUBJECT: **A QUITCLAIM DEED AND A RESOLUTION APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY, AND FINAL PARCEL MAP NO. 20465, LOCATED AT THE SOUTHWEST CORNER OF ONTARIO RANCH ROAD AND HAMNER AVENUE**

RECOMMENDATION: That the City Council take the following actions:

A. Authorize the City Manager, or his designee, to execute a Quitclaim Deed to The Ranch at Model Colony, LLC, for fee title ownership transfer of a portion of Ontario Ranch Road; and
B. Adopt a Resolution approving a Subdivision Improvement Agreement, Improvement Security, and Final Parcel Map No. 20465, located at the southwest corner of Ontario Ranch Road and Hamner Avenue, in the Rich Haven Specific Plan.

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
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

FISCAL IMPACT: There is not a direct fiscal impact associated with this action. All public infrastructure improvements required for this subdivision will be constructed by the Developer at its sole cost.

BACKGROUND & ANALYSIS: Final Parcel Map No. 20465, consisting of 10 numbered parcels on approximately 18 acres of land, as shown on Exhibit A, was submitted by The Ranch at Model Colony, LLC, a Delaware Limited Liability Company (Developer). The Tentative Parcel Map was approved by the Planning Commission on June 27, 2023.

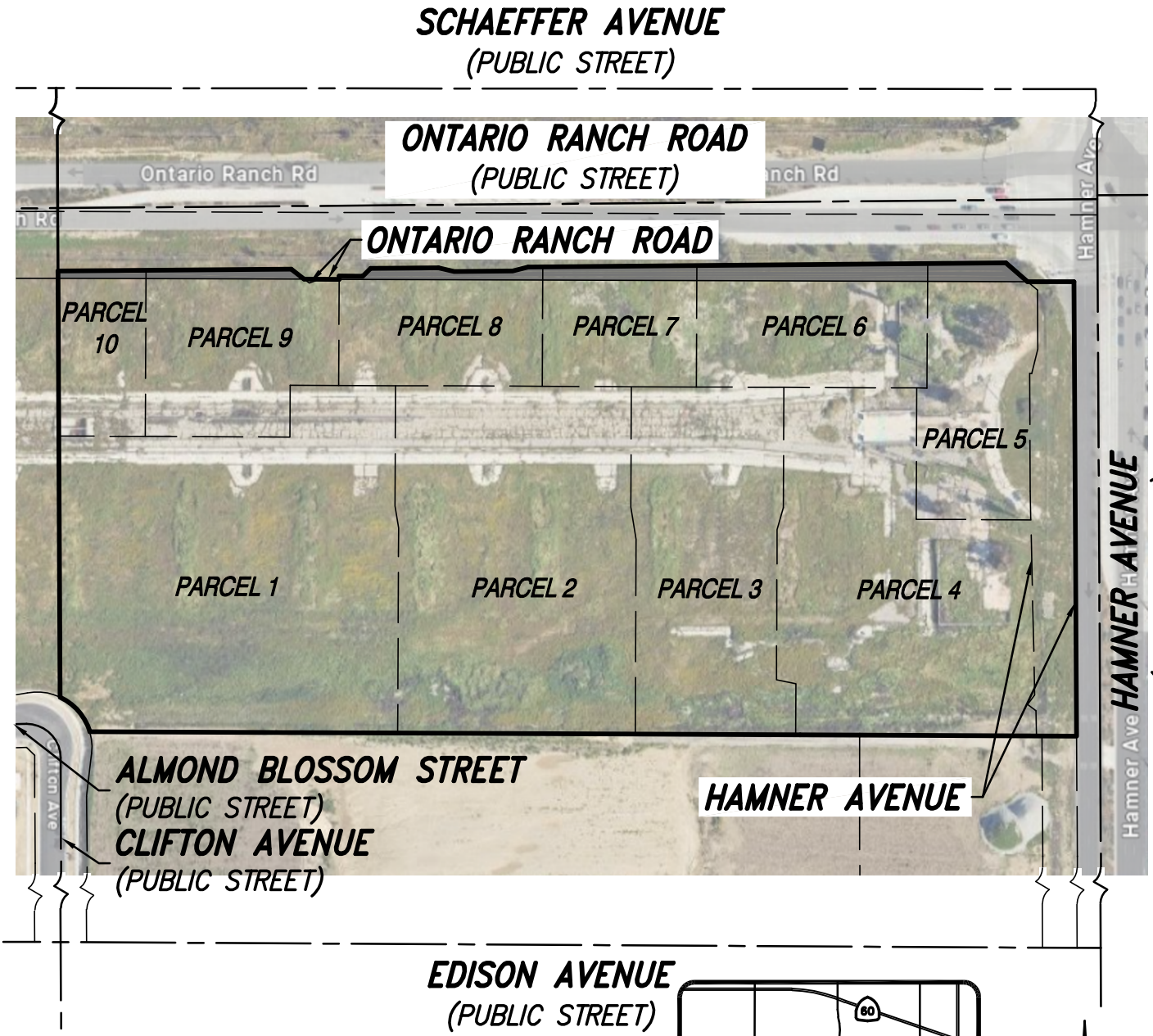
As a clean-up item prior to approval of the Final Parcel Map, the City will quitclaim a portion of Ontario Ranch Road that is not needed for present or future street or utility purposes, also shown in Exhibit A.

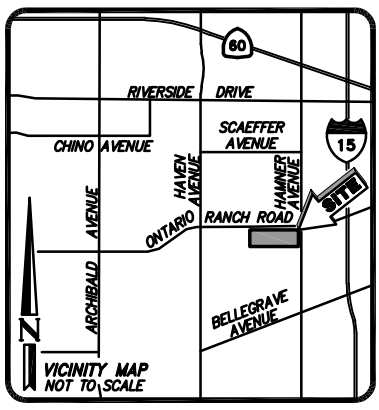
Improvements will include streets, storm drain, domestic water, recycled water, sewer, fiber optic conduit, street lights, neighborhood edge and parkway landscaping with irrigation. All landscape improvements will be consistent with current City approved drought measures.

The Developer has entered into a Subdivision Improvement Agreement with the City for Final Parcel Map No. 20465 and has posted adequate security to ensure construction of the required improvements. This map meets all conditions of the Subdivision Map Act and the Ontario Municipal Code and has been reviewed and approved by the City Engineer.

EXHIBIT "A"

PARCEL MAP NO. 20465
10 NUMBERED PARCELS





LEGEND

- PARCEL MAP NO. 20465
- RIGHT-OF-WAY LINE
- UNDERLYING LOT LINE
- SECTION LINE
- CENTER LINE
- AREA TO BE QUITCLAIMED

N

SCALE: 1"=200'
SHEET 1 OF 1

EXHIBIT "A"
PLAT
CITY OF ONTARIO, CALIFORNIA

DRC Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning
160 S. Old Springs Road
Suite 210
Anaheim Hills, CA 92808
(714) 685-6860

L:\2020\20-717 Wood Ontario Gateway\Exh\Map Exhibit\20-717exh101 - Map Exhibit.dwg; Aug 15, 2024 - 3:37pm

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT, IMPROVEMENT SECURITY, AND FINAL PARCEL MAP NO. 20465, LOCATED AT THE SOUTHWEST CORNER OF ONTARIO RANCH ROAD AND HAMNER AVENUE

WHEREAS, Tentative Parcel Map No. 20465 submitted for approval by The Ranch at Model Colony LLC, a Delaware Limited Liability Company, was approved by the Planning Commission of the City of Ontario on June 27, 2023; and

WHEREAS, Tentative Parcel Map No. 20465 consists of 10 numbered lots being a subdivision of Parcel 1 of Certificate of Compliance No. CC21-001, recorded July 9, 2021 as Document No. 2021-0310165, of official records, together with that portion of Ontario Ranch Road per document recorded _____, 2024 as Document No. 2024-_____ of official records, both in the office of the County Recorder of San Bernardino County; and

WHEREAS, to meet the requirements established as prerequisite to final approval of Parcel Map No. 20465, The Ranch at Model Colony LLC, a Delaware Limited Liability Company has offered the Subdivision Improvement Agreement together with good and sufficient improvement security, in conformance with the City Attorney's approved format, for approval and execution by the City; and

WHEREAS, the requirement for the preparation of Covenants, Conditions and Restrictions (CC&R's), approved by the City Attorney's Office, to ensure the right to mutual ingress and egress and continued maintenance of common facilities by the commonly affected property owners has been deferred to a date that coincides with the recordation of the subject Parcel Map.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ontario, California, as follows:

1. That said Subdivision Improvement Agreement be, and the same is, approved and the City Manager is authorized to execute same on behalf of said City, and the City Clerk is authorized to attest thereto; and

2. That said Improvement Security is accepted as good and sufficient, subject to approval as to form and content thereof by the City Attorney; and

3. That Final Parcel Map No. 20465 be approved and that the City Clerk be authorized to execute the statement thereon on behalf of said City.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October 2024.

_____
PAUL S. LEON, MAYOR

ATTEST:

_____
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO LEGAL FORM:

_____
BEST, BEST & KREIGER, 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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Ontario
303 East "B" Street
Ontario, CA 91764
Attn: City Engineer

(Exempt from Filing Fees – Government Code § 6103)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT

FOR COMPLETION OF PUBLIC IMPROVEMENTS

PARCEL MAP NO. 20465

between

THE CITY OF ONTARIO

a California municipal corporation

and

THE RANCH AT MODEL COLONY, LLC

a Delaware Limited Liability Company

SUBDIVISION IMPROVEMENT AGREEMENT
FOR COMPLETION OF PUBLIC IMPROVEMENTS

PARCEL MAP NO. 20465

I. PARTIES AND DATE

This Subdivision Improvement Agreement for the Completion of Public Improvements ("Agreement") is entered into as of this 17th day of September, 2024, by and between the City of Ontario, a California municipal corporation ("City") and The Ranch at Model Colony, LLC, a Delaware Limited Liability Company, with its principal office located at 2950 Airway Avenue, Unit A9, Costa Mesa, CA 92626 ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

II. RECITALS

A. Developer's tentative parcel map for real property located within City, a legal description of which is attached hereto as Exhibit "A" ("Property"), was conditionally approved by the Ontario Planning Commission on June 27, 2023. The tentative parcel map is identified in City records as Tentative Parcel Map No. 20465 ("Map").

B. Developer has not completed all of the work or made all of the public improvements required by the City's Municipal Code, the Subdivision Map Act (California Government Code section 66410, *et seq*.) ("Map Act"), the conditions of approval for the Map, or other ordinances, resolutions, or policies of City requiring construction of improvements in conjunction with the subdivision of land.

C. Pursuant to the City's Municipal Code and the applicable provisions of the Map Act, Developer and City enter into this Agreement for the timely construction and completion of the public improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for the Map.

D. Developer's execution of this Agreement and the provision of the security are made in consideration of City's approval of the final Map for the Property.

III. TERMS

1.0 Effectiveness. This Agreement shall not be effective unless and until all four of the following conditions are satisfied: (a) Developer provides City with security of the type and in the amounts required by this Agreement; (b) Developer executes and records this Agreement in the Recorder's Office of the County of San Bernardino; (c) the approving body per the Ontario Development Code approves the final map for the Property; and (d) Developer records the final map for the Property in the Recorder's Office of the County of San Bernardino. If any of the above described conditions are not satisfied, this Agreement shall automatically terminate without need of further action by either City or Developer, and Developer may not thereafter record the final map for the Property.

1.1 Definitions. For purposes of enforcing this Agreement, the term "City" shall include, but shall not be limited to, City Council, Public Works Director, City Engineer, Community Development Director, Building Official, or any of their authorized representatives. City shall have the sole and absolute discretion to determine which public body, public official, or public employee may act on behalf of City for any particular purpose.

2.0 Public Improvements. Developer shall construct or have constructed at its own cost, expense, and liability all improvements required by City as part of the approval of the Map, including, but not limited to, all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities as shown in detail on the plans, profiles, and specifications which have been prepared by or on behalf of Developer for the Map ("Public Improvements"). The Public Improvements are more specifically described in Exhibit "B," which is attached hereto and incorporated herein by this reference. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any utility system or public improvement in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such utility system or public improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

2.1 Prior Partial Construction of Public Improvements. Where construction of any Public Improvements has been partially completed prior to the execution of this Agreement, Developer agrees to complete such Public Improvements or assure their completion in accordance with this Agreement.

2.2 Permits; Notices; Utility Statements. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. Prior to commencing any work, Developer shall file a written statement with the City Clerk and the City Engineer, signed by Developer and each utility that will provide utility service to the Property, attesting that Developer has made all deposits legally required by the utility for the extension and provision of utility service to the Property.

2.3 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any Public Improvement until all plans, specifications, estimates, and bonds for such Public Improvement have been submitted to and approved by the City Engineer, or his/her authorized designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the Public Improvements shall be prepared in accordance with all

applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements. The Public Improvements shall be completed in accordance with all approved maps, conditions, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications, and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to Improvements. The Public Improvements in Exhibit "B" are understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

2.7 Superintendence by Developer. Developer shall require each contractor and subcontractor to have a competent foreperson on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing work on the Public Improvements. Before starting work on the Public Improvements, each contractor and subcontractor shall submit in writing the name of the proposed foreperson, who shall be subject to the review and approval of City. Following approval by City, each foreperson shall be present at the work site at all times that any work is in progress and at any time that any employee of the contractor or subcontractor is present at the work site. The Developer shall employ a competent construction manager that is responsible for the entire work. Each contractor or subcontractor shall contractually report to the construction manager, either directly or through a subcontract. The construction manager shall be immediately available by phone during hours when construction is in progress and shall be available in person within two hours when requested by the City. The construction manager shall coordinate the work such that construction and the associated inspection happen in an efficient manner. Should a contractor or subcontractor desire to change its foreperson, it shall provide the information specified above and obtain City's prior written approval. City, in its sole and absolute discretion, may require any contractor or subcontractor to replace its foreperson provided that City gives the contractor or subcontractor at least forty-eight hours written notice.

Developer shall, at all times, enforce strict discipline and good order among its employees and those of its subcontractors and shall not employ any unfit person or anyone not skilled in the

assigned task. If any person employed by, the Developer, a contractor or subcontractor fails or refuses to carry out the directions of the City or appears to the City, in its sole and absolute discretion, to be incompetent or to act in a disorderly or improper manner, such person shall be removed from the project immediately upon request by the City, and such person shall not again be employed on the work. Such removal shall not be the basis for any claim of compensation or damages against the City.

In addition, Developer shall maintain an office with a telephone, and Developer or a person authorized to make decisions and to act on Developer's behalf in Developer's absence shall be available to be on the job within three (3) hours of being called at such office by the City, during the hours of 9:00 a.m. through 5:00 p.m., Monday through Friday, or any other day or time when work is being performed on the Public Improvements. Developer shall also provide City with a telephone number, at which Developer, or its representative, shall be available twenty-four (24) hours a day in the event of an emergency.

3.0 Maintenance of Public Improvements and Landscaping. City shall not be responsible or liable for the maintenance or care of the Public Improvements until City approves and accepts them. City shall exercise no control over the Public Improvements until accepted. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released.

Maintenance shall include, but shall not be limited to: repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. Developer shall cause the sweeping of streets to occur weekly at a minimum. Developer shall perform additional street sweeping work as necessary depending on construction activities or as required by, and at the direction of, the City Engineer. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this Section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

3.1 Landscaping and Existing Irrigation Systems. Developer shall plant and maintain parkway trees and landscaping as provided in Section 10-2.07 of the City Municipal Code, and as directed by the Public Facilities Department. The Developer shall also be responsible for the replacement, relocation or removal of any component of any irrigation water system in conflict with the construction or installation of the Public Improvements. Such replacement, relocation or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such water system.

4.0 Construction Schedule. Unless extended pursuant to Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements within twelve (12) months following approval of the final Map. At least fifteen (15) days prior to the commencement of such work, Developer shall notify the City Engineer in writing of the date fixed by Developer for commencement of the work.

4.1 Extensions. Time is of the essence with regard to this Agreement. The City may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. Requests for extension of time shall be in writing and shall be delivered to City in the manner hereinafter specified for service of notices. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on City. It is understood that by providing the security required by this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer and waive any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defenses of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates approved by City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

4.2 Accrual of Limitations Period. Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete required or agreed upon Public Improvements.

5.0 Grading. Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements or development of the Property shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements including, without limitation, City's grading regulations, the National Pollutant Discharge Elimination Systems (NPDES), and stormwater regulations thereunder as administered by the State Water Resources Control Board and Regional Water Quality Control Boards. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in this Agreement. Developer further agrees that the indemnification as set forth in this Agreement shall extend to and include any and all grading contemplated by this Agreement, including but not limited to, any partial or rough grading work.

6.0 Encroachment Permit. Developer shall obtain any necessary encroachment permits from the office of the City Engineer prior to start of any work within the public rights-of-way, and the Developer shall conduct such work in full compliance with the regulations and other requirements contained therein. The Developer shall be responsible for the removal of all loose rock and other debris from the public rights-of-way resulting from work done on adjacent property

or within said rights-of-way. Work done within existing public rights-of-way shall be diligently pursued to completion with minimal obstruction or inconvenience to the public and pursuant to the terms of the encroachment permit and any applicable federal, state or local laws, rules or regulations. The City shall have the right to complete any and all work in the event of unjustified delay in completion, and to recover all costs and expenses incurred from the Developer or its surety by any lawful means. Non-compliance with the terms of the encroachment permit or any applicable federal, state or local laws, rules or regulations may result in the City's cessation of the work and assessment of any applicable penalties or other remedies. Prior to, and as a condition precedent to, the issuance of any required encroachment permit(s), Developer shall provide to the City evidence satisfactory to the City of: (1) the certificate(s), endorsement(s), or policy(ies) of insurance as required by this Agreement; and (2) any and all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work.

7.0 Utilities. Developer shall assume all costs for and shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within the Property in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules, and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground, unless otherwise approved by the City Council or the Planning Commission of the City, or by any other state or federal laws or regulations.

8.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to fees for the checking, filing, and processing of improvement plans and specifications and for inspecting the construction of the Public Improvements. These fees must be paid in full prior to approval of the final map and improvement plans. The fees referred to above are not necessarily the only City fees, charges, or other costs that have been or will be imposed on the subdivision and its development, and this Agreement shall in no way exonerate or relieve Developer from paying such other applicable fees, charges, and/or costs.

9.0 City Inspection of Public Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

10.0 Acceptance of Improvements; As-Built or Record Drawings. If the Public Improvements are properly completed by Developer and approved by the City Engineer, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, the City Council shall be authorized to accept the Public Improvements. The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement. Upon the total or partial

acceptance of the Public Improvements by City, the City Clerk shall file with the Recorder's Office of the County of San Bernardino, a notice of completion for the accepted Public Improvements in accordance with California Civil Code Section 9204, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefor. Title to and ownership of the Public Improvements constructed under this Agreement shall vest absolutely in City upon completion and acceptance in writing of such Public Improvements by City. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements. Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

11.0 Default; Notice; Remedies.

11.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs and expenses.

11.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none, of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

11.3 Notice of Violation; Stop Work Order. If City determines that there is a violation of applicable federal, state or local laws, ordinances, regulations or other requirements, or the terms and conditions of this Agreement, the City and/or City Engineer may issue a Notice

of Violation and Demand for Compliance and/or a Stop Work Order. The City may declare the Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation. Developer shall comply with the Notice of Violation and/or Stop Work Order and shall substantially commence the work required to remedy the default or violation with the time specified in the Notice of Violation. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City and/or City Engineer may provide the Notice of Violation verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof.

11.4 Other Remedies. No action by City pursuant to this Section of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

11.5 Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

12.0 Warranty and Guarantee. Developer hereby warrants and guarantees all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

13.0 Security.

13.1 Prior to execution of this Agreement, Developer shall provide City with sufficient security in the amounts and under the terms set forth below ("Security"). Nothing in this Section is intended to prevent City, in its sole discretion, from requiring Developer to submit, or prevent Developer from submitting, security in a form other than bonds that may be allowed under California Government Code Section 66499, et seq. and the City's Municipal Code, and acceptable

to City. The amount of the Security shall be based on the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all public landscaping ("Estimated Costs"). If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this Section shall in no way limit or modify Developer's indemnification obligation under this Agreement. Security shall be on forms approved by the City for the purposes and amounts as follows:

13.1.1 Performance Bond. To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City security in the amount of **TWO MILLION, TWO HUNDRED THIRTY-SEVEN THOUSAND, ONE HUNDRED SEVENTEEN DOLLARS AND FIFTY-ONE CENTS** (**$2,237,117.51**), which sum shall be not less than one hundred percent (100%) of the Estimated Costs (Bonds attached in Exhibit "C" and Engineering Cost Estimate attached in Exhibit "B"). The City may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the Public Improvements are accepted by City, as provided herein, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Map, and the total remaining security is not less than twenty-five percent (25%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period (as defined above), or any extension thereof as provided in this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for the Map.

13.1.2 Labor & Material Bond. To secure payment to the contractor and subcontractors, laborers, material men and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City security in the amount of **TWO MILLION, TWO HUNDRED THIRTY-SEVEN THOUSAND, ONE HUNDRED SEVENTEEN DOLLARS AND FIFTY-ONE CENTS** (**$2,237,117.51**) , which sum shall not be less than one hundred percent (100%) of the Estimated Costs (Bonds attached in Exhibit "C" and Engineering Cost Estimate attached in Exhibit "B").. The security provided under this subsection may be released by written authorization of the City Engineer after one (1) year or within the time limits established in California Government Code section 66499.7 from the date City accepts the final Public Improvements at the discretion of City. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

13.1.3 Monument Security. To guarantee payment by the Developer to the engineer or surveyor whose certificate appears on the final map for the setting of all subdivision boundaries, lot corners and street centerline monuments, as well as the furnishing of all centerline tie notes to the City, prior to the City's execution of this Agreement, Developer shall deposit cash with the City in the amount of **FIVE THOUSAND DOLLARS** (**$5,000**). Said cash deposit may be released after receipt by the City of the centerline tie notes and written acknowledgment of payment in full from the engineer or surveyor.

13.1.4 Warranty Bond. To provide in the amount of ten percent (10%) of the Estimated Costs of the Work to guarantee and warrant the Work, for a period of one year following its completion and acceptance, against any defective work or labor done, or defective materials furnished, as required by California Government Code Section 66499.3(d). Any unused portion of the guarantee and warranty security shall be released one year after acceptance of the required improvements by the City Council.

13.2 Bond/Surety Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of no less than A:VIII, shall be authorized to do business in the State of California, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorneys' fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

13.3 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "C," unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

14.0 Lien. To secure the timely performance of Developer's obligations under this Agreement, including those obligations for which security has been provided pursuant to this Agreement, Developer hereby creates in favor of City a lien against all portions of the Property not dedicated to City or some other governmental agency for a public purpose. As to Developer's default on those obligations for which security has been provided pursuant to this Agreement, City shall first attempt to collect against such security prior to exercising its rights as a contract lienholder under this Section.

15.0 Indemnification. Developer shall defend (with counsel reasonably satisfactory to the City Attorney), indemnify, and hold harmless City, its elected officials, officers, employees, agents, and volunteers from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement and shall not be restricted

to insurance proceeds, if any, received by City, its elected officials, officers, employees, agents, or volunteers.

16.0 Insurance.

16.1 Time for Compliance. Developer 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, Developer shall not allow any contractor to commence work on any contract until it has provided evidence satisfactory to the City that the contractor 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.

16.2 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 Developer, 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, Developer agrees to amend, supplement or endorse the policies to do so.

16.2.1 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.

16.2.2 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.

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

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

16.3.1 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 Developer; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Developer 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.

16.3.2 Automobile Liability: (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.

16.3.3 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.

16.4 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.

16.5 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 Developer or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Developer hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its contractors.

16.6 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.

16.7 Evidence of Insurance. The Developer, 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, Developer 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.

16.8 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.

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

16.10 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.

16.11 Additional Insurance Provisions

16.11.1 The foregoing requirements as to the types and limits of insurance coverage to be maintained by Developer, 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 Developer pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

16.11.2 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 Developer.

16.11.3 The City may require the Developer to provide complete copies of all insurance policies in effect for the duration of the Project.

16.11.4 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.

16.11.5 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 Developer from liability in excess of such coverage, nor shall it limit the Developer'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.

16.11.6 Developer shall report to the City, in addition to Developer's insurer, any and all insurance claims submitted by Developer in connection with this Agreement.

17.0 Signs and Advertising. Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the removal by City of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer. Developer shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

18.0 Relationship Between the Parties. The Parties hereby mutually agree that neither this Agreement, any map related to the Property, nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer, its contractors, or its subcontractors an agent, contractor or subcontractor of City.

19.0 General Provisions.

19.1 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.

19.2 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.

19.3 Construction; References; Captions. It being agreed the Parties or their agents have participated 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 Developer include all personnel, employees, agents, and contractors and subcontractors of Developer, 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.

19.4 Notices. All notices to be given hereunder shall be in writing and may be made either by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses listed below, but each party may change the address by written notice in accordance with this Section. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

CITY:	**DEVELOPER:**
City of Ontario	_____
Engineering Department	_____
303 East "B" Street	_____
Ontario, CA 91764	Attn: _____
Attn: City Engineer	

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

19.6 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, either written or oral, express or implied. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

19.7 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by the Developer without the prior written consent of the City.

19.8 Waiver. City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution, or performance of the Public Improvements or this Agreement.

19.9 Assignment or Transfer of Agreement. Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecate, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement. In the event that City consents in writing to such an assignment, any assignee, hypothecate, or transferee shall expressly assume Developer's obligations hereunder by a written agreement in a form, and containing such security, as is reasonably acceptable to City.

The agreement, hypothecation, or transfer shall be to the satisfaction of the City Attorney and shall include provisions requiring the assignee to post bonds or submit another form of financial security, satisfactory to City and approved by the City Attorney, to guarantee construction of the Public Improvements. The agreement shall survive the recordation of the Final Map and

shall be recorded against each of the proposed lots to inform successors and assigns of the required Public Improvements to be constructed and their time frame for construction.

Following any permitted assignment, hypothecation, or transfer of the Public Improvements as set forth in this Section, City shall release Developer from its obligations so assigned and shall release to Developer any bonds or other security posted to secure the Public Improvements so assigned; provided, however, that City shall not release any security or undertakings given to secure the performance of any of the Public Improvements not assigned, hypothecated, or transferred.

19.10 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This Section shall not be construed as an authorization for any Party to assign any right or obligation.

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

19.12 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.

19.13 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of San Bernardino, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

19.14 Attorneys' Fees and Costs. If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all costs and expenses incurred by the prevailing party, including actual attorneys' fees ("Costs"). Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Costs. This Section shall survive the termination or expiration of this Agreement.

19.15 Acquisition and Dedication of Easements or Rights-of-Way. If any of the Public Improvements required by this Agreement are to be constructed on land not within the subdivision or an already-existing public right-of-way, no construction or installation shall be commenced before:

19.15.1 The irrevocable offer of dedication or conveyance to City of appropriate rights-of-way, easements, or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Public Improvements or work; or

19.15.2 The issuance of an order of possession by a court of competent jurisdiction pursuant to California's Eminent Domain Law. Developer shall comply in all respects with any such order of possession.

Nothing in this paragraph shall be construed as authorizing or granting an extension of time to Developer for completion of the Public Improvements.

19.16 Prevailing Wages. Developer has been alerted to the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising from any decision not to pay prevailing wages for work required by this Agreement.

19.17 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

CITY OF ONTARIO
a California Municipal Corporation

By:_____
Scott Ochoa, City Manager

THE RANCH AT MODEL COLONY
a Delaware Limited Liability Company

By:_____
Signature

_____
Print Name

_____
Title

ATTEST:

By:_____
Sheila Mautz, City Clerk

By:_____
Signature

_____
Print Name

_____
Title

APPROVED AS TO FORM:

By:_____
Best Best & Krieger, City Attorney

NOTE: DEVELOPER'S AND SURETY'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

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 _____ 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:_____ (seal)

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 _____ 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:_____ (seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

PARCEL MAP NO. 20465
IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

BEING A SUBDIVISION OF PARCEL 1 OF CERTIFICATE OF COMPLIANCE NO. CC21-001, RECORDED JULY 9, 2021 AS DOCUMENT NO. 2021-0310165, OF OFFICIAL RECORDS, TOGETHER WITH THAT PORTION OF ONTARIO RANCH ROAD PER SEPARATE INSTRUMENT OF OFFICIAL RECORDS, BOTH IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT "B"

LIST OF PUBLIC IMPROVEMENTS

PARCEL MAP NO. 20465

Developer shall perform all work and furnish all materials necessary, in the opinion of the City Engineer and on his/her order, to complete the following Public Improvements in accordance with the plans and specifications on file with City or with any changes required or ordered by the City Engineer which, in his/her opinion, are necessary or required to complete this work.

Developer is required to perform the following Public Improvements under this Agreement:

[ENGINEERING COST ESTIMATE ATTACHED BEHIND THIS PAGE]

EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

PARCEL MAP NO. 20465

As evidence of understanding the provisions contained in this Agreement, and of Developer's intent to comply with same, Developer has submitted the below described security in the amounts required by this Agreement, and has affixed the appropriate signatures thereto:

FAITHFUL PERFORMANCE BOND: **$ 2,237,117.51**

Surety:_____
Attorney-in-fact:_____
Address:_____
_____
_____
_____

PAYMENT BOND: **$ 2,237,117.51**

Surety:_____
Attorney-in-fact:_____
Address:_____
_____
_____
_____

GUARANTEE AND WARRANTY SECURITY BOND: **$ 223,711.75**

To be posted upon completion of the Public Improvements by Developer and approval and acceptance by the City.

CASH MONUMENT SECURITY: **$ 5,000**

Amount deposited per Cash Receipt No. _____
Date: _____

[BONDS ATTACHED BEHIND THIS PAGE]

CITY OF ONTARIO

FAITHFUL PERFORMANCE BOND FOR
SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: PARCEL MAP NO. 20465

WHEREAS, the conditions placed on the tentative parcel map for Parcel Map No. 20465 require that the City of Ontario, a municipal corporation of the State of California ("CITY"), by its City Council, and The Ranch at Model Colony, LLC, a Delaware Limited Liability Company ("PRINCIPAL") enter into an agreement ("Agreement") whereby the PRINCIPAL agrees to install and complete certain designated public improvements ("Public Improvements"); and

WHEREAS, the PRINCIPAL is required under the terms of the Agreement to furnish a bond, in a form and from a surety acceptable to the CITY, for the faithful performance of the Agreement.

NOW, THEREFORE, PRINCIPAL and _____ ("SURETY"), a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto CITY in the sum of **TWO MILLION, TWO HUNDRED THIRTY-SEVEN THOUSAND, ONE HUNDRED SEVENTEEN DOLLARS AND FIFTY-ONE CENTS** (**$2,237,117.51**), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Agreement, 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 PRINCIPAL, 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, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, 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 to indemnify and save harmless CITY, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed 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.

This bond is executed and filed to comply with Section 66499, *et seq.*, of the Government Code of California and the CITY's Municipal Code as security for performance of the Agreement and security for the one-year guarantee and warranty of the Public Improvements.

SURETY, by executing this bond, warrants and alleges that it has read the Agreement, or by signing this bond shall be deemed to have read the Agreement, and knows the contents and all provisions contained therein, and shall be bound by each and every term, condition, and provision contained therein.

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on _____, 20___.

_____	_____
Name of Surety	Principal
	By:_____
	Title: _____
_____	and
Mailing Address of Surety	
_____	By:_____
Telephone No. of Surety	Title: _____

By: _____
Attorney in Fact

POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

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 _____ 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:_____ (seal)

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 _____ 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:_____ (seal)

CITY OF ONTARIO

LABOR & MATERIAL BOND FOR
SUBDIVISION IMPROVEMENT AGREEMENT

PROJECT: PARCEL MAP NO. 20465

WHEREAS, the conditions placed on the tentative parcel map for Parcel Map No. 20465 require that the City of Ontario, a municipal corporation of the State of California ("CITY"), by its City Council, and The Ranch at Model Colony, LLC, a Delaware Limited Liability Company ("PRINCIPAL") enter into an agreement ("Agreement") whereby the PRINCIPAL agrees to install and complete certain designated public improvements ("Public Improvements"); and

WHEREAS, under the terms of the Agreement, PRINCIPAL is required before entering upon the performance of the work, to file a good and sufficient payment bond with the CITY to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

NOW, THEREFORE, PRINCIPAL and _____ ("SURETY"), a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto CITY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the PRINCIPAL, the sum of **TWO MILLION, TWO HUNDRED THIRTY-SEVEN THOUSAND, ONE HUNDRED SEVENTEEN DOLLARS AND FIFTY-ONE CENTS** (**$2,237,117.51**), said sum being not less than 100% of the total cost of the Public Improvements under the terms of the Improvement Agreement, 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 PRINCIPAL, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said SURETY will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's

fees, incurred by CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

This bond is executed and filed to comply with Section 66499, et seq., of the California Government Code and the City's Municipal Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with section 9000) of Part 6 of Division 4 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed 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.

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on _____, 20___.

_____	_____
Name of Surety	Principal
	By:_____
	Title: _____
_____	and
Mailing Address of Surety	
_____	By:_____
Telephone No. of Surety	Title: _____

By: _____
Attorney in Fact

POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

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 _____ 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.

[SEAL]

Signature_____

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 _____ 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:_____ (seal)

CITY OF ONTARIO

SUBDIVISION MAINTENANCE BOND
GUARANTEE AND WARRANTY SECURITY

PROJECT: PARCEL MAP NO. 20465

WHEREAS, the conditions placed on the tentative parcel map for Parcel Map No. 20465 require that the City Council of the City of Ontario, State of California, and The Ranch at Model Colony, LLC, a Delaware Limited Liability Company ("PRINCIPAL") enter into an agreement by which PRINCIPAL agrees to install and complete certain designated public improvements and to guarantee and warrant the work for a period of one year following its completion and acceptance ("Agreement"); and

WHEREAS, PRINCIPAL is required under the terms of the Agreement to furnish a bond to guarantee and warrant the work for a period of one year following its completion and acceptance against any defective work or labor done, or defective materials furnished, to comply with the terms of the Agreement.

NOW, THEREFORE, we, PRINCIPAL and _____ a _____, admitted and duly authorized to transact business under the laws of the State of California as surety ("SURETY"), are held and firmly bound unto the City of Ontario as obligee ("CITY"), in the penal sum of **TWO HUNDRED TWENTY-THREE THOUSAND, ONE HUNDRED SEVENTEEN DOLLARS AND SEVENTY-FIVE CENTS** (**$223,711.75**) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if PRINCIPAL, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, provisions in the said agreement and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless CITY, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations of this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications. The surety waives all rights of subrogation against CITY or any person employed by CITY.

IN WITNESS WHEREOF, this instrument has been duly executed by PRINCIPAL and SURETY above named, on _____, 20___.

_____	_____
Name of Surety	Principal
	By:_____
	Title: _____
_____	and
Mailing Address of Surety	
_____	By:_____
Telephone No. of Surety	Title: _____

By: _____
Attorney in Fact

POWER OF ATTORNEY REQUIRED. The Attorney-in-Fact (resident agent) who executes this bond on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond which it covers.

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 _____ 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:_____ (seal)

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 _____ 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:_____ (seal)

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Economic Development Prepared By: Charity Hernandez Staff Member Presenting: Jennifer McLain Hiramoto, Economic Development Director Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 15

SUBJECT: **A RESOLUTION APPROVING A FIRST AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND EUCLID INVESTMENT GROUP, LLC, WITH RESPECT TO APPROXIMATELY 1.19 ACRES OF LAND LOCATED AT THE SOUTHEAST CORNER OF D STREET AND LEMON AVENUE (APN'S: 1048-556-01, 1048-556-02, 1048-556-03, 1048-556-04, 1048-556-05, AND 1048-556-14)**

RECOMMENDATION: That the City Council consider and:

A. Adopt a Resolution approving a First Amendment to a Disposition and Development Agreement (on file with the Records Management Department) between the Euclid Investment Group, LLC.
B. Authorize the City Manager, or his designee, to sign all documents necessary to implement the Disposition and Development Agreement.

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

FISCAL IMPACT: The purchase price of $1,088,564, which represents fair market value, will remain unchanged.

BACKGROUND & ANALYSIS: In December of 2022, the City entered into a Disposition and Development Agreement ("DDA") with Euclid Investment Group, LLC ("Developer"), for the development of multifamily residential units located on approximately 1.19 acres of land, containing an area bordered by "D" Street to the north, Plum Avenue to the east, the Ovitt Family Community Library to the south, and Lemon Avenue to the west ("Development"). The Development will result in the construction of approximately 73 market rate rental housing units and consist of one and two-bedroom units. One-bedroom units range from 674-697 square feet, and two-bedroom units will range in size from 864-986 square feet. The project also includes surface parking and open space area for residents. The Development offers an opportunity to

continue Ontario's efforts to revitalize downtown Ontario with high-density residential units, which will in turn bring more pedestrians and visitors to create a vibrant downtown.

The Developer is currently developing the mixed-use project on the northeast corner of Euclid Avenue and C Street which they will own and manage. They also own and manage residential, mixed-use and office/commercial projects at various locations throughout Southern California.

Staff is recommending approval of the First Amendment which will allow for a slight adjustment to the schedule of performance, accelerating the sale of the property which will also permit project financing and commence of construction ahead of schedule. All other Developer duties and obligations, and City safety measures and rights, remain unchanged and in place under the terms of the original Agreement.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND EUCLID INVESTMENT GROUP, LLC FOR THE DEVELOPMENT OF REAL PROPERTY LOCATED AT THE SOUTHEAST CORNER OF D STREET AND LEMON AVENUE, APN'S: 1048-556-01, 1048-556-02, 1048-556-03, 1048-556-04, 1048-556-05, and 1048-556-14, IN ACCORDANCE WITH GOVERNMENT CODE SECTION 37350 ET. SEQ.

WHEREAS, the City and Euclid Investment Group, LLC, a Delaware limited liability company ("Developer") entered into that certain 2022 Disposition and Development Agreement (Southeast Corner of D Street and Lemon Avenue) dated December 6, 2022 (the "DDA") to purchase from the City and development of the approximately 1.19-acre property (APNs 1048-556-01, 1048-556-02, 1048-556-03, 1048-556-04, 1048-556-05, 1048-556-14), commonly known as 206-218 East D Street, Ontario, CA 91762, bounded by Lemon Avenue on the west, D Street on the north, Plum Avenue on the east, and the Ovitt Family Community Library to the south, in Ontario, California (the "Property"); and

WHEREAS, for the purposes of expediting the acquisition of the Property, Developer has requested of the City, and the City is willing to agree, to accelerate the closing date of the Escrow (as assumed by Developer) and to waive and release Developer from the conditions precedent in the DDA that otherwise would have required the Escrow to close only after entitlements have been approved by the City, the Developer ready to pull building permits, and the Developer demonstrate proof financing for the entire project prior, as more particularly set forth in the First Amendment to the DDA (the "Amended DDA").

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA DOES HEREBY RESOLVE 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. Approval of the Amended DDA. The City hereby approves the Amended DDA, in substantially the form attached to this Resolution as Exhibit "A," subject to any non-substantive revisions that do not increase the City's liability and are approved by the City Attorney; authorizes the City Manager to sign and enter into the Amended DDA; and directs the City Manager to perform the obligations of the City under the Amended DDA.

SECTION 3. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect

without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council declares that the City Council would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 4. Effective Date. This Resolution shall become effective immediately 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 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT “A”

First Amendment to the
Disposition and Development Agreement

[attached behind this cover page]

FIRST AMENDMENT
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Southeast Corner of D Street and Lemon Avenue)

This FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT ("**Amendment**") is dated as of October 1, 2024 ("**Date of Amendment**"), for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation ("**City**"), and Euclid Investment Group, LLC, a Delaware limited liability company ("**Developer**"). City and Developer are sometimes referred to in this Amendment, each individually, as a "**Party**," or collectively, as the "**Parties**."

RECITALS

This Amendment is entered into with reference to the following recitals ("**Recitals**"):

A. City and Developer entered into that certain 2022 Disposition and Development Agreement (Southeast Corner of D Street and Lemon Avenue) dated December 6, 2022 (the "**DDA**") with respect to Prior Developer's purchase from the City and development of the approximately 1.19-acre property (APNs 1048-556-0l, 1048-556-02, 1048-556-03, 1048-556-04, 1048-556-05, 1048-556-14), commonly known as 206-218 East D Street, Ontario, CA 91762, bounded by Lemon Avenue on the west, D Street on the north, Plum Avenue on the east, and the Ovitt Family Community Library to the south, in Ontario, California (the "**Property**"), which Property is more fully described in the DDA; and

B. For the purposes of expediting the acquisition of the Property, Developer has requested of the City, and the City is willing to agree, to accelerate the closing date of the Escrow (as assumed by Developer) and to waive and release Developer from the conditions precedent in the DDA that otherwise would have required the Escrow to close only after entitlements have been approved by the City, the Developer ready to pull building permits, and the Developer demonstrate proof financing for the entire project prior, as more particularly set forth in this Amendment; and

C. Developer has represented to the City that Developer is considering revisions to the project under the DDA, and Developer also has represented that it will either proceed with the currently entitled project or will have submitted a complete application for revised entitlements and an updated DDA within six months of the closing of Escrow.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the City, Agency, and Developer, the Parties agree as follows:

TERMS OF AMENDMENT

1. INCORPORATION OF RECITALS. The Recitals of fact set forth preceding this Amendment are true and correct and are incorporated into this Amendment in their entirety by this reference.

2. CAPITALIZED TERMS. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings given to them in the DDA.

3. RATIFICATION OF CONSENT. The City Council hereby ratifies the Assignment Agreement and the assignments from Prior Developer to Developer, as more particularly described the Assignment Agreement, as a valid and binding action by the City.

4. WAIVER AND RELEASE BY THE PARTIES FROM CERTAIN OBLIGATIONS UNDER THE DDA PRIOR TO CLOSING ESCROW. Notwithstanding Sections 3.2.1 [Developer's Conditions to Closed of Escrow] and subsections 3.2.1.7, 3.2.1.8, 3.2.1.9 therein, notwithstanding Sections 3.2.2 [City's Conditions to Close Escrow] and subsections 3.2.2.4, 3.2.2.6, 3.2.2.7, 3.2.2.8, 3.2.2.9, 3.2.2.10, and notwithstanding any other provisions in the DDA to the contrary, the Close of Escrow and Escrow Closing Date may occur: (a) prior to Developer having obtained all of the Entitlements, (b) prior to Developer delivering to the City and the City accepting the Financial Commitment(s) applicable to the Property, (c) prior to Developer receiving City's approval of the Construction Loan and Construction Lender applicable to the Property, and (d) prior to City having issued approved Building Permits or having stamped and issued plans in "Ready to Issue Permits" status.

5. REVISED ESCROW CLOSING DATE. Notwithstanding Section 3.6 or any other provisions in the DDA to the contrary, the Escrow Closing Date shall occur no later than October 15, 2024.

6. EFFECT OF AMENDMENT. Except as expressly provided in this Amendment, all of the terms, conditions, and provisions set forth in the DDA shall remain in full force and effect. From and after the Date of Amendment, wherever the term "Agreement" or "DDA" appears in the DDA, it shall be read and understood to mean the DDA, as amended by this Amendment. In the event there is any conflict between the terms of this Amendment and the terms of the DDA, the terms of this Amendment shall govern and control.

7. EXECUTION IN COUNTERPARTS. This Amendment may be executed in counterparts, each of which, when all Parties hereto have signed this Amendment, shall be deemed an original. This Amendment may be executed and delivered by facsimile or email transmission of a file in .pdf or similar format or via electronic signatures (using platforms including, but not limited to, DocuSign and Digi-Ink) and, upon such delivery, each signature shall be deemed to have the same effect as if the original signature had been delivered.

(Signatures on Following Pages)

SIGNATURE PAGE
TO
FIRST AMENDMENT
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Downtown D Block)

CITY:

THE CITY OF Ontario
a California municipal corporation

Dated:_____, 2024

By:_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney

(Signatures continue on next page)

SIGNATURE PAGE
TO
FIRST AMENDMENT
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Downtown D Block)

DEVELOPER:

Euclid Investment Group, LLC, a Delaware limited liability company

By: Hutton Ontario, Inc.,
a California corporation
its Manager Member

Dated:_____, 2024

By:_____
Scot Felix, President

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Police Department Prepared By: Heather M Lugo Department: Prepared By: Heather M Lugo Staff Member Presenting: Mike Lorenz, Chief of Police Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 16

SUBJECT: **AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH HEXAGON SAFETY & INFRASTRUCTURE FOR THE PURCHASE OF A NEW POLICE RECORDS MANAGEMENT SYSTEM (RMS)**

RECOMMENDATION: That the City Council authorize the City Manager, or his designee, to execute Amendment No. 1 to the Professional Services Agreement with Intergraph Corporation, a Delaware corporation, by and through its Hexagon Safety & Infrastructure division, with its principal place of business in Madison, Alabama, for the purchase of the public safety records management system (RMS) OnCall Records for software and recurring annual maintenance fees, increasing the authorized contract amount by $3,239,580 for a total contract not-to-exceed amount of $8,425,696.

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: Hexagon software license, recurring maintenance and professional services, travel, training, and project contingency required to transition the City' s records management system (RMS) to Hexagon On Call Records. The proposed Amendment to the Professional Services Agreement increases the authorized contract amount by $3,239,580 for a total not-to-exceed contract amount of $8,425,696. The fiscal year 2024-25 Adopted Budget includes appropriations in the Information Technology Fund for the RMS project. If approved, appropriations will be added to the future years' budgets consistent with the annual budget adoption process.

BACKGROUND & ANALYSIS: In February 2024, the City of Ontario contracted with Hexagon to purchase and implement the public safety I/CAD solution to upgrade and enhance the computer-aided dispatch (CAD) system. To ensure data continuity, it was imperative to select a records management system that would integrate easily and efficiently. For this reason, Hexagon Oncall Records was selected as the software to replace the current RMS system.

The current RMS was acquired in 2004 as a software suite with CAD. At the time, the product was innovative and customizable. After almost twenty (20) years of service to the Police department,

the system is now obsolete with an end of life within the next few years. It is outdated and runs on older equipment that does not quickly scale as the demand for updated reporting increases. RMS is an essential system that manages records and reports for the entire Police Department. It allows Records, Administrative Staff, and Officers to input, revise, access, and review reports. This is a critical component of the department's daily operations. The output reports are provided to the courts and citizens when requested. The current RMS system has not been upgraded since its purchase and installation in 2004. With emerging technology and all new software purchases by the Police Department, purchasing and upgrading the current system is essential. The new RMS system will provide the ability to meet new reporting requirements by the Department of Justice (DOJ), which the current RMS system cannot meet. Staff requests the City Council approval to amend the Agreement to increase the not-to-exceed amount to $8,425,696 with no change to the Agreement term.

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

PAUL S. LEON
MAYOR

DEBRA PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
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 INTERGRAPH CORPORATION

1. Parties and Date.

This **Amendment No. 1** to the Professional Services Agreement (as defined herein) is made and entered as of _____, by and between the City of Ontario ("City") and **INTERGRAPH CORPORATION, through its Hexagon Safety, Infrastructure & Geospatial division ,** a Delaware Corporation, with its principal place of business at 305 Intergraph Way, Madison, Alabama, 35758 ("Consultant" or "Hexagon"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. Recitals.

2.1 Agreement. The City and Consultant have entered into a Professional Services Agreement for I/CAD Software and Recurring Maintenance, Implementation and Training services dated **February 16th, 2024** ("Agreement").

2.2 Amendment Purpose. The City and Consultant desire to amend the Agreement to include **additional Scope of Work and Compensation**.

2.3 Amendment Authority. This **Amendment No. 1** is authorized pursuant to **Section 3.7.16** of the Agreement.

3. Terms.

3.1 Amendment. **Section 3.1.1** of the Agreement is hereby amended to include additional services to read as follows:

> **3.1.1 General Scope of Services.** Under Order 1, Consultant promises and agrees to furnish to the City the professional services to perform Consultant's obligations and provide the software described in that certain Statement of Work from the original agreement as Exhibit "A" and implement a separate Subsystem, OnCall Records, which shall be a separate and a distinct Order from Order 1 and its optional Orders provided that Exhibit "F" (Maintenance Terms and Conditions) shall govern the provisioning of Maintenance Services for OnCall Records in Orders 12-14, incorporated herein by

reference attached hereto as Exhibit "H" ("Services"). The Orders shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto that are incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. To the extent a new law, rule, or regulations are promulgated after the Effective Date that materially affects the scope set forth in Exhibit "A", then the Parties will address such material change through a Change Order.'

The Agreement shall include Order 11. The scope of the RMS Order is fully contained within Exhibit "H" hereto (the "RMS Order"), which is added to the Agreement under a corresponding reference, and which is incorporated by reference herein. Orders 12-14 shall also be regarded as optional Orders.

The Table in Section 2A of the Agreement is supplemented with the following Table, which addresses the RMS Order and optional Orders pertaining to RMS.

Order Description	**Order Number**	**Base Agreement or Option**	**Applicable Exhibits**
Implementation and Licensure of OnCall Records	11	Base	E, E-1, E-2, and H
RMS Maintenance Year 2 (begins one year after Cutover)	12	Option	E, E-1, F, and H
RMS Maintenance Year 3	13	Option	E, E-1, F, and H
RMS Maintenance Year 4	14	Option	E, E-1, F, and H

3.2 Amendment. **Section 3.1.2** of the Agreement is hereby to include additional services to read as follows:

3.1.2 Optional Scope of Services. Order 1 and Order 11 are distinct of one another but contemplate similar scope in that they both include the Services and Software leading to the implementation of a specific Subsystem. References to Order 1 or "Services" in the Professional Services Agreement (omitting the Exhibits) applies *mutatis mutandis* to Order 11 provided that the Software is licensed to the City pursuant to Exhibit "E".

Exhibits "C" and "D" are unique to Order 1. With respect to Orders 11-14: (i) the compensation and fees to be paid associated with those Orders are included as an Attachment within Exhibit "H", and (ii) the payment milestones associated with Order 11 is included as an Attachment to Exhibit "H". The obligations in the Agreement pertaining to Exhibit "C" and "D" shall apply *mutatis mutandis* to the compensation and payment milestone attachment in Exhibit "H" as it pertains to Orders 11-14.

3.3 Amendment. **Section 3.2.1** of the Agreement is hereby amended in its entirety to read as follows:

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 "C" and Exhibit "H" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Eight Million Four Hundred Twenty-Five Thousand Six Hundred Ninety-Six Dollars and Zero Cents**

($8,425,696.00) 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.

To the extent the City exercises any or all option Orders, the City shall pay Hexagon all compensation due for the optional Order(s) as provided in Exhibit "C" and Exhibit "H" provided that the pricing set forth in the Quote for Maintenance Services shall apply in lieu of Exhibit "C" and Exhibit "H" in the event the City has purchased additional or different Software than is provided in Exhibit "C" and Exhibit "H" or in the event of a Lapse.

NOTE: Annual Maintenance or Subscription fees for software licenses at the quantities specified in Exhibit "C" cannot be increased more than 3% annually. The Parties acknowledge that if the City purchases additional software licenses beyond what is set forth in Exhibit "C" ("Additional Software") then total pricing of the Maintenance Order will be adjusted higher to account for the added software. However, the 3% escalation cap shall apply to subsequent years for the Additional Software in like fashion as provided for the Software (and quantities) listed in Exhibit "C".

3.4 Amendment. **Section 3.3.5** of the Agreement is hereby amended in its entirety to read as follows:

3.3.5 Consultant's Representative. **For both Order 1 and 11** Consultant hereby designates **Donno Cole, Director of Services and Delivery**, or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). For all Orders, to the extent they are exercised, the Consultant shall identify an account representative on all other Orders. Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement provided however the Consultant's Representative does not have the authority to execute amendments and change orders to 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. The Consultant's assigned Project Manager must be approved by the City and cannot be changed without written approval from the City. Upon an employee leaving the Consultant, and a new Project Manager being assigned, this Project Manager must still be approved by the City

3.5 Amendment. **Section 3.7.7** of the Agreement is hereby amended in its entirety to read as follows:

3.7.7 Entire Agreement. This Agreement together with Exhibits "A"-"H" and the Order Documents expressly described herein constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. The Parties agree and understand that, in the event of any conflict between the terms of this Agreement and the End User License Agreement, the terms of this Agreement shall control for the satisfactory coordination of all portions of the Services under this Agreement. Exhibits "F" "F-1", and "G", attached hereto and incorporated by reference herein, are added to the agreement.

3.6 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**.

3.7 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**.

3.8 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.

3.9 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 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ONTARIO AND INTERGRAPH CORPORATION DBA HEXAGON

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:

_____
City Manager
Scott Ochoa

Approved as to Form:

_____
Best Best & Krieger LLP
City Attorney

Attested By:

_____
City Clerk

INTERGRAPH CORPORATION DBA HEXAGON

By: _____

Its: Director of North America Finance

Printed Name: Tiffany Taylor

By: _____

Its: Vice President of Global Contracts

Printed Name: Richard L. Morris

EXHIBIT "F"

MAINTENANCE TERMS AND CONDITIONS FOR SOFTWARE

These terms and conditions ("Maintenance Terms") govern the provision of maintenance and support services by Hexagon with respect to Covered Products.

1. DEFINITIONS.

All capitalized terms not otherwise defined herein shall have the meaning set forth in the associated Exhibit E-1 titled "Common Terms Glossary."

2. TERM.

2.1. Term. Subject to execution/acceptance of the Order Documents, the Maintenance Contract shall begin, retroactively (if applicable), on the first calendar day of the first Month of the Coverage Period and shall expire on the last calendar day of the last Month of the Coverage Period. The Coverage Period shall be for whole Months only.

2.2. Renewal. Prior to expiration of an earlier Coverage Period, Hexagon may submit to Customer a renewal quote with pricing for extension of the Coverage Period. The Parties may extend the Coverage Period pursuant to Order Documents.

2.3. Lapse. In the event of a Lapse: (i) Hexagon shall, at any time, be entitled to discontinue Maintenance Services, in whole or in part, for the affected Covered Products; (ii) Hexagon shall be relieved of any previously provided pricing commitments or options for Maintenance Services, if any, related to time periods following the Lapse; and, (iii) Hexagon may permit Customer to reinstate support for Covered Products pursuant to Hexagon's then current policies and practices, including any policies or practices related to payment of reinstatement fees.

3. SCOPE OF COVERAGE FOR COVERED SOFTWARE PRODUCTS.

Maintenance Services described in this Section apply to Covered Software Products only. Maintenance Services for Covered Third Party Products are separately stated.

Hexagon offers three levels of Maintenance Services for Covered Software Products, dependent upon the Software Product and other factors. Under all levels of Maintenance Service, Hexagon shall provide reasonable commercial efforts to aid in the diagnosis of Defects. Under all levels of Maintenance Services, but only until the subject Software Product version reaches Version Limitation I or Version Limitation II, Hexagon shall provide reasonable commercial efforts to aid in correction of Defects. After a Software Product version reaches Version Limitation I, but only until the subject Software Product reaches Version Limitation II, Hexagon shall provide reasonable commercial efforts to aid in correction of Level One Defects only. The level of Maintenance Services for each Software Product is identified in the Order Documents, subject however to Version Limitations.

Hexagon shall respond to reported Defects in accordance with the response times provided in Exhibit E. The method of correction of reported Defects shall be at Hexagon's discretion, provided that Hexagon shall promptly and diligently undertake commercially reasonable efforts to correct all Level One or Level Two Defects. Levels of Maintenance Services are as follows:

3.1. Advantage Support. Advantage Support will include and be limited to the diagnostic and Defect correction support as described above, and the following: Out-of-the-box functionality support via the support help desk (telephone or eService via the Designated Portal; and, access to any available Hexagon problem knowledge base online self-help tool. Phone support is available Monday through Friday from 8AM –

5PM at Customer's local time, excluding Hexagon-observed holidays. Local variances in support hours will be posted online or can be determined by contacting Customer's local Hexagon office.

3.2. Standard Support. Standard Support will include and be limited to the following:

3.2.1. All features of Advantage Support.

3.2.2. Access to available Updates of Covered Software Products. Hexagon will notify Customer when Updates are made available for any Covered Software Products for which Maintenance Services have been purchased, by way of posting notices of such to the "Support Notices and Announcements" section on the Designated Portal site , where available, or via direct notification by Hexagon. Updates are shipped to Customer upon Customer's request logged in the Designated Portal site. Hexagon is not obligated to produce any Updates. For avoidance of doubt, a Customer's entitlement to Updates shall not include entitlement to any therein embedded or otherwise related module or function which is licensed and priced separately from Covered Products for which Customer has purchased an entitlement to Updates.

3.3. Premium Support. Premium Support will include all features available under Standard Support (subject to Version Limitations). Additionally, for Level One and Level Two Defects, phone support is also available after-hours and on Hexagon-observed holidays.

3.4. Product Change Requests will be reported in like manner as set forth in Section 3.1. Hexagon will review Product Change Requests and at its sole discretion decide whether to make the requested change to the Covered Product(s) through an Update. Product Change Requests not accepted may be the subject of a separate Order between the Parties. For the avoidance of doubt, to the extent Hexagon agrees to make a requested change to a Covered Product pursuant to a Product Change Request, any and all IPR resulting from the Update, including the change or modification is and shall remain the property of Hexagon.

4. MINIMUM SYSTEM REQUIREMENTS; CUSTOMER'S OBLIGATIONS.

Performance of Maintenance Services by Hexagon is specifically conditioned upon the following minimum system requirements and fulfillment by Customer of the following obligations (collectively, minimum system requirements and customer obligations hereinafter referred to as "Customer Obligations"):

4.1. System Requirements. Customer is responsible for ensuring: the System Equipment and network infrastructure meet minimum system requirements specified by Hexagon and made available to Customer upon request; its System Equipment and network infrastructure are adjusted as required to accommodate Updates of Covered Products; compatibility of non-Hexagon provided products with products provided by Hexagon; and, its systems, software, and data are adequately backed up. Hexagon is not liable for lost data.

4.2. Hexagon Access and Customer Cooperation. Customer's system and/or System Equipment must have input and output devices that enable the use of Hexagon's diagnostic programs and supplemental tests. Customer will permit Hexagon to electronically access Customer's system via Secure Access Tool. Customer will ensure availability of its own system technical support personnel so that Hexagon can fulfill its Maintenance Services obligations. When reporting problems to Hexagon's support help desk, Customer will provide a complete problem description, along with all necessary documents and information that is available to Customer and required by Hexagon to diagnose and resolve the problem. Customer will grant all necessary access to all required systems as well as to the Covered Products, and any other reasonable assistance needed. Customer will carry out any reasonable instructions and will install any necessary patches, Defect corrections, or Updates. Customer will appoint a minimum of two and a maximum of ten contact people who are each authorized to make use of the Maintenance Services ("Authorized Contacts"). Customer is obligated to select only those personnel for this task who are suitable for it by means of training and function, and who have knowledge of Customer's operating system, network, and hardware and software. Customer agrees to promptly notify Hexagon of any replacement of an Authorized Contact. Customer must ensure Authorized Contacts have adequate expertise, training, and experience to provide professionally accurate descriptions of malfunctions and facilitate Hexagon's efficient response. Authorized Contacts must have successfully completed Hexagon product training, or complete it at the

next available scheduled opportunity, for those products for which formal training is available. Customer will bear the cost of this training. Customer will enter and/or log requests for assistance in such systems, and utilizing such forms, as Hexagon may designate from time to time.

5. EXCLUDED SOFTWARE SERVICES.

Services for the following are outside the scope of the Maintenance Contract and may be available under separate Order at an additional charge (collectively "Excluded Services"):

5.1. Installation of any Covered Product, Update, or interface software;
5.2. Network configuration;
5.3. Configuration or customization of Covered Products to Customer or other third party requirements (except as necessary to remedy a Defect);
5.4. System-level tuning and optimization and system administration support;
5.5. Training;
5.6. Services required because the Authorized Contact is not available or is not trained;
5.7. On-site services (unless waived by Hexagon, in its sole discretion);
5.8. Services required due to modifications of Covered Products by Customer;
5.9. Services required due to use other than in the ordinary manner intended for the Covered Products, or use in a manner that contravenes terms hereunder, or Customer's disregard of the installation and operating instructions according to the Documentation provided with the Covered Products;
5.10. Services required due to failure of software or hardware that is not a Covered Product;
5.11. Services required due to Customer's use of hardware or software that does not meet Hexagon specifications or failure of Customer to maintain or perform industry standard maintenance on Customer's hardware or software;
5.12. Services required due to software or portions thereof that were (i) incorrectly installed or configured (other than by Hexagon), (ii) used in an environment inconsistent with the support environment specified by Hexagon, and/or (iii) used with peripherals, operational equipment or accessories not conforming to Hexagon's specifications;
5.13. Services required due to cases of force majeure, especially lightning strikes, fire or flood, third-party criminal acts, or other events not caused through Hexagon's fault;
5.14. Services required due to Customer's failure to fulfill the Customer Obligations; and/or
5.15. Services required due to faulty or incomplete Customer data.

6. COVERED THIRD PARTY PRODUCTS.

Support and Updates of Covered Third Party Products shall be provided in the fashion and to the extent or duration that Hexagon is authorized to provide such by the third party manufacturer of the Covered Third Party Products, and such Covered Third Party Products and related services may be subject to additional terms and conditions of the third party manufacturer of the Third Party Software.

Services and updates for any Third Party Software not listed in the Order Documents as Covered Products must be obtained from the third party owner of the products or their designated representative.

7. REQUIRED COVERAGE.

7.1. Multiple or Interdependent Licenses. If Customer holds multiple licenses for any Covered Product, all held licenses must be included as Covered Products in the Maintenance Contract.
7.2. Prerequisite Licenses. All prerequisite licenses for Software Products necessary to operate the Covered Products, together with all licenses of Software Products interoperating with Covered Products in a single solution, must be included as Covered Products in the Maintenance Contract.

8. ADDITIONS AND REMOVALS OF COVERED PRODUCTS.

8.1. Additions of Covered Products. Software Products licensed from Hexagon during the term of the Maintenance Contract may be added as Covered Products, if such addition is addressed through additional related Order Documents. If Software Products are not added as Covered Products by commencement of Production use thereof, Hexagon may permit Customer to add them as Covered Products, but subject to additional fees payable pursuant to Hexagon's then current policies or practices.

8.2. Removal of Covered Products from Maintenance. Either Party may provide written notice to the other Party at least sixty (60) calendar days prior to the end of any Coverage Period Anniversary of its intent to remove any individual Covered Products from the Maintenance Contract at the end of the then current and contracted Coverage Period or any Coverage Period Anniversary. Neither Party may remove Covered Products except upon Coverage Period renewal or extension or Coverage Period Anniversary; provided that Hexagon may additionally remove Covered Products as part of a general discontinuance program at any time upon one hundred eighty (180) days' written notice. Customer may not remove from the Maintenance Contract individual software licenses of a Covered Product for which Customer has multiple copies under Maintenance Services or for Covered Products that are being used interdependently, unless Customer has first certified to Hexagon on a "Software Relinquishment Agreement" that it surrenders and relinquishes all rights in and to the applicable Software licenses and the copies of the Covered Product for which Customer desires to cease Maintenance Services (the "Relinquished Licenses") for the renewal Coverage Period have been uninstalled and removed from its System(s). Should Customer desire to resume usage of the Relinquished Licenses at a later date, Customer must re-purchase the licenses at the then current list price.

9. Terms of Payment. Charges for Maintenance Services are due and payable annually and in advance. Charges for Covered Software Products added during a Coverage Period shall be prorated to the remaining Months of the Coverage Period, in whole Month increments only, and such charges shall be due and payable in full upon receipt of invoice. Covered Third Party Products added during a Coverage Period are subject to Section 6 of these Maintenance Terms. Past Due Accounts. HEXAGON RESERVES THE RIGHT TO REFUSE SERVICE TO ANY CUSTOMER WHOSE ACCOUNT IS PAST DUE over 60 days. **CUSTOMER ACKNOWLEDGEMENTS.**

During the Coverage Period, Customer commits to the following:

9.1. Customer shall have reviewed the Order Documents and by executing the Order Documents confirms the Order Documents accurately reflects all Hexagon software in its possession or control.

9.2. Customer acknowledges and confirms that for all Covered Products supported under the Maintenance Contract, all licenses of a Covered Product for which Customer has multiple copies in its possession and all prerequisite licenses necessary to operate Covered Products, are accounted for in the Order Documents. If all like Covered Products or prerequisite software licenses are not accounted for in the Order Documents, Customer agrees to notify Hexagon so that Hexagon may issue a revised Quote to Customer.

9.3. Customer acknowledges and confirms Maintenance Services provided herein shall be utilized only for the quantity of Covered Products licenses listed in the Order Documents.

10. **ADDITIONAL TERMS.**

10.1. Pass-Through Third Party Warranties. Covered Third Party Products are only warranted pursuant to a pass-through warranty to Customer from the applicable Third Party Software manufacturer and only to the extent warranted by the applicable Third Party Software manufacturer.

10.2. Remedies. In the event a warranted Maintenance Service, Covered Product, or Update provided pursuant to the Maintenance Contract does not substantially comply with the limited warranties set forth in the Maintenance Contract, Hexagon's entire liability and Customer's exclusive remedy shall be, in Hexagon's sole and absolute discretion, either (i) providing of a Service, Covered Product, or Update which conforms substantially with the warranty; or (ii) a refund of the purchase price of the particular warranted Service,

Covered Product, or Update for the period of time that the warranted Service, Covered Product, or Update did not substantially conform to the limited warranties set forth in the Maintenance Contract.
Hexagon is acting on behalf of its suppliers for the sole purpose of disclaiming, excluding and/or limiting obligations and liability as provided in the Maintenance Contract, but in no other respects and for no other purpose.

10.3. WARRANTY DISCLAIMERS. In addition to the Warranty Disclaimer provided in the Agreement, Hexagon does not warrant that any Services, Covered Products, and Updates provided pursuant to the Maintenance Contract will meet Customer's requirements, and under no circumstances does Hexagon warrant that any Services, Covered Products, and Updates will operate uninterrupted or error or Defect free.

10.4. Hexagon reserves the right to provide Maintenance Services through contracted HelpDesk support that is United States Based

EXHIBIT F-1

HEXAGON

Hexagon Safety, Infrastructure & Geospatial division
ADDENDUM to the Maintenance Terms and Conditions

This addendum ("Addendum") modifies the Maintenance Terms and Conditions between the Customer and Hexagon set forth at Exhibit F in the Master Terms. This Addendum addresses limited additional services that shall be provided within the Maintenance Contract. Except as expressly modified under this Addendum, the Maintenance Terms and Conditions shall continue to apply.

Notwithstanding the provisions set forth in Section 5 (Excluded Software Services) of the Maintenance Terms and Conditions, the following limited services are included within the scope of the Maintenance Terms and Conditions and will be available to be performed by Hexagon. Requests made hereunder to the Help Desk unrelated to resolution of a Defect shall be made by Customer in accordance with the with Maintenance Terms and Conditions and logged as a Level 4 Customer Service request.

1. For Covered Products, the Customer may request and Hexagon agrees to provide limited configuration and installation services for Hexagon COTS software unrelated to resolving a Defect. Configuration and installation requests that will be supported by Hexagon under a Maintenance Contract shall not extend beyond the original scope and Tasks provided in Order 1 (Implementation for I/CAD) and shall be, generally, within the scope of standard working product functionality. Services will only be performed remotely. For example, Hexagon will not be obligated to create: new MPS or Mobile Responder configuration sets, new macros rules, new interfaces, or GIS layers and map rolls.

2. Hexagon agrees to assist Customer with application optimization and performance tuning for the Hexagon I/CAD system only.

EXHIBIT "G"

BPR Scope of Work

Purpose

The SOW, which constitutes the scope of work for the BPR Orders, guides the Tasks and Activities for the post-cutover Business Process Review Workshop.

The scope of work reflected in this SOW shall be performed no more than once per year (with each year commencing on the day of Cutover or anniversary thereof). Order 6 shall occur no earlier than the end of the Reliability Period and shall be exercised by Customer no later than one (1) year after cutover. Successive Order shall be scheduled as provided in the Agreement.

Except as otherwise defined below, capitalized terms shall have the same meaning as provided in the Master Agreement to which this SOW is attached.

Upon completion of the Task Acceptance Criteria in accordance with the Task Acceptance Process, the entire fee corresponding to the BPR Order shall be due and payable.

Project Tasks

I/CAD Business Process Review (BPR) Workshop

Task Description

As the Customer becomes more experienced with I/CAD, it is common for requests to arise that could be solved with new configuration, additional software products, or changes in workflow. However, the Customer often does not have the expertise or time to perform these types of analysis on their own.

The Business Process Review (BPR) Workshop is a four (4) Business Day onsite collaborative workshop where the Parties will discuss and collaborate on the following, which may lead to additional configuration changes:

- Configuration and workflow reviews
- Configuration updates for new functionality
- Best practices for system administration and system maintenance

Topics of the BPR will be identified through communications and direct meetings with Customer representatives from all aspects of the system, including end users and system administrators. Hexagon will also observe operations as needed. From these observations, recommendations will be made for modifications or additions to configurations, workflow adjustments that could be made to operations, or training that might benefit the users or system administrators.

Following the BPR Workshop, Hexagon will provide up to five (5) additional days of remote assistance, including, configuration services (“Follow-up BPR Period”). Configuration changes will be agreed upon with the Customer, and only completed if time allows during the BPR Workshop and Follow-up BPR Period. Configuration requests or additional services beyond the Follow-up BPR Period would necessitate a subsequent purchase by Customer.

The Customer will receive a BPR reassessment report which will detail the findings of the Hexagon resource.

Task Deliverables

- Four (4) Day On-site BPR Workshop

- Remote Reassessment follow-up
- BPR Reassessment Report

Task Prerequisites

- The applicable BPR Order has been properly exercised by the Customer
- The BPR has been set for a mutually agreeable date.
- The I/CAD system has been in production use for at least four (4) months and the Reliability Period is complete.

Task Assumptions

- This Task must be scheduled to occur within the time prescribed in the Agreement depending on the BPR Order being exercised.
- Customer shall assign appropriately qualified personnel to the team involved with the BPR Workshop (not to exceed 12 people) and ensure they are actively engaged in the BPR Workshop.
- The Customer shall provide Hexagon with access to all data, documents, plans, reports, diagrams, and analyses reasonably related to the Project or otherwise necessary to facilitate Hexagon's performance of its Activities.
- All Hexagon personnel performing remote Activities will be identified and properly vetted prior to commencement of those remote Activities for which unescorted access into the System would be necessary.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Conduct the BPR Workshop
- Provide assistance during the BPR Follow-up Period
- Provide BPR Reassessment Report

Customer Team Participation and Responsibilities

Customer shall:

- Ensure appropriate adequate work area is made available, and time is scheduled for observations on the communications floor;
- Identify appropriate personnel to participate and ensure schedules align;
- Actively participate in the BPR Workshop;
-

Task Acceptance Criteria

This Task is complete upon the conclusion of the BPR Follow-up Period, delivery of the BPR Reassessment Report to the Customer, and the City has signed the Task Order Acceptance form.

EXHIBIT "H"

HxGN OnCall Records on-Premise Implementation Statement of Work

EXHIBIT H

City of Ontario, CA

Statement of Work

for

HxGN Records On-Premise Implementation

PRESENTED BY:

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Introduction

This Statement of Work, including the attachments hereto, provided by Intergraph Corporation by and through its Hexagon Safety, Infrastructure & Geospatial division ("Hexagon") to the City of Ontario, California on behalf of its Police Department ("Customer") describes the Products and Services that will be provided to implement an integrated records management system ("RMS") for the Customer (the "Project") in exchange for payment of the amount set forth in the Quote (which is included as Attachment A). This SOW sets forth the Products and Services Hexagon will provide as well as each Party's responsibilities and obligations to implement the Products. Except as otherwise provided herein, capitalized terms shall have the meaning set forth in the Agreement and Attachment I (Glossary of Terms) hereto.

This SOW is governed by the Agreement as amended with the Project constituting Order 11.

The Software provided by Hexagon will be the HxGN OnCall Records Subsystem ("OnCall Records" and "OnCall").

Purpose

The SOW guides the Tasks and Activities for the Project. It documents Project implementation requirements, identifies each Task within the implementation process, sets expectations for each Party, and identifies the Task Acceptance Criteria.

The SOW includes and incorporates the following Attachments:

- Attachment A – Pricing Summary
- Attachment B – Payment Schedule
- Attachment C – Initial Project Schedule
- Attachment D – Training Curriculum
- Attachment E – OnCall Records Specifications
- Attachment F – System Configuration Diagram
- Attachment G – RMS/MFR Functional Specifications Matrix
- Attachment H – Interface Descriptions
- Attachment I – Glossary of Terms
- Attachment J – Warranty
- Attachment K – Regional Provisions
    - Attachment K-1 – CJIS Security Addendum
- Attachment L White Box ART Tool SOW

The remainder of this section details Project assumptions that impact the Project cost, schedule and scope, Project team composition, and Project management responsibilities.

Each Task identified in this SOW includes the following, as necessary: Task Description, Task Deliverables, Task Prerequisites, Task Assumptions, Hexagon/Customer Team Participation and Responsibilities, and Task Acceptance Criteria. The Tasks defined in the SOW may not be listed

chronologically, and the actual Project implementation Tasks and timelines will follow the Project Schedule, unless otherwise noted.

Software Functionality and Support

As part of this Project, Hexagon shall provide licenses to Software identified in Attachment A ("Project Software"). The Project Software shall have the capabilities and functionality set forth in the Specifications corresponding to the Project Software, which reflects all of the functionality Hexagon is obligated to provide. The Project Software shall only be tested to evaluate conformity to the Specifications. The COTS versions of the Project Software will be provided, and, unless otherwise provided in the Specifications, this Order does not include any Product Change Requests or Customizations.

OnCall presents an iterative upgrading process that will also be reflected in the Project. Several times per year, Hexagon may publish a new release to OnCall Software Products. Until the end of the Testing Phase, Hexagon may periodically implement newer releases of OnCall within the Customer's environment, so the Customer may have a more current release of OnCall leading into the Training Phase and Deployment Phase.

Upon Cutover, the Warranty Period for the Project Software shall commence as described in Attachment K (Warranty). Hexagon shall provide support for the Project Software during the Warranty Period in accordance with Exhibit B (Maintenance Terms) of the Agreement.

Project Governance

Hexagon will assign a Project Manager at the beginning of the Project to act as the primary point of contact at Hexagon for the Customer and provide general oversight and guidance for the Hexagon Project team throughout Project.

To ensure successful delivery of the Project in accordance with the schedule, regular communications and an escalation path are necessary. Typically, all formal communications will occur between the Hexagon Project Manager and the Customer Project Manager. Generally, each Party's Project Manager will have, at minimum, a weekly status conference with one another. On a monthly basis, Hexagon will provide a status report reflecting completed Activities, upcoming Activities, at-risk Activities, other pertinent matters affecting the Project, and, as necessary, an updated Project Schedule. As may be appropriate, the Parties may escalate matters to appropriate executives in between quarterly executive meetings. The Customer may propose revisions to the status report and its attachments, but it must do so within five (5) Business Days, otherwise it is final and accepted by the parties.

Finally, on a quarterly basis, or more frequently if deemed necessary by the Parties, the Department Sponsor for Customer, a Hexagon Director or Vice President responsible for operations, and the Customer's Project Managers shall hold a remote executive review meeting to discuss the status of the Project and particular challenges impacting the Project. The two senior officials for both parties shall also serve as the escalation point for disputes arising between the Project Managers.

Projects of this nature involve both Parties performing a variety of Tasks that are dependent upon one another. With that type of relationship and the number of Tasks involved, from time to time delays may occur. The Hexagon Project Manager and Customer Project Manager will address and take actions to mitigate such delays, to the extent reasonably possible.

The Hexagon Project Manager will manage the Project Schedule and provide copies of it to the Customer as updated. From time to time and outside of the status report process described above, the Project Managers may find an adjustment to the Project Schedule is necessary. If the adjustment is mutually

agreeable, the Hexagon Project Manager shall update the Project Schedule and it will become the current Project Schedule, superseding all prior Project Schedules. The Parties acknowledge that potentially material adjustments to the Project Schedule may need to be addressed through a Change Order due to its impact on other aspects of the Order. Unless otherwise noted between the Project Managers, all Tasks reflected in this SOW are regarded as having completed the Task Acceptance Process upon Cutover or commencement of a Task for which the earlier Task was a prerequisite as noted within the SOW and/or Project Schedule.

Any provisions particular to Customer's country are specified in Attachment L – Regional Provisions, which shall supersede any conflicting provisions provided in this SOW.

Customer Core Team(s)

The Customer shall provide qualified resources to staff the Core Team (described below) to facilitate a successful implementation of OnCall. The Core Team consists of an overall Customer project manager who is responsible for the day-to-day coordination of Customer's Project Activities and personnel divided amongst smaller discipline-oriented groups with particular roles and responsibilities appropriate to the discipline. Those subdivided groups are denoted with suggested team member resources below.

Core Team Roles and Responsibilities

Records Core Team

Below is the defined group of Customer members responsible for decision making for the remainder of the field operations user group(s) regarding configuration and use of the OnCall Records solution. The Records Core Team either needs knowledge of all applicable departments or has access to local subject matter experts. The Records Core Team should consist of, at a minimum, the following resources with the corresponding qualifications:

- **Subject Matter Experts (SME)** – Person or person(s) responsible for adapting local agency department needs into actionable configuration processes for the new system. This person or persons need access to other local SMEs for all departments that will be utilizing the new system.
- **Technical Support Staff** – The responsibility of Technical Support Staff lies with the adaptation and configuration of the system at a more technical level. Responsibilities potentially include SQL and/or report writing experience with SSRS knowledge, current technical understanding of current interfaces in use that are to be adapted to the new systems, etc.
- **Command Staff** – This person is an active member of the command staff at the agency. This person is typically a rank of Captain or higher in law enforcement, although actual rank structure in agencies may vary.
- **Decision Maker** – This person has the authority, either by role or designation, to make decisions on behalf of the agency or agencies OnCall Records is serving pertaining to the configuration of OnCall Records products.

The ideal size of the Records Core Team is twelve (12) members. Under no circumstances shall the Records Core Team be larger than twelve (12) members.

Project Assumptions

The following list of assumptions and Customer responsibilities reflect Hexagon's understanding of the Project. Changes in any of the assumptions and Customer responsibilities will affect the scope, Project Schedule, and/or cost of the Project.

Agreement and Schedule Assumptions

- The Amendment 1 to the Agreement has been executed by both parties and the Customer has provided either a notice to proceed or PO.
- Hexagon and the Customer will review the SOW and determine a mutually agreeable date for the Services to be performed.
- The Customer shall perform its assigned responsibilities as identified within the Initial Project Schedule (Attachment C) and Project Schedule developed as part of Task 1 in the time allotted. If the Customer does not reasonably comply with the Project Schedule, Hexagon is permitted with written notice to suspend its performance on this Project and redeploy its resources on other active projects until the Parties determine a mutually agreed upon date to re-start the Project. At that time, a new Project Schedule will be provided.
- Hexagon will have timely access to the applicable members of the Core Teams and other Customer Project staff in accordance with the Project Schedule. Customer shall make additional personnel available on a priority basis, as needed, to provide subject matter expertise to complete this Project.
- Customer shall assign appropriately qualified personnel to the Core Teams and ensure they are actively engaged in the Project.
- Any work and effort ascribed to Hexagon in a given Task is confined to that specific Task and may not be used for or applied to any other Task.
- Customer shall provide Hexagon Project Manager with contact information for a Customer resource to resolve any issues that should arise from Hexagon's access of Customer's System during working and non-working hours.
- Any workshop having a duration of three (3) Business Days or less shall begin no earlier than Tuesday of the week of that workshop and will conclude that same week.
- The Customer shall provide Hexagon with access to all data, documents, plans, reports, diagrams, and analyses reasonably related to the Project or otherwise necessary to facilitate Hexagon's performance of its Activities.
- Unless expressly stated in this SOW, all Documentation, if any, provided by Hexagon under this SOW will be COTS Documentation, and the Documentation will not be customized by Hexagon. All Documentation delivered will be in Hexagon-approved format. Changes to Hexagon-format to accommodate specific Customer requests may be done at Hexagon's discretion and at an additional cost.
- Unless Hexagon and Customer mutually agree otherwise, all Documentation provided by Hexagon will only be provided in electronic format.
- Unless otherwise stated in the Task, all Tasks will be conducted remotely.
- All Hexagon personnel performing remote Activities will be identified and properly vetted prior to commencement of those remote Activities.
- As reflected herein, Hexagon may have proposed certain Activities or Tasks be performed on site. Hexagon and/or Customer may alternatively choose or circumstances necessitate to have

these Activities and Tasks performed remotely. Payments due under the Quote and as specified herein shall remain the same.

- If the title of a Task includes the name of a Subsystem (e.g., OnCall Records), that Task shall be construed as pertaining only to that Subsystem unless expressly stated otherwise.
- This Project is intended to be performed independent of Order (the I/CAD Implementation Order), and it is not designed or intended to Cutover simultaneously with Order 1.

Hardware and Software Assumptions

- All Software will be electronically delivered.
- All specifications provided with this SOW (Attachments E and F) will assume a traditional on-premises solution (*i.e.*, not a hosted solution), and any change with respect to alternative hosting requires execution of a mutually agreed upon Change Order.
- The Customer shall purchase, install, and test all physical hardware, including the client/mobile hardware.
- The Customer will ensure its hardware, operating system software, database software, and other third-party products/environments conform with Attachments F. Deviations from Attachments F will not be considered due to the critical nature of the software supported by these systems.
- Hexagon and the Customer will verify the final system hardware configuration to ensure conformance with Attachment F.
- Customer shall purchase all applicable operating systems, database licenses, and Third-Party Software and ensure such operating systems, database licenses, and Third-Party Software meet the minimum requirements as defined in Attachments F.
- Hexagon technology for this Project will be implemented in the Microsoft environment as specified in Attachments F.
- Customer shall purchase, install, configure, and administer its Network Infrastructure, including, but not limited to, its WAN/LAN and wireless infrastructure. Customer's wireless infrastructure shall meet minimum bandwidth requirements as stated in Attachments F.
- Customer shall be responsible for the wired and wireless connectivity between servers/clients and clients/clients.
- For automatic failover to a secondary location: (i) the network latency between the site servers shall be less than 10 milliseconds (ms) and (ii) load balancers must support and be configured to provide automatic failover between locations (Global Server Load Balancing).
- Customer shall be responsible for, and purchase and maintain if necessary, any hardware and/or third-party software necessary for implementing interfaces.
- Except as specified in this SOW, including Attachment A: Pricing Summary, Hexagon is not required to provide any additional Software customizations, custom forms, forms modifications, third-party software, custom interfaces, or custom reports.
- To the extent the Customer desires to use the Software or other deliverables provided herein in a manner or in combination with software or hardware that is not certified or recommended by Hexagon, then the Customer shall be solely responsible for such use. Hexagon shall not be responsible for the correction of any errors, defects, reduced performance, compromised functionality, or other unintended consequences arising from such use. The Customer also shall not withhold acceptance of any deliverable or the System due to such use.
- Customer has reviewed the SOW and acknowledges and agrees Software Requirements: (i) represents all the functionality required of the System; and (ii) is the only functionality that is required to be delivered under this SOW.

System Access Assumptions

- Depending upon the Customer's jurisdiction, additional security guidelines and assumptions are provided in Attachment K.
- Customer consents to Hexagon's inspection and use of Customer's data and systems, including, but not limited to, log files and databases, for the limited purpose of providing the Services specified herein and any future maintenance or warranty services described within the Agreement.
- Customer shall grant Hexagon personnel system administrator level access with unique log-in credentials to all servers, networks, databases, and workstations that will be involved in the Project.
- Beyond Trust is the remote access solution used by Hexagon. Customer shall provide Hexagon all necessary licenses and credentials to utilize Beyond Trust during the Project and Extend Warranty. Customer represents Beyond Trust satisfies all necessary Federal and State access requirements.
- Customer shall provide unrestricted system and VPN access via Beyond Trust to Hexagon developers and implementers who will need to have access to multiple infrastructure platforms at the same time. The Customer shall provide Hexagon personnel individualized system access credentials and allow Hexagon authorized resources VPN access twenty-four (24) hours a day, seven (7) days a week for the duration of the Project.
- Customer shall provide external VPN access while on site to access various Hexagon resource libraries.
- After completion of this Project, Hexagon will VPN using Beyond Trust into the live System only at Customer's request and will follow Customer's required VPN access procedures.

Third-Party Assumptions

- Customer shall schedule and coordinate third-party technical resources with the skills necessary to perform and/or support all Customer Responsibilities, provide necessary information, respond to Hexagon requests, and support the testing of interfaces, as required. Customer shall schedule and coordinate third-party technical resources in such a way as to ensure that a negative impact to the overall Project Schedule does not occur.
- Customer shall maintain, in good working order, all third-party systems which will integrate with Hexagon software or on which the Hexagon software depends as part of this Project.
- Customer shall be responsible for the operation and timely availability of external systems or third-party software necessary for the execution of the Project.
- If a delay in the Project is caused by a third-party vendor, Hexagon services not covered in this SOW may be required at additional costs.

Project Tasks

Project Initiation

Prior to the Kickoff Meeting and after execution of this SOW or Order, the Hexagon Project Manager will contact the Customer Project Manager to identify the Project Start date and coordinate scheduling the Kickoff Meeting. For the Project to be successful, the following initial Activities must be performed before any Tasks occur:

- Customer shall order hardware, database software, operating system software, or other third-party software (excluding Kemp Load Balancers which will be ordered by Hexagon) consistent with the requirements set forth in Attachments E and F.
- The Hexagon Project Manager will contact the Customer Project Manager. During this initial contact, the Hexagon Project Manager will:
    - Schedule the kickoff meeting;
    - Identify the Project Start date;
    - Create a detailed agenda describing the goals of the kickoff meeting;
    - Discuss any mitigating factors that could affect the Project (e.g., scheduling conflicts, communication factors, and other risk factors);
    - Schedule a conference call before the kickoff to go over the kickoff agenda;
    - Ensure both Hexagon and Customer have appropriate Subject Matter Experts available for kickoff; and

Provide document titled “Infrastructure Build Document”, if not previously provided to the Customer.

- Hexagon’s Project Manager will prepare kickoff materials.
- Hexagon’s Project Manager shall have updated the Initial Project Schedule and provide the draft Updated Initial Project Schedule and sent a copy to the Customer Project Manager for review prior to the Kickoff meeting.

Planning Phase

1. Project Kickoff Meeting

Task Description

The objective of this Task is to discuss and address questions regarding Project Assumptions, discuss the updated Initial Project Schedule and agree to it at the meeting or shortly thereafter, and all requirements are understood prior to beginning any significant work. A meeting for Project Kickoff will be held after the SOW has been fully executed. The Project Kickoff meeting will be scheduled by each party's Project Manager as part of Project Initiation Activities.

Prior to the Kickoff Meeting and after written acceptance of the Agreement, the Hexagon Project Manager will contact the Customer Project Manager to identify the Project Start date and coordinate scheduling the Kickoff Meeting. The Project Kickoff Meeting shall last no more than one (1) Business Day.

During this Task, the Parties shall confirm the updated Initial Project Schedule as updated by the Hexagon Project Manager. The resulting updated Initial Project Schedule shall be substantially similar in durations as that provided within Attachment C. Prior to the Project Kickoff Meeting Task, the Customer Project Manager shall have reviewed the updated Initial Project Schedule and be in a position to succinctly identify any needed changes understanding material extensions of the Initial Project Schedule may require additional Hexagon Services to be added via a Change Order. Once the list of changes has been made to the updated Initial Project Schedule by the Hexagon Project Manager, the Hexagon Project Manager will thereafter provide the Project Schedule to the Customer Project Manager. From time to time, the Parties' Project Managers may modify the Project Schedule upon mutual written consent or upon transmission of an updated Project Schedule to the Customer Project Manager as part of a status report and the Customer Project Manager offers no objection to the updated Project Schedule within five (5) Business Days thereafter.

At the Project Kickoff Meeting, the Customer shall provide: (i) contact information for all members of its Core Team and Executive/Departmental Sponsor, (ii) proposed alterations to the updated Initial Project Schedule, (iii) contact information for any third-party vendors which OnCall will integrate as contemplated in Attachment H, and (iv) identify to Hexagon any perceived concerns or risks with the Project. During the Project Kickoff Meeting, Hexagon shall provide template the OnCall Records Pre-BPA Questionnaire for Customer completion prior to required Tasks.

Task Deliverables

- Kickoff meeting agenda
- Project Schedule
- Kickoff meeting minutes, to include identified risks and action items
- OnCall Records Pre-BPA Questionnaire

Task Prerequisites

- Agreement executed by both Customer and Hexagon and PO issued (if applicable).
- Hexagon Project Manager has verbally communicated with the Customer to (i) identify the Project Start date and (ii) coordinate a date for the Project Kickoff Meeting.
- Customer has assigned a Customer Project Manager.
- The Core Team has reviewed this SOW.

Task Assumptions

- The Hexagon Project Manager will conduct the kickoff.
- This task will be conducted on site.
- Some members of the Hexagon Project Team may participate remotely.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Review the Project organization, roles, and responsibilities with the Customer;
- Conduct an overview of the Project including a review of the SOW to verify all aspects of the Project approach;
- Review the draft Updated Initial Project Schedule and adjust the Updated Initial Project Schedule as needed and mutually agree upon it with Customer;
- Work with Customer to identify and document any potential Project risks;
- Provide meeting minutes that document risks and action items that affect the Project Schedule, resources, and/or the SOW;
- Inform the Customer of VPN requirements for Project implementation and continued System maintenance;
- Review of delivery methodology;
- Establish status reporting requirements; and
- Provide overview of Standard Interfaces being delivered as part of the Project as identified in Attachment H.

Customer Team Participation and Responsibilities

Customer shall:

- Review the SOW;
- Ensure its Core Teams attend the applicable portions of the Kickoff Meeting;
- Provide SMEs and any other resources as recommended by the Customer and Hexagon Project Managers;
- Provide Hexagon with VPN access and individualized user accounts to Customer's System as appropriate for this Project and continued software maintenance;
- Have previously reviewed the Updated Initial Project Schedule and work with Hexagon to finalize the Updated Initial Project Schedule;
- Provide location and logistical support for Kickoff Meeting; and
- Designate and prepare workspace for Hexagon personnel.

Task Acceptance Criteria

This Task is complete at the conclusion of the Project Kickoff Meeting and delivery of the Project Kickoff meeting minutes to Customer.

2. OnCall Records Business Process Analysis (BPA) Workshop

Task Description

Hexagon will conduct the Business Process Analysis ("BPA") Workshop ("BPA Workshop") with the Customer's Records Core Team and SMEs. The BPA Workshop lasts up to four (4) Business Days on-site and is designed to document current processes that will need to be reviewed during configuration workshops and provide a guidebook for the Records Core Team to use as they work to configure the Records Subsystem.

The BPA Workshop will be an interactive workshop with the Records Core Team and any SMEs that may be required. The BPA Workshop will provide the Customer with a system and process overview to prepare for the upcoming Records Core Team training and subsequent configuration workshops where the Records Core Team will set up OnCall Records for Production use. It is important to note that some current Customer processes may not be applicable to the new Subsystem, and adjustments will have to be made by the Customer's process and procedures to implement the COTS OnCall Records Subsystem. This knowledge will be critical during the configuration workshops. The BPA Workshop results will be documented by Customer staff.

BPA Workshop Agenda

The BPA agenda will be developed between the Hexagon and Customer Project Managers based on the functional areas, subject areas specific to the Customer, and number of BPA workshops purchased. The topic points will be based on the "Pre-BPA Questionnaire" that is completed by the Customer and focuses on the current business processes.

Task Deliverables

- BPA Workshop.

Task Prerequisites

- Customer has provided appropriate meeting/training facilities.
- Project Kickoff Meeting Task is complete.
- Customer has collected and or has available necessary operating procedures, policies, plans, and/or information applicable to the BPA Workshop.
- Customer has completed and returned the Pre-BPA Questionnaire.

Task Assumptions

- The sessions are typically done in six (6)-hour blocks over (4) days.
- No more than twelve (12) agency personnel may attend.
- Hexagon responsibilities will be executed on site at a Facility.
- The BPA Workshop will cover only COTS OnCall Records functionality.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Conduct the BPA Workshop.

Customer Team Participation and Responsibilities

Customer shall:

- Attend BPA Workshop;
- Provide a facility according to the requirements provided in Task Assumptions;
- Provide a Project Workstation for each attendee;
- Collect and have ready at the BPA Workshop all of Customer's documents and information pertaining to its business processes, operating procedures, and workflows;
- Document Customer business processes to be used in the Configuration Workshops; and
- Provide access and resources as identified.

Task Acceptance Criteria

This Task is complete once the BPA Workshop has been provided.

3. Custom Interface Requirements Gathering

Task Description

During this Task, Hexagon and Customer will meet via conference call to validate the assumptions and design of each Custom Interface identified in this SOW and Attachment H (Interface Descriptions). This Custom Interfaces Requirements Gathering workshop is intended to contain a series of discussions to validate the requirements and assumptions underlying the Custom Interfaces. These sessions should include third-party vendors where appropriate. During the sessions, the specific workflow and data requirements for each of the interfaces listed below will be discussed in detail.

The information obtained in combination with the information in Attachment H will be used to develop an Interface Control Document for each Custom Interface. If the assumptions reflected in Attachment H materially change, a Change Order may be appropriate. The ICDs will become the foundation for the Custom Interface development by Hexagon. Once an ICD is mutually approved, it should only be modified through a Change Order. The Customer shall not make any changes to and shall take appropriate actions to prevent its third-party vendor from making substantive changes to the third-party software that is the subject of a Custom Interface once that Custom Interface's respective ICD has been finalized.

The following are regarded as "Custom Interfaces" as the term is defined in Attachment I of this SOW:

- Dataworks
- Crossroads
- FileonQ
- Livescan
- Evidence.com
- DA Portal
- SWITRS
- Data Ticket
- Phoenix Group
- CLETS/NCIC

For descriptions and assumptions regarding each Custom Interface listed above, please see Attachment H: Interface Descriptions.

As it pertains to the development of the ICD, the parties shall follow the following process. After the Customer provides the necessary information regarding the Custom Interface, Hexagon will prepare a draft ICD for each Custom Interface. Hexagon will then provide the initial draft ICD to the Customer for its review. The Customer shall review the draft ICD and provide any feedback or comments within ten (10) Business Days. As appropriate, Hexagon will incorporate the feedback into the ICD or advise the Customer why certain requests could not be included (e.g. the request conflicted with Attachment H) and finalize the ICD. Hexagon will provide the finalized ICD to the Customer for its written acknowledgement. The Customer will provide a response within three (3) Business Days from Hexagon providing the finalized ICD.

Task Deliverables

- Workshop meeting minutes, to include notes on the specific workflow and data requirements for each custom interface proposed

- ICD documents

Task Prerequisites

- Project Kickoff Meeting Task is complete.

Task Assumptions

- The Customer will coordinate interactions with the third-party vendors, including obtaining and providing any API or specification documentation required to develop the proposed interfaces.
- If required, all NDAs between Hexagon and third parties will be executed and current. Customer is responsible for facilitating its third-party vendors reasonable cooperation with this requirement.
- The Customer is responsible for obtaining cooperation and information from its third-party vendors and/or state agency as reasonably necessary for the development, testing, and cutover of the interfaces.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Lead the interface requirements gathering process and track outstanding items requiring resolution;
- Confer with Customer and third-party points of contact to gather information required to develop ICDs;
- Validate the third-party points of contact are appropriate sources of information necessary to develop ICD;
- Mutually agree with the third-party vendors on the operational and technical interface requirements;
- Gather all available interface data detailed schema, protocols, and specifications, as needed;
- Prepare draft ICDs and submit to Customer for feedback;
- Incorporate Customer feedback into draft ICDs;
- Finalize ICDs for Customer review and approval; and
- Manage the approved ICDs consistent with the change control process.

Customer Team Participation and Responsibilities

Customer shall:

- Identify and set up appropriate facilities;
- Provide points of contacts who are knowledgeable of the workflow and data requirements for Customer hardware and software components with which the Custom Interfaces will interact;
- Provide or have available all necessary information during the workshop to facilitate the creation of the ICD;
- Promptly review all draft ICD submissions and provide comments, questions, or approval within ten (10) Business Days of receipt; and
- Agree to and sign the ICDs before any development work can begin. Failure to approve in a timely manner may impact Project Schedule and incur additional cost.

Task Acceptance Criteria

This Task is complete upon completion of all ICDs and execution of the ICDs by both Hexagon and the Customer.

4. Custom Interface Development

Task Description

During this Task, Hexagon will develop the Custom Interfaces based upon the ICDs that were created from the Custom Interface Requirements Gathering Task.

Task Deliverables

- Custom Interface documentation

Task Prerequisites

- Custom Interface ICDs have been executed by each Party.

Task Assumptions

- Any changes to a third-party interface developed by Hexagon that will alter the agreed-upon ICD will have to be reflected in a mutually executed document, which may include a Change Order.
- Development of the Custom Interface shall not commence until the signed/approved ICD is returned to Hexagon. Failure to approve in a timely manner may impact project schedule and incur additional cost.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Develop the Custom Interfaces based upon the ICD.

Customer Team Participation and Responsibilities

Customer shall:

- Ensure SMEs are available as needed; and
- Obtain third-party cooperation as reasonably requested by Hexagon.

Task Acceptance Criteria

This Task is complete when all Custom Interfaces are developed.

5. Load Balancer Equipment Ordering

Task Description

Hexagon resources will order the load balancer components as required for the virtual environments as specified in Attachment F (System Configuration Diagram, Hardware specifications, BOM items listed as Hexagon furnished) of this SOW.

Task Deliverables

- Estimated delivery date of Kemp load balancers

Task Prerequisites

- Equipment requirements have been finalized.
- Project Kickoff Meeting Task is complete.

Task Assumptions

- N/A

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Order the Kemp load balancers.

Customer Team Participation and Responsibilities

Customer shall:

- N/A

Task Acceptance Criteria

This Task is complete when Hexagon resources have ordered the Equipment specified in this Task.

Staging Phase

6. Physical Infrastructure Installation

Task Description

This Task involves Customer physically installing the servers and storage into the datacenter and the configuration of the physical servers and storage that will host the virtual environment.

Task Deliverables

- Customer staging of the physical infrastructure

Task Prerequisites

- Project equipment is ordered and received.
- Customer must have the license keys for VMware, SQL and Windows software. If such license keys were purchased by Hexagon for Customer, then Customer will have received an email and shall have downloaded these license keys.
- The Customer has completed the Infrastructure Build Document provided by Hexagon which includes a list of server names and IPs and service account requirements and other various information.

Task Assumptions

- Servers will be created\provided for staging the Hexagon software and are for the sole purpose of Hexagon Software and will not serve other roles.

Hexagon Team Responsibilities

Hexagon shall:

- Provide the VM templates to the customer via electronic download (FTP, File copy, etc.). There will be two (2) files totaling approximately 50GB; and
- Assist the Customer with importing the Hexagon-provided templates to the templates datastore. All VMs will be created from these templates.

Customer Team Responsibilities

Customer shall:

- At each site:
  - Provide Rack Space for the server equipment;
  - Provide Power in the rack;
  - Provide Network connections for the provided equipment on the appropriate VLANs;
  - Provide adequate cooling for the servers;
- Provide required server names and IPs for all of the equipment;
- Provide domain level credentials for the vCenter server and to join servers to the domain;
- Provide assistance with resolving issues related to network connectivity and\or remote access;
- Add ESX Host names as static DNS Entries for name resolution;

- Perform the physical installation of the Project equipment in Customer datacenter or location specified in advance by Customer;
- Connect the HP ILO or Dell iDRAC, assigning an IP Address and\or license to those to allow remote access;
- Make connections between the servers and storage, as required;
- Assign an IP Address to the storage array to allow connectivity for full configuration;
- Connect to the servers install\license the ESX host OS if required;
- Configure storage to be presented to the hosts;
- Configure the networking on each host to provide two (2) virtual switches each configured with two (2) NICs. The first vSwitch will support VMware management connectivity and vMotion (10 gig). The second vSwitch will support the Production VM traffic (1 gig); and
- Configure the vSwitch that will be utilized by the virtual Kemp load balancers to change the following settings:
    - MAC address changes from reject to accept.
    - Forged Transmits from reject to accept.
- Answer other configuration questions as they arise.

Task Acceptance Criteria

This Task is complete when: (i)(a) Customer has all designated Project server hardware staged and (b) the physical servers and storage that will host the virtual environments configured and, (ii) Hexagon has provided the VM templates to the Customer.

7. Virtual Server and OnCall Software Staging

Task Description

This Task is intended to facilitate the installation and configuration of virtual machines, Microsoft SQL Servers, the client specific OnCall software suite, associated Third Party Software, and load balancers. This Task will occur in multiple steps. This Task will result in a working environment that will be configured in future tasks. Hexagon will perform all related tasks as described via the Hexagon OnCall Management Tool which utilizes PowerShell for automation of the tasks described herein.

Hexagon will initially confirm the hardware has been configured and set up according to Hexagon standards and able to receive the Software. If deviations are identified, Hexagon will notify the Customer and the Customer will take prompt action to address the deviation.

Hexagon will begin this Task by installing the virtual servers into the virtual environment identified by the Customer. Hexagon will create the virtual servers, assigning them the required CPU, memory, and disk space, set server names and IP addresses, and join the virtual servers to the domain. Hexagon shall also add Hexagon Administrator groups to the local administrator groups of the servers to allow Hexagon the required access for this Project.

Hexagon will also complete the following SQL Implementation Steps: Create SQL Group Managed Service Accounts, install and configure Windows Failover Clustering, enable and configure SQL AlwaysOn Availability group(s) with an associated Availability Group Listener, and Test SQL AlwaysOn Availability Group(s) for proper failover.

Hexagon will install and perform initial configuration of the Hexagon OnCall Product Suite included in this Project. Hexagon shall stage and install Software Products on the virtual servers, which includes creating the directory, setting up folder permissions, installing the Hexagon license servers, and installing and setting up Software Products. Software installed during this Task does not constitute a fully configured system. Additional configuration Tasks are described later in this SOW.

Hexagon will install and configure the load balancers. Hexagon and Customer will hold a meeting to discuss and provide consultation regarding which URLs will be used by the load balancers (“Load Balancer Meeting”). The Customer will ultimately determine and be responsible for the selection of the URLs that will be utilized by the OnCall Product Suite. Hexagon will use those URLs to configure the load balancer VIPs. The load balancers will be configured for GSLB (Global Site Load Balancing) and or HA (High Availability). Special DNS entries will need to be made to delegate the name resolution of the URLs if using GSLB. The Customer should test the configuration of the load balancers.

As part of this Task, Hexagon will initiate the Site Configuration document. At this stage this document is a draft that will be updated throughout the Project.

Task Deliverables

- Draft Site configuration Document
- Installation of OnCall Product Suite(s)
- URLs configured on the Load Balancers
- Ability to login to most of the applications (Some require additional configuration before functional, like OnCall Analytics)

Task Prerequisites

- Customer has completed and returned the Infrastructure Build Document to Hexagon.

- Customer has installed and configured the VMware Virtual Infrastructure in accordance with Attachment F.
- The VMware host have the vSwitch that will be utilized by the virtual Kemp load balancers have had the following settings changed:
    - MAC address changes from reject to accept.
    - Forged Transmits from reject to accept.
- Customer has downloaded the Hexagon provided software.
- Customer has uploaded the SQL Media ISO(s) to a datastore available to Hexagon.
- Customer has uploaded the ESRI Media ISO to a datastore available to Hexagon, if applicable.
- Customer has imported the Hexagon provided VMware templates.
- Customer has placed Hexagon and required third party licenses that have been provided to the Customer and placed on a network share accessible by Hexagon.

Task Assumptions

- The Virtual Infrastructure is VMware vSphere. Additional discussion and level of effort will be needed to account for a Hyper-V Infrastructure.
- New virtual servers will be for the sole purpose of the Project defined by this SOW and will not serve other roles.
- Hexagon will require the following permissions during the Project.
    - Administrative access to the vCenter cluster that the VMs will be created in.
    - Domain Administrator level permission on the domain to allow the following:
        - Join virtual servers to the domain
        - Create Computer Objects
        - Create server clusters
        - Create and manage DFS configurations
        - Create users and groups
        - Add\modify DNS entries in support of the Load balancer configuration

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Perform Virtual Server Implementation
- Install SQL and configure the SQL AlwaysOn Availability group and the MS Windows Failover Cluster
- Perform the Software Installation
- Configure Hexagon Licensing Servers
- Host the Load Balancer Meeting
- Provide the Draft Site Configuration Documentation

Customer Team Participation and Responsibilities

Customer shall:

- Provide information, credentials, and access to systems, the network, VMs, domains, as requested by Hexagon to facilitate Hexagon completing this task.
- Answer questions as needed.
- Promptly address any deviations in hardware, operating system, database software from what is required in Attachment E and F.

Task Acceptance Criteria

This Task is complete when Hexagon has completed the Software Installation and provided the Draft Site Configuration Documentation to Customer.

8. OnCall Records Link to I/CAD

Task Description

As part of this Task, Hexagon will install the OnCall Records Link in the Customer's environment to facilitate data transfers between I/CAD and OnCall Records. As part of this Task, Hexagon will install the OnCall Records Link in the Customer's environment (that will become the Production Environment upon Cutover) and validate data is being transferred through the OnCall Records Link. The OnCall Records Link communicates between I/CAD and OnCall Records to retrieve data from I/CAD and validate data is being transferred through the OnCall Records Link. The OnCall Records Link communicates between I/CAD and OnCall Records to retrieve data from I/CAD.

OnCall Records Link facilitates the transfer of data from the I/CAD system to the OnCall Records including the following:

- Call Information
- Supplemental Information Including:
    - Vehicle Information
    - Location Information
    - Property Information.
    - Name Information

Task Deliverables

- Installation of OnCall Records Link interface for Customer testing and verification

Task Prerequisites

- Virtual Server and OnCall Software Staging Task is complete.

Hexagon Team Participation and Responsibilities

- Hexagon will install the OnCall Records Link in the Customer's environment and validate data is being transferred from I/CAD to OnCall Records.

Customer Team Participation and Responsibilities

- None

Task Acceptance Criteria

This Task is complete when the OnCall Records Link software has been installed and configured.

9. OnCall Records Address Server Mapping Configuration

Task Description

During this Task, Hexagon will configure the OnCall Records Address Server components for OnCall Records and conduct the Address Server Mapping Review ("Address Server Review").

OnCall Records utilizes the native Esri GIS data files processed by the OnCall Records Address Server for geo-validation, standardization, and reverse geo-coding. The OnCall Records Address Server supports street centerline files, commonplace data, and address point information for geo-verification. OnCall Records does not directly synchronize with the maps used within the Customer's CAD solution because additional Location attributes and information may be obtained and captured within OnCall Records for a valid location (e.g., District, Post, Beat, Neighborhood, Community, Quadrants, etc.). The Address Server provides the ability to reverse geo-code a valid location to retrieve these additional data elements.

The Address Server Review is intended to cover the mapping attributes needed for OnCall Records, where the information will be pulled from, and necessary map layers and geocode conversions. The Address Server Review shall last no more than four (4) Business Days. The Customer shall ensure appropriate GIS personnel attend the Address Server Review. As may be requested during and outside of the Address Server Review, Customer shall provide assistance to Hexagon in the installation and configuration of the Address Server within the Customer's environment.

Task Deliverables

- COTS OnCall Records Address Server configuration
- Address Server Review

Task Prerequisites

- Virtual Server and OnCall Software Staging Task is complete.

Task Assumptions

- This workshop provides for a maximum of six (6) Core Team Members.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Conduct the Address Server Review;
- Configure and test the OnCall Records Address Server component; and
- Validate the COTS Address Server Configuration.

Customer Team Participation and Responsibilities

Customer shall:

- Ensure necessary GIS personnel (and others as needed) attend the Address Server Review;
- Identify and set up appropriate facilities for the Address Server Review; and
- Assist Hexagon with the Address Server configuration preparation.

Task Acceptance Criteria

This task is complete when the OnCall Records Address Server has been configured and the Address Server Review has been conducted.

Configuration Phase

10. OnCall Records Fundamentals for Core Team

Task Description

The purpose of this Task is to provide participants from the Records Core Team base level knowledge of the Subsystem to allow the attendees to properly configure the Subsystem. During this Task, Hexagon will conduct one (1) OnCall Records Fundamentals class for system administrators and Users who are part of the Records Core Team ("Core Team Training"). The Core Team Training shall last no more than four (4) Business Days on-site. The Core Team Training will include the following topics for the COTS version of OnCall Records:

Core Team Training

- OnCall Records Solution overview and global features
- Modules overview
- Overview of configuration options
- Overview of NIBRS validations and reporting
- Overview of output reporting and customizations
- Discussion on best practices to follow during configuration workshops
- Adaptation of business processes into OnCall Records and planning for upcoming workshops

The personnel attending Core Team Training shall have completed MS Windows training or have comparable education, training, and experience with MS Windows and its user interface. The personnel designated by the Customer to attend this training shall be the primary participants in Functional Testing for OnCall Records.

Task Deliverables

- Records Core Team Training session

Task Prerequisites

- Business Process Analysis Workshop Task is complete.
- Completion of an introductory Microsoft Windows course or equivalent knowledge and familiarity with the Microsoft Windows user interface.

Task Assumptions

- Hexagon responsibilities will be executed on site at a Facility.
- The training course shall last no longer than four (4) Business Days.
- Session is a formal training presentation based on the COTS version of OnCall Records.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide OnCall Records training for the Records Core Team Members on the installed COTS OnCall Records Software.

Customer Team Participation and Responsibilities

Customer shall:

- Provide a Facility;
- Provide a Project Workstation for each attendee;
- Designate the Records Core Team for attendance and ensure those same participants participate in subsequent Records configuration and testing Tasks;
- Ensure that attendees have attended an introductory MS Windows course, or have comparable education, training, or experience, are available to actively participate in the scheduled training program and attendees attend scheduled training class in their entirety;
- Ensure that all training workstations and servers are operational prior to the agreed start of training classes; and
- Provide internal training to users that are unable to attend the Hexagon-provided training.

Task Acceptance Criteria

This Task is complete when the OnCall Records Fundamentals for Core Team training has been provided.

11. OnCall Records System Configuration Workshop 1

Task Description

During this Task, Hexagon will provide the first System Configuration Workshop ("Configuration Workshop 1"). This Task includes a System/training review for the setups that will be covered. This will provide the Customer Records Core Team assistance as they configure and setup the OnCall Records system. Customer will be responsible for the overall configuration of the OnCall Records Subsystem. This is a hands-on workshop, and Customer's staff will have ongoing configuration and other assignments resulting from this Task. The Configuration Workshop 1 shall last no more than four (4) Business Days. Following completion of the Configuration Workshop 1, Customer will complete its setup of the assigned configuration topics below prior to the scheduled System Configuration Workshop 2 ("Configuration 1 Period").

Configuration Workshop 1 Topics

- OnCall Records Regional Configuration Overview
- OnCall Records Agency Configuration Overview
- Access configuration for Groups and Users
- Code Maintenance & Administration Overview
- Address Server – Overview
- Adaptation of Business Processes into OnCall Records

Task Deliverables

- Configuration Workshop 1 for the Customer OnCall Records Core Team
- Customized documentation on expectations for completion before Configuration Workshop 2.

Task Prerequisites

- OnCall Records Fundamentals for Core Team Task is complete.

Task Assumptions

- Hexagon responsibilities will be executed on site at a Facility.
- The Configuration Workshop 1 shall last no more than four (4) Business Days of the given week.
- The workshop provides for a maximum of twelve (12) Core Team Members.
- This workshop is a formal presentation based on the COTS version of OnCall Records.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide OnCall Records Configuration Workshop 1.

Customer Team Participation and Responsibilities

Customer shall:

- Provide a Facility;
- Provide a Project Workstation for each attendee;

- Ensure, at minimum, the same Records Core Team members who attended OnCall Records Fundamentals for Core Team attend Configuration Workshop 1;
- Ensure that appropriate personnel and system administrator are available to actively participate in the scheduled training program and attendees attend scheduled training class in their entirety;
- Ensure that all workshop workstations and servers are operational prior to the agreed start of training classes; and
- As it pertains to the topics listed for Configuration Workshop 1 above, configure OnCall Records based upon the information provided in OnCall Records System Configuration Workshop 1 during the Configuration 1 Period.

Task Acceptance Criteria

This Task is complete when Hexagon has delivered the Configuration Workshop 1.

12. OnCall Records System Configuration Workshop 1 Follow-up Session

Task Description

Hexagon will provide a Configuration Workshop 1 Follow-up no earlier than one (1) week after completion of the Configuration Workshop 1. This discussion will be provided to offer assistance and answer questions that may arise after the Configuration Workshop 1 and after the Customer has started configuring OnCall Records, so the Customer's Records Core Team can continue to complete their system setup. This Task occurs during the Configuration 1 Period.

Task Deliverables

- Configuration Workshop 1 Follow-up Session

Task Prerequisites

- OnCall Records System Configuration Workshop 1 Task is complete.
- Customer has commenced configuring OnCall Records reflective of the information provided in OnCall Records System Configuration Workshop 1.

Task Assumptions

- The session will last for a maximum of three (3) Business Days consisting of a four (4) hour session each day.
- The session is provided for a maximum of twelve (12) Team Members with a maximum of one (1) student per Project Workstation, unless otherwise agreed to by Hexagon;
- This session is a formal presentation based on the version of OnCall Records covered in the Configuration Workshop 1.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide OnCall Records Configuration Workshop 1 Follow-up for the Core Team Members.

Customer Team Participation and Responsibilities

Customer shall:

- Provide a Project Workstation for each attendee;
- Designate the Customer OnCall Records Core Team members for attendance, which at minimum, shall include the Records Core Team members who attended the Configuration Workshop 1;
- Provide the facilities, supplies, and equipment necessary to support a session conference call. A single room with a projector or LCD screen is recommended; and
- Ensure that appropriate personnel and system administrator are available to actively participate in the scheduled conference and attendees attend in their entirety.

Task Acceptance Criteria

This Task is complete when Hexagon has completed the Configuration Workshop 1 Follow-up Session.

13. OnCall Records System Configuration Workshop 2

Task Description

During this Task, Hexagon will provide the second System Configuration Workshop ("Configuration Workshop 2"). This Task includes a System/training review on the topics specified below. The Configuration Workshop 2 will provide instruction to facilitate the Customer continuing to configure OnCall Records This is a hands-on workshop. Customer's staff will have ongoing configuration and other assignments resulting from this Task. The Configuration Workshop 2 shall last no more than four (4) Business Days. Following completion of the Configuration Workshop 2, Customer will complete its setup of the assigned configuration topics below prior to the scheduled System Configuration Workshop 3 ("Configuration 2 Period").

Configuration Workshop 2 Topics

- Base UI Configuration Adaptations
- Alert and Notification Configuration
- Workflow Approval process
- Continued Adaptation of Business Processes into OnCall Records

Task Deliverables

- OnCall Records Configuration Workshop 2
- Customized documentation on expectations for completion before the end of the Configuration 2 Period

Task Prerequisites

- OnCall Records System Configuration Workshop 1 Follow-up Session Task is complete.
- Customer has completed configuration activities from OnCall Records Configuration Workshop 1.
- Customer has configured the items identified in Configuration Workshop 1 within OnCall Records.
- The address server will be operational and turned on. Customer will verify that the address verification is working properly.
- Hexagon has installed the Clevest software.

Task Assumptions

- Hexagon responsibilities will be executed on site at a Facility.
- The Configuration Workshop 2 shall last no more than four (4) Business Days.
- The workshop provides for a maximum of twelve (12) Team Members.
- This is a formal workshop presentation based on the COTS version of OnCall Records.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide OnCall Records Configuration Workshop 2 in the installed OnCall Records Software.

Customer Team Participation and Responsibilities

Customer shall:

- Provide a Facility;
- Provide a Project Workstation for each attendee;
- Designate the Customer OnCall Records Core Team members for attendance, which shall, at a minimum, include past participants from Configuration Workshop 1;
- Ensure that appropriate personnel and system administrator are available to actively participate in the scheduled training program and attendees attend scheduled training class in their entirety;
- Ensure that all workshop workstations and servers are operational prior to the agreed start of training classes; and
- As it pertains to the topics listed for Configuration Workshop 2 above, configure OnCall Records based upon the information provided in OnCall Records System Configuration Workshop 2 during the Configuration 2 Period.

Task Acceptance Criteria

This Task is complete when Hexagon has delivered the Configuration Workshop 2.

14. OnCall Records System Configuration Workshop 2 Follow-up Session

Task Description

Hexagon will provide a Configuration Workshop 2 Follow-up session no earlier than one (1) week after completion of the Configuration Workshop 2. This session will be provided to offer assistance and answer questions that may arise from the Configuration Workshop 2 and Customer configuration of OnCall Records based upon the information provided in OnCall Records Configuration Workshop 2, so that the Records Core Team can continue to complete configuration of the Subsystem. This Task occurs during the Configuration 2 Period.

Task Deliverables

- Configuration Workshop 2 Follow-up Session

Task Prerequisites

- OnCall Records System Configuration Workshop 2 Task is complete.
- Customer has commenced configuring OnCall Records reflective of the information provided in OnCall Records System Configuration Workshop 2.

Task Assumptions

- The session will last for a maximum of three (3) Business Days consisting of a four (4) hour session each day.
- The session is provided for a maximum of twelve (12) Team Members with a maximum of one (1) student per Project Workstation, unless otherwise agreed to by Hexagon;
- Session is a formal presentation based on the COTS version of OnCall Records covered in the Configuration Workshop 2.

Task Deliverables

- Configuration Workshop 2 Follow-up Session for the Customer OnCall Records Core Team

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide a OnCall Records Configuration Workshop 2 Follow-up session for the Core Team Members.

Customer Team Participation and Responsibilities

Customer shall:

- Provide a facility according to the requirements provided in Task Assumptions;
- Provide a Project Workstation for each attendee;
- Designate the Customer OnCall Records Core Team members for attendance, which at minimum, shall include the Records Core Team members who attended the Configuration Workshop 2;
- Ensure that appropriate personnel and system administrator are available to actively participate in the scheduled session and attendees attend in their entirety.

Task Acceptance Criteria

This Task is complete when Hexagon has delivered the Configuration Workshop 2 Follow-Up Session.

15. OnCall Records System Configuration Workshop 3

Task Description

During this Task, Hexagon will provide the third System Configuration Workshop ("Configuration Workshop 3"). This Task includes the topics specified below. The Configuration Workshop 3 will provide instruction to facilitate the Customer continuing to configure OnCall Records. This is a hands-on workshop. Customer's staff will have ongoing configuration and other assignments resulting from this Task. The Configuration Workshop 3 shall last no more than four (4) Business Days. Following completion of the Configuration Workshop 3, Customer will complete its setup of the assigned configuration topics below ("Configuration 3 Period") prior to the scheduled MFR System Configuration Workshop.

Configuration Workshop 3 Topics

- Advanced UI Configuration Adaptations
- NIBRS review and configuration Continued Adaptation of Business Processes into OnCall Records
- Planning for Testing and Training

Task Deliverables

- OnCall Records Configuration Workshop 3
- Customized documentation on expectations for completion before next Workshop session

Task Prerequisites

- OnCall Records System Configuration Workshop 2 Follow-up Session Task is complete.
- Customer has configured the items identified in Configuration Workshop 2 within OnCall Records.
- The Customer has completed all configuration activities arising from OnCall Records System Configuration Workshop 2.

Task Assumptions

- Hexagon responsibilities will be executed on site at a Facility.
- The Configuration Workshop 3 duration shall not exceed four (4) Business Days.
- Configuration Workshop 3 provides for a maximum of twelve (12) Team Members.
- This is a formal workshop presentation based on the COTS version of OnCall Records.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide OnCall Records Configuration Workshop 3 in the installed OnCall Records Software.

Customer Team Participation and Responsibilities

Customer shall:

- Provide a Facility;
- Provide a Project Workstation for each attendee;
- Designate the Customer OnCall Records Core Team members for attendance, which at a minimum, shall include Customer' participants from Configuration Workshops 1 and 2;

- Ensure that appropriate personnel and system administrator are available to actively participate in the scheduled training program and attendees attend scheduled training class in their entirety;
- Ensure that all workshop workstations and servers are operational prior to the agreed start of training classes; and
- As it pertains to the topics listed for Configuration Workshop 3 above, configure OnCall Records based upon the information provided in OnCall Records System Configuration Workshop 3 during the Configuration 3 Period.

Task Acceptance Criteria

This Task is complete when Hexagon has delivered the Configuration Workshop 3.

16. OnCall Records System Configuration Workshop 3 Follow-up Session

Task Description

Hexagon will provide a Configuration Workshop 3 Follow-up no earlier than one (1) week after completion of the Configuration Workshop 3. This session will be provided to offer assistance and answer questions that may arise from the Configuration Workshop 3 so that the Customer's Records Core Team can continue to complete the system setup. This Task occurs during the Configuration 3 Period.

Task Deliverables

- OnCall Records Configuration Workshop 3 Follow-up session

Task Prerequisites

- OnCall Records System Configuration Workshop 3 Task is complete.
- Customer has commenced configuring OnCall Records reflective of the information provided in OnCall Records System Configuration Workshop 3.

Task Assumptions

- The session will last for a maximum of three (3) Business Days consisting of a four (4) hour session each day.
- The session is provided for a maximum of twelve (12) Team Members with a maximum of one (1) student per Project Workstation, unless otherwise agreed to by Hexagon;
- Session is a formal workshop presentation based on the version of OnCall Records covered in the Configuration Workshop 3.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide a OnCall Records Configuration Workshop 3 follow-up session for the Core Team Members.

Customer Team Participation and Responsibilities

Customer shall:

- Provide a facility according to the requirements provided in Task Assumptions;
- Provide a Project Workstation for each attendee;
- Designate the Customer OnCall Records Core Team members for attendance, which at a minimum, shall include the Customer's participants from Configuration Workshop 3;
- Ensure that appropriate personnel and system administrator are available to actively participate in the scheduled session and attendees attend in their entirety.

Task Completion Criteria

This Task is complete when Hexagon has completed the Configuration Workshop 3 Follow-up Session.

17. OnCall Records | Mobile Field Reporting System Configuration Workshop

Task Description

During this Task, Hexagon will provide the System Configuration Workshop for the OnCall Records | Mobile Field Reporting Subsystem ("MFR Configuration Workshop"). This task includes a System/training review for the setups that will be covered. This will reinforce the previous training and provide the Customer Core team assistance as they configure and setup the OnCall Records | Mobile Field Reporting Subsystem. The workshop will provide the knowledge needed and enable the Customer staff to complete the OnCall Records | Mobile Field Reporting configuration and support the Subsystem. This is a hands-on workshop. Customer's staff will have ongoing configuration and other assignments resulting from this task. Following completion of the MFR Configuration Workshop ("MFR Configuration Period"), Customer will complete its setup of the assigned configuration topics below prior to Customer Functional Testing – OnCall Records.

Task Deliverables

- Configuration Workshop for the Customer OnCall Records | Mobile Field Reporting Core Team

Task Prerequisites

- OnCall Records System Configuration Workshop 3 Follow-up Session Task is complete.
- The Customer has installed and configured at least one (1) workstation for use by the Hexagon instructor during the sessions.
- The Customer has installed and configured at least one (1) workstation per student attending the session.
- An appropriate training room has been identified and set up with the workstations, at least one (1) LCD projector, display screen or other appropriate surface to display a projected image, and white-board space or other ability to take notes and record questions.

Task Assumptions

- Hexagon responsibilities will be executed on site at a Facility.
- The MFR Configuration Workshop duration is four (4) Business Days.
- The workshop provides for a maximum of twelve (12) Team Members.
- This is a formal workshop presentation based on the COTS version of OnCall Records.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide MFR Configuration Workshop in the installed OnCall Records | Mobile Field Reporting Software.

Customer Team Participation and Responsibilities

Customer shall:

- Provide a Facility;
- Provide a Project Workstation for each attendee;
- Designate the Customer OnCall Records | Mobile Field Reporting Core Team for attendance;
- Ensure that appropriate personnel and system administrator are available to actively participate in the scheduled training program and attendees attend scheduled training class in their entirety;

- Ensure that all workshop workstations and servers are operational prior to the agreed start of training classes; and
- As it pertains to the topics listed above, configure OnCall Records based during the MFR Configuration Period.

Task Acceptance Criteria

This Task is complete when Hexagon has delivered the MFR Configuration Workshop to the Customer.

18. OnCall Records | Mobile Field Reporting System Configuration Workshop Follow-up Session

Task Description

Hexagon will provide an MFR Configuration Workshop Follow-up no earlier than one (1) week after completion of the MFR Configuration Workshop. This session will be provided to offer assistance and answer questions that may arise from the MFR Configuration Workshop so that the Customer's Core Team can continue to complete the system setup. This Task occurs during the MFR Configuration Period.

Task Deliverables

- MFR Configuration Workshop Follow-up session for the Customer OnCall Records | Mobile Field Reporting Core Team

Task Prerequisites

- MFR Configuration Workshop Task is complete.
- Customer has commenced configuring OnCall Records | Mobile Field Reporting reflective of the information provided in the MFR Configuration Workshop.

Task Assumptions

- The session will last for a maximum of three (3) Business Days consisting of a four (4) hour session each day.
- The session is provided for a maximum of twelve (12) Team Members.
- Session is a formal workshop presentation based on the version of OnCall Records | Mobile Field Reporting covered in the MFR Configuration Workshop.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide an MFR Configuration Workshop follow-up session for the Core Team Members.

Customer Team Participation and Responsibilities

Customer shall:

- Designate the Customer OnCall Records Core Team for attendance;
- Provide the facilities, supplies and equipment necessary to support the session. A single room with a projector or LCD screen is recommended; and
- Ensure that appropriate personnel and system administrator are available to actively participate in the scheduled session and attendees attend in their entirety.

Task Completion Criteria

This Task is complete when Hexagon has completed the MFR Configuration Workshop Follow-up Session.

19. OnCall Records State NIBRS Validation Installation

Task Description

During this Task, Hexagon resources will upgrade the NIBRS validation changes to reflect state validations.

Task Deliverables

- Hexagon installation of the state-specific NIBRS validations

Task Prerequisites

- The Customer has completed all configuration activities arising from OnCall Records System Configuration Workshop 3.
- OnCall Records System Configuration Workshop 3 Follow-up Session Task is complete.
- Hexagon has completed any state-mandated changes on validations to core Federal IBRS product.

Task Assumptions

- N/A

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Install and test State NIBRS validations; and
- Support Customer testing and provide resolution of Blocker Defects.

Customer Team Participation and Responsibilities

Customer shall:

- Conduct testing and report any Blocker Defects back to each parties' representative via Hexagon's Customer Resource Management (CRM) issue tracking system withinfifteen (15) Business Days of receiving notification from Hexagon that the software is ready for testing.

Task Acceptance Criteria

This Task is complete when the current version of State NIBRS has been installed.

20. OnCall Records State NIBRS Validation Review

Task Description

During this Task, Hexagon resources will conduct a NIBRS validation review workshop (the "NIBRS Validation Review") to illustrate to the Customer how NIBRS Validation works with changes incorporated for the State. The NIBRS Validation Review shall last no more than one (1) Business Day. Major topics covered include the following:

- State NIBRS Requirements
- Fields in OnCall Records that are used for NIBRS reporting
- Validation process

Task Prerequisites

- State NIBRS Validation Installation Task is complete.
- Statute table and picklist code tables are mapped with the correct NIBRS values.

Task Assumptions

- The NIBRS Validation Review shall last no longer than one (1) Business Day.
- The workshop provides for a maximum of twelve (12) Core Team Members with a maximum of one (1) student per Project Workstation, unless otherwise agreed to by Hexagon.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide the NIBRS Validation Review.

Customer Team Participation and Responsibilities

Customer shall:

- Ensure that appropriate personnel are available to actively participate in the scheduled session and attendees attend in their entirety.

Task Acceptance Criteria

This Task is complete when the NIBRS Validation Review has been completed.

21. OnCall Records State NIBRS Reporting Installation

Task Description

During this Task, Hexagon resources will upgrade the IBRS reporting client to reflect state-specific product changes to support state reporting.

Task Deliverables

- Hexagon installation of the state-specific NIBRS reporting.

Task Prerequisites

- State NIBRS Validation Installation Task is complete.

Task Assumptions

- OnCall Records will use existing State NIBRS software. No new development or additional customizations are included.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide COTS documentation on the NIBRS submission tool;
- Support Customer testing and provide resolution of Blocker Defects; and
- Prepare and submit a NIBRS test submission to the State.

Customer Team Participation and Responsibilities

- None

Task Acceptance Criteria

This Task is complete when the current version of State NIBRS has been installed and tested to validate its conformance with State requirements.

22. OnCall Records State NIBRS Report Generation Training

Task Description

During this Task, Hexagon resources will train key personnel on the utilization of the Hexagon NIBRS Reporting Client.

Task Deliverables

- On site training on the NIBRS Reporting Client

Task Prerequisites

- State NIBRS Reporting Installation Task is complete.

Task Assumptions

- OnCall Records will use existing State NIBRS software. No new development or additional customizations are included.
- The session is provided for a maximum of twelve (12) attendees with a maximum of one (1) student per Project Workstation, unless otherwise agreed to by Hexagon.
- Students attending the course should have a good working knowledge of using HxGN OnCall Records.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide a two (2)-day on site training session for twelve (12) students.

Customer Team Participation and Responsibilities

Customer shall:

- Ensure appropriate personnel attend and participate fully and collaboratively in the training.

Task Acceptance Criteria

This Task is complete when the two (2)-day on site training session has been provided.

23. OnCall Records COTS Reports Review

Task Description

This Task is a Hexagon-led class on how to create and edit SSRS reports within the OnCall Records System (the “Records Reports Review”). As part of the Records Reports Review, new report creation will be shown and discussed to allow for adaptation of existing SSRS report knowledge to the new system. The Records Reports Review shall last no longer than two (2) Business Days on site. For clarity, the Records Reports Review is not intended to provide instruction on how to load and edit reports within OnCall Records or SSRS report training, which the participants should already know prior to their attendance.

Task Prerequisites

- OnCall Records System Configuration Workshop 3 Task is complete.

Task Assumptions

- Customer attendees have appropriate education, training, and experience with SQL and SSRS knowledge.
- The Records Reports Review is provided for up to twelve (12) people with a maximum of one (1) student per Project Workstation, unless otherwise agreed to by Hexagon.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide the on-site Records Reports Review

Customer Team Participation and Responsibilities

Customer shall:

- Provide a facility according to the requirements provided in Task Assumptions;
- Provide a Project Workstation for each attendee; and
- Ensure appropriate personnel, with the requisite knowledge attend the Records Reports Review.

Task Acceptance Criteria

This Task is complete when the Records Report Review is completed.

24. OnCall Analytics | Records Configuration

Task Description

This Task is Hexagon-led and involves configuring OnCall Analytics | Records Essentials with Customer's site-specific parameters.

HxGN OnCall Analytics is business intelligence software for reporting, analysis, and evidence-based decision making. It provides reporting and analysis capabilities, which are fully described within a document titled: "HxGN OnCall Analytics | Records: Delivered Models and Reports," which available upon request. That document describes the types of reports and models available within OnCall Analytics, which may require additional configuration and work by the Customer. Only those reports corresponding to the type of reporting model and Software product included within the Project are available to the Customer.

Required OnCall Analytics | Records Advantage Software:

HARDWARE	DESCRIPTION/USE	ONCALL ANALYTICS RECORDS ADVANTAGE SOFTWARE COMPONENTS TO INSTALL
Report Server	The Report Server is a platform that business users will utilize to create, access, view, schedule and manage their reporting content.	Microsoft Power BI Report Server OnCall Analytics | Records Essentials (paginated reports and dashboards)
Data Warehouse Server	The Data Warehouse Server is used for the storage of the DW schemas, ETL related jobs and tables. In addition, this server may be used for the report server schemas.	SQL Server Data Tools (SSDT) SQL Server Analysis Services (SSAS) SQL Server Integration Services (SSIS)
Client Workstation	The Client Workstation is used to access, manage and create content.	Power BI Desktop Report Server (RS) Report Builder

Task Deliverables

- Configuration of OnCall Analytics | Records Essentials software and components for Customer testing and verification
- Data Dictionary delivered to Customer.
- Delivered HxGN OnCall Analytics | Records: Delivered Models and Reports to Customer.

Task Prerequisites

- OnCall Records System Configuration Workshop 3 Task is complete.

Task Assumptions

- Hexagon will install the OnCall Analytics | Records Essentials solution into the Production Environment.

- Other environments will be the responsibility of the Customer.
- Microsoft Power BI Report Server Note: If on-premise hosting of Power BI content is required, Customer must purchase SQL Server 2022 Enterprise Edition with Software Assurance (which includes the Power BI Report Server necessary for on-premise hosting of Power BI content) or may purchase Microsoft Power BI Report Server separately.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Configure the OnCall Analytics | Records Advantage software components as outlined in the above table;
- Install the Microsoft Power BI desktop software (free download) and components as outlined in table above; and
- Confirm that the software installation and delivery has been completed, the data connections have been tested, and data is accessible in reports.

Customer Team Participation and Responsibilities

Customer shall:

- Provide remote access to Customer environment. If remote access is not possible, additional travel and administration time is required to complete the installation and a change order will be required;
- Provide system administrator to work with the Hexagon team during installation activities;
- Provide network administrator to work with the Hexagon team during installation activities;
- Provide database administrator to work with the Hexagon team during the installation activities, if needed;
- Install additional products not purchased under this Agreement, such as hardware and third-party backup software; and
- Provide SQL Server software and license keys to Hexagon for the database installation.

Task Acceptance Criteria

This Task is complete when Hexagon has configured and tested the OnCall Analytics | Records Essentials software and data is accessible for reports and analytics in the Production Environment.

25. Anti-Bias Reporting Product Installation and Configuration

Task Description

Hexagon will install and configure the HxGN Anti-Bias Reporting application, which is a web-based solution used by law enforcement officers to collect perceived demographic and other detailed data regarding pedestrian and traffic stops in compliance with California Assembly Bill 953 (AB-953), also known as the Racial and Identify Profiling Act of 2015 (RIPA).

The application receives initial inputs from Hexagon's dispatch and mobility applications including Mobile for Public Safety and Mobile Responder.

The data collected will contain the following:

- Report Details – contains the officer and stop details.
- Person – contains the data elements required to document the demographics of the person(s) contacted.
- Stop Reason – contains the reason for the interaction, a brief narrative to explain the reason, and dynamic elements required depending on the reason for the interaction.
- Search – used to notate any actions taken during the interaction and if a search of the person/property was conducted.
- Stop Result – contains the result of the stop.

Finalized records are transmitted directly to California DOJ's Web Portal electronically. Any errors are reported immediately to the user for corrections and resubmission.

Task Deliverables

- Installation and configuration of the HxGN Anti-Bias Reporting application

Task Prerequisites

- I/CAD 9.4 has been installed and is in use.

Task Assumptions

- The database tables required for this application are added to the I/CAD database schema using MS SQL Server.
- The application is hosted locally within the Customer's environment and utilizes Kestrel web server in ASP.NET Core.
- I/CAD 9.4 or OnCall Dispatch 10.00.2309 and above is required.
- Microsoft AspNetCore-runtime-6.0.21-win-x64 and above is required.
- Microsoft WindowsDesktop-runtime-6.0.21-win-x64 and above is required.
- This scope is based on the requirements of the California AB953 legislation that went into production on January 1, 2024, including data collection requirements and the API documented by California DOJ for electronically submitting the event.
- This product is not integrated with OnCall Records.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Install and configure the HxGN Anti-Bias Reporting application.

Customer Team Participation and Responsibilities

Customer shall:

- Ensure that appropriate personnel and the system administrator are available to actively participate as needed.

Task Completion Criteria

This Task is complete when Hexagon has installed and configured the HxGN Anti-Bias Reporting application.

26. Custom Interface Product Installation and Configuration

Task Description

During this Task, Hexagon will install, configure, and test the Custom Interfaces. Although the Customer is expected to participate in Hexagon's internal testing of the Custom Interfaces, the Customer will formally test the Custom Interfaces' functionality during Functional Testing.

Task Deliverables

- Documentation of Custom Interfaces installation/testing

Task Prerequisites

- Operation or availability of the external system or Third-Party Software.
- Custom Interface Development Task is complete.
- OnCall Records System Configuration Workshop 1 Task is complete.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Install Custom Interfaces; and
- Test Custom Interfaces in accordance with the approved ICDs.

Customer Team Participation and Responsibilities

Customer shall:

- Ensure SMEs are available to support Hexagon Activities as needed;
- Verify that physical connectivity has been achieved from Customer's communication server to OnCall;
- Provide availability and confirm operation of external systems or third-party software;
- Provide the following information to Hexagon:
    - IP address for remote databases
    - Socket value for remote systems
    - Operator IDs (ORIs), terminal mnemonics, etc., as needed by remote systems
- Ensure the system and network administrators are available to work closely with the Hexagon team for the duration of the Task; and
- Ensure third-party cooperation with Hexagon's reasonable requests.

Task Acceptance Criteria

This Task is complete when each Custom Interface is installed and configured in accordance with the applicable ICD.

27. Standard Interface Product Installation and Configuration

Task Description

During this Task, Hexagon will install and configure the Standard Interfaces. The Customer will formally test the interface functionality and reliability during Functional Testing.

The following are regarded as "Standard Interfaces" as the term is defined in Attachment H of this SOW:

- Coplogic Records Xalt Interface
- Anti-Bias Reporting Application (CA RIPA)

As part of this Task, Hexagon will provide Vendor Views to advise Coplink and Lexis Nexis AVCC on how to pull the data they require.

Task Deliverables

- Documentation of Standard Interfaces installation

Task Prerequisites

- Operation or availability of the external system or Third-Party Software
- OnCall Records System Configuration 3 Follow-up Session Task is complete.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Install Standard Interfaces.

Customer Team Participation and Responsibilities

- Ensure SMEs are available to support Hexagon Activities as needed;
- Verify that physical connectivity has been achieved from Customer's communication server to OnCall;
- Provide availability and confirm operation of external systems or third-party software;
- Provide the following information to Hexagon:
    - IP address for remote databases
    - Socket value for remote systems
    - Operator IDs (ORIs), terminal mnemonics, etc., as needed by remote systems
- Ensure the system and network administrators are available to work closely with the Hexagon team for the duration of the Task; and
- Ensure third-party cooperation with Hexagon's reasonable requests.

Task Acceptance Criteria

This Task is complete when each Standard Interface is installed and configured.

Testing Phase

28. Test Plan and Test Case Workshop

Task Description:

The RMS Test Plan/Test Case Workshop is an onsite workshop style session lasting up to three (3) Business Days that is intended to educate Records Core Team members on best practices when creating the RMS Test Plan and Test Cases. Hexagon will make recommendations to the Customer on how to create a Test Plan corresponding to the Benchmark Criteria. Additionally, as part of the workshop, Hexagon and Core Team members will create Test Cases until the end of workshop.

Task Prerequisites:

- OnCall Records Fundamentals Workshop for Core Team Task is complete.

Task Assumptions:

- Hexagon responsibilities will be executed on site at a Facility.
- The RMS Test Plan/Test Case Workshop shall last no more than three (3) Business Days.
- Customer has provided a Facility.

Hexagon Team Participation and Responsibilities:

Hexagon shall:

- Conduct the RMS Test Plan/Test Case Workshop
- Work with the Customer on creating Test Cases during the workshop; and
- Provide consulting services on best practices when creating a Test Plan and Test Cases.

Customer Team Participation and Responsibilities:

Customer shall:

- Provide a Facility;
- Provide a Project Workstation for each attendee;
- Ensure the attendance and active participation of the Records Core Team members and other SMEs for the duration of the Test Case/Test Plan Workshop;
- Participate in discussions and engage with the Hexagon team member;

Task Acceptance Criteria:

This Task is complete at the conclusion of the Test Case/Test Plan Workshop.

28. Test Plan and Test Cases Development

Task Description

Following the Test Plan and Test Case Workshop, , the Customer will create a test plan ("RMS Test Plan") with Test Cases for OnCall Records. The RMS Test Plan may incorporate the Test Cases created during the Test Plan and Test Case Workshop. The RMS Test Plan and Test Cases are essential for the Customer to be able to validate and prove the functionality of the Records Subsystem. Every Benchmark Criteria corresponding to OnCall Records should have at least one Test Case; some Benchmark Criteria may have multiple associated Test Cases. The Customer will identify the Benchmark Criteria that correspond to the applicable Test Cases. A clear pass/fail criterion must be defined for each Test Case. The Test Plan and Test Cases will be agency-specific, and work-process driven with clearly documented Pass/Fail criteria. Only the elements of the Test Plan and Test Cases conforming with the Benchmark Criteria shall be used in evaluating and testing the System. The Test Plan is the set of Test Cases that will serve as the basis of testing the fully configured Subsystem, including interfaces.

The Customer will not need a fully configured Subsystem to create the Test Plan and Test Cases. The Test Case creation should be accomplished using a workflow-based Test Case.

Task Deliverables

- Customer's RMS Test Plan and Test Cases

Task Prerequisites

- OnCall Records Fundamentals for Core Team Task is complete.
- Test Plan and Test Case Workshop is complete

Task Assumptions

- N/A

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Consult with the Customer during the RMS Test Plan and Test Cases creation task to validate the Test Cases correspond to the Benchmark Criteria.

Customer Team Participation and Responsibilities

Customer shall:

- Create the RMS Test Plan and Test Cases consistent with the Benchmark Criteria; and
- Provide RMS Test Plan and Test Cases to Hexagon.

Task Acceptance Criteria

This Task is complete when the Customer has created the RMS Test Plan and Test Cases and Hexagon has validated the same in accordance with the Benchmark Criteria.

29. Customer Functional Testing

Task Description

The Customer, with support from Hexagon, will test OnCall Records Subsystem's conformance with the Benchmark Criteria. The Customer will conduct Functional Testing over the course of ten (10) consecutive Business Days ("Records Testing Period"). During the Records Testing Period, the Customer shall execute the RMS Test Plan and corresponding Test Cases. Except as expressly provided, no other testing or evaluation for OnCall Records is contemplated in this Project. Hexagon and the Customer will jointly document and track the results of each Test Case as either pass or fail.

Within fifteen (15) Business Days of the end of the RMS Testing Period ("RMS Reporting Period"), the Customer shall file any Blocker Defects (Hexagon can also enter Blocker Defects as appropriate) and Permissive Defects encountered during Functional Testing – Records through Hexagon's Customer Resource Management (CRM) system. For any Blocker Defect identified, the Customer shall provide, at minimum, the following information: a description of the Defect and the steps used to reproduce it, the functionality tested when the Blocker Defect was encountered, the manner in which the functionality was tested, and the outcome when the functionality was tested. If the Blocker Defects are not filed within the RMS Reporting Period, it is presumed Functional Testing was completed without any Blocker Defect, and this Task is complete. Only Blocker Defects reported by the conclusion of the Reporting Period will be resolved as part of this Task. The existence of Permissive Defect(s) shall not preclude or be a condition of completion of any subsequent Tasks or implementation of a new Release.

To the extent requested, Customer agrees to promptly respond to requests for additional information regarding the Blocker Defect requested by Hexagon. Upon diagnosing the Blocker Defect and validating the Defect encountered meets the attributes of a Blocker Defect, Hexagon resources shall proceed to resolve the Blocker Defect accordingly. If the investigation determines the reported Blocker Defect did not meet the attributes of a Blocker Defect then the reported Defect will be reclassified in accordance with the levels provided in the Master Terms Glossary. Alternatively, if the investigation shows the reported Blocker Defect was caused by Customer hardware, Network Infrastructure, or Third-Party Software not provided by Hexagon, or non-conformance with Attachments E-2 and F, then Hexagon will provide such information to the Customer for the Customer to resolve, and the Blocker Defect will be closed and regarded as complete.

As part of its resolution efforts, Hexagon may at its discretion provide a procedural or programmatic work around, a configuration change, or provide an Update. Once the Blocker Defect(s) is addressed, Hexagon will report to Customer the Blocker Defect has been addressed and the Customer will have fifteen (15) Business Days to execute its Test Plan ("RMS Resolution Testing Period").

After the Functional Testing, Hexagon will enforce a Code Freeze. Appreciating the desire to promote stability within the System and minimize changes to the System after Functional Testing, the Parties will not make configuration changes or modifications to the System except as the Project Managers may agree or is necessary to resolve a Blocker Defect.

Task Deliverables

- OnCall Records Functional Testing

Task Prerequisites

- Customer and Hexagon mutually confirm that OnCall Records is ready for testing.
- Test Plan and Test Cases Development – OnCall Records Task is complete.
- The Customer has installed and configured at least one (1) workstation per tester.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Verify OnCall Records is ready for Functional Testing.
- Provide dedicated resource support during business hours for Functional Testing.
- Complete Interface Testing
- Review Defects identified in the Blocker Report by the Customer; and
- Resolve Blocker Defects identified in the Blocker Report.

Customer Team Participation and Responsibilities

Customer shall:

- Verify OnCall Records is ready for Functional Testing.
- Execute the RMS Test Plan;
- Track and document results from executed Test Cases and provide Hexagon a Blocker Report; and
- If applicable or desired, re-execute Test Cases during the Resolution Testing Period.

Task Acceptance Criteria

This Task is complete upon expiration of the RMS Testing Period and resolution of all Blocker Defects reported by the end of the RMS Reporting Period.

Training Phase

30. Hexagon-Led Training

Task Description

During the Training phase, Hexagon resources will conduct Administrative and Train-the-Trainer sessions for Customer-designated personnel.

The following formal training classes are included in the Project ("Hexagon Training Classes"):

- HxGN OnCall Records Train-the-Trainer – Qty: 1
- HxGN OnCall Records Train-the-User – Qty: 2
- HxGN OnCall Records | Mobile Field Reporting Train-the-Trainer – Qty: 3
- HxGN OnCall Analytics | Records User Training – Qty: 1
- HxGN OnCall Analytics | Records System Administration Training – Qty: 1

It is recommended that Customer develop its own training program, including, but not limited to: creating a training plan suitable for its needs, identifying a training cadre for each Subsystem, and leveraging the Hexagon training materials and Documentation to ensure its Users have acquired the necessary knowledge and are in a position to use OnCall Records upon Cutover. The Customer is solely responsible for training its Users. The Customer shall complete its User Training no later than thirty (30) calendar days after Hexagon has completed the Hexagon Training Classes ("End User Training Period").

Task Deliverables

- Training course agendas
- Applicable COTS Documentation, in electronic format; for the Hexagon Training Classes

Task Prerequisites

- Customer has identified and secured an appropriate training room and set up with the workstations, at least one (1) LCD projector, display screen or other appropriate surface to display a projected image, and white-board space or other ability to take notes and record questions.
- The Customer has installed and configured at least one (1) workstation per student attending the session.
- Customer Functional Testing Tasks for each Subsystem are complete.

Task Assumptions

- The Customer will complete end user training within the End User Training Period.
- Both end-user training and train-the trainer training will be provided as specifically identified herein. Training will take place during normal Business Hours, which is typically from 8:00 am - 5:00 pm.
- Training documentation provided by Hexagon with this SOW will be standard COTS Documentation and help files and will not be customized to the Customer's site-specific configuration. All Documentation will be provided in electronic format. Should printed copies be required, the Customer is responsible for providing them.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Conduct Hexagon Training Classes.

Customer Team Participation and Responsibilities

Customer shall:

- Provide appropriate facilities and install/configure workstations as indicated in the Task Assumptions;
- Provide a Project Workstation for each attendee of the Hexagon Training Classes;
- Ensure appropriate personnel participate in the Hexagon Training Courses; and
- Complete end user training within the End User Training Period.

Task Acceptance Criteria

This Task is complete once Hexagon has delivered the Hexagon Training Classes to the Customer.

31. Test Environment Creation

Task Description

Following completion of all testing Tasks, Hexagon will create the Test Environment using a snapshot of the Production Ready System. As part of this Task, Hexagon will test the Test Environment to verify the Production Ready System has been properly loaded. For clarification, this testing is not intended to repeat or overlap with Customer Functional Testing Tasks.

Task Deliverables

- Test Environment installed

Task Prerequisites

- Test virtualized environment is available.
- The System is a Production Ready System.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Install and test the Hexagon System in the Test Environment.
- Train Customer on how to do test and training refreshes (if not already taught in earlier training)

Customer Team Participation and Responsibilities

Customer shall:

- Provide IT support, as required; and
- Provide hardware, database software, operating system software, network, and physical site necessary for creation of Test Environment.

Task Acceptance Criteria

This Task is complete when the System has been installed and tested in the Test Environment.

Cutover Phase

32. Cutover Plan

Task Description

Hexagon and the Customer will jointly develop a Cutover Plan. The Cutover Plan will detail the steps necessary to cutover OnCall Records. The Cutover Plan will assign tasks and responsibilities to both Hexagon and Customer personnel in the month prior to Cutover. The Cutover Plan covers topics including Customer staffing, movement of equipment into final locations, final database cleanout of test events, procedures to report issues, and planned sequence of events for the Cutover day.

Hexagon will provide the initial draft of the Cutover Plan to the Customer for review. The Customer will review the draft and provide feedback to Hexagon within ten (10) Business Days, which will incorporate appropriate feedback into a final Cutover Plan.

As part of the execution of the Cutover Plan, the Parties will work together to address Blocker Defects that arise following testing provided that requests for new or different configuration not addressing a Blocker Defect may require a Change Order.

Task Deliverables

- Cutover Plan

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Create a draft Cutover Plan (i.e., prepare a checklist of responsibilities and tasks to be completed during the Cutover Task prior to Cutover);
- Work with Customer personnel to refine the Cutover Plan; and
- Review and approve the final Cutover Plan.

Customer Team Participation and Responsibilities

Customer shall:

- Review and comment on the draft Cutover Plan within ten (10) Business Days of receipt;
- Work with Hexagon personnel to refine the Cutover Plan; and
- Review and approve the final Cutover Plan.

Task Acceptance Criteria

This Task is complete when the Customer has reviewed and approved the final Cutover Plan.

33. System Readiness Review

Task Description

During this Task Hexagon technical resources, the Hexagon Project Manager, and the Customer team will meet and determine if the OnCall Subsystems are ready for Cutover.

In addition, the System Readiness Review verifies that the following has occurred:

- A document titled, “Cutover Plan” has been developed and approved by both Hexagon and the Customer;
- Establishment and approval of a schedule for Cutover Activities; and
- Identification and scheduling of Hexagon and Customer resources required for Cutover Activities.

Task Deliverables

- Readiness Review meeting minutes
- Discussion notes on the results from Hexagon’s final review of the system

Task Prerequisites

- Cutover Plan Task is complete.

Task Assumptions

- The Customer certifies it has trained all personnel who will be utilizing the system.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Conduct a conference call to discuss if the system is ready to perform Cutover;
- Provide system Cutover notification to appropriate internal and external interface stakeholders supplying systems integral to Cutover operations;
- Review and provide timely feedback/approval of Cutover Plan; and
- Work with Customer to determine suitable Cutover schedule.

Customer Team Participation and Responsibilities

Customer shall:

- Participate in the conference call;
- Notify internal and external interface stakeholders about pending Cutover;
- Review and provide timely feedback/approval of Cutover Plan; and
- Work with Hexagon to determine suitable Cutover schedule.

Task Acceptance Criteria

This Task is complete when the Readiness Review has been conducted.

34. Cutover to Production Use

Task Description

Cutover reflects the culmination of all the Tasks in this SOW. It reflects the point at which the Customer first uses the System in a live environment for its intended purpose.

The Parties shall execute the Cutover Plan, as practical, as part of Cutover. Beginning on Monday of the week of Cutover, Hexagon resources and the Project Manager will support the Customer's Activities leading to Cutover, during Cutover, and post-Cutover. Except for the day of Cutover where the resource may be on site at alternate hours, the Hexagon resource will be available Monday to Friday of the week of Cutover during business hours. Upon Cutover, the Customer's System Administrator will assume primary responsibility of the management and administration of the System, and the Hexagon resources will provide support as needed by the Customer System Administrator. At times where the Hexagon resources are not otherwise available after the Project is complete, the Customer shall contact Hexagon's HelpDesk in accordance with the Maintenance Terms within the Agreement. For Blocker Defects during the week of Cutover, Hexagon's Project Team will respond to the reported Defect (including during non-Business hours).

Cutover also marks the commencement of the Warranty Period for the Project Software as described in Attachment K.

Task Deliverables

- Cutover of Records Subsystems.

Task Prerequisites

- All prior Tasks are complete.
- The End User Training Period is complete.

Task Assumptions

- The Parties have agreed Cutover can proceed.
- Cutover will take place on the day and time specified in the Cutover Plan.
- Hexagon will provide resources on site (one (1) Project Manager and two (2) RMS implementers.)

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Hexagon shall provide technical resource(s) to support Cutover during the week of Cutover.

Customer Team Participation and Responsibilities

Customer shall:

- Ensure availability of trained Users;
- Ensure availability of Core Team during Cutover Activities;
- Assume System Administration and management for the System upon Cutover;
- Ensure availability of all third-party vendors impacted by the Cutover;

- Ensure availability of all IT disciplines necessary to immediately address issues as necessary; and
- Ensure availability of member(s) of the training cadre during all shifts.

Task Acceptance Criteria

This Task is complete upon Cutover of the Subsystems.

35. OnCall Records NIBRS Certification

Task Description

This Task defines the services required for NIBRS Validation and Reporting Qualification via OnCall Records.

Task Prerequisites

- Cutover to Production Use Task is complete.

Task Assumptions

- NIBRS validation will utilize production data.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Assist Customer with the NIBRS certification process; and
- After certification is achieved, install NIBRS in the Production Environment.

Customer Team Participation and Responsibilities

Customer shall:

- Ensure System Administrator is available to support all tasks.

Task Acceptance Criteria

This Task is complete when NIBRS certification has been achieved.

36. Post-Cutover Support

Task Description

During this Task, Hexagon resources will provide Post-Cutover support to Customer. The “Post-Cutover Support Period” is the ten (10) Business Days beginning the Monday following Cutover. It is designed to provide the Customer with dedicated, quickly accessible support for questions and Defects encountered in the ten (10) Business Days following the Cutover to Production use of the new System.

During this Task, Hexagon resources will be assigned Defects that are filed by the Customer against the new System. Hexagon resources will work to identify and address the Defects reported, understanding the Defects will be triaged based upon their severity during the Post Cutover Support Period. Defects remaining after the Post Cutover Support Period will be addressed by the Help Desk. Defects reported outside of Business Hours will be addressed in accordance with the maintenance provisions of the Agreement.

The Post-Cutover Support Period is not a configuration period. Requests for new configurations that are not related to addressing a Defect will not be supported during this time frame. This is done to ensure the stability of the System delivered and that focus remains on Defects and to minimize the introduction of new opportunities for errors or problems.

Task Deliverables

- Task Completion Form confirming that Post-Cutover Support has been provided in accordance with SOW Post-Cutover Support task description

Task Prerequisites

- System Cutover to Production Use Task is complete.

Task Assumptions

- Post-Cutover Support is provided Monday-Friday during normal Business Hours. Standard after-hours emergency support procedures, defined in the Cutover Plan, remain the same for the duration of this Task.
- Defects will be reported via Hexagon’s designated CRM tool.
- The Customer System Administrator remains the primary point of contact and initial troubleshooting point of contact for all issues during this Task.
- The Customer System Administrator maintains responsibility for core system administration tasks.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Provide ten (10) Business Days of Post-Cutover support in accordance with this SOW; and
- Address Defects within the Post Cutover Support Period.

Customer Team Participation and Responsibilities

Customer shall:

- Ensure Defects are recorded in Hexagon’s CRM tool in a timely manner and in accordance to the mutually agreed upon Project Schedule.

Task Acceptance Criteria

This Task is complete when the Post-Cutover Support Period has expired.

37. OnCall Records Subsystem 30-Calendar Day Reliability Test

Task Description

The Reliability Period Task is designed to demonstrate the stability of the Records System immediately following Cutover ("RMS Reliability Period"). During the Reliability Period, the Records System shall operate without a Blocker Defect (P1 or P2) for a total of thirty (30) calendar days. Once the Blocker Defect is resolved (either through configuration, reasonable work around, or a programmatic code change), the Customer shall have two (2) business days to test the resolution. Once a Blocker Defect is logged and validated the RMS Reliability Period shall and resume at a prescribed point in time. The first fifteen (15) days of the Reliability Period is regarded as Phase 1 and the second fifteen days (days 16-30) are regarded as Phase 2 of the Reliability Period. Once the System has operated for fifteen (15) consecutive days without a valid Blocker Defect, then Phase 1 of the Reliability Period is complete and Phase 2 of the Reliability Period shall commence and conclude once it has operated from Day 16 to Day 30 without a valid Blocker Defect. If a valid Blocker Defect is logged during Phase 1, then once the Blocker Defect is resolved, the Reliability Period will resume at the first day of Phase 1 of the Reliability Period (i.e. day 1). If a valid Blocker Defect is logged during Phase 2, then once the Blocker Defect is resolved, the Reliability Period will resume at the first day of Phase 2 of the Reliability Period (i.e. day 16).

Requests for new configurations not related to addressing a Blocker Defect cannot be supported during this time frame. Similarly, the Customer shall refrain from making any configuration changes until the RMS Reliability Period is complete.

Task Deliverables

- Customer support for problems, questions, or errors

Task Prerequisites

- Cutover to Production Use Task is complete.

Task Assumptions

- Support is provided Monday through Friday during normal business hours. Standard after-hours emergency support procedures remain the same for the duration of this Task.
- Blocker Defects will be reported via the Help Desk Portal.

Hexagon Team Participation and Responsibilities

Hexagon shall:

- Coordinate addressing post-live Blocker Defects with the Customer; and
- Resolve valid Blocker Defects.

Customer Team Participation and Responsibilities

Customer shall:

- Use and monitor the OnCall Records System in a production environment;
- Maintain a log of problems found;
- Contact Hexagon personnel in a timely manner in the event of system problems or failures; and
- Begin system monitoring in support of the Extended Warranty period.

Task Acceptance Criteria

This Task is complete after the OnCall Records System completes the RMS Reliability Period.

Attachment A – Pricing Summary

Hexagon OnCall Records	Total
OnCall Records Software	**$777,852**
OnCall Records Project Services	**$739,870**
OnCall Records Interfaces	**$362,966**
Third Party:	
White Box Archive Report Tool (ART)	**$38,488**
Kemp Load Balancer	**$32,090**
Other:	
Anti-Bias Reporting	**$41,684**
30 Day Reliability Support	**$20,184**
Test Plan Workshop	**$25,820**
Mobile Field Reporting Train the Trainer	**$46,362**
OnCall Records Train the User	**$46,362**
Base System Total Software and Services	**$2,131,678**
Initial Recurring Maintenance/Extended Warranty - Year 2	**$257,046**
Total Order 11 Value (including Initial Recurring Maintenance)	**$2,388,724**
Annual Recurring Maintenance Fee – Year 3 (Order 12)	**$269,899**
Annual Recurring Maintenance Fee – Year 4 (Order 13)	**$283,394**
Annual Recurring Maintenance Fee – Year 5 (Order 14)	**$297,563**
Total 5 Year Cost	**$3,239,580**

**Total Order 11 Value Price includes 12 months of extended warranty which begins at sub-system cutover of OnCall Records*

Pricing Assumptions:

- This offer is contingent upon the execution of Amendment 1 to the Agreement.

- This offer is valid until **September 27, 2024**.
- Pricing for base software licensing is based on the information provided by the Customer and the Hexagon concurrent licensing model. Please see the included Bill of Materials for license counts.
- Based on the request for a 5-year period of the contract, Hexagon pricing assumes Year 1 to be the implementation period, Year 2 as the Extended Warranty (1st year maintenance) period beginning at Cutover, and Years 3-5 as the following 3 years of recurring maintenance.
- Software licenses for Backup and Test Environments are included at no additional cost.
- Project Services included in this SOW are inclusive of project management, implementation, interface installation, training services, and related travel.
- To meet state-specific requirements, Hexagon has included our standalone Anti-bias Reporting Application included in the base price that connects to I/CAD.
- The third-party Kemp Load Balancer products procured by Hexagon are provided with a pre-paid 5-year pass-through warranty from the original manufacturer. The warranty commences on the date the product is shipped to the customer.
- Third parties included in the one-time project fee include support/maintenance; some start at cutover and others upon shipment. All have been included in the pricing appropriately.
- Hexagon has partnered with subcontractor Whitebox to convert legacy RMS data into a SQL Server format (data warehouse) and provided an interface for queries and data lookup to the historical source information. The Archive Report Tool (ART) Application is a solution designed for allowing staff without database or technical programming experience to search for and view historical legacy data.
- Hexagon has included optional years of annual system maintenance at 5% increase year over year.
- All workstation and server hardware, operating system software, and database software licenses as defined in the configuration diagram, SOW Attachment F, are assumed to be customer - furnished.
- Hexagon has provided optional pricing for HxGN OnCall Analytics - Link Analysis that reports business intelligence and analytics in HxGN OnCall Records. It provides records customers a method of analysis used to evaluate relationships between objects, relationship types and attributes. This cost represents the software only and does not include the required installation services. These services can be quoted at the time this option is selected.
- The pricing in the above tables is exclusive of any applicable sales/use tax. Any applicable tax will be added to the pricing above at time of invoicing.

Bill of Materials

DESCRIPTION	QUANTITY
Hexagon OnCall Records Software:	
HxGN OnCall Records - Concurrent User License	150
HxGN OnCall Records - Concurrent User License - BCK	150
HxGN OnCall Records - Concurrent User License - TST	150
HxGN OnCall Records-NIBRS Report & Validate -CA	1
HxGN OnCall Records-NIBRS Report & Validate -CA - BCK	1
HxGN OnCall Records - Mobile Field Reporting	75
HxGN OnCall Records - Mobile Field Reporting - BCK	75
HxGN OnCall Records - Mobile Field Reporting - TST	75
HxGN OnCall Analytics - Records Essentials NL 4 Core	1
Coplogic Records Xalt Interface	1
Coplogic Records Xalt Interface - Backup	1
Xalt - Integration Runtime Engine NL - Additional License	1
Xalt - Integration Runtime Engine NL - Additional License - BCK	1
Xalt - Integration Runtime Engine NL - Additional License - TST	1
Clevest Enterprise Mobility Platform - Platinum	1
Custom Interfaces:	
RMS Interface to CLETS (Query)	1
RMS Interface to DataWorks	1
RMS Interface to CrossRoads	1
RMS Interface to FileOnQ	1
RMS Vendor Views for Coplink	1
RMS Interface to LiveScan	1
RMS Interface to SWITRS	1

DESCRIPTION	QUANTITY
RMS Interface to LexisNexis AVCC	1
RMS Interface to Evidence.com	1
RMS Interface to Data Ticket	1
RMS Interface to DA Portal - San Bernardino DA	1
RMS Interface to Phoenix Group	1
Third Party:	
Whitebox Archive Reporting Tool (ART)	1
Kemp Load Balancer VLM-3000 (includes 5 years prepaid support)	3
Other:	
Anti-Bias Reporting	1
Anti-Bias Reporting - Backup	1
Option	
HxGN OnCall Analytics - Link Analysis	4

Attachment B – Payment Schedule

Milestone Payment Schedule			
MS (#)	**Milestone Deliverable**	**MS (%)**	**MS ($)**
1	Upon Completion of Task 1: Project Kickoff Meeting	10.00%	$238,872
2	Upon Completion of Task 7: Virtual Servers and OnCall Software Staging	10.00%	$238,872
3	Upon Completion of Task 11: OnCall Records System Configuration Workshop 1	15.00%	$358,309
4	Upon Completion of Task 13: OnCall Records System Configuration Workshop 2	15.00%	$358,309
5	Upon Completion of Task 15: OnCall Records System Configuration Workshop 3	15.00%	$358,309
6	Upon Completion of Task 17: OnCall Records Mobile Field Reporting (MFR) System Configuration Workshop	10.00%	$238,872
7	Upon Completion of Task 30: Customer Functional Testing	10.00%	$238,872
8	Upon Completion of Task 35: Cutover to Production Use	10.00%	$238,872
9	Upon Completion of Task 38: 30 Day Reliability Period	5.00%	$119,440
	Total	**100.00%**	**$2,388,724**

Attachment C – Initial Project Schedule

Task Name	Duration	Business Days Since Start
City of Ontario, CA RMS Sample Project Plan	**372 days**	**0 days**
Planning Phase	**93.88 days**	**0 days**
Project Kickoff Meeting	**7 days**	**20 days**
OnCall Records Business Process Analysis (BPA) Workshop	**8 days**	**32 days**
Custom Interface Requirements Gathering	**53.5 days**	**27 days**
OnCall Records Custom Interface Requirements Gathering (ICDs)	**53.5 days**	**27 days**
RMS Interface to CLETS (Query)	**18.13 days**	**27 days**
Customer reviews ICD	10 days	31.88 days
Customer approves ICD	3 days	42.13 days
RMS Interface to DataWorks	**15.13 days**	**31.88 days**
Customer reviews ICD	10 days	33.75 days
Customer approves ICD	3 days	44 days
RMS Interface to CrossRoads	**21.13 days**	**33.75 days**
Customer reviews ICD	10 days	41.38 days
Customer approves ICD	3 days	51.88 days
RMS Interface to FileonQ	**22.13 days**	**41.38 days**
Customer reviews ICD	10 days	50 days
Customer approves ICD	3 days	60.5 days
RMS Interface to LiveScan	**16.13 days**	**50 days**
Customer reviews ICD	10 days	52.88 days

Customer approves ICD	3 days	63.13 days
RMS Interface to DA Portal - San Bernardino DA	**17.13 days**	**52.88 days**
Customer reviews ICD	10 days	56.75 days
Customer approves ICD	3 days	67 days
RMS Interface to SWITRS	**17.13 days**	**56.75 days**
Customer reviews ICD	10 days	60.63 days
Customer approves ICD	3 days	70.88 days
RMS Interface to Evidence.com	**16.13 days**	**60.63 days**
Customer reviews ICD	10 days	63.5 days
Customer approves ICD	3 days	73.75 days
RMS Interface to Data Ticket	**15.13 days**	**63.5 days**
Customer reviews ICD	10 days	65.38 days
Customer approves ICD	3 days	75.63 days
RMS Interface to Phoenix Group	**15.13 days**	**65.38 days**
Customer reviews ICD	10 days	67.25 days
Customer approves ICD	3 days	77.5 days
Custom Interface Development	**48.75 days**	**45.13 days**
OnCall Records Custom Interface Development	**48.75 days**	**45.13 days**
RMS Interface to CLETS (Query)	16.88 days	45.13 days
RMS Interface to DataWorks	2.5 days	47 days
RMS Interface to CrossRoads	5 days	54.88 days
RMS Interface to FileonQ	5 days	63.5 days
RMS Interface to LiveScan	5 days	66.13 days
RMS Interface to DA Portal - San Bernardino DA	6.5 days	70 days

RMS Interface to SWITRS	20 days	73.88 days
RMS Interface to Evidence.com	5 days	76.75 days
RMS Interface to Data Ticket	4 days	78.63 days
RMS Interface to Phoenix Group	4 days	80.5 days
Load Balancer Equipment Ordering	**0.25 days**	**27 days**
Staging Phase	**62.39 days**	**0 days**
Physical Infrastructure Installation	**1 day**	**40.25 days**
Virtual Server and OnCall Software Staging	**62.39 days**	**0 days**
OnCall Records Link to I/CAD	1 day	0 days
OnCall Records Address Server Mapping Configuration	8.5 days	1 day
Configuration Phase	**173 days**	**50 days**
OnCall Records Fundamentals for Core Team	**10 days**	**50 days**
OnCall Records Fundamentals for Core Team	4 days	56 days
OnCall Records System Configuration Workshop 1	**13 days**	**70 days**
OnCall Records Configuration Workshop 1	4 days	74 days
Customer configures OnCall Records	5 days	78 days
OnCall Records System Configuration Workshop 1 Follow-up Session	**5 days**	**83 days**
OnCall Records System Configuration Workshop 2	**14 days**	**98 days**
OnCall Records Configuration Workshop 2	4 days	103 days
Customer configures OnCall Records	5 days	107 days
OnCall Records System Configuration Workshop 2 Follow-up Session	**5 days**	**112 days**
OnCall Records System Configuration Workshop 3	**15 days**	**127 days**
OnCall Records Configuration Workshop 3	4 days	133 days
Customer configures OnCall Records	5 days	137 days

OnCall Records System Configuration Workshop 3 Follow-up Session	**5 days**	**147 days**
OnCall Records | Mobile Field Reporting (MFR) System Configuration Workshop	**15 days**	**157 days**
OnCall Records | Mobile Field Reporting (MFR) System Configuration Workshop	**4 days**	**163 days**
Customer configures OnCall Records	5 days	167 days
OnCall Records | Mobile Field Reporting (MFR) System Configuration Workshop Follow-up Session	**5 days**	**177 days**
OnCall Records State NIBRS Validation Installation	**2 days**	**152 days**
OnCall Records State NIBRS Validation Review	**1 day**	**154 days**
OnCall Records State NIBRS Reporting Installation	**2 days**	**155 days**
State NIBRS Report Generation Training	**4 days**	**157 days**
OnCall Records COTS Reports Review	**4 days**	**152 days**
OnCall Analytics - Records Configuration	**5 days**	**152 days**
Custom Interface Product Installation and Configuration	**17.5 days**	**88 days**
OnCall Records Custom Interfaces	**17.5 days**	**88 days**
RMS Interface to CLETS (Query)	7.5 days	88 days
RMS Interface to DataWorks	3 days	95.5 days
RMS Interface to CrossRoads	2 days	98.5 days
RMS Interface to FileonQ	3 days	100.5 days
RMS Interface to LiveScan	2 days	103.5 days
RMS Interface to DA Portal - San Bernardino DA	3 days	88 days
RMS Interface to SWITRS	2 days	93.88 days
RMS Interface to Evidence.com	2 days	88 days
RMS Interface to Data Ticket	2 days	88 days
RMS Interface to Phoenix Group	3 days	88 days

Standard Interface Product Installation and Configuration	**3 days**	**152 days**
CopLogic Records Xalt Interface	3 days	152 days
California Anti-Bias Reporting Tool	**71 days**	**91 days**
Vendor Views	**2 days**	**91 days**
RMS Vendor Views for CopLink	2 days	91 days
RMS Interface to LexisNexis AVCC	2 days	91 days
Testing Phase	**188 days**	**105 days**
Test Plan Creation Workshop	**5 days**	**105 days**
Test Plan Creation Workshop	3 days	107 days
Test Plan and Test Cases Development - OnCall Records	**0 days**	**105 days**
Customer Functional Testing - OnCall Records	**60 days**	**233 days**
Customer Functional Testing	10 days	233 days
Customer Provides Blocker Error Report	15 days	243 days
Customer Executes Test Plan Post Blocker Error Resolution	15 days	278 days
Training Phase	**139 days**	**187 days**
Hexagon-Led Training	**118 days**	**187 days**
OnCall Records Train-the-Trainer	**12 days**	**293 days**
OnCall Records Train-The-User Session 1	**4 days**	**296 days**
OnCall Records Train-The-User Session 2	**1 day**	**304 days**
OnCall Analytics|Admin and User Training	**7 days**	**293 days**
OnCall Mobile Field Reporting (MFR) TTT	**16 days**	**187 days**
OnCall Mobile Field Reporting Train the Trainer	**4 days**	**189 days**
OnCall Mobile Field Reporting Train the Trainer-Session 2	**4 days**	**194 days**
OnCall Mobile Field Reporting Train the Trainer-Session 3	**4 days**	**199 days**

Customer-Led End User Training (30 calendar days)	**21 days**	**305 days**
Test Environment Creation	**6 days**	**293 days**
Cutover Phase	**46 days**	**326 days**
Cutover Plan	**11.63 days**	**326 days**
Hexagon Delivers Draft Cutover Plan	0.13 days	327 days
Customer Reviews and Approves Cutover Plan	10 days	327.13 days
System Readiness Review	**1 day**	**337.63 days**
Cutover to Production Use	**6 days**	**345 days**
OnCall Records NIBRS Certification	**7.5 days**	**351 days**
Post Cutover Support Week 1	**5 days**	**351 days**
Post Cutover Support Week 2	**5 days**	**356 days**
30 Day Reliability	**21 days**	**351 days**

Attachment D – Training Curriculum

HxGN OnCall Records Train-the-Trainer (Qty: 1)

This course provides training for the agency-designated trainers. All modules will be reviewed and related to each department in the agency such as Records, Patrol, Investigations, Evidence, and other departments. The users review the modules, searching capabilities, reporting, and other features in OnCall Records.

MAJOR TOPICS

- Navigating in OnCall Records
- Understanding the OnCall Records tabs: Home, Reports, Search, Master Indices, Investigations, Court, Jail Management, Traffic, Evidence Management, Department, and Other Info
- Understanding the Master Indices (Master Name, Master Vehicle, Master Location)
- Reviewing the OnCall Records Modules
- Understanding the Master Indices (Master Name, Master Vehicle, Master Location
- Linking data
- Configuring alerts
- Exporting search results
- Setting alerts
- Understanding workflow
- Combining Master Index records
- Using canned and Report Server reports
- Using the Record Properties menu
- Using the Records Linked menu

PREREQUISITES

- Introduction to Windows course or equivalent knowledge and familiarity with the Windows user interface
- Understanding of basic Public Safety terminology
- Knowledge of agency business processes
- Agency modules to be used have been identified
- OnCall Records configuration complete
- OnCall Records Acceptance Testing complete

TRAINING DETAILS

Method	Conducted on site by Hexagon Personnel
Target Audience	Agency trainers or end users
Duration	Four (4) Business Days
Student Capacity	Twelve (12), with a maximum of one (1) student per workstation

HxGN OnCall Records Train-the-User (Qty: 2)

This course provides training for the agency-designated users. All modules will be reviewed and related to each department in the agency such as Records, Patrol, Investigations, Evidence, and other departments. The users review the modules, searching capabilities, reporting, and other features in OnCall Records.

MAJOR TOPICS

- Navigating in OnCall Records
- Understanding the OnCall Records tabs: Home, Reports, Search, Master Indices, Investigations, Court, Jail Management, Traffic, Evidence Management, Department, and Other Info
- Understanding the Master Indices (Master Name, Master Vehicle, Master Location)
- Reviewing the OnCall Records Modules
- Understanding the Master Indices (Master Name, Master Vehicle, Master Location
- Linking data
- Configuring alerts
- Exporting search results
- Setting alerts
- Understanding workflow
- Combining Master Index records
- Using canned and Report Server reports
- Using the Record Properties menu
- Using the Records Linked menu

PREREQUISITES

- Introduction to Windows course or equivalent knowledge and familiarity with the Windows user interface
- Understanding of basic Public Safety terminology
- Knowledge of agency business processes
- Agency modules to be used have been identified
- OnCall Records configuration complete
- OnCall Records Acceptance Testing complete

TRAINING DETAILS

Method	Conducted on site by Hexagon Personnel
Target Audience	Agency end users
Duration	Four (4) Business Days
Student Capacity	Twelve (12), with a maximum of one (1) student per workstation

HxGN OnCall Records | Mobile Field Reporting Train-the-Trainer (Qty: 3)

The MFR Train-the-Trainer course is designed to teach agency trainers to enter, save, and submit reports to workflow using the MFR forms. It teaches trainers how to take advantage of RMS query capabilities. The course will also teach supervisors to access reports for review, enter comments on reports, and approve/reject reports. Students will learn how to use the RMS to search for and display data entered via the MFR.

MAJOR TOPICS

- Navigating in MFR
- Understanding the integration between MFR and OnCall Records
- User groups and roles
- Working in disconnected and connected mode
- Entering new reports
- Form commands
- Searching CAD for Calls for Service and Incidents
- Submitting Name and Vehicle searches
- Using form validation features and tools
- Entering supervisor review comments
- Using the Workflow
- Understanding required fields
- Importing data from MFR to the OnCall Records
- Training on the MFR forms
- Navigating in OnCall Records
- Searching in OnCall Records

PREREQUISITES

- Knowledge of agency report entry and understanding the approval business processes
- Completion of all MFR forms customization
- MFR users and permissions configured

TRAINING DETAILS

Method	Conducted on site by Hexagon Personnel
Target Audience	Agency trainers or end users
Duration	Four (4) Business Days
Student Capacity	Twelve (12), with a maximum of one (1) student per workstation

HxGN OnCall Analytics | Records User Training (Qty: 1)

COURSE OVERVIEW

HxGN OnCall Analytics | Records offers the ability to perform reporting and analysis from a data warehouse containing data from databases, as well as provide capabilities for the user to view and modify reports and conduct ad-hoc queries from the data warehouse.

This course is designed to familiarize the end user with HxGN OnCall Analytics | Records. It will provide instruction on accessing, viewing, and creating reports from the OnCall Analytics Report portal.

It will also provide an overview of the delivered reports and data models. The delivered report provides out-of-the box access to key performance metrics while the data models provide an easy and powerful way for users to ask their own questions of the data and create new reports.

TARGET AUDIENCE

Personnel responsible for reporting and analysis (Report Builders, Report Consumers, and System Admins)

MAJOR TOPICS

OnCall Analytics Report Portal

- Introduction
- Overview and Navigation

Delivered Reports and Data Models

- Overview of delivered reports
- Overview of analytical data models
- Overview of live data models

Creating and Modifying Reports:

- Add Visualizations
- Filtering Visualizations
- Formatting Visualizations
- Pages – Size and Alignment
- Interacting and Sharing

Power Visuals

- Creating pin, cluster and heatmaps
- Playback data over time

PREREQUISITES

- Familiarity with Windows-based applications
- Familiarity with agency workflows

COURSE DETAILS

Course Duration	Two (2) days
Course Type	Conducted on site by Hexagon Personnel
Student Capacity	Ten (10)

HxGN OnCall Analytics | Records System Administrator Training (Qty: 1)

COURSE OVERVIEW

This System Administrator Training course is designed for System Administrators, to provide instructions on the setup, site-specific configurations, and administrative tasks needed to maintain the HxGN OnCall Analytics Records Solution.

TARGET AUDIENCE

System Administrators

MAJOR TOPICS

- Introduction
- Site specific Configuration
- User and Group Management
- Data Security

PREREQUISITES

- Familiarity with Microsoft Windows-based applications, administrative tasks, and agency workflows
- Familiarity with RMS configuration

COURSE DETAILS

Course Duration	One (1) Day
Course Type	Conducted on site by Hexagon Personnel
Student Capacity	Four (4)

Attachment E – OnCall Records Specifications

[following this page]

HxGN OnCall® Records

System Requirements

Release date: 5/13/2022
Release version: 10.0
Release type: On-premises
Released by: Hexagon Global Technology Center
Release method: Hexagon Global Software Delivery Process

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Database Server 4
Application Server 5
Client Workstations 5

Overview

This document describes the system requirements for HxGN OnCall® Records from Hexagon's Safety, Infrastructure & Geospatial division.

System Requirements

Prerequisites

- Windows Server® 2008 64-bit or later
- Oracle® 12c or SQL Server® 2012 Advanced with Full Text Search enabled or later
- Java Runtime

  The Java runtime is required for the components of OnCall Records to run. Oracle no longer provides free public support for Oracle Java 8. Future updates will be available only to customers with a paid support agreement with Oracle.

  Amazon Corretto 8 is an implementation of OpenJDK 8 that Amazon has committed to support with free updates until March 2023.

  OnCall Records supports both Oracle Java 8 and Amazon Corretto 8.
- Apache Tomcat 7 or Tomcat 9 distribution
- Apache ActiveMQ® distribution

Database Server

	Minimum	Recommended
Processors	6 cores	10 cores
Memory	64 GB	128 GB
Disks—OS	300 GB of space	300 GB of space
Disk—DB/Logs	500 GB 5000 IOPS	1500 GB 15000 IOPS
Network	Single 10 Gb	Single 10 Gb

Requires Windows Server 64-bit.

Application Server

	Minimum	Recommended
Processors	6 cores	10 cores
Memory	32 GB	64 GB
Disks—OS	300 GB of space	500 GB of space
Network	Single 1 Gb	Single 1 Gb

Requires Windows Server 64-bit.

Client Workstations

Processors	I5 processor or greater (mininum 4 cores)
Memory	4-8 GB
Internal Disk	50 GB or greater (SSD recommended)
Operating System	Windows 10 64-bit or Max OS X
Video	Minimum 1920 x 1080 resolution

Attachment F – System Configuration Diagram

[following this page]

City of Ontario, CA
OnCall Records
Hardware & Software Configuration

September 2024

System Overview

Color Legend

Black – Base products
Red – Optioned products
Green – Customer-furnished products

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OnCall Records Prod Environment	Page 4
OnCall Records DR Environment	Page 5
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RMS PRODUCTION ENVIRONMENT:
Database Server #1, 2 (RMS SQL AlwaysOn Cluster)
Reporting Database Server (RMS SQL AlwaysOn Cluster)
OnCall Records Attachment Server #1
Web Application Server #1, #2 (Load Balanced)
Communications/Interface Server #1a

RMS DR ENVIRONMENT:
Database Server #3 (RMS SQL Always On Cluster)
OnCall Records Attachment Server #2
Communications/Interface Server #1c (Cold Backup)
Web Application Server DR #1, 2 (Load Balanced)

RMS TEST ENVIRONMENT:
Test Database Server
Test Web Application Server
Test Communications/Interface Server

Server Numbering Legend

Notation of **a**, **b**, and **c** for servers indicates the following:

a = Production Server
b = Redundant Server
c = Cold Backup Server

This notation indicates which interface servers are serving the same functions within their server group, respectively.

Notation of 1a, 2a, 3a, …, etc., for servers indicates that each server is an active production server.

Notation of 1b, 2b, 3b, …, etc., for servers indicates that each server is an active redundant server.

City of Ontario, CA
OnCall Records
Hardware & Software Configuration

September 2024

Hardware Specifications

Color Legend

Black – Base products
Red – Optioned products
Green – Customer-furnished products

Production

Site 1 Totals						
vCPUs (3:1)		Memory		Disk (TB)		IOPS
Provisioned	Required	Provisioned	Required	Provisioned	Required	
220	88	884	1,061	10	14	18,380

Disaster Recovery

Site 2 Totals						
vCPUs (3:1)		Memory		Disk (TB)		IOPS
Provisioned	Required	Provisioned	Required	Provisioned	Required	
120	48	506	607	6	8	6,960

Hexagon recommends Data at Rest Encryption per CJIS Security Policy sect 5.10.1.2.2

*Mobile device VPN Bandwidth minimum requirement 0 Mbps

Bill of Material			
Quantity	Make	Model	Description
3	* Kemp	VLM-3000 (Enterprise Plus License)	Load Balancers
8	Microsoft	SQL 2022 Enterprise Edition w/ SA	AAG Database
3	Microsoft	SQL 2022 Developer Edition	Test Database

**Kemp Load Balancers are required as part of the base solution; exceptions are not allowed.*

OnCall Records Workstations - Windows

Recommended Specifications:
Windows 10/11 Professional
Modern Web Browser (Chrome)
CPU:
Quad core (or more) Intel i5, i7 or i9 - 8th Generation or later
Quad core (or more) AMD Ryzen 5, 7 or 9 - 2000 series or later
No ARM CPU architecture
Memory: 16GB min (32GB recommended)
Storage: 500GB (SSD recommended)
Display: 1920 x 1080 or larger
Networking: 1GbE

OnCall Records Workstations - Apple

Recommended Specifications:
MacOS
Modern Web Browser (Chrome)
CPU:
Quad core (or more) Intel i5, i7 or i9 or Apple Silicon M1, M2, M3
Memory: 16GB min (32GB recommended)
Storage: 500GB (SSD recommended)
Display: 1920 x 1080 or larger
Graphics card: AMD (if Intel architecture); N/A if Apple Silicon
Networking: 1GbE

OnCall Mobile Field Reporting Mobile Data Computers

Recommended Specifications:
Windows 10/11 Professional
Modern Web Browser (Chrome)
CPU:
Quad core (or more) Intel i5, i7 or i9 - 8th Generation or later
Quad core (or more) AMD Ryzen 5, 7 or 9 - 2000 series or later
No ARM CPU architecture
Memory: 16GB min (32GB recommended)
Storage: 500GB (SSD recommended)
Display: 1024 x 768 or higher, touchscreen recommended
Wired networking: 1GbE
Wireless networking: WiFi, built in or USB 4G LTE or 5G for cellular connectivity

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City of Ontario, CA
OnCall Records
Hardware & Software Configuration

September 2024

OnCall Records Architectural Diagram

Color Legend

Black – Base products
Red – Optioned products
Green – Customer-furnished products

RMS Users

Intranet

HTTPS

HTTPS

HTTPS

HTTPS

HTTPS

DNS GSLB
Decision point

Internet

Production ESX Cluster (All VMs are running Windows Server)

Interface Server
Rest API

Load Balancer

Mobile Servers

Map Service

Raster tile
Reverse geocode
Routing

Web Servers

Power BI Server

SQL Server
Data Warehouse

SQL Server
Primary

ETL

Always On Failover Group

SQL

Synchronous
AlwaysOn

Domain Controllers

Microsoft Active Directory

Mobile Servers

Load Balancer

Interface Server
Rest API

Web Servers

Map Service

Raster tile
Reverse geocode
Routing

SQL Server
Backup

Domain Controllers

Microsoft Active Directory

Disaster Recovery ESX Cluster

Legend

Virtual Server

Standby Virtual Server

VNET

Many Virtual Servers

Many Standby Virtual Server

Live traffic

Standby traffic

City of Ontario, CA
OnCall Records
Hardware & Software Configuration

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RMS Production Environment

Color Legend

Black – Base products
Red – Optioned products
Green – Customer-furnished products

OnCall Records MS SQL Always On Cluster

Database Server #1, 2

Windows Server
Microsoft SQL Server 2022 EE with SA
Intergraph Licensing Server

OnCall Records Reporting Database Server (Read Only DB Copy)

Windows Server
Microsoft SQL Server 2022 EE with SA

OnCall Records Attachment Server #1

Windows Server
Microsoft Distributed File System (DFS)
(Included with Windows)

Web Application Server # 2 (Load Balanced)

Windows Server
Microsoft Office
Apache Tomcat (no charge)
HxGN OnCall Records CCU (**Qty: 150**)

Qty: 2

Web Server #1, 2

Windows Server
IIS (included with Windows Server)
MFR Services and RabbitMQ
HxGN OnCall Records | Mobile Field Reporting CCU (**Qty: 75**)

Qty: 2

OnCall Analytics Data Warehouse/Platform Server

Windows Server
IIS (included with Windows Server)
Microsoft SQL Server 2022 EE with SA
Visual Studio 2019
SQL Server Data Tools (download)

OnCall Analytics Reporting Server

Windows Server
Microsoft SQL Server 2022 EE with SA
Power BI Report Server (included with SQL EE with SA)
HxGN OnCall Analytics | Records Essentials
HxGN OnCall Analytics | Link Analysis (Qty: 4)

Communications/Interface Server #1a

Windows Server
Xalt Runtime Engine
Federal/State NIBRS

Standard Interfaces:
Coplogic Records Xalt Interface

Custom Interfaces:
Dataworks
Crossroads
FileonQ
Livescan
Evidence.com
DA Portal – San Bernardino
SWITRS
Data Ticket
Phoenix Group

RMS Vendor Views:
Coplink
Lexis Nexis AVCC

Informer-Related Interfaces:
NCIC/CLETS

Third Party Product:
Clevest Enterprise Mobility Platform - Platinum

City of Ontario, CA
OnCall Records
Hardware & Software Configuration

September 2024

RMS Disaster Recovery Environment

Color Legend

Black – Base products
Red – Optioned products
Green – Customer-furnished products

OnCall Records
MS SQL Always On Cluster

OnCall Records Database Server #3

Windows Server
Microsoft SQL Server 2022 EE with SA
Intergraph Licensing Server

Web Application Server DR #2
(Load Balanced)

Windows Server
Microsoft Office
Apache Tomcat (no charge)
HxGN OnCall Records CCU (**Qty: 150**)

Qty: 2

OnCall Records Attachment Server #2

Windows Server
Microsoft Distributed File System (DFS)
(Included with Windows)

Web Server #1, 2

Windows Server
IIS (included with Windows Server)
MFR Services and RabbitMQ
HxGN OnCall Records | Mobile Field Reporting CCU (**Qty: 75**)

Qty: 2

Communications/Interface Server #1c
(Cold Backup)

Windows Server
Xalt Runtime Engine
Federal/State NIBRS

Third Party Product:
Clevest Enterprise Mobility Platform - Platinum

Backup interface licenses are available for all proposed interfaces. However, implementation is subject to customer's ability to provide connectivity to the applicable system.

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City of Ontario, CA
OnCall Records
Hardware & Software Configuration

September 2024

RMS Test Environment

Color Legend

Black – Base products
Red – Optioned products
Green – Customer-furnished products

OnCall Records Test Environment

Test Database Server

Windows Server
Microsoft SQL Server 2022 DE

Test Web Application Server

Windows Server
Microsoft Office
Apache Tomcat (no charge)
HxGN OnCall Records CCU (**Qty: 150**)

Test Communications/Interface Server

Windows Server
Xalt Runtime Engine
Xalt Developer Engine

Test interface licenses are available for all proposed interfaces. However, implementation is subject to customer's ability to provide connectivity to the applicable system.

Test Web Server #1, 2

Windows Server
IIS (included with Windows Server)
MFR Services and RabbitMQ
HxGN OnCall Records | Mobile Field Reporting CCU (**Qty: 75**)

Qty: 2

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City of Ontario, CA
OnCall Records
Hardware & Software Configuration

September 2024

Notes

Color Legend

Black – Base products
Red – Optioned products
Green – Customer-furnished products

Client Notes:

1. OnCall supports current Chrome, Edge, and Safari browsers.

General Notes:

1. Hexagon assumes that the Local Area Network (LAN), the wide area network (WAN), Active Directory, and Domain Name System (DNS) infrastructure will be provided and staged by the Customer. Each web client connection consumes roughly 2-5 Mbps, so the network between the clients and the web server must have sufficient capacity to handle all concurrent clients. The workstation used to access the website should be on a network with a minimum bandwidth of 100 Mbps or higher.
2. All workstations, PCs, laptops, and specified peripheral hardware provided by the Customer are assumed to meet the specifications delineated on this diagram.
3. Hexagon assumes that the Customer will provide WAN communications, including wireless network communications.
4. Hexagon recommends VMware for virtualized servers and as such that the mirrored databases do not reside on the same physical host server. vSphere Enterprise Plus licensing is encouraged for using Distributed Resource Scheduling (DRS) to allow for affinity rules to keep databases separate and balance the system load during peak utilization. VMware and Microsoft require 10GB Ethernet connectivity for vMotion of SQL Always On Availability Group virtual machines.
5. The hardware specifications provided in this diagram do not account for the capacity that may be required for converted data.
6. This configuration depicts the system designed for automatic failover from the primary site to a secondary site. The capability for automatic failover between sites is dependent upon the Customer's network having less than 10 millisecond (ms) latency between the servers across sites, including, the latency between all of the DBs in a cluster and the Interface Servers 1a and 1b must be less than 10ms. In the event the Customer is unable to meet this network requirement, then the system should be updated to move automatic failover within the primary site only.
7. This Configuration Diagram illustrates the proposed hardware and software configuration at the time of submission. During implementation, the Hexagon Implementation Team, or a Hexagon subcontractor, may alter this configuration to reflect the negotiated system or alter the location of software to take advantage of efficiencies determined following submission.
8. Non-production interface licenses are available for proposed interfaces. However, implementation is subject to Customer's ability to provide connection to the applicable system. All third-party external interface connections required for non-production Environments are the responsibility of the Customer and/or third-party vendor(s).
9. The OnCall test environment is sized for functional testing. If the Customer desires to perform load testing in the test environment, then the specifications in this configuration diagram will need to be re-evaluated and adjusted.
10. CCU refers to concurrent client user
11. Hexagon assumes that the customer will provide all client access licenses (CALs) to maintain system compliancy with Microsoft policy.

Attachment G – RMS/MFR Functional Specifications Matrix

[following this page]

National Public Safety Group
Requirements Evaluation Matrix

Ontario, CA Police Department

VENDOR COMPLETING THIS MATRIX:

Hexagon

Agency Logistics	
Population served:	177,963
Current CAD system vendor:	CentralSquare (Tiburon)
Current Mobile:	CentralSquare (Tiburon)
Current Law RMS:	CentralSquare (Tiburon)
Current JMS:	DataWorks Plus and Ontario Holding Cell
Number of CAD positions:	11
Annual number of calls dispatched:	370,000
Is this a Primary PSAP?:	Yes
Is there a back-up dispatch center?:	Yes: Ontario Fire Department
Do they have separate call takers and dispatchers?:	Yes (typically)
Is the Dispatch Center its own government entity?:	No: Governed by the Ontario Police Department
Do any calls get transferred to other dispatch centers?:	Yes: Fire and EMS
E-911 vendor:	Carousel Industries
Radio system vendor:	Motorola
User Counts	**Answer**
Approximate CAD Users:	34
Approximate Mobile Users:	420
Approximate RMS Users:	440

Matrix Submission Instructions
Please respond to each line item requirement by placing an X in the appropriate column to indicate your response
Comply: This indicates the proposed solution meets all aspects of the requirement. **Comments:** Vendors are encouraged to further explain how their solution satisfies the matrix requirement item.
Does Not Comply: This indicates the proposed solution does not meet the requirement. **Comments field:** Vendors are encouraged to explain why their solution does not meet the requirement.
Partially Comply: This indicates the proposed solution meets part of the requirement. **Comments field:** Vendors are encouraged to provide details indicating which part of the requirement cannot be met by the proposed solution and how the vendor partially complies (e.g., in conjunction with a third-party solution, "workaround", etc).
Will Comply: This indicates that while the proposed solution does not currently meet the requirement, the vendor will comply with the requirement item. **Comments field:** Vendors are encouraged to explain how their solution will comply (e.g., if this is a future development roadmap item - including the approximate date of expected compliance, if it is an item the vendor is willing to develop and provide as a contract deliverable, if the solution can be used in conjunction with a third-party application or "workaround" to achieve full compliance, etc.).
The Excel version of this matrix must be included with your Proposal Submission

Item Number	Module/Description of Requirement	Comply	Does not Comply	Partially Comply	Will Comply	Comments
	System Configuration and Integration					
1.00	The proposed solution must have the ability to require both user identification and password to logon to the reporting application.	X				
1.01	Support of Multifactor Authentication (MFA) or OKTA integration	X				
2.00	The proposed solution must have the ability to support a multi-jurisdictional environment.	X				
3.00	The proposed solution must have the ability for the vendor to develop all agency-specific reports during implementation.		X			
4.00	The proposed solution must have the ability for the agency to modify vendor-provided reports (e.g., re-name data fields, add data fields, delete data fields, etc.).	X				
5.00	The proposed solution must have the ability for the agency to create custom reports (e.g., form generator) during or after initial implementation for:					
5.01	System-wide reports		X			
5.02	Agency-specific reports (within multi-jurisdictional systems)		X			
6.00	The proposed solution must have the ability to populate report fields with call information captured in CAD.		X			
7.00	The proposed solution must have the ability to provide query functionality with DMV / NCIC from the field reporting application for persons and vehicles.	X				
8.00	The proposed solution must have the ability to provide query functionality with RMS from the field reporting application for persons and vehicles.	X				
9.00	The proposed solution must have the ability to "copy" and "paste" person and vehicle information received from DMV / NCIC and/or from RMS .		X			
10.00	The proposed solution must have the ability to Interface with, or use GIS for all location/address verification. The system must also allow for using the city's data and Google's address database at the time of data entry.	X				
11.00	The proposed solution must have the ability to incorporate lat/long coordinates from mapping the into field reports.	X				
12.00	The proposed solution must have the ability to handle multiple reports per CAD call (e.g., incident, case, supplemental reports).	X				
13.00	The proposed solution must have the ability to update data in the relevant RMS module(s) when the report approval process is completed.	X				
14.00	The proposed solution must have the ability for administrators to update code tables at their discretion, which mirror the relevant tables in RMS.	X				
15.00	The proposed solution must have the ability to enter reports either:					
15.01	On a desktop	X				
15.02	On a mobile device	X				
15.03	On a tablet or phone			X		Not designed for phone use.
16.00	The proposed solution must have the ability to support input via:					
16.01	Barcode readers	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
16.02	Card swipe device	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
16.03	Keyboard	X				
16.04	Touch screen	X				
16.05	Voice dictation	X				This is an operating system function, not an MFR function.
	Report Writing (Incident, Case, and Arrest Reports)					

17.00	The proposed solution must have the ability for multiple users to simultaneously provide input to a single case report once a case report number is assigned.	X				Via Supplements.
18.00	The proposed solution must have the ability to record location information for:	[redacted]				
18.01	Involved persons	X				
18.02	Involved call / incident locations	X				
19.00	The proposed solution must have the ability to validate location information at the time of data entry.	X				
20.00	The proposed solution must have the ability to indicate unverified locations.	X				
21.00	The proposed solution must have the ability to record name information for:	[redacted]				
21.01	Suspects	X				
21.02	Witnesses	X				
21.03	Victims	X				
21.04	Other persons	X				
22.00	The proposed solution must have the ability to support the auto-population of information based on matches from fields within ths RMS master name and vehcile records (e.g., name, social security number, driver's license number, etc.).	X				
23.00	The proposed solution must have the ability to provide users entering a name with a list of potential existing master name records based on a variety of criteria, including:	[redacted]				
23.01	Exact spelling	X				
23.02	Partial name	X				
23.03	Soundex or sound-alike functionality		X			
24.00	The proposed solution must have the ability to provide word processing capabilities on narrative and comment fields, including, but not limited to:	[redacted]				
24.01	Paragraph formatting	X				
24.02	Use of bullets and numbering	X				
24.03	Spell check	X				Via browser.
24.04	Copy and paste	X				
24.05	Grammar check		X			
25.00	The proposed solution must have the ability for drop-down lists to incorporate offense codes where applicable.	X				
26.00	The proposed solution must have the ability to translate offense codes into NIBRS codes.	X				
27.00	The proposed solution must have the ability for offense codes to include state and local ordinances.	X				
28.00	The proposed solution must have the ability to support multiple charges per individual.	X				
29.00	The proposed solution must have the ability to define mandatory fields in data entry screens:	[redacted]				
29.01	By system-wide settings	X				
29.02	By agency (e.g., one agency chooses to incorporate different mandatory fields than another).	X				
30.00	The proposed solution must have the ability to visually distinguish between mandatory and optional fields.	X				
31.00	The proposed solution must have the ability to modify and control the order in which the focus of the fields change when hitting the 'tab' key.	X				

32.00	The proposed solution must have the ability to dynamically change report fields based on previously entered data (e.g., specific crime types require additional or less fields to be populated).		X			
33.00	The proposed solution must have the ability to dynamically change report fields based on previously entered data (e.g., specific crime types require additional or less fields to be populated).		X			
34.00	The proposed solution must have the ability to perform data validation:					
34.01	At time of entry, prior to submission	X				Accomplished by hitting the validate button on the report.
34.02	At time of submission	X				
35.00	The proposed solution should have the ability to attach files such as photos and videos to a report.	X				
36.00	The proposed solution should have the ability to define maximum file sizes for attachments.	X				
37.00	The proposed solution must have the ability to record information required for NIBRS reporting.	X				
38.00	The proposed solution must have the ability to record property information from the field.	X				
39.00	The proposed solution must have the ability to enter an unlimited number of:					
39.01	Persons	X				
39.02	Property	X				
39.03	Vehicles	X				
39.04	Offenses	X				
40.00	The proposed solution must have the ability to support digital signatures.	X				
41.00	The proposed solution must have the ability to enter narratives of unlimited length in all report types.			X		Determined based on database constraints.
42.00	The proposed solution must have the ability to create narrative templates for reports that officers input frequently (e.g., standard language for domestic violence situations).		X			
43.00	The proposed solution must have the ability for voice dictation capability for narratives.		X			This is an operating system function, not an MFR function.
44.00	The proposed solution must have the ability to link reports (e.g., case report, arrest report, and use of force report).	X				This is for currently available reports.
45.00	The proposed solution must have the ability to populate data between multiple report forms to eliminate redundant data entry.	X				
46.00	The proposed solution must have the ability to enter booking data and submit the information to the JMS prior to report finalization.	X				
Field Interviews / Field Contacts						
47.00	The proposed solution must have the ability to log field interviews / contacts from the field reporting application.	X				
48.00	The proposed solution must have the ability to automatically query the master name index upon entering a field contact.	X				
49.00	The proposed solution must have the ability for field interview names to be added to master name records.	X				
50.00	The proposed solution must have the ability to automatically update master indices upon submittal of a field contact, including but not limited to:					
50.01	Names	X				
50.02	Vehicles	X				
50.03	Locations	X				
51.00	The proposed solution must have the ability to create and maintain field contact records with agency-defined data elements, including but not limited to the following:					

51.01	Incident number	X				
51.02	Date / time of contact	X				
51.03	Names	X				
51.04	Determine location via GPS and verification thru GIS	X				
51.05	Vehicle information	X				
51.06	Property	X				
51.07	Weapons	X				
51.08	Narrative	X				
52.00	The proposed solution must have the ability to track and associate a field contact record with a case number.	X				
	Use of Force					
53.00	The proposed solution must have the ability to record the following information on use of force:					
53.01	Officer name	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.02	Person involved	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.03	Case number	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.04	Date and time of Incident	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.05	Agency	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.06	Unit number	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.07	Location of incident	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.08	Suspect injuries	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.09	Officer injuries	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.10	Narrative	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.11	Reason force was used	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.12	Type of force (e.g., taser, pepper spray, etc.)	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.13	Medical disposition	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.14	Final field disposition	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.15	Indicate if K9 participated	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
53.16	Indicate if drugs or alcohol were involved	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
54.00	The proposed solution must have the ability for use of force report information to automatically link to a personnel record.	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
55.00	The proposed solution must have the ability to link use of force reports to the original incident report.	X				Hexagon has provided a modification to the OnCall Records | Mobile Field Reporting application to meet this requirement.
	Supplemental Reports					

56.00	The proposed solution must have the ability for data entry requirements for supplemental reports to be agency-defined and consistent with the other reports in the system (e.g., incident reports, case reports, etc.).	X				
57.00	The proposed solution must have the ability to add new information to a report after the initial case report has been submitted and approved.	X				
58.00	The proposed solution must have the ability when writing a supplemental report to view the original incident report.	X				
59.00	The proposed solution must have the ability to permit users to complete supplemental reports before the original case report is submitted to RMS.	X				
60.00	The proposed solution must have the ability for multiple officers to simultaneously create and add supplemental reports regarding the same event.	X				
61.00	The proposed solution must have the ability to link supplemental reports to the original report.	X				
62.00	The proposed solution must have the ability to populate supplemental reports with information already in related reports.	X				
	Report Workflow					
63.00	The proposed solution must have the ability for each agency to define the call types and dispositions that require a report to be written.	X				
64.00	The proposed solution must provide for system administrators to define the report approval process for each agency on the system.	X				
64.00	The proposed solution must have the ability to provide separate approval process workflows dependent upon report type.	X				
65.00	The proposed solution must have the ability to ensure that reports are compliant with NIBRS reporting requirements prior to submission.	X				
66.00	The proposed solution must have the ability to prevent the submission of a report with NIBRS errors.	X				
67.00	The proposed solution must have the ability to ensure that reports are compliant with agency-defined reporting requirements (e.g., mandatory fields) prior to submission.	X				
68.00	The proposed solution must have the ability to prevent submission of a report with missing information in agency-designated fields.	X				
69.00	The proposed solution must have the ability to prompt users to which fields require error correction.	X				
70.00	The proposed solution must have the ability to describe the nature of the correction required.	X				
71.00	The proposed solution must have the ability to electronically route reports to:	[redacted]	[redacted]	[redacted]	[redacted]	
71.01	Specific personnel (e.g., particular supervisor)	X				
71.02	Specific shift(s)	X				
71.03	Role type (e.g., supervisor group as opposed to individual users)	X				
71.04	Group / special unit (e.g., detective unit)	X				
72.00	The proposed solution must have the ability for users to electronically submit reports to a report approval queue (e.g., not to specific individual).	X				
73.00	The proposed solution must have the ability to configure the field reporting application to support agency-specific processes and workflows at the following levels:	[redacted]	[redacted]	[redacted]	[redacted]	
73.01	System-wide	X				
73.02	Agency-specific (within multi-jurisdictional systems)	X				
74.00	The proposed solution must have the ability to determine which type of reports require approval at the following levels:	[redacted]	[redacted]	[redacted]	[redacted]	
74.01	System-wide	X				

74.02	Agency-specific (within multi-jurisdictional systems)	X				
75.00	The proposed solution must have the ability to alert supervisors that a report is ready for review via:					
75.01	Email	X				Hexagon clarifies that this is an OnCall Records workflow.
75.02	Mobile device audible or visual notification	X				Hexagon clarifies that this is an OnCall Records workflow.
75.03	System message	X				Hexagon clarifies that this is an OnCall Records workflow.
76.00	The proposed solution must have the ability for users to indicate that a report requires immediate supervisor attention.	X				
77.00	The proposed solution must have the ability for supervisors to perform the following when logged onto the System:					
77.01	Receive and view reports	X				
77.02	Review a log of reports requiring approval (e.g., pending report approval queue)	X				
77.03	Approve a report	X				
77.04	Reject a report with comments with a reason the report was rejected	X				
78.00	The proposed solution must have the ability to lock a report from edits following report approval.	X				
79.00	The proposed solution must have the ability to track the status of reports (e.g., unwritten, incomplete, awaiting approval, approved).	X				
80.00	The proposed solution must have the ability for RMS personnel to complete an accuracy review for reporting requirement compliance prior to adding a report to the RMS.	X				Hexagon clarifies that this is configured within the Approval workflow.
81.00	The proposed solution must have the ability for records personnel to send / reject reports back to supervisors if reports do not comply with agency-specified requirements.	X				
82.00	The proposed solution must have the ability to designate users with the capability to modify submitted reports (e.g., field supervisor / specific RMS personnel).	X				
83.00	The proposed solution must have the ability to designate what data fields may be modified by individuals that are not the report author.		X			
84.00	The proposed solution must have the ability to automatically save incomplete reports at the network level so a user can access the report at a later time from a device other than the one used to start the original report.	X				
85.00	The proposed solution must have the ability to save a copy of an active report locally in the event network connectivity is lost.			X		Reports are cached on the local device if connectivity is lost. A user can not manually save a local copy.
86.00	The proposed solution must have the ability to initiate a report at any time.	X				
87.00	The proposed solution must have the ability to display the following field reporting information upon logon to the field reporting system:					
87.01	Rejected reports	X				
87.02	Reports not completed	X				
88.00	The proposed solution must have the ability to notify users of rejected reports.	X				
89.00	The proposed solution must have the ability to send a rejected report to another user or supervisor when the original author of the report is unavailable.		X			
90.00	The proposed solution must have the ability to notify users of outstanding reports before logging off of the system.			X		Report status is viewable at any time.
91.00	The proposed solution must have the ability for supervisors to view which reports have not been completed at the end of the shift.	X				
92.00	The proposed solution must have the ability for authorized users to view audit trails and workflow so they can access where reports are in the process .	X				

93.00	The proposed solution must have the ability to send confirmation indicating the report upload to RMS was completed successfully.	X				
152	TOTALS (Sum of numbers in columns C, D, E, F should equal column A	135	13	4	0	
	Completion Progress					
	Total Items:	152				
	Total Items Completed:	152				
	Difference (NO ANSWERS will appear in red):	0				

Item Number	Module / Description of Requirement	Comply	Does not Comply	Partially Comply	Will Comply	Comments
	RMS interfaces					
1.00	Crossroads: Traffic citations and reports	x				Hexagon has included an interface to Crossroad for Citations for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
2.00	FileOnQ / EvidenceOnQ: Currently used for property and evidence	x				Hexagon has included an interface to FileOnQ for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
3.00	Digital Crime Scene integration		x			Hexagon clarifies that further information is required from the City in order to provide a bid for this interface. Further discussion is welcome.
4.00	ArmorerLink: Armory management software		x			Hexagon clarifies that per discussion with the customer this interface was deemed to be no longer needed. With this, Hexagon has not included a bid for this interface.
5.00	Axon Body Worn Cameras	x				Hexagon clarifies that an RMS interface is not needed to support the City's desired functionality within our Records solution. The City will be able to hyperlink a location within a report number from CAD. When the City writes the report, a reference to the video will need to be incorporated which is done via hyperlink.
6.00	Axon Evidence.com	x				Hexagon has included an interface to Evidence.com for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
7.00	Crossroads eCitation	x				Hexagon has included an interface to Crossroad for Citations for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
8.00	DA Portal:San Bernardino DA (https://portal.sbcda.org/)	x				Hexagon has included an interface to DA Portal for the City. Further details regarding this interface will be included in a later iteration of the Statement of Work.
9.00	Data Ticket Parking Enforcement	x				Hexagon has included an interface to Data Ticket for the City. Further details regarding this interface will be included in a later iteration of the Statement of Work.
10.00	LiveScan- Import DL phots to RMS	x				Hexagon has included an interface to LiveScan for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
11.00	LiveScan - name record	x				Hexagon has included an interface to LiveScan for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
12.00	LiveScan - transfer booking information	x				Hexagon has included an interface to LiveScan for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
13.00	LEAPS: Law Enforcement Automated Personnel System (Lexis-Nexis FTO)		x			Hexagon clarifies that per discussion with the customer this interface was deemed to be no longer needed. With this, Hexagon has not included a bid for this interface.
14.00	CrimeTracer (CopLink): Search engine across multiple agencies	x				Hexagon has included vendor views for CopLink for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
15.00	CopLogic (LexisNexis)	x				Hexagon has included an interface to CopLogic for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
16.00	LexisNexis: AVCC	x				Hexagon has included an interface to LexisNexis AVCC for the City. Further details regarding this interface will be included in a later iteration of the Statement of Work.
17.00	TMS: Traning Management System		x			Hexagon clarifies that per discussion with the customer this interface was deemed to be no longer needed. With this, Hexagon has not included a bid for this interface.
18.00	Phoenix Group: Parking tickets and alarm billing (one-way push to RMS)		x			Hexagon clarifies that per discussion with the customer this interface was deemed to be no longer needed. With this, Hexagon has not included a bid for this interface.
19.00	DataWorks: Mugshots	x				Hexagon has included an interface to DataWorks for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
20.00	CAL-ID: California Identification System		x			Hexagon clarifies that further information is required from the City in order to provide a bid for this interface. Further discussion is welcome.
21.00	CLETS: California Law Enforcement Telecommunications System (NCIC)	x				Hexagon has included an RMS interface to CLETS for the City. Please refer to Attachment H - Interface Descriptions of Hexagon's Statement of Work for further details.
22.00	Workday: Employee / HR software		x			Hexagon clarifies that per discussion with the customer this interface was deemed to be no longer needed. With this, Hexagon has not included a bid for this interface.
23.00	SWITRS: CA Statewide Integrated Traffic Records System	x				Hexagon has included an interface to SWITRS for the City. Further details regarding this interface will be included in a later iteration of the Statement of Work.
24.00	Ontario PD Data Warehouse (home-grown): Previously converted data		x			Hexagon clarifies that per discussion with the customer this interface was deemed to be no longer needed. With this, Hexagon has not included a bid for this interface.
25.00	Whitebox	x				Hexagon clarifies that it has included White Box data conversion and the ART tool for the City's consideration.

26.00	The ability to interface with an Internal Affairs application (there is no such feature used in the current application at Ontario PD).		x			Hexagon clarifies that further information is required from the City in order to provide a bid for this interface. Further discussion is welcome.
27.00	Hexagon I/CAD call information to populate the RMS Incidents module	x				OnCall Records which integrates natively with I/CAD.
27	TOTALS (Sum of numbers in columns C, D, E, F should equal column A	18	9	0	0	

Completion Progress	
Total Items:	27
Total Items Completed:	27
Difference (NO ANSWERS will appear in red):	0

Item Number	Module/Description of Requirement	Comply	Does not Comply	Partially Comply	Will Comply	Comments
	General Records Management Functionality					
1.00	The proposed solution must have the ability to access the RMS application from a web browser.	X				
2.00	The proposed solution must have a system upgrade process with no downtime and include the ability to apply bug fixes and patches without requiring a full upgrade.		X			
3.00	The proposed solution must have the ability to support the population of fields in RMS from data that was entered in other application components. (e.g., the field reporting application, CAD, etc.), if applicable.	X				
4.00	The proposed vendor must provide 24/7 customer support with predefined Service Level Agreement's (SLA's).	X				
5.00	The proposed solution must allow the narrative fields in any module to support an unlimited number of characters.	X				
6.00	The proposed solution must have the ability for all fields In RMS, including the narrative fields to be searchable.	X				
7.00	The proposed solution must have the ability to provide common word processing capabilities within narrative fields in each module.	X				
8.00	The proposed solution must have the ability to visually distinguish between required and optional fields in each module.	X				
9.00	The proposed solution must have the ability to prompt users to complete any required fields that have not been completed.	X				
10.00	The proposed solution must have the ability to limit available values visible in subsequent code tables based on previously entered data (e.g., crime type).	X				
11.00	The proposed solution must have the capability for users to generate inquiries to internal and external data sources-such as NCIC from within each relevant module (eg., master names, warrants, property, etc.).	X				
12.00	The proposed solution must provide a full audit log including users that have accessed a particular record, what was accessed or changed (with before and after values), and if it was printed or emailed.	X				
13.00	The proposed solution must automatically format all fields to include the proper input mask when number are typed (e.g., SSN, telephone numbers).	X				
14.00	The proposed solution must have the ability for users to scan and attach items to all modules with reports that record when items were attached, in order to recognize what can potentially be purged after a defined period of time.	X				
15.00	The proposed solution must have the ability capture digital signatures in any applicable modules.	X				
16.00	The proposed solution must have the ability for users to enter agency-defined system-wide alerts, with the ability to add free text (e.g., “Person does not like law enforcement”, “Has concealed weapons”, etc.).	X				
17.00	The proposed solution must have the ability to maintain a "Daily Activity Log" for all personnel activity.		X			
18.00	The proposed solution must have the ability to track special teams activity (and/or a relevant module for special teams).	X				Special teams can be set up as an agency to separate activity and data.
19.00	The proposed solution must have the ability to track residential and business security checks (and/or a relevant module).	X				
	System Administration					
20.00	The proposed solution must provide for agency-defined security-tiered access to all RMS modules, based on users, groups, and roles.	X				
21.00	The proposed solution must provide for administrators to define system-wide alert types and conditions such as location radius.			X		Alerts can be added to any field in the system. It does not currently allow a radius setting for the alert.
22.00	The proposed solution must provide a data dictionary and/or documentation showing the database model/schema to aid in report writing.	X				
23.00	The proposed solution must provide for administratoes to add custom fields to any module, which can be reported upon in standard and ad-hoc reports.	X				
24.00	The proposed solution must provide for administrators to define fields and field placements (tab orders) within any module, including the ability to specify which fields are required.	X				
25.00	The proposed solution must provide for administrators to define fields and field placements (tab orders) within any module, including the ability to specify which fields are required and which fields are hidden or not used.	X				

26.00	The proposed solution must provide 99.999% reliability / up-time		X			Hexagon has proposed for the City an on-premise solution that has successfully endured the crucible of the real world. Since Microsoft Windows and SQL are rated to have an up time of 99.99%, Hexagon can only commit its system, which relies on the foundational Microsoft software, will be up 99.99% of the time. Hexagon also clarifies that up time in the context of this and other requirements means the database is able to receive and transmit data.
27.00	The proposed solution must provide the following reports for system administrators:					
27.01	Failed log-ins	X				Hexagon clarifies that login attempts and failed logins are tracked. Report authors with permissions can use Power BI Desktop or Report Builder to create reports against an archived copy of the OnCall Records database. Hexagon assumes the report will be created by the City report authors.
27.02	Number of attempts	X				Hexagon clarifies that login attempts and failed logins are tracked. Report authors with permissions can use Power BI Desktop or Report Builder to create reports against an archived copy of the OnCall Records database. Hexagon assumes the report will be created by the City report authors.
27.03	Dates and times of attempts	X				Hexagon clarifies that login attempts and failed logins are tracked. Report authors with permissions can use Power BI Desktop or Report Builder to create reports against an archived copy of the OnCall Records database. Hexagon assumes the report will be created by the City report authors.
27.04	Machine used	X				Hexagon clarifies that login attempts and failed logins are tracked. Report authors with permissions can use Power BI Desktop or Report Builder to create reports against an archived copy of the OnCall Records database. Hexagon assumes the report will be created by the City report authors.
28.00	The proposed solution must have the ability to produce reports on security violations.	X				
29.00	The proposed solution must include the ability for administrators to define and maintain items within drop-down picklists/validations lists throughout the system.	X				
30.00	The proposed solution must include the ability for administrators to define associated codes or alternate values for each drop-down picklist item for reporting puprposes (eg., NIBRS, accident/crash, tickets/citations, etc.).	X				
31.00	The proposed solution must include a test/training environment that accurately mirrors the live production environment and provide training and instructions on how to refresh the data and configurations in the test/training environment with data from the production environment.	X				
	Online Help Documentation					
32.00	The proposed solution must have the ability to access an online help menu	X				
33.00	The proposed solution must have the ability to provide context-sensitive help that may be accessed from within the application.	X				
34.00	The proposed solution must have the ability for the agency to edit the text in help files.		X			
35.00	The proposed solution must have the ability for help files to automatically update at the time of any version/release updates by the vendor.	X				
36.00	The proposed solution must have the ability to prevent software updates from overriding agency-specific online documentation and help files.		X			
37.00	The proposed solution must have the ability to search help files by:					
37.01	Keywords	X				
37.02	Topics	X				
	Quality Control / Data Validation					
38.00	The proposed solution must have the ability to perform data validation at the time of data entry and again at the time of submission (e.g., NIBRS, e-Citation, e-Crash).	X				
39.00	The proposed solution must have the ability for corrected / updated information in a field (e.g., address) to auto-populate across related modules.	X				
40.00	The proposed solution must have the ability to validate location information against the application's city's GIS and Google's address database at the time of data entry.			X		The system will use the agency's GIS data, but does not validate against Google.
41.00	The proposed solution must have the ability to indicate unverified locations and allow for users to override, if necessary, and provide a method to audit/track unverified locations in order to verify them and include them in the city's GIS.	X				
	Application Integration					

42.00	The proposed solution must have the ability to share master name indices, with photos/mugshots between RMS and JMS, if applicable.	X				
43.00	The proposed solution must have the ability to transfer basic CAD call information to RMS (e.g., location, call type, all call times, assigned units and personnel, and call disposition). This requires an interface from Hexagon I/CAD.	X				
44.00	The proposed solution must have the ability to transfer CAD data either when a report number is assigned or when the call is closed.	X				
45.00	The proposed solution must have the ability to allow the CFS data imported into the RMS incident report to be modified, whether or not the CFS has been closed in CAD.	X				
General Master Indices Requirements						
46.00	The proposed solution must have the ability to maintain the following master indices:					
46.01	Persons	X				
46.02	Vehicles	X				
46.03	Locations	X				
46.04	Organizations (including businesses)	X				
47.00	The proposed solution must have the ability to automatically query master indices upon entry of information in a new master person, busineess, or vehicle record for identifying potential master index matches (which fields or combinations of fields constitute a match).	X				
48.00	The proposed solution must have the ability to maintain historical information upon entry of new and/or updated information into a master record (previous address, phone, vehicle color, etc.).	X				
49.00	The proposed solution must have the ability to automatically update master indices upon entry of information into the RMS (or transfer from a field report, as defined by the agency).	X				
50.00	The proposed solution must have the ability for users to decide whether to link information to an existing master record or add a new record (e.g., persons and vehicles).	X				
51.00	The proposed solution must have the ability for users to create a new entry if it is determined a master record does not exist.	X				
52.00	The proposed solution must have the ability to run a report to identify potential duplicate master records.	X				
53.00	The proposed solution must have the ability to merge duplicate master records based on certain criteria (e.g., persons, businesses, and vehicles) and maintain a history when information changes/is udated (with integration to LexisNexis to assist with this process).	X				
54.00	The proposed solution must have the ability to unmerge master records.	X				
55.00	The proposed solution must have the ability to search RMS by any data element in a master index.	X				
56.00	The proposed solution must have the ability to associate files, images, documents etc. to master records.	X				
57.00	The proposed solution must include the ability to create an alert that monitors activity with the master indices, such as names, businesses, and vehicles, and generate an alert based on records matching the specified criteria.	X				
58.00	The proposed solution must have the ability to link across master indices (e.g., link names or a business to vehicles).	X				
Master Name Index						
59.00	The proposed solution must have the ability to record information and descriptions, including, but not limited to: Date of birth, SSN, height, weight, physical charactaristics, scars/marks/tattoos, etc.	X				
60.00	The proposed solution must have the ability view any photos (mugshots, scars/marks/tattoos, etc.) associated with the master name record.	X				
61.00	The proposed solution must have the ability to view a history of changes within a master name record for updates within data fields (e.g., height, weight, address, phone number).	X				
62.00	The proposed solution must have the ability to provide a matching algorithm that allows users to search names by a variety of criteria, such as sound-alike searching (eg., Peterson vs. Petersen).	X				
63.00	The proposed solution must have the ability to link a name record to any module that utilizes the master name index.	X				
64.00	The proposed solution must have the ability to link alias names to a master name record and be visible in search returns, with the person's actual name.	X				

65.00	The proposed solution must have the ability to view all related records and activities in other modules when querying a master name record.	X				
66.00	The proposed solution must have the ability to view all related records and activities in other modules when querying a master name record.	X				
	Juvenile Records					
67.00	The proposed solution must have the ability to easily identify an individual as a juvenile by a visual indicator in the name record and in search results (grid lists).	X				
68.00	The proposed solution must accommodate different security permissions for access to juvenile master name records, distinctly from adult name records.	X				
69.00	The proposed solution must have the ability to document information about the juvenile including the full name, date of birth, address, contacts (i.e., family) information, physical descriptors, sex, and name of the school they attend.	X				
70.00	The proposed solution must provide for the expungement of juvenile records from the system (eg., when ordered by the court or to comply with a statute).	X				
71.00	The proposed solution must have the ability to archive juvenile information when the subject reaches the agency-defined "adult" age.		X			
72.00	The proposed solution must have the ability to track diversion programs or placements in lieu of being charged in court.			X		This can be done by configuring the code tables and forms as needed.
	Master Vehicle Index					
73.00	The proposed solution must have the ability to record information and descriptions, including, but not limited to: Year, license plate number, make, model, color(s), condition, owner, etc.	X				
74.00	The proposed solution must have the ability to link a master vehicle record with any applicaple RMS module that has vehilce entry/association (eg., incidents, cases, master names, accidents, citations, etc.).	X				
75.00	The proposed solution must have the ability to associate multiple owners with one vehicle.	X				
76.00	The proposed solution must have the ability to track previous vehicle owners.	X				
77.00	The proposed solution must have the ability to view all records in other modules associated with (linked to) a vehicle.	X				
78.00	The proposed solution must have the ability to view all related records when querying a master vehicle record.	X				
	Master Location Index					
79.00	The proposed solution must provide a master location index providing a means to verify location information throughout RMS based on a specific address, a range of addresses, an area (i.e., as defined in the agency geofile), and/or locations based on latitude/longitude coordinates.	X				
80.00	The proposed solution's Master Location Index must be consistent system-wide, between RMS, CAD, Mobile, system reporting tools, etc., and include integration for premise information/alerts.	X				
81.00	The proposed solution must allow the Master Location Index to store and provide access to additional premise information, such as occupancy, files and documents (e.g., floor plans), and premise type (e.g., residence vs. business).	X				Master Location records can store as many attachments as required.
82.00	The proposed solution must have the ability to indicate If a location is within the boundaries of the agency geofile. During the geo-validation process, identification information such as latitude/longitude coordinates and agency-defined reporting areas/map layers must be linked to the location information.	X				
	Master Business / Organization Index					
83.00	The proposed solution's Master Business/Organization Index must be consistent system-wide, between RMS, CAD, Mobile, system reporting tools, etc., and include integration for Business/Organiztion information retrieval.	X				
84.00	The proposed solution must have the ability for the agency to define categories (e.g., businesses, schools, shopping centers, etc.).	X				
85.00	The proposed solution must have the ability to search on a variety of data elements and obtain a listing of all records associated with that business or organization.	X				
86.00	The proposed solution must have the ability to link a master business or organization record to activity in any module (eg., incident, case, permits, etc..).	X				
87.00	The proposed solution must have the ability to maintain the business or organization location, owner, contacts/keyholders, and name changes.	X				

88.00	The proposed solution must have ability for master business or organization records to permit the linking of aliases to organizations (e.g., M&M Associates, doing business as Joe's Pawn Shop).	X				
	Arrests					
89.00	The proposed solution must have the ability to support multiple charges for a person within a single arrest form.	X				
90.00	The proposed solution must have the ability to add multiple counts of each statute on the arrest form.	X				
91.00	The proposed solution must have the ability to allow arrests to indicate multiple clearances, as specified for NIBRS reporting and link several cases to one arrest in the instance of multiple clearances.	X				
92.00	The proposed solution must have the ability to allow users to add supplemental arrest narratives to the original case report in the event of an arrest at a later date.	X				
93.00	The proposed solution must automatically transfer pre-booking information into a jail booking form from RMS or the Mobile / Field Reporting application.	X				
94.00	The proposed solution must have the ability to create a booking sheet to electronically provide to and print at the Detention Center.	X				
95.00	The proposed solution must have the ability to record the following information for an arrest, including but not limited to:					
95.01	Arrestee name	X				
95.02	Mugshot capture	X				
95.03	DNA capture	X				
95.04	Arrest date and time	X				
95.05	Arresting law enforcement personnel	X				
95.06	Fingerprints/Livescan	X				
95.07	Case number	X				
95.08	Incarcerated location	X				
95.09	Arrest location	X				
95.10	Court date	X				
95.11	Charge(s)	X				
96.00	The proposed solution must have the ability to provide for users to record methods used for subject identification. The process must also record other steps such as the issuing of a Miranda Warning.	X				
97.00	The proposed solution must have the ability to associate arrest records with multiple agencies.		X			
98.00	The proposed solution must trigger any active warrants based on the master name record when an arrest is saved and allow users the ability to indicate the warrant as served, if the arrest pertains to the active warrant.		X			
99.00	The proposed solution must default the following information from the warrant if linked to the arrest:					
99.01	Charge(s)		X			
99.02	Date and time served		X			
99.03	Warrant number		X			
99.04	Docket number		X			
99.05	Agency that issued the warrant		X			
100.00	The proposed solution must have the ability to view and print arrest reports.	X				
101.00	The proposed solution must have the ability to clear and/or affect multiple cases with the arrest of a person.	X				
	Case Reports					
102.00	The proposed solution must provide for entering information that complies with local, county, state, and NIBRS reporting requirements.	X				
103.00	The proposed solution must allow multiple personnel to create and add supplemental reports, linked to the original case report.	X				
104.00	The proposed solution must provide the ability for a primary personnel to be assigned with the responsibility for completing the report.	X				
105.00	The proposed solution must allow multiple personnel to provide input to a case report once it is created and a case number is assigned	X				
106.00	The proposed solution must allow the primary report responsibility assignment to be changed to other personnel during the life of the report	X				
107.00	The proposed solution must provide for the case report to comply with state and NIBRS reporting standards.	X				
108.00	The proposed solution must provide for the case report to contain the following:					

108.01	Offense(s)	X				
108.02	Persons (including suspects, victims, witnesses, complainants, etc.)	X				
108.03	Case property	X				
108.04	Vehicles	X				
108.05	Case status	X				
108.06	Assigned personnel	X				
108.07	Activity assignments to personnel	X				
108.08	Dispositions	X				
109.00	The proposed solution must allow for case reports to have free-text narrative fields that allow for entering an unlimited amount of information.	X				
110.00	The proposed solution must provide the capability to search narratives for specific keywords or phrases.	X				
111.00	The proposed solution must allow the incident report to be locked to prevent further edits, with exception to authorized personnel.	X				
112.00	The proposed solution must allow the incident report to be locked to prevent viewing, with exception to authorized personnel.	X				
113.00	The proposed solution must provide for supervisors to receive, review, approve, and reject case reports.	X				
114.00	The proposed solution must provide for online supervisor notifications when a report is ready for review.	X				
115.00	The proposed solution must provide a review function that allows supervisors to indicate any required changes and include supervisor remarks.	X				
116.00	The proposed solution must provide navigation directly to a field when a NIBRS error is generated, with an explanation of the error provided.	X				
117.00	The proposed solution must provide validation error messages that can be edited by the agency.	X				
118.00	The proposed solution must provide agency-defined case report routing (e.g., agency policy dictates the destination(s) of reports).	X				
119.00	The proposed solution must have the ability to associate an unlimited number of property/evidence items to a case.	X				
120.00	The proposed solution must support importing and storing any attachment types (any types that are supported by MS Windows).	X				
121.00	The proposed solution must allow an authorized user to change the the case number, if entered incorrectly.	X				
122.00	The proposed solution must contain the CAD call for service and incident response record in the RMS and allow it to be linked to the case .	X				
123.00	The proposed solution must have the ability to allow authorized users to build unlimited case report output (print) templates, such as an internal report, a media report, etc., and for users to specify which data is printed for each template.	X				
	Case Assignment / Case Management					
124.00	The proposed solution must include a case management feature to track all cases assigned to personnel.	X				
125.00	The proposed solution must allow supervisors to view and generate a dashboard view of unassigned cases.		X			
126.00	The proposed solution must allow supervisors to assign case responsibility to a primary investigator or other personnel, as desired.	X				
127.00	The proposed solution must have the ability for the system to identify the "next due" investigator when assigning cases, based on agency-defined criteria (case load, etc.).	X				
128.00	The proposed solution must have the ability to assign cases based on a specialty area (or bureau) of investigation.	X				
129.00	The proposed solution must have the ability to assign multiple investigators to a case.	X				
130.00	The proposed solution must have the ability to assign review dates with an investigation assignment.	X				
131.00	The proposed solution must have the ability to distinguish roles for investigators (e.g. primary, secondary, etc.).	X				
132.00	The proposed solution must have the ability for investigators to receive an electronic notification and/or email that they have been assigned a new case.	X				
133.00	The proposed solution must have the ability for supervisors to reassign cases to different personnel.	X				
134.00	The proposed solution must have the ability for supervisors to electronically notify investigators of case reassignments.	X				

135.00	The proposed solution must allow leads assigned to individuals to be displayed on their user dashboards.	X				
136.00	The proposed solution must allow for a court disposition (per person arrested and per charge) to be documented in the case record as the court case is completed.	X				
137.00	The proposed solution must support the ability to reopen a case, if necessary, based on new evidence.	X				
138.00	The proposed solution must allow supervisors to view workload information, assess all requests for new investigations, receive deadlines and reminders, and interact with investigators electronically.	X				
139.00	The proposed solution must provide for Case Assignment / Case Management dashboards that can be user-configured for desired views.		X			
140.00	The proposed solution must document investigation activities, including collecting evidence, developing leads, conducting interviews, requesting warrants, and writing supplemental reports.	X				
141.00	The proposed solution must allow authorized investigators to assign tasks to others.	X				
142.00	The proposed solution must be capable of monitoring and tracking at both the case and task levels, with due dates.	X				
143.00	The proposed solution must provide for the use of solvability factors that are agency-defined.	X				
144.00	The proposed solution must provide narrative formatting features (e.g., similar to a word processing application).	X				
145.00	The proposed solution must have the ability to link or associate additional case numbers.	X				
146.00	The proposed solution must provide case management functions including, but not limited to: Capturing and storing investigation data, adding evidence, requesting a warrant, conducting interviews and photo lineups, and producing supplemental reports, etc.	X				
147.00	The proposed solution must allow investigators to initiate criminal charges and obtain and execute search and arrest warrants.	X				
148.00	The proposed solution must allow each agency to define specific activities, including a time allocation for each activity, and generate alerts to agency-defined recipients.	X				
149.00	The proposed solution must have the ability for users to electronically send case report updates to agency-defined recipients.	X				
150.00	The proposed solution must have the ability for case reports to be automatically sent to a supervisor based on agency-defined business rules (e.g., crime type, last follow-up, age of case, etc.).	X				
151.00	The proposed solution must ability for the system to link all associated reports (e.g., incident report, supplemental reports, etc.).	X				
152.00	The proposed solution must have the ability to establish case priority levels.	X				
153.00	The proposed solution must have the ability to establish case management workflow based on agency-defined business rules.	X				
154.00	The proposed solution must have the ability to limit security access to case information at the following levels:					
154.01	Case level	X				
154.02	Field level	X				
154.03	Case document level	X				
155.00	The proposed solution must have the ability to limit any case modifications by security level(s).	X				
156.00	The proposed solution must have the ability to provide an audit trail of user access to a case record.	X				
157.00	The proposed solution must have the ability for supervisors to monitor all case activity.	X				
158.00	The proposed solution must have the ability to visually distinguish by case status (e.g., by color, font, underline, or other indicator).	X				Status values are displayed.
159.00	The proposed solution must have the ability to visually distinguish by case priority (e.g., by color, font, underline, or other indicator).	X				Case priority can be added to the default view if desired.
160.00	The proposed solution must have the ability to produce a list of cases pending or past due.	X				
161.00	The proposed solution must have the ability to include a workflow chart.	X				
162.00	The proposed solution must have the ability to create an alert to determine when an additional action or task is due (e.g., supplement report is due within 30 days of assignment).	X				
163.00	The proposed solution must have the ability to provide dedicated fields to track court case dispositions.	X				

164.00	The proposed solution must have the ability to generate a "face sheet" that includes agency-defined data fields (such as for the District Attorney's office).	X				
	Lineups					
165.00	The proposed solution must have the ability to query the mugshot data for lineups by:					
165.01	Name	X				
165.02	Age or age range	X				
165.03	Gender	X				
165.04	Race	X				
165.05	Hair color	X				
165.06	Eye color	X				
165.07	Height or height range	X				
165.08	Weight or weight range	X				
165.09	Scars, marks, tattoos	X				SMT are searchable throughout the entire system.
165.10	Physical characteristics	X				
165.11	Date of birth or date of birth range	X				
165.12	Modus Operandi (M.O.)	X				
166.00	The proposed solution must have the ability to generate a lineup based on any physical characteristic.			X		Lineup search is a set subset of values. They include: Gender, Race, Ethnicity, Build, Complexion, Glasses, Height, Eye Color, Hair, Facial Hair, Weight range, and Age range.
167.00	The proposed solution must have the ability to query lineups by any information associated with an individual, regardless if it is a physical characteristic (eg., search on employer).			X		The user has the ability to use the standard master name search to find lineups. Employer search is not directly supported.
168.00	The proposed solution must have the ability to select multiple mugshot photos to create a lineup.	X				
169.00	The proposed solution must have the ability to drag and drop photos into a lineup.		X			
170.00	The proposed solution must have the ability to determine the number of photos to be presented in a lineup.	X				
171.00	The proposed solution must have the ability to replace a photo in a lineup.	X				
172.00	The proposed solution must have the ability to pre-select a person for inclusion in a photo lineup.	X				
173.00	The proposed solution must have the ability for users to select which photo to use if a person has multiple photos on file within their master name record.	X				
174.00	The proposed solution must have the ability to view demographic information on a person within the lineup.	X				
175.00	The proposed solution must have the ability to select whether to print the name and other agency-defined information (law enforcement copy) or to exclude agency-defined information (witness copy).	X				
176.00	The proposed solution must have the ability for the system to randomly assign suspect position(s) / location(s) within the lineup.	X				
177.00	The proposed solution must have the ability to prevent juvenile photos from being displayed in adult photo lineups.	X				
178.00	The proposed solution must have the ability to save lineups and attach to a case.	X				
179.00	The proposed solution must have the ability to print lineups.	X				
180.00	The proposed solution must have the ability to export lineups (e.g., to email).	X				
181.00	The proposed solution must have the ability to save line-ups to alternative media (e.g., thumb drive or other device).			X		This can be turned into pdf that can be exported. This is not an automatic feature at this time.
	Redacting, Sealing, and Expungements					
182.00	The proposed solution must have the ability to electronically redact information from a case report.	X				
183.00	The proposed solution must provide the ability for users to select which data elements will be redacted, prior to printing a report or making it available by electronic means.			X		Print templates can be made with redaction capabilities. Users are not able to pick specific fields to redact at this time.
184.00	The proposed solution must provide the ability to print or publish a full version and any redacted versions of a case report.	X				
185.00	The proposed solution must allow for related master names to be indicated and viewed as "RESTRICTED" (or similar term) and be viewed or printed as such if the name information cannot be released (e.g., the victim of a sexual assault).	X				

186.00	The proposed solution must have the ability to electronically redact selected information in narratives.	X				
187.00	The proposed solution must have the ability to include agency-defined language in the header of a redacted report (e.g. "Original Report", "Redacted Report", etc.).	X				
188.00	The proposed solution must have the ability to provide an audit trail of redactions and/or save a "before" copy.	X				
189.00	The proposed solution must have the ability to save a copy of the redacted report.	X				
190.00	The proposed solution must have the ability for the agency to establish an automatic redaction process in which agency-defined fields are automatically excluded when a report type is selected.	X				
191.00	The proposed solution must allow authorized users to seal a case report.	X				
192.00	The proposed solution must have the ability to seal a person on a case report without sealing an entire case.	X				
193.00	The proposed solution must have the ability to require a reason when indicating that a case is sealed (or "confidential").			X		The City can indicate a reason when sealing or expunging a person.
194.00	The proposed solution must have the ability to prevent unauthorized users from viewing a sealed case record.	X				
195.00	The proposed solution must have the ability to expunge a person from a case report.	X				
196.00	The proposed solution must recognize the age of majority in the jurisdiction in order to determine if certain juvenile case-related data can be made available to the public.	X				
	State and National Incident Based Reporting (NIBRS)					
197.00	The proposed solution must have the ability to comply with state and NIBRS standards.	X				
198.00	The proposed solution must have the ability to maintain compliance with state and NIBRS reporting changes as they are modified.	X				
199.00	The proposed solution must have the ability to associate local classifications/statute numbers to NIBRS classifications.	X				
200.00	The proposed solution must have the ability to perform NIBRS error checking and validations on a case report, including detailed error messages.	X				
201.00	The proposed solution must have the ability to perform NIBRS checks with the ability for users to click on an error and be presented with specific NIBRS error details.	X				
202.00	The proposed solution must have the ability to support online submission of monthly (and/or agency-defined time-frame) reports.	X				
203.00	The proposed solution must have the ability to prevent reports from being submitted to NIBRS until all errors have been corrected.	X				
204.00	The proposed solution must have the ability for subsequent submissions for NIBRS review to include any changes in cases where a submission was re-submitted.	X				
	Field Contacts / Field Investigations					
205.00	The proposed solution must provide a field contact / field Investigation module and associate persons to the master name index, if desired.	X				
206.00	The proposed solution must allow entry of field contacts from both RMS and mobile (if applicable).	X				
207.00	The proposed solution must allow entry of field contact / field investigation information and enter information on persons, locations, reason for contact, and narrative.	X				
208.00	The proposed solution must integrate any vehicles or property added to a field contact/field investigation with the vehicle or property modules.	X				
	Property and Evidence					
209.00	The proposed solution must support integration with with FileOnQ (the system of record for evidence).	X				Hexagon has included an interface to FileOnQ for the City.
210.00	The proposed solution must provide for property and evidence items to be entered with descriptors and tracking identifiers that are recorded for inventory control and chain-of-custody purposes.	X				
211.00	The proposed solution must enforce industry property coding standards, such as NCIC and NIBRS property codes.	X				
212.00	The proposed solution must have the ability for the agency to define property and evidence types.	X				
213.00	The proposed solution must have the ability for the agency to define associated data fields corresponding to specific property and evidence types.	X				

214.00	The proposed solution must have the ability to enter and maintain property and evidence for multiple agencies.	X				
215.00	The proposed solution must link property and evidence information with a case report.	X				
216.00	The proposed solution must automate queries to NCIC for a stolen property search.		X			
217.00	The proposed solution must have the ability to capture signatures for receipt, check-out and check-in of evidence.	X				
218.00	The proposed solution must provide standard property and evidence reports, as well as support the creation of ad-hoc reports.	X				
219.00	The proposed solution must have the ability to provide a barcode system that will allow property to be scanned and barcode labels printed.	X				
220.00	The proposed solution must have the ability for each agency to configure which data fields are printed on barcode labels.	X				
221.00	The proposed solution must have the ability to record a date and time stamp with any barcode activity.	X				
222.00	The proposed solution must have the ability to print multiple barcode labels at one time.	X				
223.00	The proposed solution must have the ability to generate a single barcode label for all items with a specific property number.	X				
224.00	The proposed solution must have the ability to provide information on a barcode label, including but not limited to:					
224.01	Item number	X				
224.02	Property number	X				
224.03	Case number	X				
224.04	Property description	X				
225.00	The proposed solution must provide notifications when evidence will be needed for court (e.g., when a user receives a court summons to testify, the appropriate personnel are ntified in advance).	X				
226.00	The proposed solution must allow for batch entry of property and evidence.	X				
227.00	The proposed solution must provide for a vehicle and its contents to be entered as one piece of property or evidence (if the agency desires this process), with fields for describing the contents within a vehicle.		X			
228.00	The proposed solution must allow personnel to access a property record to view detailed information about the item and historical information about the custody and control of the item, including its current status and location.	X				
229.00	The proposed solution must provide the ability to accurately track all property items and verify evidentiary chain-of-custody requirements are met.	X				
230.00	The proposed solution must track property that has is stored in remote facilities	X				
231.00	The proposed solution must manage dispositions of property items with timed events to notify property personnel when items can be released, destroyed, or sold at auction, in accordance with statutes.			X		A global timer can be set for property disposition. It is not possible to set seperate timers for each statute at this time.
232.00	The proposed solution must maintain a disposition history for a specified time period or if retained indefinitely for future investigative purposes.	X				
233.00	The proposed solution must have the ability for the agency to configure an item numbering sequence.	X				
234.00	The proposed solution must have the ability for the agency to override a numbering sequence, based on permissions.	X				
235.00	The proposed solution must have the ability to designate property and evidence types for the following:					
235.01	Evidence	X				
235.02	Found property	X				
235.03	Safe keeping	X				
235.04	Lost	X				
235.05	Stolen	X				
235.06	Recovered	X				
235.07	Agency-defined	X				
236.00	The proposed solution must have the ability to associate NIBRS codes with property.	X				
237.00	The proposed solution must have the ability to link a property record to an incident and/or case report.	X				
238.00	The proposed solution must have the ability for each agency to define storage locations and identifiers/descriptors (e.g., shelf, bin, bag, garage).	X				

239.00	The proposed solution must have the ability to provide easily duplicate a change-of-custody entry for items under the same tag.	X				
240.00	The proposed solution must have the ability for property and evidence reports to be exported into other file formats such as MS Excel.	X				
241.00	The proposed solution must have the ability to import property information from an incident or case report into a property record.	X				
242.00	The proposed solution must have the ability to generate a receipt for items entered into property and evidence.	X				
243.00	The proposed solution must have the ability to automatically assign storage locations based on:					
243.01	Available locations		X			
243.02	Property type		X			
244.00	The proposed solution must have the ability for users to manually enter a storage location, if desired.	X				
244.01	The proposed solution must have the ability to record the following information related to a drug seizure:					
244.02	Drug type	X				
244.03	Quantity	X				
244.04	Weight	X				
244.05	Estimated value	X				
245.00	The proposed solution must have the ability to record the following information related to a weapon:					
245.01	Type	X				
245.02	Description	X				
245.03	Owner information	X				
245.04	Size	X				
245.05	Make	X				
245.06	Caliber	X				
245.07	Serial number	X				
245.08	Manufacturer	X				
246.00	The proposed solution must have the ability to maintain a balance of currency held.		X			This can be done with reporting in OnCall Analytics.
247.00	The proposed solution must have the ability to track forfeited currency.	X				
248.00	The proposed solution must have the ability to generate a receipt for currency taken into property or evidence.	X				
249.00	The proposed solution must have the ability to attach digital property / evidence (e.g., photographs, video, emails, etc.).	X				
250.00	The proposed solution must have the ability to print digital property / evidence.	X				
251.00	The proposed solution must have the ability to batch upload digital property / evidence.	X				
252.00	The proposed solution must have the ability to restrict access to digital property / evidence by security permissions.	X				
253.00	The proposed solution must have the ability to purge digital evidence.	X				
254.00	The proposed solution must have the ability to email digital property / evidence and record the email information in the chain of custody.		X			
255.00	The proposed solution must have the ability to reject submitted property / evidence and indicate a reason (e.g., improperly packaged or documented).	X				
256.00	The proposed solution must have the ability to notify submitting personnel that an item was rejected..	X				
257.00	The proposed solution must have the ability to generate a report showing the number of rejected items.	X				
258.00	The proposed solution must have the ability to resubmit rejected items after required corrections have been made.	X				
259.00	The proposed solution must have the ability to track the chain of custody for blood kits:					
259.01	Date the kit is mailed	X				Hexagon clarifies that if desired fields are not in the COTS product, agency administrators have to ability to add all needed fields.
259.02	Date results are received	X				Hexagon clarifies that if desired fields are not in the COTS product, agency administrators have to ability to add all needed fields.
260.00	The proposed solution must have the ability to notify a single user or multiple users of changes in chain of custody status for a defined property item.	X				
261.00	The proposed solution must have the ability to track the viewing of a property item, including but not limited to:					

261.01	Start and end time of viewing			X		End time of viewing is not tracked.
261.02	Evidence viewed	X				
261.03	Location of viewing	X				IP Address of computer used is tracked.
261.04	Person(s) present during viewing	X				User accessing is logged.
261.05	Reason for viewing		X			
262.00	The proposed solution must have the ability to include due dates for items to be returned, with notifications.		X			
263.00	The proposed solution must have the ability to provide automatic reminders (at agency-defined intervals) that checked-out items are overdue.		X			
264.00	The proposed solution must have the ability to generate a chain of custody report for an item.	X				
265.00	The proposed solution must have the ability to query a property item and identify its location from the chain of custody information.	X				
266.00	The proposed solution must have the ability to document users conducting a property / evidence audit.	X				
267.00	The proposed solution must have the ability to document on a property record that an item was included in an inventory or audit.	X				
268.00	The proposed solution must have the ability to generate a list of all property located in a specified area.	X				
269.00	The proposed solution must have the ability to scan all items in a specified location to ensure that items on a list of property are in their proper location.	X				
270.00	The proposed solution must have the ability to generate a report of missing property items.	X				
271.00	The proposed solution must have the ability to notify investigators of items that require review:					
271.01	Manually	X				
271.02	Automatically (based on agency-defined business logic)	X				
272.00	The proposed solution must have the ability to alert property and evidence personnel of items that require review.	X				
273.00	The proposed solution must have the ability to alert property and evidence personnel of property items eligible for disposition.	X				
274.00	The proposed solution must have the ability for the agency to configure property / evidence disposition types.	X				
275.00	The proposed solution must have the ability to generate a report of property eligible for return to an owner.	X				
276.00	The proposed solution must have the ability to generate an owner notification letter based on disposition status.	X				
277.00	The proposed solution must have the ability to add disposal information to a property / evidence record.	X				
278.00	The proposed solution must have the ability to track the information associated with property / evidence destruction in a report.	X				
279.00	The proposed solution must have the ability to require multiple levels of approval prior to property / evidence being eligible for disposal.	X				
280.00	The proposed solution must have the ability to produce automated scheduled reports indicating property / evidence eligible for disposal.	X				
281.00	The proposed solution must have the ability to assign a disposition to all items attached to a case simultaneously.	X				
Vehicle Impounds						
282.00	The proposed solution must support the entry of all identifying information for each vehicle type (eg., passenger cars, trucks, boats, motorcycles, airplanes, etc.).	X				
283.00	The proposed solution must allow the personnel entering an impound to record information as the officer who initiates the impound, impound reason, and information about the vehicle (eg., VIN, description, license plate number, and the condition of the vehicle, as well as information about the owner and driver).	X				
284.00	The proposed solution must check the vehicle against the master vehicle record in RMS and automatically perform an NCIC query.			X		The NCIC query does not run automatically.
285.00	The proposed solution must provide for users to include the name of the tow company and impound lot a vehicle is towed to.	X				
286.00	The proposed solution must provide for CAD or mobile users (if applicable) to enter vehicle and impound information, which transfers to RMS.		X			
287.00	The proposed solution must allow an initial estimate of the vehicle's value to be entered.	X				
Crash / Accident Reporting						

288.00	The proposed solution must have the ability to import crash / accident report information from an electronic crash reporting system.	X				Hexagon has included an interface to Crossroads for Crash/Accidents for the City.
289.00	The proposed solution must have the ability to record all crash / accident data as required by the state.	X				Hexagon clarifies while OnCall Records does have the ability to record accident data, we have included an interface to Crossroads.
290.00	The proposed solution must have the ability to manually enter and update crash / accident information into RMS, if desired.	X				Hexagon clarifies while OnCall Records does have the ability to record accident data, we have included an interface to Crossroads.
291.00	The proposed solution must have the ability to print crash / accident reports.	X				
292.00	The proposed solution must have the ability to provide standard crash / accident reports.	X				Hexagon clarifies while OnCall Records does have the ability to record accident data, we have included an interface to Crossroads.
293.00	The proposed solution must provide for personnel to collect data on the demographics of persons involved for statistical reporting.	X				Hexagon clarifies while OnCall Records does have the ability to record accident data, we have included an interface to Crossroads.
294.00	The proposed solution must support the ability to attach diagrams and photographs to a crash / accident report.	X				
295.00	The proposed solution must have the ability to link crash / accident records to ticket / citation records.	X				
	Tickets / Citations					
296.00	The proposed solution must have the ability to import ticket / citation information from an electronic ticketing system.	X				Hexagon has included an interface to Crossroad for Citations for the City.
297.00	The proposed solution must have the ability to record all data for tickets / citations as required by the state.	X				Hexagon clarifies while OnCall Records does have the ability to record citation data, we have included an interface to Crossroads.
298.00	The proposed solution must have the ability to record all data required of tickets / citations as required by the agency, for local ordinances.	X				Hexagon clarifies while OnCall Records does have the ability to record citation data, we have included an interface to Crossroads.
299.00	The proposed solution must have the ability to maintain compliance with state data collection requirements as modifications are required by the state.	X				Hexagon clarifies while OnCall Records does have the ability to record citation data, we have included an interface to Crossroads.
300.00	The proposed solution must have the ability to export ticket / citation information to the state.	X				Hexagon clarifies while OnCall Records does have the ability to export citation data to the state, we have included an interface to Crossroads. We have not included an export interface to the state at this time.
301.00	The proposed solution must have the ability to manually update ticket / citation information.	X				
302.00	The proposed solution must have the ability to manually add written citations to RMS and add attachments to the ticket / citation records.	X				
303.00	The proposed solution must have the ability to update a ticket / citation with a disposition from the court system, if provided and desired.	X				
304.00	The proposed solution must have the ability to link ticket / citation person information to master name records.	X				
305.00	The proposed solution must have the ability to link ticket / citation vehicle information to master vehicle records.	X				
306.00	The proposed solution must query RMS and state databases that contain information regarding previously issued tickets / citations and warnings. The query must also check for any outstanding protection orders, warrants or other alerts.		X			
307.00	The proposed solution must provide for personnel to collect data on the demographics of persons involved for statistical reporting and/or demographic profiling.	X				
308.00	The proposed solution must have the ability to produce standard reports for tickets / citations.	X				
309.00	The proposed solution must allow tickets / citations to be associated with case reports or created without a case report.	X				
310.00	The proposed solution must have allow users to save, print, or email a summary list of ticket / citation records directly from a list-view window.	X				Authorized users have the ability to send the search lists to Excel or a PDF which can then be emailed.
	Warrants and Protection Orders					
311.00	The proposed solution must have the ability to enter warrants and protection orders in RMS.	X				
312.00	The proposed solution must have the ability to enter caution / risk information on a person.	X				
313.00	The proposed solution must have the ability to notify users if there are alerts (eg., cautions or risks) associated with a person.	X				
314.00	The proposed solution must have the ability to enter an unlimited number of warrants and protective orders associated with a person.	X				
315.00	The proposed solution must have the ability to use agency-defined warrant statuses (e.g., active, pending, reactivate, inactive, recalled, etc.).	X				
316.00	The proposed solution must have the ability to associate multiple statutes to a single warrant.	X				
317.00	The proposed solution must have the ability to attach documents to warrant and protection order records.	X				

318.00	The proposed solution must have the ability to query the state / NCIC from within RMS when entering a name into a warrant record.	X				
319.00	The proposed solution must have the ability to submit warrants to the state / NCIC system from within RMS.	X				
320.00	The proposed solution must have the ability to supplement, modify, and cancel a warrant within the state / NCIC system from RMS.	X				
321.00	The proposed solution must have the ability to record the circumstance of service (e.g., voluntary, law enforcement initiated, etc.).	X				
322.00	The proposed solution must have the ability to allow multiple numbers to be included in the warrant record (eg., NCIC, docket, state case, OCA, etc.).	X				
323.00	The proposed solution must automatically create a system-wide alert on the master name and appropriate locations (such as current address of the persons) upon entry of warrants, and protection orders. This includes the ability to alert CAD and mobile users performing inquiries on the person, if applicable.	X				
324.00	The proposed solution must have the ability to provide for users to add comments and narratives to the warrant record.	X				
325.00	The proposed solution must have the ability to provide dedicated fields to track service attempt history.	X				
326.00	The proposed solution must provide for a reason for a warrant cancellation to be recorded, if the court cancels a warrant.	X				
327.00	The proposed solution must track any warrant-related activity or status changes including the type of activity, contact with the subject (if any), the date of the activity, and the result of the activity.	X				
328.00	The proposed solution must have the ability to create a warrant affidavit requesting that the court issue a warrant.	X				
329.00	The proposed solution must have the ability to enter the following:					
329.01	Offense tracking number	X				
329.02	Court / Magistrate office the warrant was issued from	X				
330.00	The proposed solution must have the ability to record the personnel name that performed a state/NCIC criminal history inquiry and who it was confirmed by.	X				
331.00	The proposed solution must have the ability to track subpoenas received from the District Attorney's office.	X				
332.00	The proposed solution must have the ability to generate a court calendar with the following information:					
332.01	Case number		X			
332.02	Date of trial		X			
332.03	Personnel		X			
332.04	Defendant name		X			
332.05	Purpose of the trial		X			
333.00	The proposed solution must have the ability to inquire and generate a report of warrants that are awaiting extradition from other agencies.	X				
334.00	The proposed solution must have the ability to create automatic alerts based on warrant status (eg., "in custody", "awaiting trial", "awaiting extradition", etc.).	X				
335.00	The proposed solution must have the ability to import warrant information from the court system.		X			Hexagon clarifies that this would require an interface to the City's court system. Further discussion is required.
336.00	The proposed solution must have the ability to record DNA information.	X				
337.00	The proposed solution must have the ability to record information specific to a search warrant.	X				
338.00	The proposed solution must have the ability to generate reports on open and cancelled warrants within user-specified date and time ranges.	X				
339.00	The proposed solution must record conditions within a protection order record, such as anti-harassment orders and no-contact orders, including all persons named in the orders and their relationships.	X				
340.00	The proposed solution must store information related to protection order conditions, such as the issuing authority, effective time period, location, distance, restrictions, and types of contact prohibited.	X				
341.00	The proposed solution must notify the appropriate designated personnel when a protection order record requires validation.	X				
342.00	The proposed solution must have the ability to notify and track when a protection order is in effect.	X				
343.00	The proposed solution must have the ability to automatically expire a protection order based on the expiration date of the order.	X				

344.00	The proposed solution must have the ability to generate a report of all protection orders expiring within a specified date and time range.	X				
	Narcotics / Intelligence					
345.00	The proposed solution must ensure that intelligence case reports include all of the standard functionality and workflow as standard case reports.	X				
346.00	The proposed solution must provide for agency-defined security permissions for all information within intelligence case reports.	X				
347.00	The proposed solution must have the ability to ensure that intelligence case reports include links to protection orders, field contacts, other intelligence case reports, and standard case reports.	X				
348.00	The proposed solution must have the ability to link master name records associated with an intelligence record and provide for entering information such as informant ID and the M.O., with agency-defined security permissions.	X				
349.00	The proposed solution must allow authorized users to add and track notes on informants to document all contacts with the person(s), with agency-defined security access.	X				
350.00	The proposed solution must provide for authorized users to choose not to submit intelligence cases for state and NIBRS reporting.			X		Could be done with specific offense codes or a specific agency configuration.
351.00	The proposed solution must have the ability to notify intelligence personnel if a master name record involved an intelligence case is queried in the system. This notification must not notify the user performing the inquiry.			X		RMS does not send an alert on query, but can on view.
352.00	The proposed solution must have the ability to notify users inquiring on a person to any relevant alerts on the person.			X		Alerts can be displayed on view, not on query.
353.00	The proposed solution must have the ability to notify agency-defined personnel if a location involved an intelligence case is queried or entered as a new report in the system.			X		Entered or view is supported.
354.00	The proposed solution must have the ability to track tips, including but not limited to the following:					
354.01	Date and time		X			
354.02	Source		X			
354.03	Narrative / comments		X			
354.04	Category (e.g., suspected trafficking)		X			
354.05	Any reward for valid tips		X			
354.06	Contact information (if provided)		X			
355.00	The proposed solution must allow names, offenses, property, and vehicles to be copied from an intelligence case into a standard case without the need to re-enter the information.		X			
356.00	The proposed solution must have the ability to provide case management functionality for intelligence-related investigations, but have intelligence-related investigations secured separately from other investigation types.	X				
357.00	The proposed solution must have the ability to establish intelligence investigation groups / units (e.g., SWAT, Narcotics, etc.).	X				
358.00	The proposed solution must have the ability to track the workload activity of each specialty unit.	X				
	Gangs					
359.00	The proposed solution must have the ability to flag individuals with confirmed or suspected gang involvement in the master name index.	X				
360.00	The proposed solution must have the ability to distinguish between confirmed and suspected gang members.		X			
361.00	The proposed solution must have the ability to record criteria used to identify a person as a gang member.	X				
362.00	The proposed solution must have the ability for gang information to be made available to the JMS and vice versa (if applicable).	X				
363.00	The proposed solution must have the ability to auto-populate the gang module with information from a master name record once a person is identified as a gang member.	X				
364.00	The proposed solution must have the ability to prompt personnel to forward gang information to an investigator when new information is entered into agency-defined fields.	X				
365.00	The proposed solution must have the ability to manually remove gang alerts.	X				
366.00	The proposed solution must have the ability to provide security provisions at the user level to:					
366.01	Create gang records	X				
366.02	Modify gang records	X				
366.03	Indicate a person as a gang member	X				

367.00	The proposed solution must have the ability to prevent gang information from displaying on a master name record.	X				
368.00	The proposed solution must have the ability to transfer agency-defined gang information to NCIC from within RMS, based on agency-defined criteria.	X				
369.00	The proposed solution must have the ability to provide dedicated fields to record the following gang-related data:					
369.01	Person name	X				
369.02	Person "street name" or alias	X				
369.03	Date of birth	X				
369.04	Gender	X				
369.05	Race	X				
369.06	Ethnicity	X				
369.07	Known associates	X				
369.08	Height	X				
369.09	Weight	X				
369.10	Hair color	X				
369.11	Eye color	X				
369.12	Gang name	X				
369.13	Street address	X				
369.14	Phone number	X				
369.15	Employer	X				
369.16	Employer address	X				
369.17	Work phone	X				
369.18	Occupation	X				
369.19	Active member (Y/N)	X				
369.20	Physical characteristics	X				
369.21	Scars, marks, tattoos	X				
370.00	The proposed solution must have the ability to track associates of gang members, with the same data fields listed above.	X				
371.00	The proposed solution must have ability to restrict security access to agency-specified fields, including photos, within the gang database by:					
372.00	Person	X				
372.01	Rank	X				
372.02	Agency	X				
373.00	The proposed solution must have the ability to identify juvenile gang members.	X				
	Sex Offenders					
374.00	The proposed solution must provide for tracking and registering sex offenders.	X				
375.00	The proposed solution must link sex offender records to master name records.	X				
376.00	The proposed solution must automatically create a system-wide alert on the master name and appropriate locations (such as current address of the offender) upon entry of sex offender information. This includes the ability to alert CAD and mobile users performing inquiries on the person, if applicable.	X				
377.00	The proposed solution must provide the ability to generate a list of registered sex offenders that is accessible by authorized users.	X				
	Personnel and Training					
378.00	The proposed solution must have the ability to maintain separate personnel records for each agency on the system.	X				
379.00	The proposed solution must have the ability maintain the following personnel information at a minimum:					
379.01	Agency	X				
379.02	Name	X				
379.03	Employee ID	X				
379.04	Unit ID (if applicable)	X				
379.05	Driver's license number and class	X				
379.06	Hire Date	X				
379.07	Termination / separation date	X				
379.08	Promotion history (start and end date)	X				
379.09	Blood type	X				
379.10	Phone number(s)	X				

379.11	Address	X				
379.12	Sex	X				
379.13	Race	X				
379.14	Marital status	X				
379.15	Rank	X				
379.16	Badge number	X				
379.17	Employment status	X				
379.18	Special skills	X				
379.19	Email address	X				
379.20	Assignment	X				
379.21	Injury history	X				
379.22	Exposure history	X				
379.23	Supervisor(s)	X				
379.24	Education	X				
379.25	Sworn date	X				
380.00	The proposed solution must have the ability to assign an employee a role or position.	X				
381.00	The proposed solution must have the ability to attach a photo to a personnel record.	X				
382.00	The proposed solution must have the ability to record the following information regarding disciplinary action:					
382.01	Type	X				
382.02	Disciplinary action start date and time	X				
382.03	Disciplinary action end date and time	X				
382.04	Status of disciplinary action	X				
382.05	Rank	X				
382.06	Evaluation dates	X				
382.07	History	X				
383.00	The proposed solution must have the ability to generate a report of pending expiration dates for disciplinary action.	X				
384.00	The proposed solution must have the ability to track all changes to personnel information (e.g., promotions, transfers), including but not limited to:					
384.01	Date of change	X				
384.02	Person making the change	X				
384.03	Before and after values	X				
385.00	The proposed solution must have the ability to attach files to a personnel record.	X				
386.00	The proposed solution must have the ability to maintain the history of personnel information that may change over time (e.g. address, phone, etc.).	X				
387.00	The proposed solution must support the tracking of required vaccinations and medical information.	X				
388.00	The proposed solution must generate reports to supervisors for upcoming expirations and required medical procedures, such as vaccinations.			X		This can be done with Reporting and Analytics.
389.00	The proposed solution must maintain information on current health-related duty restrictions affecting personnel.		X			
390.00	The proposed solution must have the ability for inquiries to be conducted on RMS data to identify potential personnel and organizational issues, including:					
390.01	Biased-based policing	X				
390.02	Uses of force	X				
390.03	Vehicle pursuits	X				
390.04	Vehicle crashes	X				
390.05	Personnel injuries	X				
390.06	Citation data	X				
390.07	Field contact reports	X				
390.08	Citizen complaints	X				
390.09	Civil and criminal actions	X				
391.00	The proposed solution must maintain personnel information that includes Line of Duty Death (LODD) information (e.g., personnel wishes, contact information, etc.).		X			
392.00	The proposed solution must allow for the creation and maintenance of various schedule patterns (e.g., days on, days off, and assigned hours).		X			

393.00	The proposed solution must record personnel assignments, shifts, and locations.	X				
394.00	The proposed solution must have the ability to generate a duty roster for a specified time period.		X			
395.00	The proposed solution must provide for tracking personnel attendance to agency-defined training courses, programs, and certifications (e.g., NCIC, CPR, etc.).	X				
396.00	The proposed solution must provide a training function that includes tracking required and recommended courses by category, classification, and specialty.	X				
397.00	The proposed solution must have the ability to assign training to:					
397.01	Personnel	X				
397.02	Agency	X				
397.03	Role	X				
398.00	The proposed solution must have the ability to maintain the following training Information:					
398.01	Attendee(s)	X				
398.02	Hours	X				
398.03	Cost		X			
398.04	Course description	X				
398.05	Narrative / comments	X				
398.06	Training provider	X				
398.07	Training location	X				
398.08	Score (pass / fail)	X				
398.09	Method of training	X				
398.10	Recertification required	X				
398.11	Date of recertification	X				
399.00	The proposed solution must have the ability to maintain separate personnel training records for each agency on the system.	X				
400.00	The proposed solution must provide user configurable alerts or notifications for expiring certifications, required trainings etc.	X				
401.00	The proposed solution must provide a training function that includes the ability to attach documents to training records.	X				
402.00	The proposed solution must provide for tracking awards and commendations.	X				
403.00	The proposed solution must have the ability to allow personnel to view (not edit) their training records.	X				
404.00	The proposed solution must have the ability to for authorized personnel to modify training records.	X				
405.00	The proposed solution must have the ability to generate a report of training and associated expiration dates by:					
405.01	Agency	X				
405.02	Personnel	X				
406.00	The proposed solution must have the ability to maintain a list of instructors.	X				
407.00	The proposed solution must have the ability to document hours of instructional time per instructor.		X			
408.00	The proposed solution must have the ability to track required / mandatory training requirements.		X			
409.00	The proposed solution must have the ability to track continuing education hours.	X				
410.00	The proposed solution must have the ability to track follow-up training for personnel that fail certification tests.	X				
411.00	The proposed solution must have the ability to generate a notification to participants of upcoming trianing information (e.g., class location, time, date, etc.).		X			
412.00	The proposed solution must have the ability to report on personnel that were scheduled but did not attend a scheduled training.		X			
413.00	The proposed solution must have the ability for individuals to request training electronically.		X			
414.00	The proposed solution must have the ability to post training information online.		X			
415.00	The proposed solution must have the ability to search training records by:					
415.01	Name	X				
415.02	Group / unit	X				

415.03	Course	X				
415.04	Assignment	X				
415.05	Shift		X			
415.06	Agency	X				
415.07	Training provider	X				
416.00	The proposed solution must have the ability to generate a report on training costs by:					
416.01	Name		X			
416.02	Group / unit		X			
416.03	Course		X			
416.04	Assignment		X			
416.05	Shift		X			
416.06	Agency		X			
416.07	Training provider		X			
416.08	Source (e.g., grants, department-funded, etc.)		X			
	Equipment / Asset Management / Inventory					
417.00	The proposed solution must have the ability to maintain equipment (including personnel-issued items), agency assets, and inventory.	X				
418.00	The proposed solution must have the ability to maintain equipment by agency-defined categories.	X				
419.00	The proposed solution must have the ability to maintain equipment by agency-defined equipment types.	X				
420.00	The proposed solution must have the ability to maintain equipment purchase information, including cost and vendor.	X				
421.00	The proposed solution must have the ability to maintain equipment purchase date, in-service date, and replacement date.	X				
422.00	The proposed solution must provide for assigning equipment to personnel, units, buildings / stations, or indicating that it is inventory for future assignment / use.	X				
423.00	The proposed solution must provide for indicating the date / time and location when assigning equipment.	X				
424.00	The proposed solution must generate reports on the physical location of agency equipment to support inventories and audits.	X				
425.00	The proposed solution must support the generation of reports for overdue, lost, stolen, or destroyed equipment.	X				
426.00	The proposed solution must maintain a log of all equipment activity	X				
427.00	The proposed solution must record information regarding the condition of equipment (e.g., new, used, damaged, etc.).	X				
428.00	The proposed solution must provide for equipment maintenance, including agency-defined maintenance activity types.	X				
429.00	The proposed solution must provide for notifications and recurring notifications for when maintenance is due on equipment.	X				
430.00	The proposed solution must have the ability to track inventoried items.	X				
431.00	The proposed solution must have the ability to associate inventoried items by agency.	X				
432.00	The proposed solution must track spare parts and related inventory.	X				
433.00	The proposed solution must generate reports to support equipment and inventory audits, which will assist in managing repairs and disposal.	X				
434.00	The proposed solution must have the ability for agency to establish threshold levels per specific equipment and inventory item.	X				
435.00	The proposed solution must have the ability to generate an automatic alert to designated personnel when inventory levels fall below agency-defined levels (e.g., threshold levels).	X				
436.00	The proposed solution must have the ability to track vendor information for equipment and inventory items:					
436.01	Vendor name	X				
436.02	Contact information	X				
436.03	Items provided	X				
436.04	Cost per item	X				
437.00	The proposed solution must have the ability to manage and track equipment and inventory using barcoding including, but not limited to the following functions:					
437.01	Perform a mass update		X			
437.02	Locate an item a by barcode		X			

437.03	Generate a barcode		X			
437.04	Read a barcode using a wireless or connected hand-held device		X			
438.00	The proposed solution must have the ability to generate equipment and inventory reports by:					
438.01	Agency assigned to	X				
438.02	Ppersonnel assigned to	X				
438.03	Vehicle / unit assigned to	X				
438.04	Inventory on hand	X				
439.00	The proposed solution must have the ability to track the disposal of inventory.	X				
440.00	The proposed solution must have the ability to track disposal methods by equipment and inventory type.	X				
441.00	The proposed solution must have the ability to generate reports for inventory items used (e.g., rubber gloves, etc.).	X				
442.00	The proposed solution must have the ability to associate costs to:					
442.01	Inventory (e.g., equipment, parts, etc.)		X			
442.02	Labor		X			
	Fleet Vehicles					
443.00	The proposed solution must have the ability to track fleet vehicles.	X				
444.00	The proposed solution must have the ability to differentiate fleets by all agencies on the system.	X				
445.00	The proposed solution must have the ability to track all maintenance activity associated with a vehicle.	X				
446.00	The proposed solution must provide for agency-defined maintenance activity types.	X				
447.00	The proposed solution must provide for notifications and recurring notifications for when maintenance is due on a vehicle.	X				
448.00	The proposed solution must have the ability to track vendors when maintenance or repairs are performed, including services provided and cost.	X				
449.00	The proposed solution must have the ability to generate reports for all repairs made to vehicles, with any costs incurred.	X				
450.00	The proposed solution must have the ability to link an assigned fleet vehicle to a mobile application user with a vehicle ID number, if applicable.	X				
451.00	The proposed solution must have the ability to prompt mobile application users to enter the vehicle ID number they are assigned to at the beginning og their shift, with a prompt for current mileage, if applicable.			X		Hexagon clarifies that this functionality can be achieved through the City's purchased Hexagon MPS.
452.00	The proposed solution must have the ability to prompt mobile application users for ending mileage at end of shift, if applicable.			X		Hexagon clarifies that this functionality can be achieved through the City's purchased Hexagon MPS.
453.00	The proposed solution must have the ability to record the date, cost, and amount of fuel purchased at each fill-up, as well as the vehicle's mileage.			X		Hexagon clarifies that this functionality can be achieved through the City's purchased Hexagon MPS.
454.00	The proposed solution must have the ability for personnel to conduct a vehicle inspection using a mobile application and record the information in the RMS vehicles / fleet module.			X		Hexagon clarifies that this functionality can be achieved through the City's purchased Hexagon MPS.
455.00	The proposed solution must have the ability to record all personnel in a vehicle performing a vehicle inspection.			X		Hexagon clarifies that this functionality can be achieved through the City's purchased Hexagon MPS.
456.00	The proposed solution must have the ability to record the following information for vehicle inspections:					
456.01	Inspection date and time			X		Hexagon clarifies that all of these fields can be added to the maintance section of Fleet Maintanence.
456.02	Personnel performing the inspection			X		Hexagon clarifies that all of these fields can be added to the maintance section of Fleet Maintanence.
456.03	Shift			X		Hexagon clarifies that all of these fields can be added to the maintance section of Fleet Maintanence.

456.04	Fuel level			X		Hexagon clarifies that all of these fields can be added to the maintance section of Fleet Maintanence.
456.05	Number of gallons of fuel added (if applicable)			X		Hexagon clarifies that all of these fields can be added to the maintance section of Fleet Maintanence.
456.06	Number of quarts oil added (if applicable)			X		Hexagon clarifies that all of these fields can be added to the maintance section of Fleet Maintanence.
456.07	Equipment condition with list of equipment and choices of conditions with separate comments field			X		Hexagon clarifies that all of these fields can be added to the maintance section of Fleet Maintanence.
456.08	Vehicle condition and cleanliness, with a separate comments field			X		Hexagon clarifies that all of these fields can be added to the maintance section of Fleet Maintanence.
456.09	Body damage, with a separate comments field			X		Hexagon clarifies that all of these fields can be added to the maintance section of Fleet Maintanence.
456.10	Narratve / comments field			X		Hexagon clarifies that all of these fields can be added to the maintance section of Fleet Maintanence.
457.00	The proposed solution must produce the following reports with a date / time range:					
457.01	Vehicle inspections by personnel		X			
457.02	Vehicles by fuel, oil, and mileage		X			
457.03	Vehicles by assignment	X				
457.04	Vehicle maintenance by type	X				
457.05	Vehicles with assigned equipment	X				
457.06	Vehicles with missing equipment		X			
457.07	Vehicles with repairs needed	X				
	Permits					
458.00	The proposed solution must have the ability to enter agency-defined permits (e.g., parade and assembly permits, massage parlors, dance permits, alcohol licenses, alarms, etc.).	X				
459.00	The proposed solution must have the ability to track the status of permits including the permit application, granting the permit, denial, revocation, and expiration.	X				
460.00	The proposed solution must generate the appropriate system-wide alerts for permits (e.g., locations and/or persons that are issued the permit).	X				
461.00	The proposed solution must generate the appropriate notifications or reports for a change of status or an upcoming alert expiration date.	X				
462.00	The proposed solution must track payments associated with the issuance of licenses and permits.	X				
463.00	The proposed solution must have the ability to provide the following standard reports for:					
463.01	Permit applications granted based on varying search criteria	X				
463.02	Permit applications denied, with reason indicated	X				
464.00	The proposed solution must have the ability to automatically create a system-wide alert when a person is granted a concealed weapon or gun permit.	X				
465.00	The proposed solution must have the ability to maintain information required for obtaining approval on a gun permit such as medical and background checks, including the date and time sent and received back.	X				
466.00	The proposed solution must have the ability link persons with gun permits to master name records.	X				
	Professional Standards / Internal Affairs					
467.00	The proposed solution must have the ability to record the following regarding personnel:					
467.01	Citizen complaints		X			
467.02	Agency infractions		X			
467.03	Accidents		X			
467.04	Use of force	X				
467.05	Injuries		X			
467.06	Pursuits	X				
468.00	The proposed solution must have the ability to support a threshold alerting feature for agency-specified activity or charge types, including but not limited to:					
468.01	Accidents		X			
468.02	Complaints		X			
468.03	Discipline		X			
468.04	Use of force		X			
468.05	Injuries		X			

468.06	Pursuits		X			
469.00	The proposed solution must have the ability for threshold alerts to be unique for:					
469.01	Each agency		X			
469.02	Each charge type		X			
470.00	The proposed solution must have the ability to record the following fleet vehicle accident information:					
470.01	Date of accident		X			
470.02	Time of accident		X			
470.03	Location of accident		X			
470.04	Type of accident		X			
470.05	Personnel name, rank, and division		X			
470.06	Case number		X			
470.07	Supervisor who investigated accident		X			
470.08	Agency that investigated the accident		X			
470.09	Disposition		X			
471.00	The proposed solution must have the ability to record the following information on complaints:					
471.01	Personnel name, rank, and division		X			
471.02	Complaint type (e.g., informal, informal, fact finding, administrative review, etc.)		X			
471.03	Date the complaint was assigned		X			
471.04	Personnel and/or supervisor the complaint was assigned to		X			
471.05	Date the investigation was completed		X			
471.06	Narrative		X			
471.07	Case number		X			
471.08	How the complaint was reported		X			
471.09	Date the incident occurred		X			
471.10	Date the incident was reported		X			
471.11	Indicate if the incident occurred off-duty		X			
471.12	Name of the person that received the complaint		X			
471.13	Complainant name, gender, race, address, phone number		X			
471.14	Witness name, gender, race, address, phone number		X			
471.15	Date witness was contacted		X			
471.16	Type of witness		X			
471.17	Name, rank, and division of other personnel involved		X			
471.18	Disposition of complaint		X			
472.00	The proposed solution must have multiple levels of security for the internal affairs module, for individual records or groups of records, and for individual fields or groups of fields.		X			
473.00	The proposed solution must provide for the encryption of information maintained within the professional standards / internal affairs module.		X			
474.00	The proposed solution must have security levels within the professional standards / internal affairs module that limit availability of information accessible through other RMS modules and indices.		X			
475.00	The proposed solution must have the ability to attach documents to records in the module.		X			
476.00	The proposed solution must have the ability to link (e.g., hyperlink, attach, etc.) a report to the internal affairs incident.		X			
477.00	The proposed solution must have the ability to link all reports written by personnel to their internal affairs incident.		X			
478.00	The proposed solution must have the ability to view and print a summary of all internal affairs activity for personnel.		X			
479.00	The proposed solution must have the ability to record the user name, date, and time an internal affairs record was added, changed, viewed, and printed.		X			
Messaging						
480.00	The proposed solution must have the ability to send and receive messages within the RMS.	X				
481.00	The proposed solution must include the ability to send and receive messages regardless if the recipient(s) are logged on or off the system.	X				
482.00	The proposed solution must include the ability to create message groups within the system.	X				
Link Analysis						

483.00	The proposed solution must have the ability to provide link analysis within RMS.			X		Hexagon has included HxGN OnCall Analytics | Link Analysis as an option for the City's consideration. Please note it is not accessed through RMS but through a secure URL.
484.00	The proposed solution must have the ability to click on a linked element within the application to show links based on that element and drill into the information.		X			Hexagon clarifies that users will access the optional Link Analysis from a secure URL not from within OnCall Records.
485.00	The proposed solution must have the ability to print and export information, detailing how people, locations, property, and vehicles are linked.	X				Via the optional HxGN OnCall Analytics | Link Analysis
Reporting and Map Analysis						
486.00	The proposed solution must have the ability to search all fields of operational data within any module in the RMS, including narrative fields.	X				
487.00	The proposed solution must provide the ability to filter search results for selected categories similar to (MS Excel filtering).	X				
488.00	The proposed solution must have the ability to save searches from any module.		X			
489.00	The proposed solution must have the ability to produce standard and ad-hoc statistical and analytical reports for all modules in the RMS.	X				
490.00	The proposed solution must have the ability to create report templates and to allow for redacting and masking data. These reports are to be stored in the system to allow for auditing and future retrieval.	X				
491.00	The proposed solution must provide web browser-based reporting capabilies to search and pull up reports (e.g., cases, etc.).	X				
492.00	The proposed solution must provide for users to schedule reports.	X				
493.00	The proposed solution must have the ability to produce Compstat or similar reports.	X				
494.00	The proposed solution must support Freedom of Information Act (FOIA) reporting and/or a specific FOIA module.	X				
495.00	The proposed solution must have the ability to create user-defined and role-based dashboards with lists, graphs, charts, and maps within RMS, for activity in any module.	X				
496.00	The proposed solution must have the ability for each agency to define and configure the print format of reports that incorporates agency logos or other identifiable information in the header / footer.	X				
497.00	The proposed solution must have the ability to export search results to MS Excel and PDF.	X				
498.00	The proposed solution must provide the ability to automatically export RMS report data in a manner to support reporting, business intelligence or data analysis using stand alone or 3rd party tools.	X				
499.00	The proposed solution must have the ability to automatically export data or schedule the export of data to analytical support tools for crime-mapping, link-analysis, data mining, etc.	X				Hexagon clarifies that this would be based on the tools used.
500.00	The proposed solution must have the ability to produce crime distribution analysis reports.	X				
501.00	The proposed solution must have the ability to establish incident / case crime thresholds.		X			
502.00	The proposed solution must have the ability to alert specified users when crimes exceed thresholds.		X			
503.00	The proposed solution must have the ability for threshold alerts to notify agency-defined personnel via email, visual alert, etc..		X			
504.00	The proposed solution must have the ability to aggregate data on various conditions and time periods (e.g., current quarter vs previous quarter and current quarter vs. historical average, etc.).	X				
505.00	The proposed solution must provide for standard and agency-configured form letters that pre-populate agency-defined information from RMS modules, with the ability to capture signatures.	X				
506.00	The proposed solution must provide the ability to produce reports for crime trends and predictions.	X				
507.00	The proposed solution must have the ability to plot activity from any relevant module on a map.	X				
508.00	The proposed solution must have the ability to produce density maps.	X				
509.00	The proposed solution must have the ability to produce heat maps (hotspot / trouble spot maps).	X				
510.00	The proposed solution must have the ability to export data with geographic coordinates (case locations, etc) to ESRI-based feature classes or web services.	X				

511.00	The proposed solution must have the ability to export data with geographic coordinates (case locations, etc) to ESRI-based feature classes or web services.	X				
512.00	The proposed solution must have the ability to search by radius on a map.	X				
513.00	The proposed solution must have the ability to search any system map layers and polygons.	X				Hexagon clarifies the OnCall Records will support seaching on map layers, but the polygons would need to be searched through mapping reports. Records does allow users to search by radius and and rectangles.
514.00	The proposed solution must have the ability to use different icons to display data on a map.		X			
515.00	The proposed solution must have the ability to print a map, with plotted results (pins).	X				
516.00	The proposed solution must have the ability to provide a crime mapping application that allows the public to plot and search for agency-defined information.		X			
	Public Records Requests					
517.00	The proposed solution must have the ability to obtain information for a Public Records Request (PRR).	X				
518.00	The proposed solution must have the ability to provide a sub-module (or other area) within every module, to capture the information that was requested and what information was disseminated	X				
	Detention Center					
519.00	The proposed solution must provide a module or application similar to the Ontario Holding Cell system, since the agency needs to maintain records of inmates that were in their custody as well as having the ability to view how long a subject has been in custody.	X				
520.00	The proposed solution must provide the ability to save certain information to the master name history as information changes such as address, phone numbers, employers, etc.	X				
749	**TOTALS (Sum of numbers in columns C, D, E, F should equal column A**	**593**	**124**	**32**	**0**	

Completion Progress	
Total Items:	**749**
Total Items Completed:	**749**
Difference (NO ANSWERS will appear in red):	**0**

Attachment H – Interface Descriptions

Standard Interfaces

Coplogic Records Xalt Interface

Description:

Hexagon will install the standard CopLogic Xalt interface that will monitor a shared directory for XML files provided by CopLogic system. The interface will import the data into the incident module in OnCall Records.

Assumptions:

- Hexagon has worked with the CopLogic system before and assumes that file formats and the data exchange will be the same as in the past.
- Data will be provided via either a shared directory on the Customer's network or via a web service where the data can be pulled.

Constraints:

- The Customer is responsible for providing complete and accurate description of the API needed to interface, and for any software/hardware/data required to implement communications with the external systems.

Anti-Bias Reporting Application (CA RIPA)

Description:

The Anti-Bias Reporting application is a web-based solution used by law enforcement officers to collect perceived demographic and other detailed data regarding pedestrian and traffic stops in compliance with California Assembly Bill 953 (AB-953), also known as the Racial and Identify Profiling Act of 2015 (RIPA).

The application receives initial inputs from Hexagon's dispatch and mobility applications including Mobile for Public Safety (MPS).

The data collected will contain the following:

- Report Details – contains the officer and stop details.
- Person – contains the data elements required to document the demographics of the person(s) contacted.
- Stop Reason – contains the reason for the interaction, a brief narrative to explain the reason, and dynamic elements required depending on the reason for the interaction.
- Search – used to notate any actions taken during the interaction and if a search of the person/property was conducted.
- Stop Result – contains the result of the stop.

Finalized records are transmitted directly to California DOJ's Web Portal electronically. Any errors are reported immediately to the user for corrections and resubmission.

The application is hosted locally within the cCustomer's environment and utilizes Kestrel web server in ASP.NET Core

Requires:

- I/CAD 9.4 or OnCall Dispatch 10.00.2309 and above
- Microsoft AspNetCore-runtime-6.0.21-win-x64 and above
- Microsoft WindowsDesktop-runtime-6.0.21-win-x64 and above

Assumptions:

- To meet state-specific requirements, Hexagon has included our standalone Anti-bias Reporting Application that connects to I/CAD; it is not integrated to OnCall Records.

Constraints:

- This scope was provided based on the requirements of the California AB953 legislation that went into production on January 1, 2024, including data collection requirements and the API documented by California DOJ for electronically submitting the event.

Custom Interfaces

DataWorks

Description:

Hexagon will create an interface that will import mugshot images. These images will be attached to the related booking and/or name record in the OnCall Records environment. This integration will be a one-way exchange of information from DataWorks to OnCall Records. The interface will monitor a shared folder, at a configurable intervals, for incoming files. Incoming files will consist of a .DAT text file and a associated .ZIP file with compressed image(s), both files may have multiple records and both files will have the same name. Upon receipt of a .DAT and corresponding .ZIP file, the images will be decompressed, and the mugshot(s) attached to the designated Master Name Index (MNI) as well as the originating Booking or Arrest record.

CrossRoads

Description:

Hexagon will create an interface necessary to import citation and crash data provided by Crossroads.

Assumptions:

- Data will be provided by Crossroads in XML format to a shared directory on the Customer's network (or alternatively to a FTP site or web service that Hexagon can access in order to pull the data).
- Citation warnings and standard Uniform Traffic Citation data will be imported for citations along with the standard state crash data.
- For the crash import, if pdf copies of the crash report or crash diagram images are provided by Crossroads, Hexagon will import these and attach to the imported records as attachments.

FileonQ

Description:

Hexagon will create an interface that will export new property and evidence items to FileOnQ. When a new item is created in OnCall Records, that item, along with the associated incident data, will be exported

to FileOnQ to initiate a chain of custody record. In addition, case disposition information entered in OnCall Records will be exported to FileOnQ to trigger property disposition activities. OnCall Records includes the ability to link to FileOnQ records, given a URL. If allowed by FileOnQ, the URL would show the status of evidence analysis and other information. If FileOnQ does not support URL links to evidence, then an interface will be provided to import evidence information when provided by FileOnQ.

Livescan

Description:

Hexagon will create interfaces that will:

- (1) export Arrest/Booking/Name Demographic information and send to a shared directory on the customer's network that is accessible by the Livescan devices.
- (2) Import and update name ID information returned by the Livescan as well as import and attach mugshot images returned by the Livescan.

Assumptions:

- The data will need to be provided in XML or NIST format.
- Alert triggers will need to be setup in the OnCall Records environment that defines when the data is exported to the Livescan devices (i.e. on record add/modify, picklist set to configurable value).

Evidence.com

Description:

Hexagon will create an interface that will create hyperlinks to video/photo files from the Evidence.com system. Hyperlinks to the video/photo files will be created as attachments to related RMS records based on alert triggers that are created that tell the interface when an incident needs a link to Evidence.com. An ICD will be created that explains the interface and the customer must approve and sign the ICD before any development work can begin.

DA Portal

Description:

Hexagon will create an interface that will send arrest, incident, case management data to the DA Portal system via SFTP, API or file share. It is expected that the data will need to be sent in XML, PDF and/or .zip format. An alert trigger will be created that will determine exactly when records will be sent to the DA Portal system (i.e. picklist value for "Send to DA Portal"). An Interface Control Document (ICD) will be provided for this interface that describes the interface and data elements exchanged. The ICD will need to be approved and signed by the Customer before any development can begin.

SWITRS

Description:

Hexagon will create an interface that will export new/modified/approved Crash information and send to SWITRS. A configurable alert trigger will be created in the RMS environment that will determine when accident records are sent to the SWITRS system (i.e. record is added, record is modified, picklist value set to "Send to SWITRS", etc). It is expected that the data will be provided in a common data format and exchanged via an API provided by SWITRS. That data will be sent to SWITRS on a periodic bases that is configurable by the customer. An ICD will be provided for this and must be agreed to and signed by the

customer before any development work can begin in order that complete workflow and technical details can be completely understood.

In addition to the Crash export to SWITRS, Hexagon will provide, as part of the OnCall Records implementation, the ability to capture information for and print the "Traffic Collision Report" CHP 555 (version 4-11) and CHP 556 (version 7-90) pages of the California Crash Report. The CHP 555 and 556 reports will be provided in SSRS.

Data Ticket

Description:

Hexagon will create an interface necessary to import parking citation data provided by the Data Ticket system. An ICD will be provided to explain the interface and will need to be approved and signed by the customer before any development work on the interfaces can begin.

Assumptions:

- Data will be provided by in XML format to a shared directory on the customer's network (or alternatively to a FTP site or web service that Hexagon can access in order to pull the data.
- Only parking citation data will be imported into the Citation module in OnCall Records.

Phoenix Group

Description:

Hexagon will create an interface to import citation data provided by the Phoenix Group system. An ICD will be provided to explain the interface and will need to be approved and signed by the customer before any development work on the interfaces can begin.

Assumptions:

- Data will be provided in XML format to a shared directory on the customer's network (or alternatively to a FTP site or web service that Hexagon can access in order to pull the data).
- Only citation data will be imported into the Citation module in OnCall Records.

CLETS/NCIC

Description:

Hexagon will develop an interface for supported transactions between I/Informer and CLETS is documented in the "I/CAD Message Suite For California State Switch (CLETS)" document.

- Person / Mastername Supersearch - (QW, DQ, QM,QMJ, UQ, WQ,QWS)
- Person / Court Document Modules – Warrants
    - Adult module: (QW, DQ, EW, MW, LW, XW, CW)
    - Juvenile module: (QW, DQ, EWJ, MWJ, LWJ, XWJ, CWJ)
- Person / Court Document Modules - Civil (Protective/Restraining Orders)
    - Adult module: (QW, EPO, MPO, XPO, CPO, IPO)
    - Juvenile module: (QW, ETO, MTO, XTO, CTO, ITO)
- Vehicle (In State and NLETS) / Master Vehicle - (QV, RQ, VQ, XQ, Parts, EV, MV, LV, XV, CV)

- Boat (In State and NLETS) / Master Vehicle - (QB, BQ, CBQ, EB, LB, MB, XB,CB)
- Gun by (serial, caliber, make) / Master Property - (QG, CGQ, EG, MG, LG, XG, CG)
- Article (serial, type) / Master Property - ((QA, CAQ, MQ, EA, MA, LA, XA, CA)
- Aircraft Query / Master Vehicle - (GQ)
- Sex Offender - / Mastername (QWS in SuperSearch,QWS, EXS, MXS, XXS, CXS, EXSN)
- UnIdentified Person - / Mastername (MUPS, EUP, MUP, EUID, MUID, EUD, MUD, RPS)

Assumptions:

- I/CAD Informer is connected direct to CLETS.
- OnCall Records will connect with I/CAD Informer directly to facilitate transactions.

Constraints:

- Not all transactions are available in all modules. Each transaction is listed in the module it is available/included in.
- Transaction codes will be matched to the document noted above.

RMS Vendor Views

Coplink

Hexagon will work with the customer to determine the information needed by Coplink and will create vendor views on the OnCall Records database (Live or replication) so that Coplink can export the data directly.

Lexis Nexis AVCC

Hexagon will provide vendor views of the database. In addition to the views, Hexagon will provide consultation sessions with LexisNexis necessary for them to understand the necessary views enough to pull the data they need. These views will either be created on the production database or a reporting database depending on the customer's database architecture.

Attachment I – Glossary of Terms

Capitalized terms that are not defined below or within the body of the SOW, shall have the same meaning as set forth in the Master Terms Glossary.

"Acceptance" to mean acceptance of a Task in accordance with Task Acceptance Process.

"Agreement" shall have the same meaning as set forth under the header "Terms and Conditions."

"Benchmark Criteria" or "**Specifications**" means the objective criteria which identifies an intended outcome as reflected in, as applicable, an ICD, a Design Document, or Software Requirements (whichever document having last addressed the functionality in question being dispositive)

"Blocker Defect" means a Test Case has failed to satisfy the Benchmark Criteria that would correspond to a Level One Defect or Level Two Defect, or a Level One or Level Two Defect.

"Code Freeze" means a point in the Project where Customer may not make any change, configuration change, or other modification to the Software implemented as part of the Project.

"Core Team(s)" means all of the respective Subsystem Core Teams pertaining to the Project, which depending on the Project will collectively include: the Dispatch Core Team, the Mobile Core Team(s), and the Records Core Team.

"COTS Interfaces" means those Interfaces specifically identified in COTS Interface Questionnaire Completion Task in the SOW

"Customer Responsibilities" means (1) those specific tasks and obligations identified in the SOW as being the responsibility of the Customer and (2) those obligations, not stated in the SOW, but which would otherwise be reasonably considered as being Customer obligations and responsibilities.

"Custom Interfaces" means those Interfaces specifically identified in the applicable Task

"Customization" means a modification of the source code of Software.

"Cutover Plan" means a document reflecting the Activities and actions necessary to Cutover the System.

"Design Document" means a document articulating the design and intended output of a Customization.

"Documentation" means, whether in printed or electronic format, all documents (digital or hardcopy) delivered by Hexagon as part of the Project. Unless otherwise specified, it shall mean COTS Documentation.

"Facility" means a Customer provided facility/building/room that: (i) Can accommodate up to twelve (12) Customer participants; (ii) Has a projector and screen for displaying the content being presented, (iii) has Project Workstations for each participant; and a Customer workstation available for Hexagon's use while in the Facility.

"Functional Testing" means that testing process described in the Customer Functional Testing Task(s).

"GIS" means geographic information system

"Initial Schedule" means the initial iteration of the Project Schedule, which is contained in Attachment C of the SOW.

"Interface Control Document" or **"ICD"** means a document reflecting the design and requirements of a Custom Interface or certain I/Informer Interfaces, if any.

"Help Desk Portal" the electronic portal through which Customer may access the Help Desk to among other actions, log Services Requests, review the Knowledge Base,

"Hexagon Project Manager" means the person authorized by Hexagon to coordinate and manage the providing of Hexagon Services and Deliverables for the Project on behalf of Hexagon, in addition to being responsible for other duties specified in the Agreement and SOW.

"Master Terms Glossary" means that certain Common Terms Glossary set forth at https://www.hexagonsafetyinfrastructure.com/-/media/Legal/Hexagon/SI/TPS/CTG 06-2021.pdf

"Network Infrastructure" means the provision of adequate network and internet connectivity to provide sufficient operational bandwidth for the operation of the System in a manner consistent with the Product System Specifications together with all industry-standard network security, monitoring, and protection.

"Permissive Defect" means a substantially failed Test Case that would correspond to a Level Three or Level Four Defect, or a Level Three or Level Four Defect.

"Project Assumptions" means assumptions regarding the Project, which are listed in the SOW. Changes in any of the assumptions will affect the scope, schedule, and/or cost of the Project.

"Project Team" means the applicable Core Team and other resources assigned to provide information or services in connection with the Project, or applicable part thereof.

"Project Workstation" means a computer workstation (expressly excludes tablets or other smart devices) that has: (i) a modern web browser installed and ready for use; (ii) Internet access; (iii) at least one (1) external monitor with a resolution no smaller than 1920x1080 (understanding two (2) external monitors are recommended); (iv) the ability to connect to the web conference audio; and (v) a headset.

"Required Facilities" means a facility provided by the Customer that: (i) can accommodate up to twelve (12) Customer participants with workstations and monitors meeting the specifications for the Software described herein for each participant and (ii) has a projector and screen for displaying the content being presented. If the Customer's policies preclude connecting Hexagon-owned equipment to their network, a computer workstation for use by Hexagon for presenting content shall be made available.

"Server Setup Worksheet" means a document reflecting, among other details, the identification of servers, IP addresses, and node names for the System.

"Site Configuration Document" means a document reflecting the configurations made to the OnCall System.

"Software Requirements" means the functionality and capabilities affirmatively included in the OnCall Software as expressly specified in OnCall Functional Matrix (Attachment G-1 and G-2, as appropriate to the Subsystem).

"SR" or **"Service Request"** a request logged into Hexagon's Help Desk Portal identifying a request for Hexagon to address a Defect, question, provide an Update, or provide an enhancement request, among other requests.

"Subject Matter Expert" or **"SME"** means a person(s) who has particular knowledge about a specific topic(s).

"System Administrator(s)" means a person or persons having the appropriate education, training, and/or experience in information technology to provide first tier support of the System.

"Task Prerequisites" means those events, deliverables, or accomplishments that are required to occur prior to the commencement of the applicable Task, except as may otherwise be agreed to through Conditional Acceptance.

"Test Case" means a set of conditions and parameters agreed to by the Parties which the Parties shall use to test whether the intended functionality identified in the Benchmark Criteria is reflected in the System.

"Test Case Failure" means a situation in which an executed Test Case has substantially failed in meeting the passage criteria set forth in the applicable portion of the Benchmark Criteria.

"Updated Initial Project Schedule" means the Initial Project Schedule updated by the Parties' Project Managers during Project Kickoff Meeting Task and reflecting the actual Notice to Proceed date.

"VPN" means virtual private network.

"Warranty Period" means that one (1) year period beginning at Cutover for a Subsystem during which the applicable Project Software is subject to the warranty described in Attachment K.

Attachment J – Warranty

In accordance with Section 7.2 of the Agreement, Hexagon warrants the Hexagon Software provided in this Order shall materially conform to its Specifications for one (1) year from Cutover of the applicable Subsystem, provided that in the event of a nonconformity during the Warranty Period, Hexagon shall address the reported Defect in accordance with the Maintenance Terms within the Agreement.

Attachment K – Regional Provisions

The following terms, including any sub-attachments to this Attachment L, modify provisions set forth above to accommodate regional requirements. To the extent there is any conflict between the terms specified below and the terms set forth in the remainder of the SOW, the following shall control.

1. A Business Day includes up to eight (8) Business Hours, including breaks, during a twenty-four (24) hour period.

2. Upon Customer request, Hexagon personnel may undergo a criminal background check consisting of biographical information necessary to initiate an NCIC query and fingerprinting. To the extent the Customer requires Hexagon personnel to undergo such criminal background check, the Customer shall arrange for such criminal background check and fingerprinting and be responsible for all costs associated with the criminal background check and fingerprinting. Any remote personnel shall only be required to provide biographical information necessary to initiate a NCIC query and a fingerprint card completed by any law enforcement agency.
3. Per CJIS security policy, customers who wish to access U.S. national databases using mobile devices must use data encryption that is FIPS 140-2 certified and meets other CJIS requirements. The Customer is responsible for ensuring that their data communications infrastructure and devices comply with CJIS and applicable State requirements.

Attachment K-1 – CJIS Security Addendum

FEDERAL BUREAU OF INVESTIGATION

CRIMINAL JUSTICE INFORMATION SERVICES

SECURITY ADDENDUM

The goal of this document is to augment the CJIS Security Policy to ensure adequate security is provided for criminal justice systems while (1) under the control or management of a private entity or (2) connectivity to FBI CJIS Systems has been provided to a private entity (contractor). Adequate security is defined in Office of Management and Budget Circular A-130 as “security commensurate with the risk and magnitude of harm resulting from the loss, misuse, or unauthorized access to or modification of information.”

The intent of this Security Addendum is to require that the Contractor maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

This Security Addendum identifies the duties and responsibilities with respect to the installation and maintenance of adequate internal controls within the contractual relationship so that the security and integrity of the FBI's information resources are not compromised. The security program shall include consideration of personnel security, site security, system security, and data security, and technical security.

The provisions of this Security Addendum apply to all personnel, systems, networks and support facilities supporting and/or acting on behalf of the government agency.

1.00 Definitions

1.01 Contracting Government Agency (CGA) - the government agency, whether a Criminal Justice Agency or a Noncriminal Justice Agency, which enters into an agreement with a private contractor subject to this Security Addendum.

1.02 Contractor - a private business, organization or individual which has entered into an agreement for the administration of criminal justice with a Criminal Justice Agency or a Noncriminal Justice Agency.

2.00 Responsibilities of the Contracting Government Agency.

2.01 The CGA will ensure that each Contractor employee receives a copy of the Security Addendum and the CJIS Security Policy and executes an acknowledgment of such receipt and the contents of the Security Addendum. The signed acknowledgments shall remain in the possession of the CGA and available for audit purposes. The acknowledgement may be signed by hand or via digital signature (see glossary for definition of digital signature).

3.00 Responsibilities of the Contractor.

3.01 The Contractor will maintain a security program consistent with federal and state laws, regulations, and standards (including the CJIS Security Policy in effect when the contract is executed and all subsequent versions), as well as with policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

4.00 Security Violations.

4.01 The CGA must report security violations to the CJIS Systems Officer (CSO) and the Director, FBI, along with indications of actions taken by the CGA and Contractor.

4.02 Security violations can justify termination of the appended agreement.

4.03 Upon notification, the FBI reserves the right to:

a. Investigate or decline to investigate any report of unauthorized use;

b. Suspend or terminate access and services, including telecommunications links. The FBI will provide the CSO with timely written notice of the suspension. Access and services will be reinstated only after satisfactory assurances have been provided to the FBI by the CGA and Contractor. Upon termination, the Contractor's records containing CHRI must be deleted or returned to the CGA.

5.00 Audit

5.01 The FBI is authorized to perform a final audit of the Contractor's systems after termination of the Security Addendum.

6.00 Scope and Authority

6.01 This Security Addendum does not confer, grant, or authorize any rights, privileges, or obligations on any persons other than the Contractor, CGA, CJA (where applicable), CSA, and FBI.

6.02 The following documents are incorporated by reference and made part of this agreement: (1) the Security Addendum; (2) the NCIC 2000 Operating Manual; (3) the CJIS Security Policy; and (4) Title 28, Code of Federal Regulations, Part 20. The parties are also subject to applicable federal and state laws and regulations.

6.03 The terms set forth in this document do not constitute the sole understanding by and between the parties hereto; rather they augment the provisions of the CJIS Security Policy to provide a minimum basis for the security of the system and contained information and it is understood that there may be terms and conditions of the appended Agreement which impose more stringent requirements upon the Contractor.

6.04 This Security Addendum may only be modified by the FBI, and may not be modified by the parties to the appended Agreement without the consent of the FBI.

6.05 All notices and correspondence shall be forwarded by First Class mail to:

Information Security Officer

Criminal Justice Information Services Division, FBI

1000 Custer Hollow Road

Clarksburg, West Virginia 26306

Attachment L – White Box ART Tool SOW

[following this page]

CITY OF ONTARIO – STATEMENT OF WORK
ARCHIVE REPORT TOOL (ART)

WHITE BOX TECHNOLOGIES, INC

PROJECT NAME: **ONTARIO- ART** **DATE:** **AUGUST 11, 2024**

This Statement of Work sets forth the roles and responsibilities, assumptions, scope, constraints (with an estimated schedule TBD) that will govern the project detailed below. The content of this document is intended to provide a framework for the project processes to ensure mutual understanding, clear expectations, and successful results. And is subject to the terms and conditions outlined in the Master Purchase Agreement dated May 10, 2021

PROJECT SUMMARY: Convert legacy access data to a readable portable format and provide a searchable solution and reporting tool to access legacy source data with an interface for queries and data lookups to the historical source (Tiburon) data information within the parameters specified below. Where Agency/Ontario is referenced below, Hexagon will assume the responsibility to work with Ontario to complete the task.

Roles and responsibilities:

Hexagon

- Implementation Manager and System Engineer
  - Manage project scope and performance, coordinate activities and Assist with adherence to schedule, and issue resolution
  - Inform White Box of any issues with plan to resolve

Ontario

- Legacy System Subject Matter Expert and IT Support
  - Work with White Box to retrieve data and layout information from legacy system in a usable format
  - Inform White Box of any issues impacting the project
  - Work with White Box to retrieve data and outline which queries are needed
  - Clarify and answer promptly any potential questions
  - Ensure prompt and accurate delivery of source data for mock and final data extraction
  - Review, provide feedback and approve any Mapping Document and iterations per schedule

White Box

- Project Manager
  - Manage project scope, schedule, and performance
- Data Analyst/Engineer
  - Retrieve and prepare source data and setup other applicable systems
  - Build, test, and run application interface and deliver converted data

Assumptions and Constraints:

- This project includes one test iteration and the final “go live”, consisting of the source data provided to White Box Technologies. Data must be in either a CSV, flat files with table header layouts or in a portable (e.g. SQL) format. And must match the same layout as previously provided.
- White Box will not be analyzing, populating, migrating, cleansing, or manipulating any legacy data into any Ontario production RMS/CAD or JMS system. Legacy data is static, no new data can be added to the Archive Report Tool solution.
- White Box will deliver the converted data and application either via FTP or Hard Drive via mail.
- If hosting the solution on premise, Ontario is responsible to acquire the hardware and any software licenses to house the converted data; both the SQL Database(s) and the ART application. (If database size is under

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10GIG then the free version of SQL Express can be utilized). Hardware for the Application is minimal-any modern processor with approximately 100 MB of free space needed for the ART Solution. Hosted solutions are available as a separate option

- Work performed under this SOW is under warranty by White Box for thirty (30) days following delivery of the converted data and Archive Report Tool. White Box is not responsible for any source data issues and since no cleansing of data is included with this SOW, the source data will only be searchable in its existing form. White Box is not responsible for the integrity or cleanliness of the source data. Errors or omissions in converted data that result from application, database, or source data changes by Ontario are not covered by this warranty. Ongoing support will need to be added after the first year of use. Support and any additional licensing as well as other hosting solutions will be in a separate Work Order. (As of the date of this agreemnt, annual licensing is 15% year of the total White Box SOW price per ART installation). This SOW grants Ontario a one-year license after the final delivery.
- Ontario will set up a test environment that White Box can utilize for testing purposes, as well as access to any required hardware or software, prior to production.
- A project schedule will be developed and mutually agreed to during the initiation of this project. Any delay in the delivery of milestones or related sub-steps to the schedule, which is the responsibility of Ontario, can result in a day-for-day delay in subsequent milestones that White Box is responsible for.
- Following a White Box deliverable, unless otherwise specified Ontario has 10 business days to report any issues. If White Box receives no response within that time, the deliverable will be considered accepted as delivered and if tied to a billable milestone, the deliverable will be invoiced. Issues reported after that period of time will be resolved on a case-by-case basis and may or may not be subject to additional charges and / or a change request.

Estimated Key project milestones:

Estimated Date	Milestone	Responsibility
TBD	Deliver Source data and code tables to White Box	Ontario
TBD	Develop Technical Specifications/Requirements, fields to be queried and report format	White Box/Ontario
TBD	Finalize Mapping Doc	White Box/Ontario
TBD	Deliver first iteration	White Box
TBD	Cut off for providing feedback on first iteration	Ontario
TBD	Develop and finalize interface build-test as needed	White Box
TBD	Deliver source data for go live	Ontario
TBD	Deliver final converted data and interface build	White Box
TBD	Cut off for reporting post ART development issues (30-day Warranty period)	Ontario

Source System:

Source: Tiburon

Work Scope:

The base app is a tool for allowing staff without database experience to search for and view historical database records in a spreadsheet style environment.

Once getting the data the first step is to convert the legacy data to a SQL format. Then, the application will be built to query data from that SQL database converted from the legacy database. Data can be queried by name, case name/number, and/or any event. The base app allows for records to be deleted (expunged) by a specified user. All queries or lookups and/or expungements will need to be done through the base application with a customizable

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report. Ontario may choose any existing hardware to house the data and the ART application if no hosted solution is chosen.

White Box recommends that customizable reports are the easiest way to view data that's based on an event and present that in a searchable, human readable format. Report(s) will have the capability to print, save, and save as and show attachments/mugshots that are linked to the selected record. The customizable report(s) have the capability to present all applicable data for a selected record.

One report is included with this SOW and includes up to 6 sections* with no more than 80 total fields. The first step of the kickoff meeting will be to refine those data elements to be included as well as the report format. * (A section on a report is a logical main header of data e.g. a general details section, involvement section etc)

This SOW assumes that all report values from the source data are static values stored in a database table and that there are no values in the report that are generated that WB would have to spend time and effort to re-create the logic from the app, to generate those values for the report. It also assumes that the report doesn't have additional sections that were excluded due to the source tables being empty.

Additional custom interfaces, customizations, reports and enhancements can be developed if needed to perform searches, views and expungements, which will require a separate SOW for both time and cost.

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CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **CONSENT CALENDAR**
Department: Economic Development Prepared By: Charity Hernandez Staff Member Presenting: Jennifer McLain Hiramoto, Economic Development Director Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 17

SUBJECT: **A RESOLUTION APPROVING A FIRST AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LAUREL INVESTMENT PROPERTY GROUP FUND, LLC, WITH RESPECT TO APPROXIMATELY 2.13 ACRES OF LAND LOCATED AT 404, 416 AND 414 NORTH EUCLID AVENUE AND 401 AND 418 NORTH LEMON AVENUE (APNS: PORTION OF 1048-363-02, 1048-363-03, 1048-363-04, AND 1048-363-05)**

RECOMMENDATION: That the City Council consider and:

A. Adopt a Resolution approving a First Amendment to a Disposition and Development Agreement (on file with the Records Management Department) between the Laurel Investment Property Group Fund, LLC.
B. Authorize the City Manager, or his designee, to sign all documents necessary to implement the Disposition and Development Agreement.

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

FISCAL IMPACT: The purchase price of $2,200,000, which represents the current fair market value of the property, remains unchanged.

BACKGROUND & ANALYSIS: In July of 2022, the City entered into a Disposition and Development Agreement ("DDA") with Ontario Place D Block, LLC for the development of approximately 109 market rate rental housing units and approximately 4,040 square feet of ground level retail and service commercial space fronting on Euclid Avenue. The Downtown Euclid Avenue Mixed-Use Development ("Development") is located on approximately 2.13 acres of land, containing an area bordered by "E" Street to the north, Lemon Avenue to the east, "D" Street to the south, and Euclid Avenue to the west.

Ontario Place D Block LLC had permitted transfers rights under the DDA, in which they exercised only after City approval, transferring all right and obligations to Laurel Investment Property Group Fund, LLC ("Developer").

Staff is recommending approval of the First Amendment to the DDA which will allow for a slight adjustment to the schedule of performance, accelerating the sale of the property which will also permit project financing and commencement of construction ahead of schedule. All other Developer duties and obligations, and City safety measures and rights, remain unchanged and in place under the terms of the original DDA.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ONTARIO AND LAUREL INVESTMENT PROPERTY GROUP FUND, LLC FOR THE DEVELOPMENT OF REAL PROPERTY LOCATED AT 404, 416 AND 414 NORTH EUCLID AVENUE AND 401 AND 418 NORTH LEMON AVENUE (APNS: PORTION OF 1048-363-02, 1048-363-03, 1048-363-04, AND 1048-363-05).

WHEREAS, the City and Ontario Place D Block LLC, a California limited liability company ("Prior Developer") entered into that certain 2022 Disposition and Development Agreement (Downtown D Block) dated July 5, 2022 (the "DDA") with respect to Prior Developer's purchase from the City and development of that certain 2.13-acre property commonly known as 404, 416 and 414 N. Euclid Ave. and 401 and 418 N. Lemon Ave., Ontario, California (the "Property"); and

WHEREAS, the Prior Developer, as "Assignor," and Laurel Investment Property Group Fund, LLC ("Developer'), as "Assignee," entered into that certain Agreement for Assignment of Disposition and Development Agreement ("Assignment Agreement") made as of August 23, 2024, pursuant to which Assignor desired to sell and Assignee desired to purchase all of Assignor's right, title and interest in and to the DDA and all other intangible property owned or licensed by Assignor relating to the Property; and

WHEREAS, on or about September 12, the City executed that certain City of Ontario Consent to Agreement for Assignment of Disposition and Development Agreement (Downtown D Block) ("City Consent"), thereby consenting and approving to the Assignment Agreement and the assignments from Prior Developer to Developer, as more particularly described the Assignment Agreement, in accordance with Sections 8.2 and 8.13 of the DDA; and

WHEREAS, with that assumption of the DDA, and for the purposes of expediting the acquisition of the Property, Developer has requested of the City, and the City is willing to agree, to accelerate the closing date of the Escrow (as assumed by Developer) and to waive and release Developer from the conditions precedent in the DDA that otherwise would have required the Escrow to close only after entitlements have been approved by the City, the Developer ready to pull building permits, and the Developer demonstrate proof financing for the entire project prior, as more particularly set forth in the First Amendment to the DDA (the "Amended DDA"); and

WHEREAS, the Developer has represented to the City that Developer is considering revisions to the project under the DDA, and Developer also has represented that it will either proceed with the currently entitled project or will have submitted a complete application for revised entitlements and an updated DDA within six months of the closing of Escrow.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA DOES HEREBY RESOLVE 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. Approval of the Amended DDA . The City hereby approves the Amended DDA, in substantially the form attached to this Resolution as Exhibit "A," subject to any non-substantive revisions that do not increase the City's liability and are approved by the City Attorney; authorizes the City Manager to sign and enter into the Amended DDA; and directs the City Manager to perform the obligations of the City under the Amended DDA.

SECTION 3. Severability. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council declares that the City Council would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

SECTION 4. Effective Date. This Resolution shall become effective immediately 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 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT “A”

First Amendment to the
Disposition and Development Agreement

[attached behind this cover page]

FIRST AMENDMENT
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Downtown D Block)

This FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (Downtown D Block) ("**Amendment**") is dated as of October 1, 2024 ("**Date of Amendment**"), for reference purposes only, and is entered into by and between the City of Ontario, a California municipal corporation ("**City**"), and Laurel Investment Property Group Fund, LLC, a Delaware limited liability company ("**Developer**"). City and Developer are sometimes referred to in this Amendment, each individually, as a "**Party**," or collectively, as the "**Parties**."

RECITALS

This Amendment is entered into with reference to the following recitals ("**Recitals**"):

A. City and Ontario Place D Block LLC, a California limited liability company ("**Prior Developer**") entered into that certain 2022 Disposition and Development Agreement (Downtown D Block) dated July 5, 2022 (the "**DDA**") with respect to Prior Developer's purchase from the City and development of that certain 2.13-acre property commonly known as 404, 416 and 414 N. Euclid Ave. and 401 and 418 N. Lemon Ave., Ontario, California (the "**Property**"), which Property is more fully described in the DDA; and

B. Prior Developer, as "Assignor," and Developer, as "**Assignee**," entered into that certain Agreement for Assignment of Disposition and Development Agreement ("**Assignment Agreement**") made as of August 23, 2024, pursuant to which Assignor desired to sell and Assignee desired to purchase all of Assignor's right, title and interest in and to the DDA (collectively, defined therein as the "**DDA Rights**") and all other intangible property owned or licensed by Assignor relating to the Property (collectively, defined therein as the "**Other Rights**"; and, together with the DDA Rights, collectively, defined therein as the "**Rights**"), including, without limitation, (i) all plans, surveys, maps, reports, studies and other items relating to the Property listed on Exhibit A attached to the Assignment Agreement (collectively, defined therein as the "**Plans and Reports**"), (ii) all governmental permits, approvals and other entitlements listed on Exhibit B attached to the Assignment Agreement (collectively, the defined therein as the "**Entitlements**"), and (iii) the escrow opened in connection with the DDA (identified as escrow number 188634 held by Chicago Title Company) (collectively, defined therein as the "**Escrow**"), including the $60,000 earnest money deposit currently held in the Escrow, all as more particularly described and set forth in the Assignment Agreement; and

C. On or about September 12, 2024, the City executed that certain City of Ontario Consent to Agreement for Assignment of Disposition and Development Agreement (Downtown D Block) ("**City Consent**"), thereby consenting and approving to the Assignment Agreement and the assignments from Prior Developer to Developer, as more particularly described the Assignment Agreement, in accordance with Sections 8.2 and 8.13 of the DDA.

D. With that assumption of the DDA, and for the purposes of expediting the acquisition of the Property, Developer has requested of the City, and the City is willing to agree,

to accelerate the closing date of the Escrow (as assumed by Developer) and to waive and release Developer from the conditions precedent in the DDA that otherwise would have required the Escrow to close only after entitlements have been approved by the City, the Developer ready to pull building permits, and the Developer demonstrate proof financing for the entire project prior, as more particularly set forth in this Amendment; and

E. Developer has represented to the City that Developer is considering revisions to the project under the DDA, and Developer also has represented that it will either proceed with the currently entitled project or will have submitted a complete application for revised entitlements and an updated DDA within six months of the closing of Escrow.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the City, Agency, and Developer, the Parties agree as follows:

TERMS OF AMENDMENT

1. INCORPORATION OF RECITALS. The Recitals of fact set forth preceding this Amendment are true and correct and are incorporated into this Amendment in their entirety by this reference.

2. CAPITALIZED TERMS. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings given to them in the DDA, unless meanings were ascribed from the Assignment Agreement, in which case Capitalized terms shall have the meanings ascribed in the Assignment Agreement.

3. RATIFICATION OF CONSENT. The City Council hereby ratifies the City Manager's action to consent and approve the Assignment Agreement and the assignments from Prior Developer to Developer, as more particularly described the Assignment Agreement, as a valid and binding action by the City.

4. WAIVER AND RELEASE BY THE PARTIES FROM CERTAIN OBLIGATIONS UNDER THE DDA PRIOR TO CLOSING ESCROW. Notwithstanding Sections 3.2.1 [Developer's Conditions to Closed of Escrow] and subsections 3.2.1.7, 3.2.1.8, 3.2.1.9 therein, notwithstanding Sections 3.2.2 [City's Conditions to Close Escrow] and subsections 3.2.2.4, 3.2.2.6, 3.2.2.7, 3.2.2.8, 3.2.2.9, 3.2.2.10, and notwithstanding any other provisions in the DDA to the contrary, the Close of Escrow and Escrow Closing Date may occur: (a) prior Developer having obtained all of the Entitlements, (b) prior to Developer delivering to the City and the City accepting the Financial Commitment(s) applicable to the Property, (c) prior to Developer receiving City's approval of the Construction Loan and Construction Lender applicable to the Property, and (d) prior to City having issued approved Building Permits or having stamped and issued plans in "Ready to Issue Permits" status.

5. REVISED ESCROW CLOSING DATE. Notwithstanding Section 3.6 or any other provisions in the DDA to the contrary, the Escrow Closing Date shall occur no later than October 15, 2024.

6. PROPOSED PROJECT REVISIONS BY DEVELOPER. If Developer wants the City to consider revisions to the Project, Developer shall, no later than the date that is six (6) months after the date for the Close of Escrow, submit to the City a complete application for revised Entitlements and any proposed additional amendments to the DDA as amended by this Amendment. If Developer does not timely submit said complete declaration, then Developer may proceed with the Project with the Entitlements issued or the City may exercise its right of reverter in the Property pursuant to Section 7.6 of the DDA.

7. EFFECT OF AMENDMENT. Except as expressly provided in this Amendment, all of the terms, conditions, and provisions set forth in the DDA shall remain in full force and effect. From and after the Date of Amendment, wherever the term "Agreement" or "DDA" appears in the DDA, it shall be read and understood to mean the DDA, as amended by this Amendment. In the event there is any conflict between the terms of this Amendment and the terms of the DDA, the terms of this Amendment shall govern and control.

8. EXECUTION IN COUNTERPARTS. This Amendment may be executed in counterparts, each of which, when all Parties hereto have signed this Amendment, shall be deemed an original. This Amendment may be executed and delivered by facsimile or email transmission of a file in .pdf or similar format or via electronic signatures (using platforms including, but not limited to, DocuSign and Digi-Ink) and, upon such delivery, each signature shall be deemed to have the same effect as if the original signature had been delivered.

(Signatures on Following Pages)

SIGNATURE PAGE
TO
FIRST AMENDMENT
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Downtown D Block)

CITY:

THE CITY OF Ontario
a California municipal corporation

Dated:_____, 2024

By:_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney

(Signatures continue on next page)

SIGNATURE PAGE
TO
FIRST AMENDMENT
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
(Downtown D Block)

DEVELOPER:

Laurel Investment Property Group Fund, LLC, a Delaware limited liability company

By: Hutton Ontario, Inc.,
a California corporation
its Manager Member

Dated:_____, 2024

By:_____
Scot Felix, President

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **PUBLIC HEARINGS**
Department: Economic Development Prepared By: Charity Hernandez Staff Member Presenting: Jennifer McLain Hiramoto, Economic Development Director Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 18

SUBJECT: **A PUBLIC HEARING TO CONSIDER ADOPTING A RESOLUTION OF NECESSITY FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST IN CERTAIN REAL PROPERTY LOCATED AT THE SOUTHEAST CORNER OF RIVERSIDE DRIVE AND VINEYARD AVENUE FOR THE REGIONAL SPORTS COMPLEX PROJECT**

RECOMMENDATION: That the City Council conduct a public hearing and adopt a Resolution of Necessity declaring that the acquisition of a fee simple interest in certain real property located at the southeast corner of Riverside Drive and Vineyard Avenue, more particularly described as Assessor Parcel Number's 0218-101-03, 0218-101- 04, 0218-101-05 and 0218-101-06 ("The Property"), is necessary for the Regional Sports Complex Project.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
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)
Invest in the Growth and Evolution of the City's Economy

FISCAL IMPACT: Appropriations of $3,710,000 are included in the Fiscal Year 2024-25 Adopted Budget in the Capital Projects Fund. Additional appropriations will be added at a future quarterly budget update, as necessary. The deposit necessary to file the Resolution of Necessity for prejudgment possession of the Property is approximately $37,100,000.

BACKGROUND & ANALYSIS: The City is in the process of developing a 200 acre state-of-the-art regional sports complex to meet the region's growing demand for sports recreation amenities.

The Property consists of four parcels located on the southeast corner of Riverside Drive and Vineyard Avenue in Ontario, California, as shown in Exhibit 1.

The City obtained an appraisal of the Property from John G. Ellis, MAI, CRE, FRICS of CBRE Valuation and Advisory Services, Inc., and made an offer of just compensation to the property owners for the acquisition pursuant to California Government Code section 7267.2.

A litigation guarantee was ordered to determine and confirm the identity of the record owner. Following a standard public records request and due diligence search for ownership information, a notice of this public hearing was mailed to the affected property owner.

The power of eminent domain is used by the City only as a last resort to obtain interests necessary for projects after 1) negotiations have stalled, or 2) the owner has requested that the City proceed directly to eminent domain for tax or other advantages, or 3) the eminent domain process is necessary to clear title to the property. In this case, an offer of just compensation was made to the owner for the full Fair Market Value, as determined by an independent appraisal. California's definition of Fair Market Value is one of the most inclusive definitions in the United States and requires the appraiser to consider the highest and best use of the property and to consider the highest price a willing buyer and seller would agree to. The City's appraisal must use this definition of Fair Market Value.

DESCRIPTION OF PROPERTY TO BE ACQUIRED: The Property affected by the proposed acquisition is located within the City of Ontario, southeast corner of Riverside Drive and Vineyard Avenue, Ontario, California 91764, and more particularly described as Assessor Parcel Number's 0218-101-03, 0218-101-04, 0218-101-05 and 0218-101-06.

HEARINGS AND REQUIRED FINDINGS: The recommended actions of the City Council pertain to the acquisition of a fee simple interest in the Property owned by JCLIN Investment, LP, a California limited partnership. A true and correct of the legal definition, legal description, and map of the Property sought to be acquired is attached to the Resolution of Necessity as Exhibit A.

California eminent domain law provides that a public entity may not commence an eminent domain proceeding until its governing body has adopted a Resolution of Necessity, which resolution may only be adopted after the governing body has given each party with an interest in the affected property or their representatives a reasonable opportunity to appear and be heard on the following matters:

1. The public interest and necessity require the proposed project.
2. The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. The real property to be acquired is necessary for the project.
4. The offer of just compensation has been made to the property owner.

Since an agreement has not been reached with the property owner, it is necessary to acquire the property by eminent domain to meet critical project deadlines. Pursuant to Section 1245.235 of the California Code of Civil Procedures, a notice of this hearing was sent by first class mail on September 11, 2024, to the record owner, and stated the City's intent to consider the adoption of a resolution, the right of the property owner to appear and be heard and notice that failure to file a written request to appear may result in a waiver of the right to appear and be heard.

The above four required findings are addressed as follows:

The Public Interest and Necessity Require the Proposed Project

Property is 37 acres of vacant unimproved land. The City seeks to acquire a full fee interest in the Property to allow for the development of a Regional Sports Complex. The City is in the process of developing a 200 acre state-of-the-art regional sports complex to meet the region's growing demand for sports recreation amenities. With participation rates in baseball, soccer, and softball well above the state and national averages, Ontario's Regional Sports Complex will be a haven for the community, sports enthusiasts and athletes of all ages and backgrounds. It will be the largest premier sports complex in the Inland Empire and a catalyst for future growth and investment in the City. The regional sports complex includes: a professional league baseball stadium, baseball/softball/soccer/football/little league fields, batting cages, basketball/volleyball courts, tennis/pickleball courts, skatepark, aquatics facility, community center, playground, 10-acre public park, picnic space, and other amenities to serve the sports complex.

The Project is Planned or Located in a Manner That Will be Most Compatible With the Greatest Public Good and the Least Private Injury

The proposed Project will support the City Council's goals and objectives and implement land use and development goals as stated in the Policy Plan component of the General Plan. The Property to be acquired is best suited for the Project and will cause the least private injury. To move this Project elsewhere would require significant land use policy changes, cause a greater impact on local property owners, and would effectively be cost prohibitive.

The Real Property to be Acquired is Necessary for the Proposed Project

The Property affected by the proposed acquisition is located within the City of Ontario, at the southeast corner of Riverside Drive and Vineyard Avenue, Ontario, CA 91761, Assessors Parcel Number's 0218-101-03, 0218-10-04, 0218-101-05, and 0218-101-06 (owned by JCLIN Investment, LP.) The acquisition is necessary to allow for the Regional Sports Complex Project, in Ontario, California.

The Offer of Just Compensation Has Been Made

Appraisals were prepared by John G. Ellis, MAI, CRE, FRICS of CBRE Valuation and Advisory Services, Inc., to establish the Fair Market Value of the fee interest of the Property the City is seeking to acquire. An offer of just compensation was made to the record owners to purchase the fee interest in the Property to be acquired, as established by the approved appraisal and as required by Section 7267.2 of the California Government Code. Although negotiated settlements may still be possible for the fee interests cited above, it would be appropriate to commence the procedures to acquire the necessary interest through eminent domain.

ENVIRONMENTAL ANALYSIS: Pursuant to the State of California Environmental Quality Act Guidelines Section 15183 there has been compliance by the City with the requirements of the California Environmental Quality Act.

EXHIBIT “1”

SOUTHEAST CORNER OF RIVERSIDE DRIVE AND VINEYARD AVENUE



RESOLUTION NO. _____

RESOLUTION OF NECESSITY OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, FOR THE ACQUISITION BY EMINENT DOMAIN OF A FEE SIMPLE INTEREST IN CERTAIN REAL PROPERTY LOCATED ON THE SOUTHEAST CORNER OF RIVERSIDE DRIVE AND VINEYARD AVENUE IN THE ARMSTRONG SPECIFIC PLAN AREA OF ONTARIO, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS ASSESSOR PARCEL NUMBERS 0218-101-03, 0218-101-04, 0218-101-05 AND 0218-101-06, FOR THE ONTARIO REGIONAL SPORTS COMPLEX PROJECT, IN ONTARIO, CALIFORNIA

WHEREAS, the City of Ontario (the "City") proposes to acquire, by eminent domain, a fee simple interest in vacant real property located in the southeast corner of Riverside Drive and Vineyard Avenue in the Armstrong Specific Plan Area of Ontario, California, more particularly described as Assessor Parcel Numbers 0218-101-03, 0218-101-04, 0218-101-05 and 0218-101-06, for the Ontario Regional Sports Complex Project in the City of Ontario, San Bernardino County, California, pursuant to the authority granted to it by Section 37350.5 of the California Government Code; and

WHEREAS, pursuant to Section 1245.235 of the California Code of Civil Procedure, the City scheduled a public hearing for Tuesday, October 1, 2024, at 6:30 p.m. at the Ontario City Hall, Council Chambers, 303 East “B” Street, Ontario, California, and gave to each person whose property is to be acquired and whose name and address appeared on the last equalized county assessment roll, notice and a reasonable opportunity to appear at said hearing and be heard on the matters referred to in Section 1240.030 of the California Code of Civil Procedure; and

WHEREAS, said hearing has been held by the City and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, the City may now adopt a Resolution of Necessity pursuant to Section 1240.040 of the California Code of Civil Procedure.

NOW, THEREFORE, THE CITY DOES HEREBY RESOLVE AND DECLARE AS FOLLOWS:

SECTION 1. **Compliance with California Code of Civil Procedure and California Environmental Quality Act.** There has been compliance by the City with the requirements of Section 1245.235 of the California Code of Civil Procedure and the California Environmental Quality Act.

SECTION 2. **Public Use.** The public use for which the real property interest is to be acquired is to provide a location for which a sports complex will be built for public use through the City of Ontario’s Regional Sports Complex Project in the City of Ontario, San Bernardino County, California. Section 37350.5 of the California

Government Code authorizes the City to acquire by eminent domain real property necessary for such purposes.

SECTION 3. **Description of Property**. Attached and marked as Exhibit A is the legal definition, description and depiction of the real property to be acquired by the City, which describes the general location and extent of the property to be acquired with sufficient detail for reasonable identification.

SECTION 4. **Findings.** The City hereby finds and determines each of the following:

(a) The public interest and necessity require the proposed project;

(b) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

(c) The fee simple interest described in Exhibit A is necessary for the proposed project;

(d) The offer required by Section 7267.2 of the California Government Code was made.

SECTION 5. **Use Not Unreasonably Interfering with Existing Public Use:** Some or all of the real property to be acquired may be subject to easements and rights-of-way appropriated to existing public uses. The legal descriptions of these easements and rights-of-way are on file with the City and describe the general location and extent of the easements and rights-of-way with sufficient detail for reasonable identification. In the event the herein described use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, counsel for the City is authorized to acquire the fee interest subject to such existing public use(s) pursuant to Section 1240.510 of the California Code of Civil Procedure.

SECTION 6. **More Necessary Public Use.** Some or all of the real property to be acquired may be subject to easements and rights-of-way appropriated to existing public uses. To the extent that the herein described use or uses will unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, the City finds and determines that the herein described use or uses are more necessary than said existing public use. Counsel for the City is authorized to acquire the real property appropriated to such existing public use(s) pursuant to Section 1240.610 of the California Code of Civil Procedure. Staff is further authorized to make such improvements to the real property being acquired that it determines is reasonably necessary to mitigate any adverse impact upon the existing public use.

SECTION 7. **Further Activities.** Counsel for the City is hereby authorized to file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City by eminent domain, and counsel is authorized to

institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such security deposits as may be required by order of court, to permit the City to take possession of and use said real property at the earliest possible time. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property.

SECTION 8. **Effective Date.** 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 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A

Legal Definition of Property to be Acquired

The following is the definition of the legal rights to be acquired by the City of Ontario:

"**Fee**," also known as fee simple or fee simple absolute, grants to the City of Ontario absolute ownership of the property.

EXHIBIT "A"

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOTS 7, 8, 9 AND 10 OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO MAP OF SUBDIVISION OF PART OF RANCHO SANTA ANA DEL CHINO, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 6 OF MAPS, PAGE 15, RECORDS OF SAID COUNTY.

EXCEPTING FROM LOT 7 THAT PORTION CONVEYED TO THE COUNTY OF SAN BERNARDINO IN DEED RECORDED JANUARY 26, 1951 IN BOOK 2708, PAGE 572, OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF AFORESAID LOT 7, (SAID POINT BEING IN THE CENTER LINE OF RIVERSIDE DRIVE, AND THE WESTERLY RIGHT OF WAY LINE OF CHINO AVENUE AS NOW ESTABLISHED); THENCE SOUTH 0° 47' 33" WEST A DISTANCE OF 33 FEET TO A POINT (SAID POINT BEING THE TRUE POINT OF BEGINNING); THENCE SOUTH 0° 47' 33" WEST ALONG THE EASTERLY LINE OF LOT 7, A DISTANCE OF 59.11 FEET TO A POINT; THENCE NORTH 79° 12' 57" WEST AS DISTANCE OF 131.12 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT, THROUGH AN ANGLE OF 10° 45' 53", WHOSE RADIUS IS 1967 FEET A DISTANCE OF 369.56 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF RIVERSIDE DRIVE; THENCE SOUTH 89° 58' 50" EAST PARALLEL TO AND 33 FEET DISTANT SOUTHERLY FROM THE CENTER LINE OF RIVERSIDE DRIVE A DISTANCE OF 497.00 FEET TO THE TRUE POINT OF BEGINNING.

Assessor's Parcel Number: **0218-101-03, 0218-101-04, 0218-101-05 and 0218-101-06**

Order: 92021362
Doc: SB:A 218-10

This map/plat is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

Requested By: vanburaj1, Printed: 7/12/2023 4:19 AM

THIS MAP IS FOR THE PURPOSE OF AD VALOREM TAXATION ONLY.

Assessor

0113 / 56

Ptn. Rancho Santa Ana Del Chino
M.B. 6/15

0113 / 28

City of Ontario
Tax Rate Area
4073,4075

0218 – 10

1"=300'

RIVERSIDE AVENUE

DRIVE

ROAD

AVENUE

4073

4075

9 AC.

9 AC.

8

7

9.5 AC. 9 10 9.5 AC.

W.B. 6/15

W.B. 12/45

0216 / 17

101

102

BLK. 2

11

2 (9.5 AC.)

1 (9 AC.)

3 (10 AC.)

4 (9.5 AC.)

29.08 AC.

46.27 AC.

6 (10 AC.)

5 (9.5 AC.)

9.5 AC. 24 23 9.5 AC.

25

26

9 AC.

9 AC.

7 (10 AC.)

8 (9 AC.)

T.R.A.

T.R.A.

VINEYARD

COUNTY

ONTARIO

CHINO AVENUE

12

CHINO (MOUNTAIN STREET) AVE

SEC. 10

T.2S., R.7W.

Assessor's Map
Book 0218 Page 10
San Bernardino County

REVISED

September 2004

Ptn. Moist Belt Tract, M.B. 12/45

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **PUBLIC HEARINGS**
Department: Planning Prepared By: Rudy Zeledon Staff Member Presenting: Scott Murphy, Executive Director Community Development Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 19

SUBJECT: **AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION FOR FILE NOS. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016**

RECOMMENDATION: That the City Council conduct a public hearing on the Appeals and after receiving all public testimony, uphold the Planning Commission's decision to uphold Zoning Administrator Decision No's. ZA23-024 (File No. PDET23-005), ZA23-030 (File No. PDET23-007), ZA23-031 (File No. PDET23-008), ZA23-032 (File No. PDET23-009), ZA23-033 (File No. PDET23-010), ZA23-038 (File No. PDET23-015) and ZA23-039 (File No. PDET23-016) and deny the Appeals.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: There is not a direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: On September 3, 2024, the City Council introduced and conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application and continued the item to the October 1, 2024, City Council meeting.

In 2020, the Executive Director of Finance ("License Official") sent out a Notice of Assessment for Transient Occupancy Tax (TOT) ("Notice of Assessment"), which found that the following business operators (hereinafter referred to as "Hotels") were delinquent with unpaid Transient Occupancy Taxes (Attachment "A" on each Planning Commission Resolution).

- Hotel Hacienda (File No PDET23-005), located at 2425 South Archibald Avenue;
- Bright Star Motel (File No. PDET23-007), located 1530 West Mission Boulevard;
- Days Inn Ontario Motel (File No. PDET23-008), located at 1405 East 4th Street;
- Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue;
- Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard;
- Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard; and
- West Coast Inn (File No. PDET23-016) located at 1211 North Grove Avenue.

In 2021, the License Official, sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held hearings for the Hotels listed above. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect.

The Hotels were represented by Attorney Frank A. Weiser. Mr. Weiser argued that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients and argued that transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. The operators provided evidence that the Hotels rent rooms to guests for longer than 30 days and argued that these guests, having stayed longer than 30 days at the Hotels, are exempt from taxation as they no longer meet the definition of transient. Under Ontario Development Code section 5.03.250(E)(1), no hotel can rent to a guest for longer than 30 days.

The License Official's jurisdiction is to determine the proper tax to be remitted and give such determination and the amount of such tax, interest, and penalties (O.M.C. § 3-6.09). The License Official does not have the jurisdiction to interpret or make a determination regarding the applicability of the Ontario Development Code (ODC), that the Hotels where a guest exceeds 30-day occupancy are exempt from the definition of transient as described in ODC Section 5.03.250(E)(l). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. After the testimony was completed, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) to the Hotels.

In November and December of 2023, the Zoning Administrator issued Determination of Use Decisions for each of the Hotels and made the findings that the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotels (Attachment "A" on each Resolution). ODC Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Hotel or Motel is to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. A Hotel or Motel permitting guests occupancy longer than 30 days are in violation and not exempt from ODC Section 5.03.250(E)(1). Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

On May 28, 2024, the Planning Commission conducted a public hearing to consider the appeal of the Zoning Administrator denial. Following the staff's presentation and after receipt of all public correspondence and testimony, the Planning Commission noted agreement with the Zoning Administrator. The Zoning Administrator acted within his limited authority to interpret the Ontario Development Code (ODC). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. Further, the Planning Commission found that the

appellant introduced irrelevant legal arguments which did not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellant takes issue with the implementation of legislation of the Ontario Development Code. For example, Ordinance No. 1569, which imposed the TOT, was passed in 1965 – fifty-nine years ago. To address these constitutional arguments for a legislative action that occurred in 1965 goes beyond the scope of the Zoning Administrator's role. Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

As a result, the Planning Commission voted 7-0 to adopt Resolution No's PC24-018 (File No. PDET23-005), PC24-019 (File No. PDET23-007), PC24-020 (File No. PDET23-008), PC24-021 (File No. PDET23-009), PC24-022 (File No. PDET23-010), PC24-023 (File PDET23-015) and PC24-024 (File No. PDET23-016) upholding the Zoning Administrator's decision and denying the appeals.

APPEAL TO COUNCIL: On June 6, 2024, the Appellant submitted an Appeal to the City Council, appealing the Planning Commission's decision to uphold the Zoning Administrator's decision. The Appellant raises the argument that the Planning Commission's decision is not supported by the information, findings, and recommendations presented in the Background and Analysis Section of the Zoning Administrator's Decision report.

The Appellant argues that the Planning Commission was required to adopt an Environmental Impact Report as part of their decision, and that the Zoning Administrator's decision violated the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.

A copy of the Appeal applications and Appellant's statement is included as Appendix A of this report. Staff has reviewed the appeals and provides a response for each issue raised by the Appellant's:

Appellants' Issue No. 1: *The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission 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 found that:

- The administrative record has been completed in compliance with CEQA, the State CEQA Guidelines, and the City of Ontario Local CEQA Guidelines; and
- The Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA"), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a "project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the "common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA Guidelines Section15378(B)(4).

Here, there is no physical project undertaken and the TOT's effect is fiscal. Thus, the TOT Ordinance is a funding mechanism not a "project" and an EIR is not required under CEQA.

Appellant's Issue #2: *The Zoning Administrator's decision violated the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case, ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellant takes issue with the implementation of legislation of the ODC. Ordinance No. 1569, which imposed the TOT, was passed in 1965 – fifty-nine years ago. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

CITY OF ONTARIO PLANNING DEPARTMENT

PLANNING COMMISSION AGENDA REPORT

May 28, 2024

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

FILE NOS: PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015, and PDET23-016 (APPEAL)

SUBJECT: An appeal of Zoning Administrator's interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the following hotels and motels: 1) Hotel Hacienda (File No. PDET23-005), located at 2423 South Archibald Avenue; 2) Bright Star Motel (File No. PDET23-007), located at 1530 West Mission Boulevard; 3) Days Inn Ontario Motel (File No.PDET23-008, located at 1405 East 4th Street; 4) Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue; 5) Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard; 6) Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard; and 7) West Coast Inn (File No. PDET23-016), located at 1211 North Grove Avenue; (APNS: 1083-071-26, 1011-221-15, 0108-381-32, 1051-071-04, 1049-141-25, 1101-211-03 and 1047-451-25)**. Submitted by Frank A. Weiser – Attorney at Law**

PROPERTY OWNER: See attached Exhibit A.

RECOMMENDED ACTION: That the Planning Commission consider and deny the appeals and uphold Zoning Administrators Decision No's. ZA23-024 (File No. PDET23-005), ZA23-030 (File No. PDET23-007), ZA23-031 (File No. PDET23-008), ZA23-032 (File No. PDET23-009), ZA23-033 (File No. PDET23-010), ZA23-038 (File No. PDET23-015) and ZA23-039 (File No. PDET23-016), pursuant to the facts and reasons contained in the staff report and attached Resolutions.

PROJECT ANALYSIS:

Background — In 2020, the Executive Director of Finance Arman Harkalyan ("License Official"), sent out a Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment"), which found that the following business operators (hereinafter referred to as "Hotels') were delinquent with unpaid Transient Occupancy Taxes (Attachment "A" on each Resolution).

- Hotel Hacienda (File No PDET23-005), located at 2423 South Archibald Avenue;
- Bright Star Motel (File No. PDET23-007), located 1530 West Mission Boulevard;
- Days Inn Ontario Motel (File No. PDET23-008), located at 1405 East 4th Street;
- Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue;
- Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard;

Case Planner:	Rudy Zeledon CDA Assistant Director
Planning Director Approval:	
Submittal Date:	11/16/2023 and 01/11/2024

Hearing Body	*Date*	*Decision*	*Action*
DAB	N/A	N/A	N/A
PC	05/28/2024	Denied	Final
CC			

- Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard; and
- West Coast Inn (File No. PDET23-016) located at 1211 North Grove Avenue.

Chapter 6: *Transient Occupancy Taxes* of the City of Ontario Municipal Code ("OMC"), allows the City of Ontario to impose a Transient Occupancy Tax (TOT) of eleven and three-quarters percent (11¾%) of the rent, charged by operator, to transient guest for the privilege of occupancy of any hotel or motel. The Ontario Municipal Code (Section 3.6.02 Definitions) defines "Transient" as any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

All hotel or motel operators are required to collect and hold in trust for the account and benefit of the City the tax imposed at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged. In addition, hotel and motel operators are required to report and remit TOT imposed on or before the last day of the month following the close of each calendar month, make a return to the Tax Administrator, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. Any hotel/motel operator who fails to report and remit TOT are subject to penalties and become delinquent.

In 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held hearings for the hotels/motels as stated above. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect.

The Hotels were represented by attorney Frank A. Weiser who offered legal arguments orally at the hearings. Under the representation of Mr. Weiser, the Hotels argued that under the Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients and argued that transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. The operators provided evidence that the Hotels rent rooms to guests for longer than 30 days and argued that these guests, having stayed longer than 30 days at the Hotels, are exempt from taxation as they no longer meet the definition of transient. The License Official's jurisdiction is to determine the proper tax to be remitted and give such determination and the amount of such tax, interest, and penalties (" O.M.C. § 3-6.09). The License Official does not have the jurisdiction to interpret or make a determination regarding the applicability of the Ontario Development Code that the Hotels where a guest exceeds 30-day occupancy is exempt from the definition of transient as described in Ontario Development Code (ODC) Section 5.03.250(E)(l). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is

responsible for, the administration and application of the regulations and provisions of this Development Code. After the testimony was completed, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the hotels/motels.

In November and December of 2023, the Zoning Administrator issued Determination of Use Decisions for each of the Hotels and made the findings that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotels (Attachment "A" on each Resolution). The ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Hotel or Motel is to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. A Hotel or motel permitting guests occupancy longer than 30 days are in violation and not exempt from the ODC Division 5.03, Section 5.03.250(E)(1). Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

Appeal — On November 16, 2023 and January 11, 2024, Frank A. Weiser, Attorney at Law (Appellant representative), submitted appeals to the Zoning Administrators interpretation and determination decisions that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the following hotels and motels:

- Hotel Hacienda (File No PDET23-005), Appellant: Naman Patel;
- Bright Star Motel (File No. PDET23-007), Appellant: Purushottam Patel/Esha Smah;
- Days Inn Ontario Motel (File No. PDET23-008, Appellant: Kisham Patel;
- Economy Inn (File No. PDET23-009), Appellant: Mehesh Patel;
- Mayfair Inn (File No. PDET23-010), Appellant: Dilip Payaran;
- Sands Motel (File No. PDET23-015), Appellant: Purushottam Patel; and
- West Coast Inn (File No. PDET23-016) Appellant: Anil Patel.

A copy of the Appeal applications and Appellant's statement is included as Appendix A of this report. Staff has reviewed the appeals and provides a response for each issue raised by the Appellant's:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth*

Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal

Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states that a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies, ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld.

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.

Exhibit A – Property Owners

1. PATEL & JOSHI HOSPITALITY CORP (Hotel Hacienda (File No PDET23-005), located at 2423 South Archibald Avenue).

2. PATEL, RAMANBHAI G & MANJULABEN R RV (Bright Star Motel (File No. PDET23-007), located 1530 West Mission Boulevard).

3. BRIGHT MORNING STAR LLC (Days Inn Ontario Motel (File No. PDET23-008, located at 1405 East 4th Street).

4. DESAI, JAY P & SMITA ET AL (Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue).

5. SHIVASMT, INC (Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard).

6. SANDS LIMITED PARTNERSHIP (Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard).

7. PATEL, NARAYAN AMBALA (West Coast Inn (File No. PDET23-016) located at 1211 North Grove Avenue).

Appendix A

(Appeal Applications to follow this page)

CITY OF ONTARIO PLANNING DEPARTMENT

Hotel HACIENDA

Appeal Application Form

ZA 23-024

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: NAMAN PATEL DOA HOTEL HACIENDA
Address: 2423 SOUTH ARCHIBALD AVENUE
ONTARIO, CA 91751
Phone: (909) 215-6366
Email: NAMAN@haciendaont.com

Appellant's Representative: FRANK A. WEBER - ATTORNEY AT LAW
Address: 3460 Wilshire BLVD, STE. 1212,
LOS ANGELES, CA 90010
Phone: (213) 384-6964 (Voice) · (213) 399-7806 (Cell)
Email: Maimonr@aol.com

(For staff use only)
File No(s): PDET23-005
Date: 11/16/2023
Rec'd by: DB
Fees Paid: $902.00
☐ Cash ☐ Check (#)
☒ Credit Card
Receipt No.: 347815

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator
☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission Planning Commission

Hearing 4/30/24

Appeal Application Form

Project File No(s).: PDET23-005 Date of Action/Decision:

The application being appealed requests the following *(attach additional sheets as necessary)*:

Reverse Zoning Administrator Decision dated November 7, 2023 that Ontario Development Code (OMC) Division 5.03, Section 5.03.250 CE1(1) is applicable to Hacienda + Enforceable Motel

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary):

Reverse Zoning Administrator Decision dated November 7, 2023 that OMC, Division 5.03 Section 5.03.250(E)(1) is Applicable and enforceable to Hacienda Motel, and therefore OMC Section 3-6.02(C)(g) defining "transient" for purposes of transient occupancy tax shall be imposed on the Hacienda Motel

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☐ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The Decision violates the First Amendment of the U.S. Constitution Petition and Grievance Clause, the Fourth Amendment of the U.S. Constitution Search & Seizure clause, the Fifth Amendment Takings Clause of the U.S. Constitution, the procedural & substantive components of the U.S. Constitution and the Equal Protection Clause of the U.S. Constitution and the Contracts Clause of the U.S. Constitution the Privileges & Immunities clause of the U.S. Constitution. Further, the Appellant has a pre-existing entitlement to rent beyond 30 days at the Motel and has owned and operated the Motel prior to the City's adoption of OMC 5.03.250(E)(1) and thus the Applicability of the section violates the Takings Clause of the Fifth Amendment of the U.S. Constitution and the Due Process Clause and Equal Protection Clause of Fourteenth Amendment of the U.S. Constitution. Appellant was never given a hearing on the Applicability of OMC 5.03.250(E)(1) to his hotel which violates Due process. The decision was not supported by the record.

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form,** and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 11-16-23 Signature: Frank A. Weiser - Attorney For Appellants

Name (print or type): Frank A. Weiser

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-005
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 2425 S ARCHIBALD AV, ONTARIO, CA 91761

Receipt No. 347815

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	AB-20231116-6.1	$902.00	11/16/2023			

Owner Info.: PATEL & JOSHI HOSPITALITY CORP
2425 S ARCHIBALD AVE
ONTARIO, CA 917616502

Work Description: Referral to Zoning Administrator and Stay of Decision for the Hotel Hacienda (Formally America's Best Value Inn), located at 2425 South Archibald Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(I) as to the Hotel (APN: 1083-071-26); submitted by Transient Occupancy Tax License Official for the City of Ontario.

Invoice Detail

Permit ID #: PDET23-005
Invoice #: 405579
Invoice Date: 11/16/2023 15:23:31

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-030

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

BRIGHT STAR MOTEL

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Purshottam Patel / ESHA SHAH / Bright Star Motel
Address: 1530 West Mission Blvd; Ontario, CA 91762

Phone: (909) 241-2157 or (909) 568-8100
Email: pbpupland@yahoo.com

Appellant's Representative: Frank A. Weiser - Attorney at Law
Address: 3460 Wilshire Blvd. Ste. 1212
L.A., CA 90010
Phone: (213) 384-6464 (voice) (213) 383-7368
Email: Maimony@aol.com

(For staff use only)

File No(s): PDEV23-007

Date: 1/11/24
Rec'd by: AA
Fees Paid: 902.00
☐ Cash ☐ Check (#)
☒ Credit Card
Receipt No.: 349485

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 1/22/24

Appeal Application Form

Project File No(s).: PDET 23-007 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision dby the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.25-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02(A(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is grandfathered in as to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250(E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's Decision is requested to be reversed and that a decision be granted on appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02(A(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: [signature] - ATTORNEY AT LAW

Name (print or type): FRANK A. WERNER - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-007
Invoice #: 407389
Invoice Date: 01/11/2024 16:20:37

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-007
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 1530 W MISSION BL, BLDG# 1 ONTARIO, CA 91762

Receipt No. 349485

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-9.1	$902.00	01/11/2024			

Owner Info.: BRIGHT STAR LIMITED PARTNERSHIP
P O BOX 1858
ONTARIO, CA 91762

Work Description: Referral to Zoning Administrator and Stay of Decision for the Bright Star Motel ("Hotel"), located at 1530 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1011-221-15); submitted by the City of Ontario Transient Occupancy Tax License Official.

Rev. 10.01.2020

CITY OF ONTARIO PLANNING DEPARTMENT

ZA 23-031

Appeal Application Form

DAYS INN ONTARIO motel

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Krishna Patel / DAYS INN ONTARIO

Address: 1401 East 4th ST. ONTARIO, CA

Personal Mailing Address - 2176 S. Harbor Blvd, Anaheim, CA 91764 92802

Phone: (562) 858-9398

Email: aksmhospitality1@gmail.com

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW

Address: 3460 Wilshire BLVD. Ste. 1212

L.A., CA 90010

Phone: (213) 384-6964 (voice) (213) 383-7368

Email: Mimang@aol.com

(For staff use only)

File No(s): PDEV23-009

Date: 1/11/24

Rec'd by: AR

Fees Paid: 902.00

☐ Cash ☐ Check (#)

☒ Credit Card

Receipt No.: 349496

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 4/2/24

Appeal Application Form

Project File No(s).: PDET23-008 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision dby the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.25o-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hamlalyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02a(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

☒ Abuse of discretion.

☐ Decision was not supported by the record.

☒ Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is granted fathered in or to be allowed stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250 (E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment SEARCH & SEIZURE clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process clause (substantive and procedural) and EQUAL Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's decision is requested to be reversed and that a decision be granted this appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: [signature] - ATTORNEY AT LAW

Name (print or type): FRANK A. WEISER - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-008
Invoice #: 407388
Invoice Date: 01/11/2024 16:18:24

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-008
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 3560 E SHADOW CREEK WY, ONTARIO, CA 91761

Receipt No. 349486

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-9.2	$902.00	01/11/2024			

Owner Info.: SANDRA M BERNSTEIN
3560 SHADOW CREEK WAY
ONTARIO, CA 91761

Work Description: Referral to Zoning Administrator and Stay of Decision for the Days Inn Ontario ("Hotel"), located at 1405 East 4th Street, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(I) as to the Hotel (APN: 108338132); submitted by the City of Ontario Transient Occupancy Tax License Official.

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-032

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

ECONOMY INN

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Mehesh (MAC) Patel/ECONOMY INN
Address: 2301 South Euclid Avenue, ONTARIO, CA 91762
Phone: (909) 957-1714
Email: Nddamp@aol.com

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW
Address: 3460 Wilshire Blvd. Ste. 1212 L.A. CA 90010
Phone: (213) 384-6464 (voice) (213) 383-7368
Email: Mximony@aol.com

(For staff use only)

File No(s): PDET23-009
Date: 1/11/24
Rec'd by: AM
Fees Paid: 902.00
☐ Cash ☐ Check (#)
☑ Credit Card
Receipt No.: 349487

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator
☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

Hearing 2/8/24

Appeal Application Form

Project File No(s).: PDET 23-009 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision by the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject Motel and motel cannot rent for a period exceeding 30 consecutive days. And that guests are thus subject to OMC 3-6.02(g) for transient occupancy tax for all occupants as "transients".

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

FAIL.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(CE)(1) and is grandfathered in as to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and thus subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250(CE)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First, ~~Four~~ Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(CE)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's Decision is requested to be reversed and that a decision be granting the appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: [signature] - ATTORNEY AT LAW

Name (print or type): FRANK A. WERGE - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-009
Invoice #: 407390
Invoice Date: 01/11/2024 16:23:30

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-009
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 2301 S EUCLID AV, ONTARIO, CA 91761

Receipt No. 349487

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-9.3	$902.00	01/11/2024			

Owner Info.: JAYANTI P DESAI
2817 E EDMONTON ST
ONTARIO, CA 91761

Work Description: Referral to Zoning Administrator and Stay of Decision for the Economy Inn ("Hotel"), located at 2301 South Euclid Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(I) as to the Hotel (APN:1051-071-04); submitted by the City of Ontario Transient Occupancy Tax License Official.

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-033

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

MAYFAIR INN

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: D.V.P PAYARAM, KNIGHTS INN/MAYFAIR INN
Address: 1120 EAST HOLT BLVD., ONTARIO, CA 91761
Phone: (213) 440-0329
Email: MayFairOnt@gmail.com

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW
Address: 3460 WILSHIRE BLVD. STE. 1212 L.A. CA 90010
Phone: (213) 384-6464 (Voice) (213) 383-7368
Email: MJimony@aol.com

(For staff use only)
File No(s): PDET23-010
Date: 1/11/24
Rec'd by: AR
Fees Paid: 902.00
☐ Cash ☐ Check (# _____)
☑ Credit Card
Receipt No.: 3494993

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☑ Zoning Administrator
☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

HEARING 4/16/24

Appeal Application Form

Project File No(s).: PDET 23-010 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision by the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral from City of Ontario Transient Occupancy TAX License Official Arman Hanhalyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days. And that guests are thus subject to OMC 3-6.02a(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- [X] Abuse of discretion.
- [ ] Decision was not supported by the record.
- [X] Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the Zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is grandfathered in as to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250 (E)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process Clause (substantive and procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's decision is requested to be reversed and that a decision be granting the appeal and finding that OMC 5.03.250 (E)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: Frank A. Wiese - Attorney at Law

Name (print or type): Frank A. Wiese - Attorney at Law

Invoice Detail

Permit ID #: PDET23-010
Invoice #: 407387
Invoice Date: 01/11/2024 16:14:11

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-010
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 1120 E HOLT BL, ONTARIO, CA 91761

Receipt No. 349488

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-10.1	$902.00	01/11/2024			

Owner Info.: INC SHIVASMT
1120 E HOLT BLVD
ONTARIO, CA 91761

Work Description: Referral to Zoning Administrator and Stay of Decision for the Knights Inn ("Hotel"), located at 1120 Eas Holt Blvd. , within the industrial park zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1049141-25); submitted by the City of Ontario Transient Occupancy Tax License Official.

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-038 SANOS motel

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: Purshtam PATEL/ANDY PATEL/SANOS MOTEL

Address: 1240 WEST 1ST MISSION BLVD, ONTARIO, CA 91762

Phone: (909) 241-2157 OR (909) 568-8100

Email: PBPUPLAND@YAHOO.COM

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW

Address: 3460 WILSHIRE BLVD. STE. 1212 L.A. CA 90010

Phone: (213) 384-6464 (VOICE) (213) 383-7368

Email: MWIMONY@AOL.COM

(For staff use only)

File No(s): PDEV23-015

Date: 1/11/24

Rec'd by: AA

Fees Paid: 902.00

☐ Cash ☐ Check (#)

☒ Credit Card

Receipt No.: 349409

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator

☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

HEARING 1/8/24

Appeal Application Form

Project File No(s).: PDET23-015 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision by the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250 CE)C.1

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02a(g) For transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

FILED

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(E)(1) and is grandfathered in as to the allowance stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250(E)(1), both on its face, and as applied to the Appellant violated his constitutional rights under the First, Fourth Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process clause (substantive and procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(E)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's Decision is requested to be reversed and that a decision be granted this appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: Frank A. Weiser - Attorney at Law

Name (print or type): FRANK A. WEISER - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-015
Invoice #: 407391
Invoice Date: 01/11/2024 16:28:35

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-015
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 630 S OAKS AV, ONTARIO, CA 91762

Receipt No. 349489

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-10.2	$902.00	01/11/2024			

Owner Info.: MARILEE RUTH TRUST 2016 VAN
630 S OAKS AVE
ONTARIO, CA 91762

Work Description: Referral to Zoning Administrator and Stay of Decision for the Sands Motel ("Hotel"), located at 1240 West Mission Blvd. , within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1011-211-03); submitted by the City of Ontario Transient Occupancy Tax License Official.

CITY OF ONTARIO PLANNING DEPARTMENT

Appeal Application Form

ZA23-039 WEST COAST INN

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

Instructions:

1. *Pursuant to Ontario Development Code Division 2.04 (Appeals), any person having legal standing may appeal and action or decision to the Appeal Authority, including but not limited to an applicant, resident, business owner, or any person owning real property within the City, that is aggrieved by an interpretation, action, or decision made by any City agency or department, or by an Approving Authority.*

2. *Within 10 days following the action or decision being appealed, an appeal request must be filed with the Planning Department on an Appeal Application Form, along with the required filing fees. The appeal request must include a statement identifying the specific action or decision that is being appealed, the specific grounds for the appeal, and the relief requested from the Appeal Authority.*

3. *An appeal of an action or decision made by an Approving Authority following a hearing, is limited to those matters raised during the hearing and contained in an appeal statement. The Appeal Authority cannot consider any matter that was not raised during the hearing before the Approving Authority and contained in the appeal statement.*

4. *The Appeal Authority that will hear the appeal request is limited to taking testimony and making its decision based solely on the specific grounds specified by the appellant in the Appeal Application Form, insofar as they make an adequate claim pursuant to Ontario Development Code Section 2.04.010. When the decision of an Approving Authority*

GENERAL INFORMATION (PRINT OR TYPE)

Appellant: ANIL PATEL / WEST COAST INN
Address: 1211 North Grove Avenue, ONTARIO, CA 91764
Phone: (323) 215-5120
Email: apatel815@gmail.com

Appellant's Representative: FRANK A. WEISER - ATTORNEY AT LAW
Address: 3460 Wilshire BLVD. Ste. 1212 L.A. CA 90010
Phone: (213) 384-6464 (Voice) (213) 383-7368
Email: Mimony@aol.com

(For staff use only)

File No(s): PDEV23-016
Date: 1/11/24
Rec'd by: AA
Fees Paid: 902.00
☐ Cash ☐ Check (#)
☒ Credit Card
Receipt No.: 349490

SUBJECT OF APPEAL

This application is hereby filed pursuant to Ontario Development Code Division 2.04 (Appeals), appealing a decision or action of the following Authority:

☐ Department/Agency Head ☐ Development Advisory Board ☒ Zoning Administrator
☐ Historic Preservation Subcommittee ☐ Historic Preservation Commission ☐ Planning Commission

HEARD 1/8/24

Appeal Application Form

Project File No(s).: PDET 23-016 Date of Action/Decision: 12/21/2023

The application being appealed requests the following *(attach additional sheets as necessary)*: Reversal of Decision dby the Zoning Administrator dated December 21, 2023 As to the applicability and enforceability of Ontario Development Code 5.03.250-CE)(1)

List the specific action(s) or decision(s) that is/are being appealed (attach additional sheets as necessary): Zoning Administrator received a referral From City of Ontario Transient Occupancy TAX License Official Arman Hartoloyan requesting interpretation and applicability of Section 5.03.250CE)(1) as to subject motel and Zoning Administrator found that section is applicable and enforceable as to subject motel and motel cannot rent for a period exceeding 30 consecutive days And that guests are thus subject to OMC 3-6.02a(g) for transient occupancy tax for all occupants as "transients"

APPEAL STATEMENT

Please check the box that best describes your reason(s) for the appeal:

- ☒ Abuse of discretion.
- ☐ Decision was not supported by the record.
- ☒ Abuse of discretion and decision was not supported by the record.

State the specific grounds for the appeal and the relief requested (please be specific and attach additional sheets if necessary):

The subject motel never received notice of the zoning change and adoption of OMC 5.03 and OMC 5.03.250(CE)(1) and is grandfathered in as to the allowable stays of 30 days or more consecutively. The City's decision is not supported by the record and the subject motel was entitled to an individualized hearing as to his Motel. The Ordinance, OMC 5.03.250 (CE)(1), both on its face, and as applied to the Appellant violates his constitutional rights under the First Amendment Petition Clause, Fourth Amendment Search & Seizure Clause, the Fifth Amendment Takings clause, the Fourteenth Amendment Due Process Clause (substantive and procedural) and Equal Protection Clause of the U.S. Constitution and parallel provisions of California Constitution. The decision and OMC 5.03.250(CE)(1) is also void for vagueness on its face and as applied to subject motel under Due Process Clause of Fourteenth Amendment of U.S. Constitution. The Zoning Administrator's decision is requested to be reversed and that a decision be granted this appeal and finding that OMC 5.03.250 CE)(1) is not applicable to subject motel and that Motel can rent to guests for 30 consecutive days or more and such guests are permanent occupants not subject to OMC 3-6.02a(g) and not subject to Transient occupancy TAX

APPELLANT ACKNOWLEDGEMENT

I, the undersigned, hereby certify that the statements and information provided in this **Appeal Application Form**, and in any attached exhibits, present the data and information required for this application to the best of my ability, and that the facts, statements and information presented are true and correct to the best of my knowledge and belief.

Date: 1-11-24 Signature: - ATTORNEY AT LAW

Name (print or type): FRANK A. WERNER - ATTORNEY AT LAW

Invoice Detail

Permit ID #: PDET23-016
Invoice #: 407392
Invoice Date: 01/11/2024 16:30:40

Period	Fee Item	Qty	Fee
FINAL	Appeal Other	902	$902.00

Total Fee: $902.00

RECEIPT

CITY OF ONTARIO
REVENUE DEPARTMENT
303 E. B STREET
(909) 395-2050
ONTARIO, CA 91764

Application: PDET23-016
Application Type: Planning/PLANNING/PLANNING/DETERMINATION OF USE
Address: 1205 N GROVE AV, BLDG# 1 ONTARIO, CA 91764

Receipt No. 349490

Payment Method	Ref Number	Amount Paid	Payment Date	Cash Drawer ID	Received	Comments
Credit	JV-20240111-10.3	$902.00	01/11/2024			

Owner Info.: NARAYAN AMBALAL PATEL
5321 ROCKY MOUNTAIN CT
RANCHO CUCAMONGA, CA 91737

Work Description: Referral to Zoning Administrator and Stay of Decision for the Pepper Tree Motel ("Hotel"), located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1047-451-25); submitted by the City of Ontario Transient Occupancy Tax License Official.

RESOLUTION NO. PC24-018

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-005) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE HOTEL HACIENDA, LOCATED AT 2425 SOUTH ARCHIBALD AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF— APN: 1083-071-26.

WHEREAS, Noman Patel ("Applicant") operator of the Hotel Hacienda has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Hotel Hacienda, File No. PDET23-005, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Hotel Hacienda (Formally America's Best Value Inn) ("Hotel"), located at 2425 South Archibald Avenue, within the Community Commercial zoning district; and

WHEREAS, on April 30, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Hotel Hacienda. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 30, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Hotel Hacienda; and

WHEREAS, the Hotel Hacienda was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel (known in 1986 as the Knice Inn); and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, in 1988, the Motel was constructed; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning

Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D).

The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; 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 May 28, 2024, 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 decision-making 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

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 Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotel Hacienda. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 30, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

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.

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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 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

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. PC24-018, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE America's Best Value Inn 2425 S. Archibald Ave. Ontario, CA 91751	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** License Official: Armen Harkalyan Date: 4/30/2021 Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. America's Best Value Inn ("Hotel") is a hotel located at 2425 S. Archibald Ave. in the City of Ontario. The Hotel is operated by Naman Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**($1,197.79)**
PENALTIES:	**$35.16**
INTEREST:	**$162.56**
TOTAL:	**$28,151.47**

The basis for this finding is $220,124.56 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "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 or house, 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." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "…the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the

exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to 'determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

CITY OF ONTARIO PLANNING DEPARTMENT

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

November 6, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-024**

FILE NO.: PDET23-005

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Hotel Hacienda (Formally America's Best Value Inn) ("Hotel"), located at 2425 South Archibald Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1083-071-26); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-005, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Hotel Hacienda, located at 2425 South Archibald Avenue, within the Commercial Zoning District, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Hotel Hacienda (known in 1986 as the Knice Inn) was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel. On November 6, 1987, the Building Department approved the construction plans for the 55-unit motel and construction for the Motel concluded in 1988. Division 9.01 (Definitions) of the ODC, defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03,

Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Hotel Hacienda is located at 2425 South Archibald Avenue, within the Community Commercial zoning district. Hotels or Motels are not permitted within the Community Commercial zoning district. The existing Hotel Hacienda is a legal nonconforming use;

(b) The Hotel Hacienda was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel (known in 1986 as the Knice Inn);

(c) On November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

(d) In 1988, the Motel was constructed; and

(e) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda; and

(f) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(g) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(h) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(i) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(j) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-005, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Hotel Hacienda. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the April 30, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) 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.

APPROVED AND ADOPTED this 6th day of November 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-019

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-007) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE BRIGHT STAR MOTEL, LOCATED AT 1530 WEST MISSION BOULEVARD SOUTH ARCHIBALD AVENUE, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1011-221-15.

WHEREAS, Purushottam Patel and Esha Smah ("Applicant") operator of the Bright Star Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Bright Star Motel, File No. PDET23-007, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Bright Star Motel, located at 1530 West Mission Boulevard, within the Light Industrial zoning district. The existing Bright Star Motel is a legal nonconforming use; and

WHEREAS, on January 22, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Bright Star Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 22, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Bright Star Motel; and

WHEREAS, the City of Ontario Building Department issued building permits, between 1956 and 1962, for the construction of Motel; and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior

walkways consistent with the City approval and design layout for the Bright Star Motel; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; 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 May 28, 2024, 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 decision-making 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

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 Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Bright Star Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 22, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

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.

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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 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

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. PC24-019, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Bright Star Motel 1530 W. Mission Blvd. Ontario, CA 91762	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 1/22/2021 Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Bright Star Motel ("Hotel") is a hotel located at 1530 W. Mission Blvd. in the City of Ontario. The Hotel is operated by Esha Shah ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$47,514.30**
PENALTIES:	**$950.29**
INTEREST:	**$4,829.73**
TOTAL:	**$53,294.31**

The basis for this finding is $404,377.00 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D.**

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E.**

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F.**

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "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 or house, 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." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G**.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-030**

FILE NO.: PDET23-007

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Bright Star Motel ("Hotel"), located at 1530 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1011-221-15); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-007, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Bright Star Motel, located at 1530 West Million Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Bright Star Motel property is zoned Light Industrial. Between 1956 and 1962 the City of Ontario Building Department issued permits for the construction of Motel. The permitted Motel was constructed in conformance with all regulations of the Municipal Code at the time of development; however, at present, it is not in compliance with the current Light Industrial zoning district. Consequently, the existing Motel use is deemed "legal nonconforming". Division 3.01 (Nonconforming Lots, Uses and Structures), Section 3.01.015: Nonconforming Land Uses, outlines the regulations for the continuance of a nonconforming use.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Bright Star Motel. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide

additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Bright Star Motel is located at 1530 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the light industrial zoning district. The existing Bright Star Motel is a legal nonconforming use;

(b) The City of Ontario Building Department issued building permits, between 1956 and 1962, for the construction of Motel; and

(c) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Bright Star Motel; and

(d) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(e) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(f) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(g) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(h) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-007, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Bright Star Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the January 1, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) 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.

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-020

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-008) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE DAYS INN ONTARIO MOTEL, LOCATED AT 1405 EAST 4TH STREET, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0108-381-32.

WHEREAS, Kisham Patel ("Applicant") operator of the Days Inn Ontario Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Days Inn Ontario Motel, File No. PDET23-008, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Days Inn Ontario is located at 1405 East 4th Street, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on April 2, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Days Inn Ontario. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 2, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Days Inn Ontario Motel; and

WHEREAS, in 1985, The Planning Commission approved a Conditional Use Permit (File No. 3225-CUP) to establish 53-unit Days Inn Ontario Motel (known as Youngs Motel); and

WHEREAS, in 1987, the City of Ontario Building Department issued building permits for the construction of Days Inn Ontario Motel (Known as "Youngs Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Days Inn Ontario; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; 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 May 28, 2024, 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 decision-making 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

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 Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Days Inn Ontario. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 2, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

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.

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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 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

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. PC24-020, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Days Inn Ontario 1405 E 4th Street Ontario, CA 91764	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 4/2/2021 Time: 2:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Days Inn Ontario ("Hotel") is a hotel located at 1405 E 4th Street in the City of Ontario. The Hotel is operated by Kisham Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$23,619.98**
PENALTIES:	**$472.40**
INTEREST:	**$2,276.79**
TOTAL:	**$26,369.17**

The basis for this finding is $201,021.08 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "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 or house, 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." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G.**

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-031**

FILE NO.: PDET23-008

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Days Inn Ontario("Hotel"), located at 1405 East 4th Street, within the Neighborhood Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 0108-381-32); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-008, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Days Inn Ontario, located at 1405 East 4th Street, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Days Inn Ontario is 1405 East 4th Street and zoned Neighborhood Commercial. In 1985, the Planning Commission approved a Conditional Use Permit (File No. 3225-CUP - Youngs Motel) to establish a 53-unit motel at 1405 East 4th Street. In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Youngs Motel").

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Days Inn Ontario. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Days Inn Ontario is located at 1405 East 4th Street, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

(b) In 1985, The Planning Commission approved a Conditional Use Permit (File No. 3225-CUP) to establish 53-unit motel; and

(c) In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Youngs Motel"); and

(d) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Days Inn Ontario; and

(e) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(f) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(g) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(h) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(i) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-008, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Days Inn Ontario. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the April 2, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) 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.

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-021

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-009) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE ECONOMY INN, LOCATED AT 2301 SOUTH EUCLID AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1051-071-04.

WHEREAS, Mehesh Patel ("Applicant") operator of the Economy Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Economy Inn, File No. PDET23-009, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Economy Inn is located at 2301 South Euclid Avenue, within the Community Commercial zoning district. Hotels or Motels are permitted within the Community Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on February 5, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Economy Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on February 5, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Economy Inn; and

WHEREAS, in 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish 47-unit Economy Inn Motel; and

WHEREAS, in 1985, the City of Ontario Building Department issued building permits for the construction of the Economy Inn Motel; and

WHEREAS Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate,

to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; 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 May 28, 2024, 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 decision-making 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

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 Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Economy Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the February 5, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

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.

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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 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

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. PC24-021, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Economy Inn 2301 S. Euclid Ave. Ontario, CA 91762	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 2/5/2021 Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Economy Inn ("Hotel") is a hotel located at 2301 S. Euclid Ave. in the City of Ontario. The Hotel is operated by Mahesh Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$18,580.28**
PENALTIES:	**$371.61**
INTEREST:	**$1,873.64**
TOTAL:	**$20,825.52**

The basis for this finding is $158,130.00 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D.**

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E.**

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F.**

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "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 or house, 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." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "…the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G.**

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-032**

FILE NO.: PDET23-009

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Economy Inn ("Hotel"), located at 2301 South Euclid Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1051-071-04); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-009, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Economy Inn, located at 2301 South Euclid Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Economy Inn is located at 2301 South Euclid Avenue and zoned Community Commercial. In 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish a 47-unit motel at 2301 South Euclid Avenue. In 1985, the City of Ontario Building Department issued building permits for the construction of Motel.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Economy Inn is located at 2301 South Euclid Avenue, within the Community Commercial zoning district. Hotels or Motels are permitted within the Community Commercial zoning district subject to approval of a Conditional Use Permit; and

(b) In 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish 47-unit motel; and

(c) In 1985, the City of Ontario Building Department issued building permits for the construction of Motel; and

(d) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn; and

(e) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(f) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(g) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(h) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(i) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-009, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Economy Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the February 5, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) 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.

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-022

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-010) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE MAYFAIR INN, LOCATED AT 1120 EAST HOLT BOULEVARD, WITHIN THE INDUSTRIAL PARK ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1049-141-25.

WHEREAS, Dilip Payaram ("Applicant") operator of the Mayfair Inn ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Mayfair Inn, File No. PDET23-010, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Mayfair Inn (formally known as the Knights Inn) is located at 1120 East Holt Boulevard, within the Industrial Park zoning district. Hotels or Motels are not permitted within the Industrial Park zoning district. The existing Mayfair Inn is a legal nonconforming use; and

WHEREAS, on April 16, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Mayfiar Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 16, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Mayfair Inn; and

WHEREAS, in 1985, the Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit Mayfair Inn motel; and

WHEREAS, in 1987, City of Ontario Building Department issued permits for the construction of Mayfair Motel; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate,

to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; 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 May 28, 2024, 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 decision-making 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

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 Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Mayfair Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 16, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

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.

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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 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

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. PC24-022, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE Knights Inn 1120 E. Holt Blvd. Ontario, CA 91761	**REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION** _____ License Official: Armen Harkalyan Date: 4/16/2021 Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Knights Inn ("Hotel") is a hotel located at 1120 E. Holt Blvd. in the City of Ontario. The Hotel is operated by Dilip Payaram ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$103,487.11**
PENALTIES:	**$2,069.74**
INTEREST:	**$8,721.73**
TOTAL:	**$114,278.58**

The basis for this finding is $880,741.37 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "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 or house, 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." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G.**

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-033**

FILE NO.: PDET23-010

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Mayfair Inn ("Hotel"), located at 1120 East Holt Boulevard, within the Industrial Park zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1049-141-25); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-010, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Mayfair Inn (Formally known as "Knights Inn"), located at 1120 East Holt Boulevard, within the Industrial Park zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Mayfair Inn is located at 1120 East Holt Boulevard and zoned Industrial Park. In 1985, the Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit motel. In 1987, City of Ontario Building Department issued permits for the construction of Motel. The permitted Motel was constructed in conformance with all regulations of the Municipal Code at the time of development; however, at present, it is not in compliance with the current Industrial Park zoning district. Consequently, the existing Motel use is deemed "legal nonconforming". Division 3.01 (Nonconforming Lots, Uses and Structures), Section 3.01.015: Nonconforming Land Uses, outlines the regulations for the continuance of a nonconforming use.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional

services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Mayfair Inn is located at 1120 East Holt Boulevard, within the Industrial Park zoning district. Hotels or Motels are not permitted within the Industrial Park zoning district. The existing Mayfair Inn is a legal nonconforming use;

(b) The Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit motel; and

(c) In 1987, City of Ontario Building Department issued permits for the construction of Motel; and

(d) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn; and

(e) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(f) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(g) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(h) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(i) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-010, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Mayfair Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the April 16, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) 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.

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APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-023

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-015) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE SANDS MOTEL, LOCATED AT 1240 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1101-211-03.

WHEREAS, Purushottam Patel and Andy Patel ("Applicant") operator of the Sands Motel ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation Sands Motel, File No. PDET23-015, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Sands Motel is located at 1240 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the Light Industrial zoning district. The existing Sands Motel is a legal nonconforming use; and

WHEREAS, on January 1, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Sands Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 1, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to Sands Motel; and

WHEREAS The City of Ontario Building Department issued permits for the construction of Sands Motel in the 1956; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Mote; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of

legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; 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 May 28, 2024, 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 decision-making 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

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 Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Sands Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 1, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

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.

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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 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

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. PC24-023, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE

Sands Motel
1240 W. Mission Blvd.
Ontario, CA 91762

REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION _____

License Official: Armen Harkalyan
Date: 1/8/2021
Time: 2:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. Sands Motel ("Hotel") is a hotel located at 1240 W. Mission Boulevard in the City of Ontario. The Hotel is operated by Andy Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$36,399.14**
PENALTIES:	**$727.98**
INTEREST:	**$3,012.29**
TOTAL:	**$40,139.42**

The basis for this finding is $309,779.94 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "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 or house, 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." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "…the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G**.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-038**

FILE NO.: PDET23-015

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Sands Motel ("Hotel"), located at 1240 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1101-211-03); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-015, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the Sands Motel, located at 1240 West Mission Boulevard, within the Light Industrial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations

The Sands Motel is located at 1240 West Mission Boulevard and zoned Light Industrial. The City of Ontario Building Department issued permits for the construction of the Motel in the early 1956. The permitted Motel was constructed in conformance with all regulations of the Municipal Code at the time of development; however, at present, it is not in compliance with the current Light Industrial zoning district. Consequently, the existing Motel use is deemed "legal nonconforming". Division 3.01 (Nonconforming Lots, Uses and Structures), Section 3.01.015: Nonconforming Land Uses, outlines the regulations for the continuance of a nonconforming use.

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Motel. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide

additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The Sands Motel is located at 1240 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the Light Industrial zoning district. The existing Sands Motel is a legal nonconforming use;

(b) The City of Ontario Building Department issued permits for the construction of a Motel in the 1956; and

(c) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Motel ; and

(d) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(e) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(f) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(g) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(h) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-015, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the Sands Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) 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.

APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

RESOLUTION NO. PC24-024

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ONTARIO, CALIFORNIA, UPHOLDING THE ZONING ADMINSTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET 23-016) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(L) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE WEST COAST INN, LOCATED AT 1211 NORTH GROVE AVENUE, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1047-451-25.

WHEREAS, Anil Patel ("Applicant") operator of the West Coast Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation West Coast Inn, File No. PDET23-016, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the West Coast Inn is located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on January 8, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the West Coast Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 8, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to West Coast Inn; and

WHEREAS in 1987, the City of Ontario Building Department issued building permits for the construction of West Coast Inn Motel (known as "Grove Avenue Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant issues that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. Issues like the adoption and amendment of zoning ordinances are legislative acts rather than administrative or quasi-judicial acts. Arnel Dev. Co. v City of Costa Mesa (1980) 28 C3d 511, 514. Appellants take issue with the implementation of

legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld.

2. Appellants' Issue No. 2: *Ontario Development Code chapter 5.03.250(E)(1) which prohibits hotels from having a guestroom rented for longer than 30 days is inapplicable because Ontario Municipal Code chapter 3-06.02(g) states than an occupant can have an occupancy for longer than 30 days (with a written agreement).*

Staff Response: The Zoning Administrator's application of ODC § 5.03.250(E)(1) as to Appellants' hotels was proper. Where the Development Code imposes a greater restriction than is imposed or required by an existing law, the provisions of the Development Code shall prevail. ODC § 1.02.005. To the extent that there is an external inconsistency between the provisions of the Ontario Development Code and the provisions of the Ontario Municipal Code, the more restrictive provisions shall apply. ODC § 1.01.015(D). Thus, if there is a conflict between the Ontario Municipal Code and the Ontario Development Code, the Zoning Administrator must make a decision pursuant to the Development Code.

Here, Appellants argue that because OMC § 3-06.02(g) states than a person can have an occupancy of longer than 30 days (with an agreement in writing), that Appellants can rent their hotels to occupants for longer than 30 days and be exempt from the TOT. However, under the Development Code, "no guestroom shall be rented for a period exceeding 30 consecutive calendar days for a hotel or motel. ODC § 5.03.250(E)(1). This is an explicit restriction on hotels. To the extent that there exists any conflict by inference with OMC section 3-602(g), the ODC's restriction on hotels applies. ODC § 1.01.015(D). The Zoning Administrator's application of the ODC's more restrictive provision prohibiting Appellants' hotels from renting to a person for longer than 30 days was proper.

Thus, the appeals should be denied, and the Zoning Administrator's decisions should be upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, Ontario Development Code Table 2.02-1 (Review Matrix) grants the Planning Commission the responsibility and authority to review and act on the subject appeal Application; 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 May 28, 2024, 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 decision-making 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines,

and the Planning Commission has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

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 Sections 1 through 3, above, the Planning Commission hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the West Coast Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 5: ***Planning Commission Action.*** Based upon the findings and conclusions set forth in Sections 1 through 4, above, the Planning Commission hereby Approves to uphold the Zoning Administrator Decision herein described Application.

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.

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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 28th day of May 2024, and the foregoing is a full, true and correct copy of said Resolution, and has not been amended or repealed.

Nicola Ricci
Planning Commission Chairperson

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. PC24-024, was duly passed and adopted by the Planning Commission of the City of Ontario at their regular meeting held on May 28, 2024, by the following roll call vote, to wit:

AYES: Anderson, DeDiemar, Del Turco, Lampkin, Ricci

NOES: None

ABSENT: Dean, Gage

ABSTAIN: None

Gwen Berendsen
Secretary Pro Tempore

ATTACHMENT A:

Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment")

(Notice of Assessment to follow this page)

(BEFORE THE

TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL

FOR THE

CITY OF ONTARIO, CALIFORNIA

IN RE

West Coast Inn
1211 N. Grove Ave.
Ontario, CA 91764

REFERRAL TO ZONING ADMINISTRATOR AND STAY OF DECISION _____

License Official: Armen Harkalyan
Date: 1/8/2021
Time: 1:00 P.M.

INTRODUCTION

1. This matter involves the application of the City of Ontario's Transient Occupancy Tax to the revenues of a hotel in the City of Ontario. Executive Director of Finance Armen Harkalyan ("License Official"), sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, heard this matter via remote teleconference on the date and time noted above (the "Hearing"). The License Official was advised by attorney Steven P. Graham, special counsel to the City of Ontario.
2. City of Ontario ("City") is a municipal corporation existing under the laws of the State of California.
3. West Coast Inn ("Hotel") is a hotel located at 1211 N. Grove Ave. in the City of Ontario. The Hotel is operated by Anil Patel ("Operator") and represented by attorney Frank A. Weiser, both were present at the hearing.
4. The following Referral to Zoning Administrator and Stay of Decision is based on the evidence presented during the Hearing for this matter. Pursuant to oral stipulation at the Hearing, the Hearing was held open for two weeks to give Mr. Weiser an opportunity to file additional evidence or legal argument in support the appeal. Nothing was filed within the two-week period and the Hearing was closed.

5. Chapter 6 of Title 3 of the Ontario Municipal Code related to Transient Occupancy Tax is attached hereto as **ATTACHMENT A**. Section 5.03.250 of the Ontario Development Code ("ODC"), which governs the operations of hotels, motels, residence inns, and other similar traveler accommodations, is attached hereto as **ATTACHMENT B**.

6. The License Official considered the testimony of all witnesses at the Hearing and all attachments received into evidence. The mere fact that particular witness testimony or attachments may not be specifically referred to below does not and shall not be construed to mean that said testimony or attachment was not considered.

7. The hearing was recorded and a copy of the recording is available upon request.

ISSUES

8. Pursuant to Ontario Municipal Code Section 3-6.09, the issue to be determined by the License Official on the application of Hotel is whether the amount of Transient Occupancy Tax, along with any interest and penalties, specified within the Notice of Assessment issued by the License Official on 11/18/2020 should be upheld.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Matters

9. This matter is before the License Official following the City's 11/18/2020 Notice of Assessment for Transient Occupancy Tax ("Notice of Assessment") which found that Hotel had unpaid Transient Occupancy Taxes. The Notice of Assessment is attached hereto as **ATTACHMENT C**. Specifically, the Notice of Assessment finds the following amounts are unpaid:

TOT UNCOLLECTED:	**$57,236.84**
PENALTIES:	**$1,144.74**
INTEREST:	**$5,994.89**
TOTAL:	**$64,376.46**

The basis for this finding is $487,122.00 in exemptions claimed for non-transient guests of the Hotel, which the City alleges violate the provisions of Section 5.03.250 of the ODC.

10. Hotel filed an Application for Hearing on 12/2/2020 challenging the Notice of Assessment. The Application for Hearing is attached hereto as **ATTACHMENT D**.

11. The Hotel filed a Letter Brief into its Application for Hearing. The Letter Brief is attached hereto as **ATTACHMENT E**.

12. Pursuant to Ontario Municipal Code Section 3-6.09, a hearing before Executive Director of Finance Armen Harkalyan sitting as the Transient Occupancy Tax License Official was set where the Hotel could appear and offer evidence why the specified tax, interest, and penalties within the Notice of Assessment should not be so fixed. A copy of the Notice of Hearing is attached hereto as **ATTACHMENT F**.

B. Procedural Background

11. The Hearing for this matter was held on the date and time noted above in Ontario, California.

12. The Hotel called the Operator to offer testimony and evidence at the hearing. Attorney Frank A. Weiser offered legal argument at the hearing.

13. The matter was taken under submission by the Hearing Officer at the conclusion of the hearing, pending receipt of the letter brief from the Hotel.

14. Per oral stipulation at the hearing, the Hotel was given the opportunity to file a letter brief with evidentiary attachments within two weeks of the date and time noted above. No letter brief was filed and the Hearing was closed.

C. The Transient Occupancy Tax Ordinance

15. The City of Ontario imposes a Transient Occupancy Tax of eleven and three-quarters percent (11¾%) of rent on the privilege of occupancy of space in a hotel within its jurisdiction. O.M.C. § 3-6.03.

16. Rent is defined by the Ontario Municipal Code as "the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature, without any deduction therefrom whatsoever." O.M.C. § 3-6.02(e).

17. Hotel is defined by the Ontario Municipal Code as "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 or house, 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." O.M.C. § 3-6.02(a).

18. The Ontario Municipal Code requires that "[e]ach operator shall collect and hold in trust for the account and benefit of the City the tax imposed by the provisions of this chapter to the same extent and at the same time as the rent is collected from every transient." O.M.C. § 3-6.05.

19. Operator is defined by the Ontario Municipal Code as "...the person who is the proprietor of the hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his or her principal." O.M.C. § 3-6.02(c).

20. The City of Ontario requires all operators of hotels to register such hotel with the License Official and obtain a "Transient Occupancy Registration Certificate" which shall be posted in a conspicuous place on the hotel premises. O.M.C. § 3-6.06. Such certificate shall include the name and address of the operator, the address of the hotel, the date the certificate was issued, and a statement required by the code. O.M.C. § 3-6.06.

21. The City of Ontario requires all operators to report and remit Transient Occupancy Taxes to the License Official. O.M.C. § 3-6.07. "Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the License Official, make a return to the License Official, on forms provided by him or her, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the License Official." O.M.C. § 3-6.07.

22. Transient is defined by the Ontario Municipal Code as "any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) consecutive calendar days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. Any individual person who exercises or is entitled to occupancy for a period of thirty (30) consecutive calendar days or less shall be deemed to be a transient, regardless of whether the reservation and/or payment for occupancy is made directly by the person exercising occupancy or another person, or entity. The intent is to tax the individual person occupying, or having the right or entitlement to occupancy, the hotel room. 'Transient' includes any employee or officer of the State government or of the government of a political subdivision of the State. 'Transient' does not mean or include any Federal officer or employee when on official Federal government business, or any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days." O.M.C. § 3-6.02(g).

23. Under Section 5.03.250 of the Ontario Development Code, "No guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days." O.D.C. § 5.03.250 (E)(1).

24. Operators who fail to report and remit any Transient Occupancy Tax are subject to penalties and interest. O.M.C. § 3-6.08.

25. When an operator fails or refuses to report or remit Transient Occupancy Tax in the manner required by the Ontario Municipal Code, the License Official "shall proceed in such manner as he may deem best to obtain the facts and information on which to base his estimate of the tax due." O.M.C. § 3-6.09. Once the License Official has obtained such facts and information, the License Official "shall proceed to determine and assess against such operator the tax, interest, and penalties" and "give notice of the amount so assessed by serving it personally or depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address." O.M.C. § 3-6.09.

26. The Ontario Municipal Code creates a rebuttable presumption that the amount of Transient Occupancy Tax, along with any penalties and interest, determined by the License Official is correct. O.M.C. § 3-6.09. If not challenged, the determination of the License Official is "final and conclusive and immediately due and payable." O.M.C. § 3-6.09.

27. Any operator receiving a notice of assessment "may, within ten (10) days after the service or mailing of such notice, make an application in writing to the License Official for a hearing on the amount assessed." O.M.C. § 3-6.09. At the hearing "the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed." O.M.C. § 3-6.09.

28. After the hearing, the License Official "shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

D. The Hearing

29. Except as discussed below, the facts of this matter are essentially undisputed.

30. Under the Ontario Municipal Code, a rebuttable presumption exists at the hearing that the amount of tax assessed by the License Official is correct and operator has the opportunity to appear and offer evidence why the specified tax, interest, and penalties are incorrect.

31. The Hotel appeared by attorney Frank A. Weiser who offered legal arguments orally at the hearing. The Hotel called the Operator to offer testimony and provide documents that were taken into evidence. A copy of the evidence submitted by the Operator is attached hereto as **ATTACHMENT G**.

32. Hotel argues that the exemptions claimed are consistent with Title 3 Chapter 6 of the Ontario Municipal Code (the "TOT Ordinance"). Specifically, Hotel argues that under Section 3-6.03 of the TOT Ordinance, the transient occupancy tax is imposed only on transients. Transients are defined in Section 3-6.02(g) as any person who exercises occupancy or is entitled to occupancy, for a period of 30 calendar days or less. Here, the Hotel provided evidence that it rents rooms to guests for longer than 30 days. The Hotel argues that these guests, having stayed longer than 30 days at the Hotel, are exempt from taxation as they no longer meet the definition of transient.

33. The City, in response, called Tony Lai who made the findings on appeal before the License Official. Mr. Lai argues that under Section 5.03.250(E)(1) of Ontario Development Code, the exemption is impermissible as "[n]o guestroom shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as follow days." In particular, in the Audit Findings (Attachment C) for the Hotel, Mr. Lai claims "the hotel is claiming long-term occupants in error as it is zoned in a non-confirming [sic] area, per the Ontario Development Code Section 5.03.250. All long-term exemptions claimed are considered invalid and as a result TOT is understated." Furthermore, Mr. Lai stated that his findings were purely based on whether the exemption was permissible for the Hotel in light of the ODC prohibition.

REFERRAL TO ZONING ADMINISTRATOR

34. The Hotel has presented credible evidence and testimony that a significant portion of the guests of the Hotel stay in excess of 30 days.

35. The License Official's jurisdiction is to "determine the proper tax to be remitted and [...] thereafter give written notice to the person in the manner prescribed in this section of such determination and the amount of such tax, interest, and penalties." O.M.C. § 3-6.09.

36. Under Section 1.02.015(A)(1) of the ODC "The Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code."

37. Therefore, pursuant to Section 1.02.010(C) of the ODC, the License Official hereby requests that the Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to the Hotel.

38. Pending an interpretation or determination of the Zoning Administrator, the assessment of transient occupancy taxes, penalties, and interest assessed against the Hotel is hereby STAYED. Once an interpretation or determination is made, this stay will be lifted and a Decision and Order will issue that will UPHOLD, DISMISS, or MODIFY the assessment.

Dated: 10-5-21

License Official

ZONING ADMINISTRATOR DECISION: LAND USE DETERMINATION

December 21, 2023

303 East B Street, Ontario, California 91764 Phone: 909.395.2036 / Fax: 909.395.2420

DECISION NO.: **ZA23-039**

FILE NO.: PDET23-016

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the West Coast Inn ("Hotel"), located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel (APN: 1047-451-25); **submitted by the City of Ontario Transient Occupancy Tax License Official.**

PART 1: BACKGROUND & ANALYSIS

THE CITY OF ONTARIO TRANSIENT OCCUPANCY TAX LICENSE OFFICIAL, (herein after referred to as "Applicant") has filed a request that Zoning Administrator provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(l) as to the Hotel. Land Use Interpretation or Determination, File No. PDET23-016, as described in the subject of this Decision (herein after referred to as "Application" or "Project").

DESCRIPTION: Referral to Zoning Administrator and Stay of Decision for the West Coast Inn, located at 1211 North Grove Avenue, within the Community Commercial zoning district, to provide an interpretation or determination regarding the applicability and enforceability of Ontario Development Code (ODC) Section 5.03.250(E)(l) as to the Hotel.

ANALYSIS: Under the ODC Section 1.02.015(A), the Zoning Administrator shall have jurisdiction of, and be responsible for, the administration and application of the regulations and provisions of this Development Code. Subsequently, the ODC Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations.

The West Coast Inn (Formally known as the Grove Avenue Motel) is located at 1211 North Grove Avenue and zoned Neighborhood Commercial. In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Grove Avenue Motel").

The Ontario Development Code, Division 9.01 (Definitions), defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn. Hotels are defined as lodging facilities, which offers transient accommodations at a daily rate, to the general public, and which may provide additional services, such as restaurants, meeting rooms and recreational facilities. The definitions for a Motel and Hotel both clearly state the intent for transient accommodations at a daily rate.

ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days

as full days. Rooms that are being rented longer than 30 days are in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.02(g) of the Ontario Municipal Code (OMC) states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days.

PART 2: RECITALS

WHEREAS, the City of Ontario has received a request for an interpretation or determination, as described in Part I, above; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, it has been recognized that every conceivable use cannot be identified by the City of Ontario Development Code, and anticipating that new uses will evolve over time, Ontario Development Code Section 1.02.101 (Interpretations and Land Use Determinations) establishes the Zoning Administrator's authority to review and act upon a Determination of Use, comparing and measuring a proposed use against those listed in the Development Code, which have similar impacts, functions and characteristics; and

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

PART 3: THE DECISION

NOW, THEREFORE, it is hereby found, determined, and resolved by the Zoning Administrator of the City of Ontario as follows:

(1) All facts set forth in the preceding sections of this Interpretation and Determination of Use are true and correct and are incorporated by this reference.

(2) Based upon the evidence presented, the Zoning Administrator hereby concludes as follows:

(a) The West Coast Inn is located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

(b) In 1987, the City of Ontario Building Department issued building permits for the construction of Motel (Known as "Grove Avenue Motel"); and

(c) Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn; and

(d) ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

(e) Rooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

(f) Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

(g) The Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

(h) Section 3-6.04 of the OMC provides for exemptions from the TOT under limited circumstances and pursuant to Section 3-6.04(b) no such exemption shall be granted except upon a claim made at the time the rent is collected and made under penalty of perjury upon a form approved by the Tax Administrator.

(3) The Zoning Administrator hereby finds and determines that the project identified in this Determination of Use is not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.

(4) Based upon the findings and conclusions set forth in Parts 1, 2 and 3 above, the Zoning Administrator hereby finds and determines, File No. PDET23-016, the following:

(a) That the ODC Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the West Coast Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(b) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(c) That Hotel's operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

(5) 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.

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APPROVED AND ADOPTED this 21st day of December 2023.

Rudy Zeledon
Zoning Administrator

CITY OF ONTARIO PLANNING COMMISSION/ HISTORIC PRESERVATION MEETING

MINUTES

May 28, 2024

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CITY OF ONTARIO PLANNING COMMISSION/ HISTORIC PRESERVATION MEETING

MINUTES

May 28, 2024

REGULAR MEETING: City Hall, 303 East B Street
Called to order by Chairperson Ricci at 6:30 PM

COMMISSIONERS Present: Chairperson Ricci**,** Vice-Chairman DeDiemar, Anderson, Del Turco, Gage, Lampkin

Absent: Dean

OTHERS PRESENT: Community Development Assistant Director Zeledon, City Attorney Guiboa, Planning Director Noh, Sustainability Manager Ruddins, Principal Planner Eoff IV, Senior Planner Ayala, Senior Planner Grahn, Associate Planner Aguilo, Associate Planner Torres, Assistant City Engineer Lee, and Planning Secretary Berendsen

PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was led by Commissioner Del Turco.

ANNOUNCEMENTS

Mr. Noh stated there were no changes to the agenda.

PUBLIC COMMENTS

No person from the public wished to speak at this time.

CONSENT CALENDAR ITEMS

A-01. MINUTES APPROVAL

Planning/Historic Preservation Commission Minutes of April 23, 2024.

PLANNING COMMISSION ACTION

It was moved by DeDiemar, seconded by Lampkin, to approve the Consent Calendar as written. Roll call vote: AYES, Anderson, DeDiemar, Del Turco, Lampkin, Ricci; NOES, none; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 5-0.

PLANNING/HISTORIC COMMISSION PUBLIC HEARING ITEMS

B. ENVIRONMENTAL ASSESSMENT AND DEVELOPMENT AGREEMENT REVIEW FOR FILE NO. PDA21-010: A public hearing to consider a Development Agreement (File No. PDA21-010) between the City of Ontario and SL Ontario Development Company, LLC to

Mr. McDonald stated they either stay in the lobby area or go to the area businesses.

Ms. DeDiemar wanted to clarify that they give economic output.

Mr. McDonald stated yes.

Mr. Del Turco wanted to know if the facility would be used for Ontario residents or from other cities.

Mr. Wong stated for participants within surrounding cities.

Mr. Del Turco wanted to clarify they have vendors contracts to supply food.

Mr. Wong stated that is correct.

Mr. Del Turco wanted to clarify that they won't be using the surrounding restaurants in the area.

Mr. Wong stated they would use the restaurants in the area.

Ms. Anderson wanted to know if the clients that attend the facility aloud to go out of the building.

Mr. Wong, during business hours they use their transportation and have supervised outings.

Ms. Anderson wanted to know what kind of food vendors they buy food from.

Mr. Wong stated they use bakeries and Chinese food and food for events is kind of a mix.

Ms. Anderson wanted to know the percentage of various ethnicities that attend.

Mr. Wong stated that the majority are Asian but will take anyone who would like to join the program.

As there was no one else wishing to speak, Chairperson Ricci closed the public testimony.

Mr. Lampkin spoke regarding the need for senior facilities and spoke regarding concerns and the characteristics of the building for the use.

PLANNING COMMISSION ACTION

It was moved by Lampkin, seconded by Anderson; to deny the Appeal of the Zoning Administrator's decision for File No. PCUP23-018, subject to conditions of approval. Roll call vote: AYES, Anderson, Del Turco, Lampkin; NOES, DeDiemar, Ricci; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 3-2.

H. **APPEAL OF ZONING ADMINISTRATOR DECISION FOR FILE NOS. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015, AND PDET23-016:** An appeal of Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(l) is applicable and enforceable to the operation of the following hotels and motels; 1) Hotel Hacienda (File No PDET23-005), located at 2423 South Archibald Avenue; 2) Bright Star Motel (File No. PDET23-005), located at 1530 West Mission Boulevard; 3) Days Inn Ontario Motel (File No.PDET23-008, located at 1405 East 4th Street; 4) Economy Inn (File No. PDET23-009), located at 2301 South Euclid Avenue; 5) Mayfair Inn (File No. PDET23-010), located 1120 East Holt Boulevard; 6) Sands Motel (File No. PDET23-015), located at 1240 West Mission Boulevard and 7) and the West Coast Inn (File No. PDET23-016), located at 1211 North Grove Avenue. The appeal is not subject to the California

Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment. (APNS: 1083-071-26, 1011-221-15, 0108-381-32, 1051-071-04, 1049-141-25, 1101-211-03 and 1047-451-25). **Submitted by Frank A. Weiser – Attorney at Law**

Mr. Zeledon introduced Andrew Lopez, the attorney representing the City for this item.

Assistant Community Development Director Zeledon presented the staff report. Mr. Lopez explained the appellant's issues and city's response to them. He stated that staff is recommending the Planning Commission deny the appeal of the Zoning Administrator's decision for, File Nos. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016, pursuant to the facts and reasons contained in the staff report and the attached Resolutions.

PUBLIC TESTIMONY

Frank Weiser explained his procedural objections regarding CEQA applying, and that this issue relates to housing and the due process clause with the TOT audit and that they were due a hearing before the Zoning Administrator. He stated the motels are grandfathered in and there are constitutional issues, and that there can't be contradictory ordinances. He requested they either deny the Zoning Administrator hearing or have an EIR be produced and there should be a hearing.

Mr. Lampkin wanted to clarify that Mr. Weiser believes that staff believes that CEQA doesn't apply.

Mr. Weiser stated he believes CEQA does apply because it is a housing issue and an EIR should be done.

Mr. Lampkin asked the deputy city attorney how CEQA applies to this appeal.

Mr. Zeledon responded and stated CEQA doesn't apply as there are no physical changes to the environment. He clarified the TOT, and 30-day limitation was approved in 1965 and amendments have been made since then.

Mr. Weiser stated the Development Code was amended in 2017 or 2018 and his clients did not receive notification and that there cannot be contradictory applications of an ordinance.

Mr. Lampkin asked the Zoning Administrator if it is his opinion that CEQA does not apply in this situation because it is not a new development.

Mr. Zeledon stated that is correct, it is not a project defined under CEQA.

Mr. Lampkin clarified that's why Mr. Zeledon didn't abdicate that they comply with CEQA as it didn't apply.

Mr. Zeledon stated that is correct and the CEQA exemption is sited in the Zoning Administrator decision and in the Planning Commission agenda report.

Mr. Weiser stated he respectively disagreed.

Mr. Lampkin asked the attorney what his opinion is regarding the Toronto Open Space Committee vs. Marion Counties decision in regard to property not developed.

Attorney Lopez diverted to the specifics of the case as he hasn't been briefed on the case.

Ms. DeDiemar wanted clarification on the definition of transient.

Mr. Weiser stated under the TOT it is defined as 30 days or less and these people were given a permanent exemption beyond that.

Attorney Lopez explained that Ontario Development Code does have the transient definition as written, which states hotels can't rent longer than 30 days.

Ms. DeDiemar asked if this would be considered a lease or rent after 30 days.

Attorney Lopez stated the Zoning Administrator based the decision on the Development Code, which says longer than 30 days is not permitted.

Mr. Zeledon responded with the definition of transient within the Development Code which states a 30-day max., which is what he needed to apply for this decision.

Mr. Weiser rebutted, disagreed with Attorney Lopez.

Mr. Zeledon responded.

As there was no one else wishing to speak, Chairperson Ricci closed the public testimony.

Mr. Lampkin spoke regarding the staff addressing the issue succinctly and the issues from the appellant that didn't apply.

Mr. Del Turco asked Mr. Zeledon if the hotels were aware of the standard.

Mr. Zeledon stated yes.

PLANNING COMMISSION ACTION

It was moved by Lampkin, seconded by Del Turco, to deny the Appeal of the Zoning Administrator's decision for File Nos. PDET23-005, PDET23-007, PDET23-008, PDET23-009, PDET23-010, PDET23-015 AND PDET23-016. Roll call vote: AYES, Anderson, DeDiemar, Del Turco, Lampkin, Ricci; NOES, none; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 5-0.

Mr. Ricci stated that this decision can be appealed within 10 days.

Attorney Guiboa stated that there was confusion regarding the voting for Item D and that some Commissioners did not intend to deny the EIR and asked the Commission if they would like to reconsider that vote and make a motion to continue that item to the next Planning Commission meeting.

It was moved by Lampkin, seconded by Anderson, to reconsider the Item D decision and to continue that Item to the next Planning Commission meeting. Roll call vote: AYES, Anderson, DeDiemar, Del Turco, Lampkin, Ricci; NOES, none; RECUSE, none; ABSENT, Dean, Gage. The motion was carried 5-0.

MATTERS FROM THE PLANNING COMMISSION

Old Business Reports From Subcommittees

Historic Preservation (Standing): Did not meet this month.

New Business

Nominations for Special Recognition

None at this time.

DIRECTOR'S REPORT

Mr. Noh stated the Monthly Activity Reports were available, reminded the Commissioners about the Model Colony Award presentation and talked about Ms. Nancy DeDiemar receiving the Prism Award from the Soroptimist International of Montclair/Inland Valley Chapter.

ADJOURNMENT

Ricci adjourned the meeting at 9:52 PM, to the next meeting on June 25, 2024.

Secretary Pro Tempore

Chairman, Planning Commission

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-005) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE HOTEL HACIENDA, LOCATED AT 2425 SOUTH ARCHIBALD AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1083-071-26.

WHEREAS, Noman Patel ("Applicant") operator of the Hotel Hacienda has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Hotel Hacienda, File No. PDET23-005, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Hotel Hacienda (Formally America's Best Value Inn) ("Hotel"), located at 2425 South Archibald Avenue, within the Community Commercial zoning district; and

WHEREAS, on April 30, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Hotel Hacienda. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 30, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Hotel Hacienda; and

WHEREAS, the Hotel Hacienda was approved (File No. 3472-S) by the City of Ontario in 1986 as a 55-unit Motel (known in 1986 as the Knice Inn); and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, in 1988, the Motel was constructed; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate,

to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Hotel Hacienda; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission 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 found that:

(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) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section 15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the

Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; 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 appeal Application; 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-018 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-005; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the

Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, 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 City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Hotel Hacienda. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a

period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the April 30, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission’s Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***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 5: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-007) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE BRIGHT STAR MOTEL, LOCATED AT 1530 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1011-221-15.

WHEREAS, Purushottam Patel and Esha Smah ("Applicant") operator of the Bright Star Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Bright Star Motel, File No. PDET23-007, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Application applies to the Bright Star Motel, located at 1530 West Mission Boulevard, within the Light Industrial zoning district. The existing Bright Star Motel is a legal nonconforming use; and

WHEREAS, on January 22, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Bright Star Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 22, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Bright Star Motel; and

WHEREAS, the City of Ontario Building Department issued building permits, between 1956 and 1962, for the construction of Motel; and

WHEREAS, on November 6, 1987, the Building Department approved the construction plans for a the 55-unit motel, located at 2425 South Archibald Avenue; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Bright Star Motel; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission 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 found that:

   (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) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

   Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

   The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

   Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of

the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; 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 appeal Application; 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-019 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-007; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, 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 City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Bright Star Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 22, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission’s Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***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 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-008) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE DAYS INN ONTARIO MOTEL, LOCATED AT 1405 EAST 4TH STREET, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 0108-381-32.

WHEREAS, Kisham Patel ("Applicant") operator of the Days Inn Ontario Motel ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Days Inn Ontario Motel, File No. PDET23-008, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Days Inn Ontario is located at 1405 East 4th Street, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on April 2, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Days Inn Ontario. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 2, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Days Inn Ontario Motel; and

WHEREAS, in 1985, The Planning Commission approved a Conditional Use Permit (File No. 3225-CUP) to establish 53-unit Days Inn Ontario Motel (known as Youngs Motel); and

WHEREAS, in 1987, the City of Ontario Building Department issued building permits for the construction of Days Inn Ontario Motel (Known as "Youngs Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior

walkways consistent with the City approval and design layout for the Days Inn Ontario; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission 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 found that:

   (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) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; 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 appeal Application; 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-020 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-008; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, 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 City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Days Inn Ontario. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the

Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the April 2, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***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 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-009) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE ECONOMY INN, LOCATED AT 2301 SOUTH EUCLID AVENUE, WITHIN THE COMMUNITY COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1051-071-04.

WHEREAS, Mehesh Patel ("Applicant") operator of the Economy Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Economy Inn, File No. PDET23-009, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Economy Inn is located at 2301 South Euclid Avenue, within the Community Commercial zoning district. Hotels or Motels are permitted within the Community Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on February 5, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Economy Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on February 5, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Economy Inn; and

WHEREAS, in 1984, The Planning Commission approved a Conditional Use Permit (File No. 3051-CUP) to establish 47-unit Economy Inn Motel; and

WHEREAS, in 1985, the City of Ontario Building Department issued building permits for the construction of the Economy Inn Motel; and

WHEREAS Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Economy Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission 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 found that:

   (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) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning

Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; 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 appeal Application; 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-021 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-009; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the

Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, 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 City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the Planning Commission.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Economy Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason

of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the February 5, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission’s Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***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 5: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-010) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE MAYFAIR INN, LOCATED AT 1120 EAST HOLT BOULEVARD, WITHIN THE INDUSTRIAL PARK ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1049-141-25.

WHEREAS, Dilip Payaram ("Applicant") operator of the Mayfair Inn ("Hotel") has filed an appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Mayfair Inn, File No. PDET23-010, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Mayfair Inn (formally known as the Knights Inn) is located at 1120 East Holt Boulevard, within the Industrial Park zoning district. Hotels or Motels are not permitted within the Industrial Park zoning district. The existing Mayfair Inn is a legal nonconforming use; and

WHEREAS, on April 16, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Mayfiar Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on April 16, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Mayfair Inn; and

WHEREAS, in 1985, the Planning Commission approved a Development Plan (File No. 3294-S) for the construction of 37-unit Mayfair Inn motel; and

WHEREAS, in 1987, City of Ontario Building Department issued permits for the construction of Mayfair Motel; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Mayfair Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission 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 found that:

   (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) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State

CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which

imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; 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 appeal Application; 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-022 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-010; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, 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 City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Mayfair Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as

full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the April 16, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***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 5: ***Certification to Adoption.*** The Secretary shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-015) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE SANDS MOTEL, LOCATED AT 1240 WEST MISSION BOULEVARD, WITHIN THE LIGHT INDUSTRIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1101-211-03.

WHEREAS, Purushottam Patel and Andy Patel ("Applicant") operator of the Sands Motel ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation Sands Motel, File No. PDET23-015, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the Sands Motel is located at 1240 West Mission Boulevard, within the Light Industrial zoning district. Hotels or Motels are not permitted within the Light Industrial zoning district. The existing Sands Motel is a legal nonconforming use; and

WHEREAS, on January 1, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the Sands Motel. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 1, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to Sands Motel; and

WHEREAS The City of Ontario Building Department issued permits for the construction of Sands Motel in the 1956; and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the Sands Mote; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that “Transient” shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff’s response:

1. *Appellants’ Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants’ argument is flawed because the TOT ordinance was not a “project” under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission’s decision to uphold the Zoning Administrator’s decision, the Planning Commission 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 found that:

   (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) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will

result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator

to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; 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 appeal Application; 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-023 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-015; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, 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 City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the Sands Motel. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as

full days. Therefore, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel's operations, as stipulated in the January 1, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission's Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***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 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S INTERPRETATION AND DETERMINATION DECISION (FILE NO. PDET23-016) THAT THE ONTARIO DEVELOPMENT CODE DIVISION 5.03, SECTION 5.03.250(E)(1) IS APPLICABLE AND ENFORCEABLE TO THE OPERATION TO THE WEST COAST INN, LOCATED AT 1211 NORTH GROVE AVENUE, WITHIN THE NEIGHBORHOOD COMMERCIAL ZONING DISTRICT, AND MAKING FINDINGS IN SUPPORT THEREOF—APN: 1047-451-25.

WHEREAS, Anil Patel ("Applicant") operator of the West Coast Inn ("Hotel") has filed an Appeal of Application of the Zoning Administrators interpretation and determination decision that the Ontario Development Code Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation West Coast Inn, File No. PDET23-016, as described in the title of this Resolution (hereinafter referred to as "Application" or "Project"); and

WHEREAS, the West Coast Inn is located at 1211 North Grove Avenue, within the Neighborhood Commercial zoning district. Hotels or Motels are permitted within the Neighborhood Commercial zoning district subject to approval of a Conditional Use Permit; and

WHEREAS, on January 8, 2021, Executive Director of Finance Armen Harkalyan ("License Official") sitting as the Transient Occupancy Tax License Official under Chapter 6 of Title 3 of the Ontario Municipal Code, held a hearing for the operator of the West Coast Inn. The purpose of the hearing was to allow the operators the opportunity to rebut the amount of tax assessed by the License Official and offer evidence why the specified tax, interest, and penalties are incorrect; and

WHEREAS, on January 8, 2021, the License Official issued a Stay of Decision and referred the matter to the Zoning Administrator to provide an interpretation or determination regarding the applicability and enforceability of Section 5.03.250(E)(1) as to West Coast Inn; and

WHEREAS in 1987, the City of Ontario Building Department issued building permits for the construction of West Coast Inn Motel (known as "Grove Avenue Motel"); and

WHEREAS, Division 9.01 (Definitions) of the Ontario Development Code (ODC) defines a Motel as a lodging facility that offers transient accommodations at a daily rate, to the general public, which are predominantly accessed from parking lots or exterior walkways consistent with the City approval and design layout for the West Coast Inn; and

WHEREAS, ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days; and

WHEREAS, guestrooms that are being rented longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and not consistent with the intent of Motel or Hotel to provide transient accommodations at a daily rate; and

WHEREAS, Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days; and

WHEREAS, the Transient Occupancy Tax shall be imposed on "transients" as defined the OMC Section 3-6.029(g); and

WHEREAS, in response to the Appellants basis for the appeal staff has prepared a response to each of the items. Below is the Appellants statement and staff's response:

1. *Appellants' Issue No. 1: The Planning Commission was required under California Environmental Quality Act to provide an Environmental Impact Report as the issue of the applicability of the Development Code may have a negative impact on the environment.*

   Staff Response: Appellants' argument is flawed because the TOT ordinance was not a "project" under CEQA requiring an Environmental Impact Report.

   The California Environmental Quality Act (CEQA) provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts. CEQA applies to projects that may result in a change in the environment; a full environmental review is only required where the project could result in a significant adverse impact.

   As part of the Planning Commission's decision to uphold the Zoning Administrator's decision, the Planning Commission 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 found that:

   (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) This Resolutions were reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State

CEQA Guidelines, and the Planning Commission determined that the Resolutions did not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.

Moreover, if the Planning Commission's decision to uphold the Zoning Administrator's decision comprises a project for CEQA analysis, it falls within the " common sense" CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding projects where "it can be seen with certainty that there is no possibility that the activity in question (interpretation or determination regarding the applicability and enforceability of the Development Code) may have a significant effect on the environment."

Additionally, the "creation of government funding mechanisms or other fiscal activities, which do not involve any commitment to any specific project. . ." are not considered a "project" under CEQA. CEQA Guidelines section 15378(B)(4).

Here, there is no physical project undertaken. The TOT's effect is fiscal. Thus, the TOT ordinance is a funding mechanism is not a "project" and an EIR is not required under CEQA.

2. *Appellants' Issue No. 2: Subject hotels never received notice of the zoning change and adoption of Ontario Development Code ("ODC") Division 5.03 Section 5.03.250(E)(1) and were entitled to an individualized hearing under the First Amendment Petition Clause, Fourth Amendment Search and Seizure Clause, the Fifth Amendment Takings Clause, the Fourteenth Amendment Due Process Clause (Substantive and Procedural) and Equal Protection of the United States Constitution.*

Staff Response: Appellant's arguments introduce irrelevant legal arguments that go beyond the limited scope of the Zoning Administrator's decisions.

The Zoning Administrator has acted within his limited authority to interpret the Ontario Development Code ("ODC"). The Zoning Administrator, under Section l.02.015(A)(l) of the ODC, has jurisdiction of, and is responsible for, the administration and application of the regulations and provisions of the Development Code. The Zoning Administrator's power is limited to interpretation of the Code as applied to a particular case. ODC § 1.02.010(B)(1). Thus, the Zoning Administrator's power is limited to interpretation of the code and its application to a particular set of facts.

Appellants' arguments introduce irrelevant legal arguments that do not challenge the underlying factual findings and analysis of each of the decisions by the Zoning Administrator. The Appellants take issue with the implementation of legislation of the Ontario Development Code. For reference, Ordinance No. 1569, which

imposed the TOT was passed in 1965 – fifty-nine years ago. These issues are beyond the scope of the Zoning Administrator's role. For the Zoning Administrator to consider these legal issues would exceed the power granted by the Development Code.

The Zoning Administrator has acted within his limited authority to interpret the Development Code as to Appellants' claims and found that their hotels are subject to ODC chapter 5.03.250(E)(1). Appellants do not challenge the factual findings made by the Zoning Administrator. Thus, the appeal should be denied, and the Zoning Administrator's decisions upheld; and

WHEREAS, Ontario Development Code Table 2.01-1 (Review Matrix) establishes that the Zoning Administrator has the responsibility and authority to review and act upon Interpretations and Land Use Determinations; 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 not subject to the California Environmental Quality Act of 1970, as amended, and the Guidelines promulgated thereunder, pursuant to Section 15060(c)(2) of the State CEQA Guidelines, as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; 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 appeal Application; 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 May 28, 2024, the Planning Commission of the City of Ontario conducted a hearing to consider the Appeal and concluded said hearing on that date, voting to issue Resolution No. PC24-024 upholding the Zoning Administrator's decision to deny the Appeal; and

WHEREAS, on June 6, 2024, Frank A. Weiser ("Appellant Representative"), submitted an Appeal of the Planning Commission's decision to uphold the Zoning Administrator's decision and deny the Appeal of the Land Use Determination, File No. PDET23-016; and

WHEREAS, on September 3, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, and concluded said hearing on that date and continued the item to the October 1, 2024 City Council meeting; and

WHEREAS, on October 1, 2024, the City Council of the City of Ontario conducted a hearing to consider the Appeal of the Planning Commission's denial of the Application, 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 City Council of the City of Ontario, as follows:

SECTION 1: ***Environmental Determination and Findings.*** As the decision-making authority 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) This Resolution has been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 ("CEQA "), and the State CEQA Guidelines, and the City Council has determined that this Resolution does not constitute a " project" within the meaning of CEQA Guidelines Section 15060(c)(2) because there is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because it has no potential for either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment; and

(3) The determination of CEQA exemption reflects the independent judgment of the City Council.

SECTION 2: ***Concluding Facts and Reasons.*** Based on the substantial evidence presented to the City Council during the above-referenced hearing, the specific findings set forth in Section 1, above, and for all the reasons stated in the staff report, the City Council hereby concludes as follows:

(1) That the ODC Division 5.03, Section 5.03.250(E)(1) is applicable and enforceable to the operation of the West Coast Inn. ODC Division 5.03, Section 5.03.250(E)(1) states that no guestroom, for Motel or Hotel, shall be rented for a period exceeding 30 consecutive calendar days, counting portions of calendar days as full days. The intent of a Motel or Hotel to provide transient accommodations at a daily rate. Section 3-6.029(g) of the Ontario Municipal Code (OMC) clearly states that "Transient" shall mean any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of

calendar days as full days. Therefore, the Transient Occupancy Tax shall be imposed on “transients” as defined the OMC Section 3-6.029(g).

(2) That Hotel has not applied for an exemption pursuant to Section 3-6.04 of the OMC and therefore no such exemption would be applicable to the Hotel.

(3) That Hotel’s operations, as stipulated in the January 8, 2021 hearing, allowing guests to stay longer than 30 days is in violation of ODC Division 5.03, Section 5.03.250(E)(1) and in violation of all applicable zoning and use permits.

SECTION 3: ***City Council Action.*** Based upon the findings and conclusions set forth in Sections 1 and 2, above, the City Council hereby Approves to uphold the Planning Commission’s Decision to uphold the Zoning Administrator Decision herein described Application.

SECTION 4: ***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 5: ***Certification to Adoption.*** The City Clerk shall certify to the adoption of the Resolution.

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

PASSED, APPROVED, AND ADOPTED this 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
Department: Records Management Prepared By: Peak Approver Staff Member Presenting: Claudia Y. Isbell, Assistant City Clerk Approved By:	Submitted To: Council/OHA Approved: _____ Continued To: _____ Denied: _____ Item No: 20

SUBJECT: **AN ORDINANCE AMENDING SECTION 2-1.203 OF THE ONTARIO MUNICIPAL CODE RELATING TO SALARY COMPENSATION FOR THE CITY COUNCIL**

RECOMMENDATION: That the City Council introduce and waive further reading of Ordinance Amending Section 2-1.203 of the Ontario Municipal Code relating to Salary Compensation for the Mayor and the City Council.

THE FOLLOWING COUNCIL GOALS ARE BEING ACHIEVED:
Operate in a Businesslike Manner

FISCAL IMPACT: The compensation adjustments for the City Council members will be effective after the November 5, 2024 election, and will increase General Fund personnel appropriations by approximately $6,760 per Councilmember, for a total of $27,040 for the remainder of Fiscal Year 2024-25. Additional appropriations will be added to the General Fund at a future quarterly budget update, as necessary.

BACKGROUND & ANALYSIS: Senate Bill 329 amends Government Code Section 36516 and authorizes a City Council to enact an ordinance to provide each member of the City Council a salary based upon the population of the city, as specified. The bill allows for an increase up to $2,550 for cities with a population from 150,000 to 250,000.

The bill authorizes the salary of council members to be increased beyond the specified maximums to an amount not exceeding the greater of either 5% for each calendar year from the operative date of the last adjustment of the salary in effect when the Ordinance or amendment is enacted, or an amount equal to inflation since January 1, 2024, based upon the California Consumer Price Index, which shall not exceed 10% for each calendar year. The bill requires the City Council to consider the adoption of an ordinance to increase council member compensation in open session during at least two regular meetings of the City Council.

As such, Staff recommends that the City Council introduce the Ordinance and waive further reading of the Ordinance to bring City Council compensation to the amount of $2,550.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING SECTION 2-1.203 OF THE ONTARIO MUNICIPAL CODE RELATING TO SALARY COMPENSATION FOR THE CITY COUNCIL.

WHEREAS, the California State Governor signed SB 329 into law on June 29, 2023, and

WHEREAS, the new law amends Government Code Section 36516, allowing general law cities to adjust council member salaries for inflation, and

WHEREAS, the new law allows for cities over 150,000 up to and including 250,000 in population, up to and including [a salary of] two thousand five hundred and fifty dollars ($2,550) per month, and

WHEREAS, the City Council's current salary is below the newly established salary, and

WHEREAS, the new salary for City Council would be effective on November 5, 2024, and

WHEREAS, the City Council desires to modify the salary compensation for all City Council Members.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario as follows:

SECTION 1. Findings. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Section 2-1.203 of Chapter 1 to Title 2 of the Ontario Municipal Code is hereby amended in its entirety to read as follows:

Sec. 2-1.203. Payment.

(a) Each member of the Council shall receive as salary the sum of Two-Thousand-Five-Hundred-Fifty and Dollars ($2,550) per month.

(b) Said salaries shall be payable from and after the operative date of this section at the same time and in the same manner as salaries are paid to other officers and employees of the City.

SECTION 3. Pursuant to Section 36516.5 of the California Government Code, the adjustments to City Council Member salary set forth herein shall become effective

upon the completion and installation of the new members of the City Council subsequent to November 5, 2024, pursuant to California Elections Code Section 10262.

SECTION 4. CEQA. The City Council hereby finds that adoption of this Ordinance is not a "project" under the California Environmental Quality Act because the Ordinance does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

SECTION 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 303 East "B" Street, Ontario, CA 91764. The custodian of these records is the City Clerk.

SECTION 6. 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 7. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 8. 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 _____ 2024.

_____
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 _____, 2024 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)

CITY OF ONTARIO *Agenda Report* **October 1, 2024**	**SECTION:** **ADMINISTRATIVE REPORTS/DISCUSSION/ACTION**
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: 21

SUBJECT: **A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE ONTARIO PUBLIC FINANCING AUTHORITY AND THE CITY OF ONTARIO**

RECOMMENDATION: That the City Council and the Ontario Public Financing Authority take the following actions:

A. The City Council consider and adopt a Resolution authorizing the execution and delivery of Amendment No. 1 to the Lease Agreement; and
B. The Ontario Public Financing Authority consider and adopt a Resolution authorizing the execution and delivery of Amendment No. 1 to the Lease Agreement.

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

FISCAL IMPACT: There is no direct fiscal impact associated with this action.

BACKGROUND & ANALYSIS: The City of Ontario ("City") and the Ontario Public Financing Authority ("Authority") entered into a Lease Agreement on March 1, 2023, under which the City leased to the Authority property ("Leased Premises") for the purpose of securing payments made with respect to the Ontario Public Financing Authority Taxable Lease Revenue Bonds, 2023 Series A. The Authority and the City wish to release a portion of the Leased Premises surrounding Lot A to the Ontario Sports Arena and a portion of the frontage of the Sports Arena consisting of approximately five acres ("Released Property") for future development and improvement to the surrounding area. The Authority and the City wish to substitute property consisting of approximately five acres located at the corner of East Fourth Street and Via Piemonte ("Substitute Property") as Leased Premises under the Lease Agreement. The City has determined that the fair rental value of the Substitute Property, together with the remaining Leased Premises is greater than the payments remaining on the bonds. The security for payment of the bonds will not be impaired, nor will the interests of the bondholders be adversely affected.

The City and the Authority have determined that it is in its best interest to amend the description of the Leased Property contained in the Lease Agreement by removing the Released Property and replacing it with the Substitute Property.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENT NO. 1 TO LEASE AGREEMENT.

WHEREAS, the Ontario Public Financing Authority (the "Authority") is a joint exercise of powers authority formed pursuant to a Joint Exercise of Powers Agreement by and between the City of Ontario (the "City") and the Ontario Housing Authority and is authorized under said Agreement and under the laws of the State of California to finance the acquisition and construction of public capital improvements for the City; and

WHEREAS, the Authority has caused to be delivered its $100,000,000 Ontario Public Financing Authority Taxable Lease Revenue Bonds, 2023 Series A (the "Bonds") for the purpose of financing the acquisition of real property and construction and installation of public improvements throughout the City (the “Project”) which Bonds are payable from lease payments to be paid to the Authority by the City pursuant to a Lease Agreement dated as of March 1, 2023 relating to the Project (the “Lease Agreement”); and

WHEREAS, the City Council wishes to release a portion of the Leased Premises surrounding Lot A to the Ontario Sports Arena and a portion of the frontage of the Sports Arena consisting of approximately 5 acres (the “Released Property”) for future development and improvement to the surrounding area; and

WHEREAS, the City Council wishes to substitute property consisting of land located at the corner of E. Fourth Street and Via Piemonte and consisting of approximately 5 acres (the “Substitute Property”) as Leased Premises under the Lease Agreement; and

WHEREAS, the City Council has determined to release (the “Released Property from the Leased Premises and replace it with the Substitute Property under the Leased Premises; and

WHEREAS, under the terms of the Lease Agreement, the Original Purchaser, as defined in the Lease Agreement, of the Bonds, Bank of America, N.A., shall have provided its consent to any amendment before such amendment shall become effective; and

WHEREAS, the City and Authority will release and substitute the Leased Premises pursuant to the Lease Agreement upon the written consent of the Original Purchaser.

NOW THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED that the City Council of the City of Ontario as follows:

Section 1. Findings and Determinations. The City Council finds and determines that the above recitals are true and correct and that the value of real

property together with an assessment of value of improvements exceeds the amount of the outstanding Bonds. The fair rental value of the Substitute Property, together with the remaining Leased Premises is greater than the payments remaining on the Bonds.

Section 2. Approval of Amendments. The City Council hereby approves the Amendment No. 1 to Lease Agreement in substantially the form on file with the City Clerk, together with such additions thereto and changes therein as Bond Counsel shall deem necessary, desirable or appropriate, the execution of which by the Mayor, the Mayor Pro Tem, the City Manager or the Executive Director of Finance shall be conclusive evidence of the approval of any such additions and changes. The Mayor, the Mayor Pro Tem, the City Manager or the Executive Director of Finance is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to, the final forms of each of the above-mentioned documents for and in the name and on behalf of the City.

Section 3. Official Actions. The Mayor, the Mayor Pro Tem, the City Manager, the Executive Director of Finance, the City Clerk and any and all other officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions other documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions as described herein.

Section 4. Effective Date. 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 1st day of October, 2024.

_____
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. 2024- was duly passed and adopted by the City Council of the City of Ontario at their regular meeting held October 1, 2024 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. 2024- duly passed and adopted by the Ontario City Council at their regular meeting held October 1, 2024.

_____
SHEILA MAUTZ, CITY CLERK

(SEAL)

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ONTARIO PUBLIC FINANCING AUTHORITY OF THE CITY OF ONTARIO, CALIFORNIA, AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENT NO. 1 TO LEASE AGREEMENT.

WHEREAS, the Ontario Public Financing Authority (the "Authority") is a joint exercise of powers authority formed pursuant to a Joint Exercise of Powers Agreement by and between the City of Ontario (the "City") and the Ontario Housing Authority and is authorized under said Agreement and under the laws of the State of California to finance the acquisition and construction of public capital improvements for the City; and

WHEREAS, the Authority has caused to be delivered its $100,000,000 Ontario Public Financing Authority Taxable Lease Revenue Bonds, 2023 Series A (the "Bonds") for the purpose of financing the acquisition of real property and construction and installation of public improvements throughout the City (the "Project") which Bonds are payable from lease payments to be paid to the Authority by the City pursuant to a Lease Agreement dated as of March 1, 2023, relating to the Project (the "Lease Agreement"); and

WHEREAS, the Authority wishes to release a portion of the Leased Premises surrounding Lot A to the Ontario Sports Arena and a portion of the frontage of the Sports Arena consisting of approximately 5 acres (the "Released Property") for future development and improvement to the surrounding area; and

WHEREAS, the Authority wishes to substitute property consisting of land located at the corner of E. Fourth Street and Via Piemonte and approximately 5 acres (the "Substitute Property") as Leased Premises under the Lease Agreement; and

WHEREAS, the Authority has determined to release the Released Property from the Leased Premises and replace it with the Substitute Property under the Leased Premises; and

WHEREAS, under the terms of the Lease Agreement, the Original Purchaser, as defined in the Lease Agreement, of the Bonds, Bank of America, N.A., shall have provided its consent to any amendment before such amendment shall become effective; and

WHEREAS, the City and Authority will release and substitute the Leased Premises pursuant to the Lease Agreement upon receipt of the written consent of the Original Purchaser.

NOW THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED that the Board of the Ontario Public Financing Authority as follows:

SECTION 1. Findings and Determinations. The Board of the Authority finds and determines that the above recitals are true and correct and that the value of the remaining Leased Premises under the Lease Agreement will be equal to or in excess of the remaining lease payments to be made under the Lease Agreement.

SECTION 2. Approval of Amendments. The Board of the Authority hereby approves the Amendment No. 1 to Lease Agreement in the form on file with the Secretary, together with such additions thereto and changes therein as Counsel to the City shall deem necessary, desirable or appropriate, the execution of which by the Chair, the Vice-Chair, the Executive Director, the Treasurer shall be conclusive evidence of the approval of any such additions and changes.

SECTION 3. Official Actions. The Chair, the Vice-Chair, the Executive Director, the Treasurer, and the Secretary, and the and any and all other officers of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions other documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions as described herein.

SECTION 4. Effective Date. 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 1st day of October 2024.

_____
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 October 1, 2024, 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 October 1, 2024.

_____
SHEILA MAUTZ, AUTHORITY SECRETARY

(SEAL)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Best Best & Krieger LLP
3390 University Avenue, 5th Floor
Riverside, California 92501
Attention: Kim A. Byrens, Esq.

(Space above for Recorder's Use)

AMENDMENT NO. 1 TO

LEASE AGREEMENT

Dated as of October 1, 2024

by and between

ONTARIO PUBLIC FINANCING AUTHORITY

and

CITY OF ONTARIO

(Exempt from filing fee pursuant to
Government Code Section 6103)

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AMENDMENT NO. 1 TO
LEASE AGREEMENT

THIS AMENDMENT NO. 1 TO LEASE AGREEMENT, made as of October 1, 2024, is entered into by and between ONTARIO PUBLIC FINANCING AUTHORITY, a joint powers authority organized and existing under the laws of the State of California, as lessor (the "Authority") and the CITY OF ONTARIO, a municipal corporation, duly organized and existing under and by virtue of the laws of said state, as lessee (the "City").

W I T N E S S E T H

WHEREAS, the City and the Authority have previously entered into a Lease Agreement dated as of March 1, 2023 (the "Lease Agreement"), a memorandum of which was recorded as Document No. 2023-0065791 in the Official Records of the San Bernardino County Recorder's Office, under which the City leased to the Authority the property set forth therein and described in Exhibit A thereto (the "Leased Premises") for the purpose of securing payments made with respect to the $100,000,000 Ontario Public Financing Authority Taxable Lease Revenue Bonds, 2023 Series A (the "Bonds"), which were issued pursuant to a Indenture of Trust (the "Indenture") dated as of March 1, 2023, by and between the Ontario Finance Authority and Zions Bancorporation, National Association; and

WHEREAS, the Authority and the City wish to release a portion of the Leased Premises surrounding Lot A to the Ontario Sports Arena and a portion of the frontage of the Sports Arena consisting of approximately ___ acres (the "Released Property") for future development and improvement to the surrounding area; and

WHEREAS, the Authority and the City wish to substitute property consisting of land located at the [Southwest/Southeast corner of E. Fourth Street and Via Piemonte] and approximately__ acres (the "Substitute Property") as Leased Premises under the Lease Agreement; and

WHEREAS, the City and the Authority have determined that it is in its best interests to amend the Lease Agreement to remove the Released Property from the description of the Leased Property contained in the Lease Agreement by amending and restating Exhibit A and replacing such Exhibit A with the description of the Substitute Property shown in Exhibit A attached hereto and by this reference herein incorporated; and

WHEREAS, under the terms of the Lease Agreement, the Original Purchaser, as defined in the Lease Agreement, of the Bonds, Bank of America, N.A., shall have provided its consent to any amendment before such amendment shall become effective; and

WHEREAS, the City finds that the security for payment of the Bonds will not be impaired, nor will the interests of the Holders be adversely effected; and

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. Unless the context otherwise requires, capitalized terms used herein shall have the meanings given to such terms in the Lease Agreement and the Indenture.

ARTICLE II

REPRESENTATIONS, OF THE AUTHORITY

Section 2.1 Representations of the City. The City represents, covenants and warrants to the Authority as follows:

(a) Due Organization and Existence. The City is a duly organized and validly existing municipal corporation under the laws of the State of California.

(b) No Default. No Event of Default has occurred under the Lease Agreement and no event has occurred which, with the passing of time or the giving of notice, would constitute an Event of Default under the Lease Agreement.

ARTICLE III

AMENDMENT TO LEASE AGREEMENT

Section 3.1 Amendment to Leased Property Description. The Lease Agreement is hereby amended by amending and restating Exhibit A of each respective agreement and revising said exhibit with the description of property described in Exhibit A hereto.

ARTICLE IV

MISCELLANEOUS

Section 4.1 Severability. In the event any provision of this Amendment No. 1 to Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

Section 4.2 Execution in Counterparts. This Amendment No. 1 to Lease Agreement may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

Section 4.3 Applicable Law. This Amendment No. 1 to Lease Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Authority has caused this Amendment No. 1 to Lease Agreement to be executed in its corporate name by its duly authorized officer and sealed with its corporate seal; and the City has caused this Lease to be executed in its name by its duly authorized officers, as of the date first above written.

CITY OF ONTARIO, as Lessee

By:_____
City Manager

(S E A L)

ATTEST:

_____
Clerk

ONTARIO PUBLIC FINANCING AUTHORITY, as Lessor

By:_____
Executive Director

ATTEST:

_____
Secretary

CONSENTED TO BY:

BANK OF AMERICA, N.A., as Purchaser

By: _____
Authorized Representative

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

On _____, 2024, before me, _____, a 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 _____ (Seal)

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

On _____, 2024, before me, _____, a 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 _____ (Seal)

EXHIBIT A

AMENDED AND RESTATED
LEASED PROPERTY

(SEE FOLLOWING PAGES)

BBK
BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Memorandum

To: Honorable Mayor And Members Of The City Council Of The City Of Ontario And Members Of The Ontario Public Financing Authority

From: Best Best & Krieger LLP, Bond Counsel

Date: October 1, 2024

Re: Release And Substitution Of Property Relating To Ontario Public Financing Authority Taxable Lease Revenue Bonds, 2023 Series A

The City of Ontario has previously financed the acquisition of property and other public improvements with the proceeds of the Ontario Public Financing Authority Taxable Lease Revenue Bonds, 2024 Series A (the "2023 Bonds"). The leased asset under the lease agreement relating to the 2023 Bonds is the Toyota Sports Arena and the surrounding property and parking lots. The City is engaging vendors to develop the sports arena complex and entertainment zone on certain property surrounding the sports arena. The City will need to protect the interests of the purchaser of the 2023 Bonds, Bank of America, from unwanted encumbrances on the property that is the subject of the lease agreement for the 2023 Bonds. To accomplish the goal of protecting the owner of the 2023 Bonds and allowing the vendors to assert their interests in the development of the sports arena area, it is necessary to release from the lien of the 2023 Bonds certain properties adjacent to the sports arena and to substitute those properties with other property of equivalent value.

Accompanying this memorandum are approving resolutions of the City and the Ontario Public Financing Authority which approve the release and substitution of the property along with the following document:

1. Amendment No. 1 to Lease Agreement, by and between the City and the Ontario Public Financing Authority. This agreement provides for the release of certain property and the substitution of additional property with an equivalent value.

Each resolution requires that the consent of the owner of the 2023 Bonds is required to effect the amendment. Additionally, each resolution authorizes the officers of the City and Authority to provide such other documents and certificates to effectuate the release and substitution of the property.

Should the City Council and the governing board of the Ontario Public Financing Authority wish to proceed with the release and substitution of the property, the accompanying resolutions should be considered for adoption.

BBK
BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Memorandum

To: Honorable Mayor And Members Of The City Council Of The City Of Ontario And Members Of The Ontario Public Financing Authority

From: Best Best & Krieger LLP, Bond Counsel

Date: October 1, 2024

Re: Release And Substitution Of Property Relating To Ontario Public Financing Authority Taxable Lease Revenue Bonds, 2023 Series A

The City of Ontario has previously financed the acquisition of property and other public improvements with the proceeds of the Ontario Public Financing Authority Taxable Lease Revenue Bonds, 2024 Series A (the "2023 Bonds"). The leased asset under the lease agreement relating to the 2023 Bonds is the Toyota Sports Arena and the surrounding property and parking lots. The City is engaging vendors to develop the sports arena complex and entertainment zone on certain property surrounding the sports arena. The City will need to protect the interests of the purchaser of the 2023 Bonds, Bank of America, from unwanted encumbrances on the property that is the subject of the lease agreement for the 2023 Bonds. To accomplish the goal of protecting the owner of the 2023 Bonds and allowing the vendors to assert their interests in the development of the sports arena area, it is necessary to release from the lien of the 2023 Bonds certain properties adjacent to the sports arena and to substitute those properties with other property of equivalent value.

Accompanying this memorandum are approving resolutions of the City and the Ontario Public Financing Authority which approve the release and substitution of the property along with the following document:

1. Amendment No. 1 to Lease Agreement, by and between the City and the Ontario Public Financing Authority. This agreement provides for the release of certain property and the substitution of additional property with an equivalent value.

Each resolution requires that the consent of the owner of the 2023 Bonds is required to effect the amendment. Additionally, each resolution authorizes the officers of the City and Authority to provide such other documents and certificates to effectuate the release and substitution of the property.

Should the City Council and the governing board of the Ontario Public Financing Authority wish to proceed with the release and substitution of the property, the accompanying resolutions should be considered for adoption.